

**MID-KINGS RIVER
GROUNDWATER
SUSTAINABILITY
AGENCY**



**RE: GROUNDWATER EXPORT & WATER RESOURCE
OVERSIGHT COMMISSION ORDINANCE COMMENTS**

County of Kings
City of Hanford
Kings County
Water District

Dear Board of Supervisors:

Barry McCutcheon
Chair
Michael Murray
Vice-Chair
Diane Sharp
Steven P. Dias
Dennis Mills
Secretary

200 North Campus Dr.
Hanford, CA 93230
Phone: (559) 584-6412
Fax: (559) 584-6882

I hope this letter finds you well. Please consider this correspondence on behalf of Mid-Kings River (MKR) Groundwater Sustainability Agency (GSA) in response to the proposed Kings County Ordinance to dissolve the Water Commission and enact a Groundwater Exportation Ordinance. We understand from the November 8th Board of Supervisor meeting that the first readings of the “Groundwater Export Ordinance” (Ordinance) and the “Water Resources Oversight Commission Formation Ordinance” (WROC) were waived and the process continued to the second reading schedule for November 29, 2022. The following is a list of topics from both the Ordinance and the WROC that are very concerning to the MKR GSA. This is provided as written comment for your consideration at the public hearing.

1. Local GSAs – The Ordinance has very little description of how the County’s groundwater management efforts would be coordinated with local GSAs or whether those efforts are compliant with existing Groundwater Sustainability Plans (GSPs).
2. “Health, welfare and safety” – The Ordinance references the County’s purpose as being “to protect the health, welfare, and safety of the residents of the County”. In other arenas the County oversees compliance with flood zones, traffic requirements, building permits, grading plans or requirements to use qualified contractors for well development. However, the GSA is not aware of the County exerting their authority “to protect health, welfare, and safety” in the realm of groundwater. Given the stated goal, the MKR GSA would recommend connecting observable impacts from export pumping on nearby landowners to justify the restriction. Also, if a complaint was received about impacts from pumping, then it would also make sense to get the local GSA involved at that point.
3. Comingled Supplies – It is unclear how the County/staff/WROC would investigate a situation where groundwater was pumped into a conveyance or storage system where the groundwater was comingled with other supplies like surface water, banked water or recycled/treated groundwater. Once the supplies are comingled, it is not possible to track the molecules of water to determine where the groundwater went versus the surface water.
4. Investigation Authority – The Ordinance appears to suggest the County has the authority to search local landowner’s properties and businesses during a staff or WROC investigation. The MKR GSA understands that County staff could only investigate from public lands unless a

GW Export Ordinance and WROC Ordinance – Concerns & Comments

warrant was obtained or a landowner agreed to provide access and records. And if the public lands investigation was inconclusive, it would seem the WROC would not have justification to issue any related penalties.

5. Defense Information – It is unclear how any landowner would defend themselves against an accusation of exporting groundwater. The Ordinance appears to suggest that it will be possible to investigate potential groundwater export complaints even though volumetric groundwater pumping amounts may not be available and the County does not have access to crop ET evaluations from local fields or groundwater level monitoring information either.
6. What is/isn't restricted – The Ordinance uses inclusive lists of restricted actions and also states a caveat that anything beyond the County's jurisdiction won't be regulated. Given that this is the County's first regulation/ordinance of this kind, the MKR GSA suggests the use of exclusive lists and specific examples of what is to be regulated in order to improve landowner understanding.
7. Unlawful Presumption
 - a. *"All" Groundwater Exports* – The Ordinance appears to state that all groundwater exports from the County are "unlawful", and that all exports are required to obtain County permits. This tends to beg the question, why is there no minimum amount that is acceptable when there are significant groundwater supplies that are imported into Kings County?
 - b. *Exceptions* – The MKR GSA understands from reading the Ordinance that all exports, even exceptions, are required to obtain County permits and be considered by the WROC. The MKR GSA would suggest that exceptions to this process be made clearer and more substantive so that parties like landowners along the border of the County could rely on them without going through an unneeded evaluation, defense before the WROC and development of a permit.
 - c. *GSA Management* – The Ordinance does not seem to envision that GSAs are developing groundwater management programs that address declining groundwater levels by 2040, as required in SGMA. It is unclear how any of these programs/projects/policies would relate to the Ordinance. One clear example would seem to be that the Tri-County Water Authority and Greater Kaweah GSA are existing GSAs that have service areas in multiple counties. Another clear example would be that the Greater Kaweah GSA is implementing a pumping cap this water year for the first time. From my understanding of the policies approved by the Greater Kaweah GSA in September, some of these policies would be in conflict with the proposed Ordinance.
8. Impact Identification – Given that correlative groundwater rights, involved in local groundwater aquifers, extend far beyond the County boundary, the County needs to be conscious that its Ordinance could restrict an owner's use of existing groundwater rights.
9. Other Counties – Parties within Kings County have a long history of importing a significant amount of groundwater from adjacent Counties. Based on the Tulare Lake Subbasin Annual Reports, imports from other counties in some years exceed 50,000 acre-feet. Even given the exceptions included in the Ordinance, it appears that if adjacent Counties adopted identical

GW Export Ordinance and WROC Ordinance – Concerns & Comments

ordinances, those imports would be restricted to such an extent as to negatively impact some landowners in Kings County.

