

CENTRAL DELTA-MENDOTA GROUNDWATER SUSTAINABILITY AGENCY

RESOLUTION NO. 2021-02

**RESOLUTION ADOPTING THE CENTRAL DELTA-MENDOTA GROUNDWATER
SUSTAINABILITY AGENCY ADMINISTRATIVE POLICY NUMBER ONE
WELL CENSUS AND REGISTRATION POLICY**

A. **WHEREAS**, in August 2014, the California Legislature passed, and in September 2014 the Governor signed, legislation creating the Sustainable Groundwater Management Act (“SGMA”) “to provide local groundwater agencies with the authority and technical and financial assistance necessary to sustainably manage groundwater” (Wat. Code, § 10720, subd. (d)); and

B. **WHEREAS**, effective August 28, 2019, certain entities whose boundaries overlie a portion of the Delta-Mendota Subbasin number 5-22.07 of the San Joaquin Valley Groundwater Basin identified in the California Department of Water Resources (“DWR”) Bulletin 118, formed a joint powers authority known as the Central Delta-Mendota Groundwater Sustainability Agency (the “Central Delta-Mendota GSA”), which replaced a prior multi-agency groundwater sustainability agency. The members of the Central Delta-Mendota GSA are: Eagle Field Water District, Fresno Slough Water District, Mercy Springs Water District, Pacheco Water District, Panoche Water District, San Luis Water District, Santa Nella County Water District, Tranquillity Irrigation District, the County of Fresno, and the County of Merced (the “GSA Members”); and

C. **WHEREAS**, the Central Delta-Mendota GSA has the powers provided to it by virtue of being a GSA, as defined by SGMA, and by virtue of the Joint Powers Agreement that formed the Central Delta-Mendota GSA, pursuant to the Joint Exercise of Powers Act; and

D. **WHEREAS**, groundwater sustainability under SGMA is to be achieved through groundwater sustainability plans (“GSPs”), which can be a single plan developed by one or more GSAs or multiple coordinated plans within a basin or subbasin (Wat. Code § 10727); and

E. **WHEREAS**, on January 6, 2020, the Central Delta-Mendota GSA, in coordination with West Stanislaus Irrigation District GSA, the City of Patterson GSA, the Northwestern Delta-Mendota GSA, the Patterson Irrigation District GSA, the DM-II GSA, the Widren Water District GSA, and the Oro Loma Water District GSA, adopted the Northern & Central Delta-Mendota GSP and submitted it to DWR on January 23, 2020; and

F. **WHEREAS**, as part of implementation of the Northern & Central Delta-Mendota GSP, it is necessary for the Central Delta-Mendota GSA to obtain accurate and consistent well data information from groundwater wells within its boundaries to better understand groundwater usage so that area-specific determinations can be made by the Central Delta-Mendota GSA to avoid potential undesirable results and to achieve groundwater sustainability; and

G. **WHEREAS**, California Water Code section 10725.6 provides that a GSA may require registration of groundwater extraction facilities within the management area of the GSA; and

H. **WHEREAS**, the Board of Directors of the Central Delta-Mendota GSA now intends to adopt the Central Delta-Mendota Groundwater Sustainability Agency Administrative Policy Number One Well Census and Registration Policy (the "Well Census and Registration Policy") to establish and achieve an accurate and comprehensive well census of all wells within its boundaries, requiring the registration such wells, and allowing for the imposition of fees and penalties for non-compliance; and

I. **WHEREAS**, the Central Delta-Mendota GSA, at a public hearing held in compliance with California Water Code section 10730, adopted the fees identified in its "Administrative Policy Number One Well Registration Policy Fee Rate Study", which delineates the fees and penalties to be imposed upon landowners for non-compliance with the Well Census and Registration Policy.

NOW THEREFORE, BE IT RESOLVED that the Board of Directors of the Central Delta-Mendota GSA finds as follows:

1. The facts stated in the Recitals above are true and correct and the Board of Directors so finds, orders, and determines.

2.. The Central Delta-Mendota GSA adopts the Well Census and Registration Policy, attached hereto and incorporated herein as Exhibit A.

3. The Board of Directors authorizes the GSA Members and the Central Delta-Mendota GSA's consultants to take such other actions as necessary to implement the purpose of this Resolution.