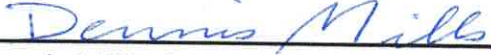
10. Carryover – There is no surface water developed in Kings County, yet the Ordinance is not clear as to whether a party that carried surface water over, into a coming Water Year, in a reservoir outside of the County (i.e. Pine Flat – Fresno Co, Terminus – Tulare Co, Success – Tulare Co, San Luis - Merced Co), would be “exporting” surface water. The MKR GSA views that this should be clearly listed in the exceptions.
11. Water Deals – The Ordinance appears to envision a fairly lengthy timeframe from submittal to the WROC, investigation, consideration and an eventual vote by the Board of Supervisors. In terms of surface water deals by local agencies and ditch companies, this timeframe is far too long. The process would also be public, which would work against a party’s ability to successfully negotiate terms.
12. Surface Water Obligation – The Ordinance appears to restrict landowners with access to surface water and makes their use of surface water a new obligation. The MKR GSA is concerned that the County does not have the authority to connect the continued use of surface water use with groundwater pumping restrictions. Just for reference, SGMA does not provide any jurisdiction over surface water to GSAs, so all SGMA compliance through GSAs is only related to groundwater usage.
13. Agency Water – The Ordinance appears to try to restrict the groundwater use of individuals that export surface water. However, it is unclear how the Ordinance would be applied when surface water is controlled, or the rights are held by, an agency and what impacts a perceived export would have on landowners in the agency’s service area. Also, the Ordinance appears to be silent on any period of consideration. Many water deals involve delivery of water in the current year, and a repayment of water in a coming year.
14. Budget Impact – The Ordinance claims to authorize the development of a new County “agency” or department, and to authorize staff to investigate matters of interest. However, there is no statement of anticipated impact to the County’s fiscal budget. Given what is described, there would appear to be new staff necessary and other related expenses that should be considered with the Ordinance language.
15. WROC Qualifications – The Ordinance requires the WROC to consider a list of technical matters in Section 14C-23, B. These technical matters appear to require a professional registration in the State of California as well as a local understanding of groundwater conditions throughout the County. Generally this list would seem to require WROC members to be Civil Engineers, Geotechnical Engineers, Certified Hydrogeologist or other similarly qualified professionals. The budget impact associated with contracting for professional services for the WROC should be considered with the WROC language.

The MKR GSA has developed this list of concerns for the Groundwater Export Ordinance and the Water Resource Oversight Committee Ordinance in the hopes that the Board of Supervisors will consider having both ordinances revised before they are considered again. It is

GW Export Ordinance and WROC Ordinance – Concerns & Comments

clear the Supervisors believe that there is a significant need to address this matter, but the MKR GSA hopes that the Supervisors would attempt to make both ordinances more easily understood and more implementable. Thank you for your attention to these concerns. Should you have any questions or concerns regarding the above, please do not hesitate to contact me directly.

Sincerely,


Dennis Mills
Dennis Mills, General Manager
Mid-Kings River Groundwater Sustainability Agency

Cc: Ray Carlson, Attorney
Jeof Wyrick, El Rico GSA
Amer Hussain, TLS Point of Contact
Deanna Jackson, Tri-County Water Authority
Charlotte Gallock, South Fork Kings GSA
Don Mills, Greater Kaweah GSA

From: [David Merritt](#)
To: [BOS Questions](#)
Cc: [Boyett, Matthew](#)
Subject: FW: June Check-In Before August Meeting
Date: Tuesday, November 22, 2022 4:19:18 PM
Attachments: [image001.png](#)

Please include the below as comments on the upcoming hearing concerning the proposed Groundwater Ordinance –

Thank you –

David M. Merritt

General Manager

Kings River Conservation District

4886 East Jensen Avenue

Fresno, CA 93725

559.237.5567 ext. 111

559.476.0538 - cell

dmerritt@krcd.org

From: David Merritt

Sent: Tuesday, November 22, 2022 8:11 AM

To: Boyett, Matthew <Matthew.Boyett@co.kings.ca.us>; Hill, Edward <Edward.Hill@co.kings.ca.us>; Freeman, Diane <Diane.Freeman@co.kings.ca.us>; Cash, Sean <Sean.Cash@co.kings.ca.us>; Neves, Joe <Joe.Neves@co.kings.ca.us>; Verboon, Doug <Doug.Verboon@co.kings.ca.us>

Cc: Antonio Solorio <asolorio@wwd.ca.gov>; Eric Osterling <eosterling@greaterkaweahgsa.org>; Dennis Mills <dennis.kingscwg@outlook.com>; Charlotte Gallock <cgallock@krcd.org>; djackson@tcwater.org; munruh@jgboswell.com; jwyrick@jgboswell.com; kcampbell@wwd.ca.gov

Subject: RE: June Check-In Before August Meeting

Good morning, Matthew –

I would like to suggest Kings County delay the Groundwater Ordinance that is currently being heard by the Board of Supervisors and allow the below process to continue. Several agencies were caught off by this current reading and have not had the time to review. In addition, the next hearing date falls during the ACWA Conference in Southern California and several of the water agencies will not be able to participate in the next hearing as a result.

Again, I thought the goal was for the county to collaborate with all GSA's overlying Kings County to develop a framework for this. I realize there will be challenges and disagreement; however, feel strongly we ALL need to commit to the process we discussed at our last meeting and develop a structure that provides solutions and not more confusion / layers of government.

Greatly appreciated –

-David

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General Manager

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559.476.0538 - cell

dmerritt@krcd.org

From: Boyett, Matthew <Matthew.Boyett@co.kings.ca.us>

Sent: Tuesday, June 7, 2022 1:27 PM

To: 'kcampbell@wwd.ca.gov' <kcampbell@wwd.ca.gov>; djackson@tcwater.org; Phil Desatoff <pdesatoff@cidwater.com>; Eric Osterling <eosterling@greaterkaweahgsa.org>; Dennis Mills <dennis.kingscwg@outlook.com>; Antonio Solorio <asolorio@wwd.ca.gov>; 'jwyrick@jgboswell.com' <jwyrick@jgboswell.com>; 'munruh@jgboswell.com' <munruh@jgboswell.com>; David Merritt <dmerritt@krcd.org>; Charlotte Gallock <cgallock@krcd.org>

Cc: Hill, Edward <Edward.Hill@co.kings.ca.us>; Freeman, Diane <Diane.Freeman@co.kings.ca.us>; Cash, Sean <Sean.Cash@co.kings.ca.us>; Neves, Joe <Joe.Neves@co.kings.ca.us>; Verboon, Doug <Doug.Verboon@co.kings.ca.us>

Subject: June Check-In Before August Meeting

Good afternoon everyone,

I know you are all hard at work amending your GSPs in collaboration with DWR and that we are planning to reconvene in August. I just wanted to quickly touch bases with you all regarding our meeting in August and ensure that we are on your radar as you're in the swings of amending your GSPs and having conversations with DWR about groundwater.

As you are working with DWR on your amendments, it would be greatly appreciated if you would please keep us in the back of your minds as to what you'd like to see the County do in the effort to support sustainable groundwater resources here in the county. I know the initial draft ordinance was met with much opposition, so I'm wanting the County's efforts to stay somewhat at the forefront of your mind as you're working with DWR so we can hopefully get valuable feedback from you all in August to ensure the County supports the efforts of all of the GSAs. We want to make sure the County's efforts are not hindering the goals and activities of the GSAs and instead supporting the goals and actions of the GSAs and your soon-to-be-approved GSPs.

So I just wanted to quickly check in and make sure that you keep us in mind and hopefully come up with constructive feedback that the County can use to make sure we are all supporting each other in

ensuring our groundwater levels are sustainable and available for many generations here in the county.

Thanks again and I look forward to hearing from you all on your ideas for how we can best support your groundwater efforts in your respective areas. As always, if you have any questions or comments beforehand, please reach out to me at any time. Thanks again.



Matthew Boyett

Administrative Analyst

Kings County Administration

1400 W. Lacey Blvd. | Hanford, CA 93230

Office: (559) 852-2380 | Fax: (559) 585-8047

matthew.boyett@co.kings.ca.us

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the contents are safe.

From: [Charlotte Gallock](#)
To: [BOS Questions](#)
Subject: FW: June Check-In Before August Meeting
Date: Tuesday, November 22, 2022 4:35:29 PM
Attachments: [image001.png](#)

Good Afternoon,

Please see the below comments regarding the Kings County Groundwater Export Ordinance. I am formally requesting that the second reading be delayed at a minimum of two weeks.

Thanks,

[Charlotte Gallock](#)

From: Charlotte Gallock
Sent: Tuesday, November 22, 2022 4:00 PM
To: David Merritt <dmerritt@krcd.org>; Boyett, Matthew <Matthew.Boyett@co.kings.ca.us>; Hill, Edward <Edward.Hill@co.kings.ca.us>; Freeman, Diane <Diane.Freeman@co.kings.ca.us>; Cash, Sean <Sean.Cash@co.kings.ca.us>; Neves, Joe <Joe.Neves@co.kings.ca.us>; Verboon, Doug <Doug.Verboon@co.kings.ca.us>
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Subject: RE: June Check-In Before August Meeting

Matthew,

As the administrator for the South Fork Kings GSA, I agree with David regarding the collaboration efforts associated with the County and the GSA's.

With the upcoming holiday it will be difficult to fully review and discuss the proposed ordinance with all of our respective boards prior to your meeting for the second reading on November 29. I would like to request that the second reading be delayed at a minimum of two weeks. Please let me know if this request could be granted.

Thank you and Happy Thanksgiving,

[Charlotte Gallock](#)

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To: Boyett, Matthew <Matthew.Boyett@co.kings.ca.us>; Hill, Edward <Edward.Hill@co.kings.ca.us>; Freeman, Diane <Diane.Freeman@co.kings.ca.us>; Cash, Sean <Sean.Cash@co.kings.ca.us>; Neves, Joe <Joe.Neves@co.kings.ca.us>; Verboon, Doug <Doug.Verboon@co.kings.ca.us>
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**KINGS
COUNTY
WATER
DISTRICT**



RE: ***GROUNDWATER EXPORT & WATER
RESOURCE OVERSIGHT COMMISSION
ORDINANCE COMMENTS***

Barry McCutcheon
President

Steven P. Dias
Vice-President

Joseph Freitas

Ernest A. Taylor

Michael Murray

Dennis Mills
Manager-Secretary

200 North Campus Dr.
Hanford, CA 93230
Phone: (559) 584-6412
Fax: (559) 584-6882

Dear Board of Supervisors:

It is hoped that this letter finds you well. Please consider this correspondence on behalf of the Kings County Water District (KCWD) in response to the proposed Kings County Ordinance to dissolve the Water Commission and enact a Groundwater Exportation Ordinance. The District understands from the November 8th Board of Supervisor meeting that the first readings of the “Groundwater Export Ordinance” (Ordinance) and the “Water Resources Oversight Commission Formation Ordinance” (WROC) were waived and the process continued to the second reading schedule for November 29, 2022. The following is a list of topics from both the Ordinance and the WROC that are very concerning to the KCWD. This is provided as written comment for your consideration at the public hearing.

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 - c. *GSA Management* – The Ordinance does not seem to envision that GSAs and partnering agencies are developing groundwater management projects and programs that address declining groundwater levels by 2040, as required in SGMA. It is unclear how any of these programs/projects/policies would relate to the Ordinance. Just for reference, there are a few existing and envisioned recharge and banking projects very near the County boundary.
8. Impact Identification – Given that correlative groundwater rights, involved in local groundwater aquifers, extend far beyond the County boundary, the County needs to be conscious that its Ordinance could restrict an owner's use of existing groundwater rights.
9. Other Counties – Parties within Kings County have a long history of importing a significant amount of groundwater from adjacent Counties. Based on the Tulare Lake Subbasin Annual Reports, imports from other counties in some years exceed 50,000 acre-feet. Even given the exceptions included in the Ordinance, it appears that if adjacent Counties adopted identical

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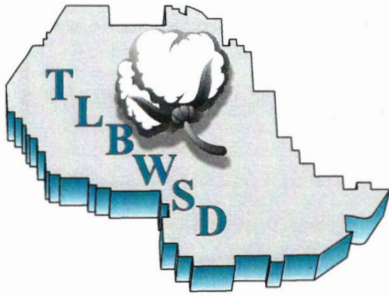
Sincerely,



Dennis Mills
Dennis Mills, General Manager
Kings County Water District

Cc: Ray Carlson, Attorney
Andy Hemans, Peoples Ditch Co.

Neil Bellamy, Last Chance Water Ditch Co.
Shawn Corley, Lakeside Ditch Co.



TULARE LAKE BASIN WATER STORAGE DISTRICT

ESTABLISHED SEPTEMBER 1926

1001 CHASE AVENUE, CORCORAN, CALIFORNIA 93212

PHONE (559) 992-4127 • FAX (559) 992-3891

November 23, 2022

Delivered via email: Catherine.Venturella@co.kings.ca.us

Kings County Board of Supervisors
Kings County Government Center
1400 W Lacey Boulevard
Hanford CA 93230

Re: Dissolution of Water Commission and Groundwater Exportation Ordinance

Dear Board of Supervisors:

Please consider this correspondence on behalf of Tulare Lake Basin Water Storage District (District) in response to the District's correspondence on November 8, 2022, regarding a proposed Kings County Ordinance to dissolve the Water Commission and enact the Groundwater Exportation Ordinance. We understand from the November 8, 2022, Board of Supervisors meeting that the first reading was waived and the process continued to the public comment period to be held on November 29, 2022. We provided these written comments for your consideration at the public hearing.

First, we thank the Board for continuing its interest in sound and reasonable water management within Kings County (County). We share this ultimate goal. However, we have grave concerns about the policy direction of the ordinance and even stronger concerns about various provisions therein. These comments address each.

Water is the limiting factor for almost all agricultural production in the County and as such is a significant component of the entire economy of the County. For this reason, we request that the County not move forward with the proposed Ordinance and instead agree to meet with the District, County staff and Supervisors as soon as possible for the specific purpose of reaching agreement on the issues set forth below for the benefit of the residents and landowners within the County.

Process for Implementation

The draft Ordinance was discovered by District staff the Sunday evening before the Board meeting on November 8, 2022. Despite having monthly meetings between District and County staff regarding water issues, District staff received zero communication that these items would be

presented for consideration, much less already in the form to have a “first reading”. Although the Supervisors did contact a limited number of individuals, it has been stated on the record by at least one Supervisor that there were intentional efforts not to work with stakeholders in advance of releasing the document. This is unfortunate and contrary to the purpose of open meeting laws which guide the conduct of Supervisors.

We encourage the County to use well-established open lines of communication to produce more productive results for all parties.

Water Commission

We understand the Board is considering replacing the Water Commission with an entirely different Agency. This is disheartening since the Water Commission has historically provided sound advice to the Board.

The proposed Ordinance sets forth a new “County Water Agency” (CWA) typically formed pursuant to specific statutory authority. Is there such statutory authority or is the purpose to form an advisory committee to make recommendations to the Board? If the latter, it is again unclear why the Water Commission, a committee formed to fulfill such purpose, should be dissolved.

We also have concerns regarding composition of the CWA which will have a large majority of voting members that use very little water but will be empowered to make decisions about virtually any use of groundwater in the County (i.e., incorporated cities and unincorporated communities). In contrast, only one representative from a water agency will be represented even though multiple water agencies are the heaviest users of water, each with differing issues. Also, there is no representation for property owners not in water districts but who are very important users of water with well-established rights.

In addition to the CWA, the draft Ordinance creates the Water Resources Oversight Commission (Oversight Commission) in part to comply with Senate Bill 552, California Water Code Section 10609.70, titled Drought Planning for Small Water Suppliers and Rural Communities. The purpose of the CWA, and presumably the Oversight Commission, goes far beyond the scope of small water suppliers and rural communities. Forming a new Agency and Oversight Commission to comply with the State’s mandate regarding drought planning for small and rural communities does not foster the stakeholder engagement necessary from the agricultural community. If the County concludes that a new task force or Oversight Commission is needed to comply with Senate Bill 552, it can do so without eliminating existing processes and Water Commissions historically created to deal with agriculture water issues.

Consistency with Sustainable Groundwater Management Act (SGMA)

The implications of SGMA and forthcoming restrictions and regulations on groundwater pumping is of the utmost concern to District landowners. The economic effects from such regulations is also of concern and should be of utmost importance to the County.

However, there are several alarming statements in the draft Ordinance. First, the “Background” section states that much of the groundwater under Kings County is currently not managed by an established Groundwater Sustainability Agency (GSA). This is patently false. Although County staff corrected this error at the Board meetings, it shows the County’s lack of attention to detail and pushing forward with misleading facts. If not pointed out by others, this false statement would have gone uncorrected. Locals spent a tremendous amount of time in forming the GSAs, knowing the counties were the “backstop” to provide jurisdictional coverage for any areas not within water districts, or other public agencies. Every acre of ground was required to be “covered” by a GSA by the SGMA deadline of June 30, 2017.

County Counsel recognized at the time that the County did not have the resources, staff, or actual water use to justify the time and expense of forming a single GSA for the County. Rather, the County proposed that the GSAs would all cover some of the undistricted areas over which the County has jurisdiction. All GSAs agreed to this plan and included the County as one of the members of the (JPAs) formed for SGMA GSAs.

Since formation, the GSAs have submitted Groundwater Sustainability Plans (GSPs) by the initial deadline of January 2020, and recently went through the exercise of amending the initial submittal because of deficiencies articulated by the State. The process has been costly and time consuming and the GSAs are awaiting DWR’s complete technical review to determine next steps in the process.

We highlight this because it is extremely concerning that the County would make this error with the background materials. We are also concerned that there may be fundamental misunderstandings as to the role of the GSP, SGMA authority in general, and more. Again, communication may have resolved matters before reaching this point.

Recital A of draft Section 14C-2 provides that the authority granted in this Chapter is in addition to any authority granted to any GSA. However, the basis upon which the County is imposing authority is unclear. Is the County attempting to rely on SGMA itself? Since the County has not elected to become a GSA itself, it would be improper to do so. In addition, it is concerning that the authority the County outlines therein is inconsistent with the current GSPs, and importantly, the technical basis for each GSP.

An example of another extremely alarming concern with the draft is in the definitions section of Section 16 regarding “safe yield” and “sustainable yield”. SGMA provides a specific definition of Sustainable Yield. Safe Yield is a common law term used historically in adjudications. The two terms are not the same and to use them interchangeably is incorrect and ripe for legal challenge. Again, this highlights our concerns about inconsistencies between the proposed Ordinance and SGMA. The GSAs have spent, and have funding for additional spending, of over Two Million Dollars (\$2,000,000) to model the “safe yield” of the area. This is an extremely complex modeling that is still underway. In contrast, there is no scientific representation on the CWA, and there is growing concern that decisions will be made on a hunch, a feeling, or a political slant that is not necessarily aligned with SGMA. This could jeopardize the entire SGMA effort underway in the County.

In the granting or denial of a permit, one determination the Oversight Commission must make is that the proposed extraction will not cause or increase overdraft. This is clearly a finding to be determined by the relevant GSA, which is required in the GSP and its implementation. Adding an additional layer and oversight by a separate public agency will undoubtedly lead to inconsistent conclusions and determinations. Further, it is unclear what basis the County can rely on in making such a determination given that it is not a GSA and therefore cannot utilize the powers and authorities found in SGMA. The denial of a permit for lack of the listed determinations is ripe for legal challenge and rightfully so. Further, the determinations are costly, and for some, even impossible to make given data limitations.

Misstatements of Law

There are several alarming misstatements of law in the draft. For example, Recital F provides: The principle of correlative rights, developed in California case law, provides that water may be appropriated from a groundwater basin only if groundwater supply is surplus and exceeds the reasonable and beneficial needs of overlying users.

This is incorrect! An overlying right, analogous to that of the riparian owner in a surface stream, is the owner's right to take water from the ground underneath for use on his land within the basin or watershed; it is based on the ownership of the land and is appurtenant thereto. (*California Water Service Co. v. Edward Sidebotham & Son, Inc.*, (1964) 224 Cal.App.2d 715, 725.) As between overlying owners, the rights, like those of riparians, are **correlative**; each may use only his reasonable share when water is insufficient to meet the needs of all (Katz v. Walkinshaw, supra). (*California Water Service Co. v. Edward Sidebotham & Son, Inc.* (1964) 224 Cal.App.2d 715, 725.) Any water not needed for the reasonable beneficial uses of those having prior rights is excess or surplus water and may be appropriated on privately owned land for non-overlying uses, such as devotion to a public use or exportation beyond the basin or watershed. (*Pasadena v. Alhambra* (1949) 33 Cal. 2d 908.) Appropriative rights are not derived from land ownership but depend upon the actual taking of water. (*City of Santa Maria v. Adam*, (2012) Cal.App.4th 266, 278.)

In addition, the County proposes to authorize certain inspections of land without justification, which is an imposition on landowners, likely in violation of the Constitution's Fourth Amendment protections.

Lack of Technical Evidence

There are significant statements throughout the Ordinance that do not appear to be technically justified.

For example, Recital G provides that: The Board is aware of adverse consequences suffered in Kings County and in neighboring counties that have engaged in excessive extraction of groundwater. These consequences include, but are not limited to, land subsidence, damage to the local environment, critical overdraft of local groundwater basins, and increased cost of groundwater production for local use.

The District is unaware of any finding in any GSP or by the County of the foregoing and thus is unable to articulate the County's technical support for such finding. It is also worth noting that Kings County imports groundwater from other counties, a fact that is inconsistent with the foregoing statement.

Tailwater

The ordinance, although proposed to be a limitation on groundwater exportation, focuses on "tailwater" as well, thereby unjustifiably targeting a specific commodity or industry farming practices. Calling any tailwater use "overwatering" and "excessive conversion" of groundwater is not a well-informed standard, lacking objective analysis by policy makers. The standard does not consider closed recirculation systems and appears to potentially threaten all row crops which are key to the economy of the County.

In addition, the County appears to be attempting to regulate a perceived concern with tailwater, while other regulatory programs such as the Irrigated Lands Regulatory Program were mandated to address concerns like discharges from irrigated ag runoff. This again creates inconsistencies between the draft Ordinance and existing law and regulations.

Permit Requirements

Section 14C-10 provides it is unlawful to extract groundwater without first obtaining a permit. Subsection(b) provides two examples of when specific circumstances are to be considered an extraction of groundwater for which a permit is required. Those are the extraction of groundwater to replace a surface water supply, which has been, is being, or will be exported; or overwater agricultural or other lands, through flood irrigation or other means, that causes an excessive conversion of groundwater into tailwater.

Numerous landowners are entirely dependent on groundwater alone. Why is the use of groundwater to replace surface water, for whatever reasons, a factor to consider when issuing a permit? Why is the creation of tailwater from applied groundwater irrigation a circumstance to cause the issuance of a groundwater export permit?

The rationale for the foregoing is unclear, and even more troubling is the complete inability to track or enforce these provisions. Further, these provisions appear to violate private property rights under the California Constitution.

District versus Non-District Lands

The draft Ordinance distinguishes and exempts a permit if historical practices are "consistent with the historical practices of the local agency", drawing a distinction between lands within and outside a District boundary. There is no justification for treating District versus non-District lands differently. To do so places an unfair disadvantage on non-District lands which should have no bearing in the context of groundwater supplies.

10-Mile Exemption

The draft Ordinance exempts exports that are consistent with historical practices and are not used for the benefit of lands more than ten miles beyond the point of extraction. What technical justification exists for the 10-mile limitation? Does this somehow factor into whether the GSAs reach Minimum Thresholds as outlined in the GSPs, for example? The limitation without justification seems completely arbitrary.

Application Requirements and Procedure

The application requirements set forth in the draft are extremely problematic. How were the technical requirements for the permit determined? What technical consultants assisted the County in drafting these requirements? In Section 14C-23, members of the CWA must consider how exports impact the aquifer regarding 14 items that only a technical expert could provide the necessary guidance.

California Environmental Quality Act (CEQA) Review

As the County is well-aware, CEQA review is necessary with any proposed ordinance such as discussed on November 8, 2022. When does the County plan to release its initial findings related to CEQA compliance?

Grandfather Provision

Section 14-C-12(C) of the proposed ordinance provides an exemption for grandfathering use of water “within the boundaries of a local agency located in part within the County and in part in another county where the extraction quantities and uses are consistent with the historical practices of the local agency.” This exemption is prejudicial against landowner use not within a local agency. There are landowners within mutual water companies, not inside a local agency, who will have their rights rescinded based on whether their land is within a local agency. What is the rationale for such a determination of exemption?

Conclusion

The District is extremely concerned with numerous policy directions and legal issues with the proposed drafts and request that you not proceed with adoption until the numerous flaws specified above are fully corrected. To this end, we are prepared to work through these issues with you.

Very truly yours,



Jacob Westra
General Manager

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Deanna Jackson, Executive Director
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DIRECTORS

Cory VanderHam, Chair
Michael Nordstrom
Carlo Wilcox
Wade Magden
Myron Schotanus

November 23, 2022

Chairman Joe Neves
Kings County Board of Supervisors
1400 W. Lacey Blvd.
Hanford, CA 93230

Dear Chairman Neves:

The Tri-County Water Authority (TCWA) is providing these comments regarding the proposed Kings County Groundwater Export Ordinance and the dissolution of the Kings County Water Commission. At the November 8 Board of Supervisors meeting, the first reading of the ordinance was waived and the process continued to the public comment period to be held on November 29, 2022. TCWA is providing these comments for your consideration at the public hearing.

TCWA's concerns mirror those provided by the other Groundwater Sustainability Agencies (GSAs) and water agencies in Kings County. We strongly support the comments included in the letters from the Mid-Kings GSA and the Tulare Lake Water Storage District. In particular, we are concerned how TCWA landowners would be expected to implement separate set of rules in Tulare versus Kings County. Further, there is a significant amount of water that is imported from outside of Kings County. If the neighboring counties were to implement similar ordinances, that would have a detrimental impact in Kings County and would likely result in additional groundwater extraction.

Kings County is covered by three different subbasins with the majority within the Tulare Lake Subbasin. The five GSAs within the Tulare Lake Subbasin (Mid-Kings, South Fork Kings, Southwest Kings, El Rico, and TCWA) have worked closely to implement SGMA. At this important junction, it is critical that the GSAs, water providers, and the County coordinate efforts. The County's decision to unilaterally move forward with this ordinance will create confusion among landowners who are already facing numerous complex regulatory requirements.

The County's stated goal is to protect the groundwater resources of Kings County "from harm resulting from the excessive extraction of groundwater for use outside the basins from which it was extracted." While we support the County's efforts toward reasonable groundwater management, we believe strongly that it is important to engage with the GSAs and water agencies before moving forward with this ordinance. We request that County staff meet with the GSAs to discuss our concerns and identify ways to achieve the County's goals through the SGMA process.

TCWA has serious concerns about the proposed ordinance and would strongly urge the County to allow time for coordination. We concur with David Merritt and Charlotte Gallock's request for additional time for the GSAs, water agencies, and other interested stakeholders to collaborate with the County on the creation of an ordinance that may have impacts on management of water. The SGMA process was based on the principal of local control to address these types of complicated issues.

TCWA disagrees with the proposal to dissolve the Water Commission that is composed of persons with expertise in the water industry for a newly formed Water Resources Oversight Commission. We request additional information on the necessity and purpose of this new agency.

Thank you for your consideration. We look forward to discussing these matters further.

Sincerely,



Deanna Jackson
Executive Director

EMPIRE WEST SIDE IRRIGATION DISTRICT

21990 Laurel Avenue
P.O. Box 66
Stratford, CA 93266

November 23, 2022

Kings County Board of Supervisors
1400 W. Lacey Blvd
Hanford, CA 93230

Re: Groundwater Ordinance

Honorable Board of Supervisors,

This letter is a response to the proposed Groundwater Export Ordinance, and our position on the matter. We have several comments to its current version.

First of all, we do not see the need for this Ordinance. We are not aware of groundwater leaving the County. Our own review has determined that is not the case. Is this Ordinance in response to rumors or fact? If groundwater exportation is occurring, we believe local agencies would be interested to know where it is happening.

Secondly, we believe the ordinance, if adopted, would undermine the authority of the Groundwater Sustainability Agencies, GSAs, within the County. The GSAs have spent much time, effort, and money to analyze the groundwater conditions within their boundaries. They have collected data which their Engineers and Boards have evaluated to make wise decisions for their stakeholders. The County has not been deeply involved in the process and should allow the GSA's to handle any loss of groundwater on their own. At a minimum, the County should allow the GSA's time to respond to the Department of Water Resources, DWR, review of their Groundwater Sustainability Plans, GSPs, and begin implementation or corrections as prescribed before taking this action.

Another item to consider would be the possible loss of imported groundwater into the County should this Ordinance prompt neighboring counties to take a similar stance. Upwards of 100,000-acre feet of groundwater is brought into Kings County from Tulare County in the drier years. The reduction, or loss, of this historic supply would be devastating to agricultural and municipalities in Kings County, not to mention the additional strain to our GSAs.

Lastly, we object to the formation of a Water Resource Oversight Commission to replace the Water Commission. It is understood that the Water Commission has not met regularly of late, but that is an issue that can be remedied. We suggest that the Water Commission remain in place, but report directly to the Board of Supervisors, rather than through the Ag Advisory Council. The Water Commission represents all stakeholders within the County, so why reinvent the wheel.

Thank you for your consideration in this matter.

Sincerely,



Scott Sills
General Manager
Laguna Irrigation District
(559) 923-6800 ext. 2 Office
(559) 352-7947 Cell
scott@lagunaid.com



LAGUNA IRRIGATION DISTRICT

Frank Zonneveld, President
John Oliveira, Vice President
Tony Thomas, Secretary/Treasurer

Jake Miller, Director
Monty Hoggard, Director
Scott Sills, General Manager

November 23, 2022

Kings County Board of Supervisors
1400 W. Lacey Blvd
Hanford, CA 93230

Re: Groundwater Ordinance

Honorable Board of Supervisors,

This letter is a response to the proposed Groundwater Export Ordinance, and our position on the matter. We have several comments to its current version.

First of all, we understand and appreciate the County's interest in the matter. However, we do not see the need for the action at this time. We believe the ordinance, if adopted, would undermine the authority of the Groundwater Sustainability Agencies, GSAs, within the County. The GSAs have spent much time, effort, and money to analyze the groundwater conditions within their boundaries. They have collected data which their engineers and Boards have evaluated to make wise decisions for their stakeholders. The County has not been deeply involved in the process and should allow the GSA's to handle any loss of groundwater on their own.

The County at the least should allow the GSA's time to respond to the Department of Water Resources, DWR, review of their Groundwater Sustainability Plans, GSPs, and begin implementation or corrections as prescribed before taking this action.

Another item to consider would be the possible loss of imported groundwater into the County should this Ordinance prompt neighboring counties to take a similar stance. Upwards of 100,000-acre feet of groundwater is brought into Kings County from Tulare County in the drier years. The reduction, or loss, of this historic supply would be devastating to agricultural and municipalities in Kings County, not to mention the additional strain to our GSAs.

Lastly, we object to the formation of a Water Resource Oversight Commission to replace the Water Commission. It is understood that the Water Commission has not met regularly of late, but that is an issue that can be remedied. We suggest that the Water Commission remain in place, but report directly to the Board of Supervisors, rather than through the Ag Advisory Council. The Water Commission represents all stakeholders within the County, so why reinvent the wheel.

Thank you for your consideration in this matter.

Sincerely,

Scott Sills
General Manager
Laguna Irrigation District
(559) 923-6800 ext. 2 Office
(559) 352-7947 Cell
scott@lagunaid.com



November 28, 2022

Delivered via email: bosquestions@co.kings.ca.us

Kings County Board of Supervisors
Kings County Government Center
1400 W. Lacey Blvd.
Hanford, CA 93230

RE: AN ORDINANCE ADDING CHAPTER 14C, GOVERNING THE EXTRACTION OF GROUNDWATER FOR USE OUTSIDE OF KINGS COUNTY, TO THE KINGS COUNTY CODE OF ORDINANCES AND THE WATER RESOURCES OVERSIGHT COMMISSION FORMATION ORDINANCE

To the Kings County Board of Supervisors:

Kings County Farm Bureau (KCFB) is opposed to the above ordinance as written. While KCFB supports the spirit of the rule and the intended results, the regulation will do more harm than good to the growers of Kings County. KCFB suggests that the Board of Supervisors engage with water stakeholders, including water users, to create an ordinance that works best for the county. This would be preferable to a "working document" written with inconsistencies that leaves more questions than answers.

The following comments cover KCFB's concerns:

The background section reviewed during the Nov. 8, 2022, meeting states on page three of three, "much of the groundwater under Kings County is currently not managed by an established groundwater sustainability agency." That statement is false and shows that either rushed or inexperienced county staff drafted the proposed language. Quick, inaccurate work is an unacceptable first step in governing a natural resource as precious as water.

The ordinance's title implies only groundwater leaving Kings County will be regulated. However, as written, water movement within Kings County and certain farming practices may also be prohibited. ARTICLE II. SECTION 14C-10 SUBSECTION B 2. states, "Overwatering agricultural or other lands, through flood irrigation or other means, that causes an excessive conversion of groundwater into tailwater." This statement lacks clear definitions and quantifiable amounts of "tailwater" and "excessive conversion." Row crop irrigation practices create "tailwater," and eliminating that practice will single out a substantial portion of the industry and negatively impact the county's economy.

This ordinance creates a complaint-based system that allows non-farmers to complain about farming practices. Without a definition of terms like "overwatering" and "excessive conversion," how will the Community Development Agency know how to penalize a landowner or justify to a complainant their practices are warranted?

In addition to creating an export ordinance, the county introduced and waived the first reading of an ordinance forming the Water Resources Oversight Commission. KCFB is concerned with the commission's composition, expressly the qualifications to serve as written.

The commission's membership would consist of voting members with little to no need for or experience using or managing groundwater. They instead represent governmental agencies from the county and cities and community

services districts within Kings County. At best, one water user may serve the commission as a water agency representative. A lack of practical experience among the members of a commission formed to regulate groundwater is troubling. However, when you consider the authority provided to the commission as part of the export ordinance, the commissioner's qualifications are unimaginable. What technical expertise would any of the commissioners possess that uniquely qualifies them to perform the duties of an oversight committee?

With these points in mind, KCFB respectfully encourages that the Board of Supervisors not pass either ordinance as written. Instead, we ask the county to confer with water users, irrigation districts, and groundwater sustainability agencies as soon as possible to address concerns with the ordinance and create a regulation with their comments in mind.

Respectfully,



Dusty Ference
Executive Director

Cc: Catherine.venturella@co.kings.ca.us
Diane.freeman@co.kings.ca.us



ANGIOLA WATER DISTRICT

944 WHITLEY AVENUE, SUITE A, CORCORAN, CALIFORNIA 93212
Telephone 559-992-8980 Facsimile 559-992-1236

November 28, 2022

VIA EMAIL

Joe Neves, Chairman
Kings County Board of Supervisors
1400 W. Lacey Boulevard
Hanford, CA 93230

Re: Proposed Kings County Groundwater Export Ordinance and Dissolution of the
Kings County Water Commission

Dear Joe,

The purpose of this letter is to provide comments on the proposed Kings County Groundwater Export Ordinance and the dissolution of the Kings County Water Commission. At the Board of Supervisors meeting held November 8 the first reading was waived and public comments are to be heard tomorrow, November 29, 2022. These comments are provided on behalf of Angiola Water District (AWD).

AWD's concerns are aligned with those articulated by the County's Groundwater Sustainability Agencies (GSAs) and water agencies in the county. We strongly support the comments provided by the Mid-Kings GSA and the Tulare Lake Basin Water Storage District.

The State of California implemented the Sustainable Groundwater Management Act (SIGMA) to, among other things, implement local management of our groundwater basins and supplies. To that end, five GSAs have been formed in Kings County to manage the groundwater and the groundwater basins in the county. One of the stated goals of the proposed ordinance is to eliminate exportation of groundwater from the county. Rather than enact more regulations and create an additional regulatory agency, the County would be well served to communicate and work closely with the local GSAs with respect to issues perceived by the county supervisors requiring the proposed ordinance. Surely the County is aware that substantial quantities of groundwater are delivered into Kings County from neighboring counties? If our neighboring counties follow Kings County's tracks, our county could potentially face even greater water shortages and the resulting adverse impacts on its economy.

Joe Neves, Chairman
Kings County Board of Supervisors
Page 2.


I served on the Kings County Water Commission in the past. The Water Commission is a solid organization whose members both had and have an excellent understanding of the county's water operations, issues and needs. The commission has provided sound advice to the County over the years. The new body doesn't appear to be able to accomplish anything more than the past commission. The new commission will consist of a majority of board members that use little water and have little at stake. The County currently has an effective commission in place. It's unclear what the necessity or purpose of the new agency is. No need exists to change it. The purpose is difficult to understand.

Article II-B-2 refers to "overwatering agricultural or other lands, through flood irrigation or other means, that causes an excessive conversion of groundwater into tailwater." This section indicates a lack of understanding of irrigation science. The ordinance, purportedly proposed to be a limitation on groundwater exportation, jumps to tail water out of the clear blue sky. Why is tail water a concern when discussing groundwater exportation? Suggesting "overwatering" is intentionally done by growers for any reason is folly. It's **unclear** what the County's goal is here.

Lastly, it appears the proposed ordinance is being hurried through "due process" procedures. The first reading of the ordinance was waived. Tomorrow you will receive public comment that should be thoughtfully considered prior to crafting an ordinance that appears to be short-sighted, solves no real problems and very likely creates a number of new ones. If the proposed Kings County Groundwater Export Ordinance and Dissolution of the Kings County Water Commission is to be good law, please do not rush the process. Take sufficient time to thoughtfully review all the comments and input received.

Thank you for the opportunity to comment on this matter.

Sincerely,



Carlo J. Wilcox
Acting General Manager

From: [Jeremi Garcia](#)
To: [BOS Questions](#)
Subject: KEEP OOR WATER IN OUR COUNTY!
Date: Tuesday, November 29, 2022 7:29:03 AM

Good Morning my name is Jeremi Garcia, first let me start off by saying thank you to the Board for representing our community in a positive manner!

In regards to the ordinance governing the extradition of water from Kings County. We need to keep our water here for our farmers, their employees and the community as a whole. If we had the water to sell off without causing ill effects on the county this would not be an issue. We are all aware that our water table is depleted, currently water wells are being drilled to the deepest depths ever. Water should not be a commodity that is bought and sold by some "politically financed farmer". Please voter to keep our water here where it belongs! Thank you for the opportunity to voice my opinion.

Keep up the great work!!!!

Jeremi Garcia

[Sent from AT&T Yahoo Mail for iPhone](#)

EXTERNAL EMAIL: Do not click any links or open any attachments unless you trust the sender and know the contents are safe.

KINGS RIVER WATER ASSOCIATION

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November 29, 2022

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Clerk of the Board of Supervisors, County of Kings
1400 W. Lacey Blvd.
Hanford, CA 93230

Re: Proposed Kings County Groundwater Ordinance

County of Kings Board of Supervisors,

I am writing to request a brief postponement in the adoption of the proposed Groundwater Ordinance. As drafted, the Ordinance will significantly impact the traditional management and operation of the Kings River surface waters within the Kings River service area that includes portions of Fresno, Kings and Tulare Counties. My comments today do not address any impacts to groundwater management but instead solely address how the proposed Ordinance could impact surface water management in the County and Kings River service area.

The Kings River Water Association (KRWA) is unincorporated association formed in 1927 to administer, manage, and allocate the surface waters of the Kings River to approximately 1,000,000 acres in Fresno, Kings and Tulare Counties. The KRWA is made up of 28 member units composed of 13 public agencies, and 15 private water and ditch companies.

As part of routine traditional operations, these 28 member units move water back and forth between their respective service areas and within the broader KRWA service area to optimize water management and their respective water supplies. This movement is generally characterized as transfers and exchanges. These transfers are not conducted exclusively in one county, but are maintained within the KRWA service area. My observation is that, over time, these transfers tend to balance out in the movement of water in and out of an area. As drafted, the Ordinance would not allow these types of necessary water management activities without going through a permit process.

Administratively, these transfers are typically made with very little advance notice at the end of the season to best utilize relatively small volumes of water that would otherwise not be deliverable in that season. To be effective, completion of the paperwork and approval would need to be completed in less than a week. These transfers are typically made between member

units and not water users. Making the findings in the current draft of the ordinance in this situation difficult, if not impossible, to make.

Suggested edits and actions:

- 1) In the definition of “Local Agency” add: unincorporated association and mutual water company
- 2) In the definition of “Historical Practices” remove the seven-year limit. The timeframe of seven years is insufficient for the transfers described above. Hydrologic conditions within the Kings River system are much more variable and occur over a much broader timeframe.
- 3) Postpone the adoption of this proposed ordinance to allow the above edits to be made and a broader circulation of the ordinance to the various surface water management entities in Kings County. I only became aware of this ordinance last week when it was forwarded to me. Its title of Groundwater Ordinance did not indicate the significance that it could have on surface water management. I suspect that there are several other multi-county surface water entities that could have similar concerns.

About 25 years ago, Fresno County worked through a groundwater ordinance that took many, many drafts and numerous meetings, but the effort made for a workable and manageable solution for the County and the surface water management entities. It addressed the traditional surface water practices through exemptions.

My request is for a brief postponement of the Kings County Groundwater Ordinance to allow an opportunity for a thorough vetting of the surface water implications of the proposed Ordinance.

Respectfully submitted,

A handwritten signature in blue ink that reads "Steven Haugen". The signature is fluid and cursive, with a long horizontal stroke at the end.

Steven Haugen, PE
Watermaster