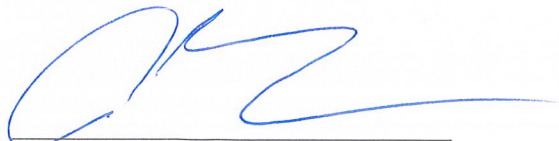
PASSED, APPROVED, AND ADOPTED this 25th day of January, 2021 by the following vote:

AYES: Miles, Ramirez, Wade, McBride, Cadena, Barcellos, Linneman, Wood, Montgomery, Pucheu

NAYS:

ABSTAIN:

ABSENT:


AARON BARCELLOS, Chairman

Attest:


BEN FENTERS, Secretary

Date: 3 / 2 / 2021

CERTIFICATION

I do hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the CENTRAL DELTA-MENDOTA GROUNDWATER SUSTAINABILITY AGENCY, held on the 25th day of January, 2021.

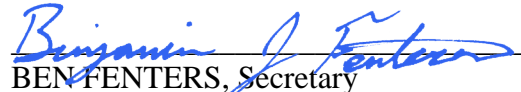
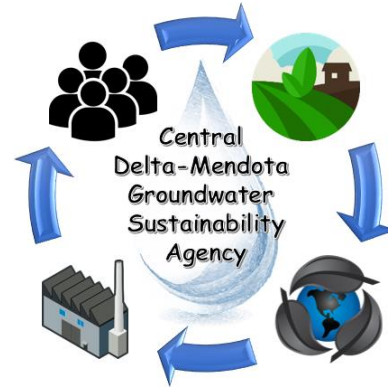

BEN FENTERS, Secretary

EXHIBIT A

The Well Census and Registration Policy

CENTRAL DELTA-MENDOTA GROUNDWATER SUSTAINABILITY AGENCY



Eagle Field WD ♦ Fresno County ♦ Fresno Slough WD ♦ Merced County ♦ Mercy Springs WD ♦ Pacheco WD ♦ Panoche WD ♦ San Luis WD ♦ Santa Nella County WD ♦ Tranquillity I.D

ADMINISTRATIVE POLICY NUMBER ONE

WELL CENSUS AND REGISTRATION

Adopted: January 25, 2021

POLICY STATEMENT

In order for the Central Delta-Mendota Groundwater Sustainability Agency (“CDMGSA”) to effectively administer and implement the Northern and Central Delta-Mendota Regions Groundwater Sustainability Plan (“NCDM GSP”) within its area, it is necessary for the CDMGSA to understand the groundwater usage within its boundaries. To gain a better understanding, the CDMGSA will need to obtain specific information from all users of groundwater wells.

The purpose of this Policy is to establish and achieve an accurate and comprehensive well census of all wells located within the CDMGSA boundary. Therefore, all existing wells shall be registered, on a form provided by the CDMGSA, no later than April 1, 2021. Any new wells constructed after said date shall be registered with the CDMGSA within 30 days of the completion of drilling activities.

To provide constructive notice to the public and to ensure adoption and enforcement of this Policy is within the authorities provided by the Sustainable Groundwater Management Act of 2014 (“SGMA”), and any amendment thereto, the CDMGSA shall adopt a resolution or ordinance prior to this Policy becoming effective.

This Policy applies to all groundwater wells, including those that are active and non-active and those that are used solely for monitoring. This Policy outlines definitions of well types, the well registration process, timing for compliance and registration, and fees for non-compliance.

AUTHORITY:

This Policy is adopted pursuant to the authority granted to the CDMGSA by Water Code Sections 10725.2, 10725.6, and 10725.8, and through the Joint Powers Agreement that formed the CDMGSA, pursuant to the Joint Exercise of Powers Act.

BACKGROUND:

In 2014, the California Legislature passed and the Governor signed into law a three-bill legislative package (AB 1739, SB 1168, and SB 1319), collectively known as SGMA. SGMA required those subbasins designated by the California Department of Water Resources ("DWR") publication Bulletin 118 as being medium to high priority to form Groundwater Sustainability Agency ("GSAs") by June 1, 2017, and then adopt and submit Groundwater Sustainability Plans ("GSPs") to DWR by January 31, 2020. The CDMGSA is located within the Delta-Mendota Subbasin (Basin number 5-022.07), a high priority subbasin (the "Subbasin"). The CDMGSA is one of 23 separate GSAs in the Subbasin that developed and coordinated six independent GSPs to cover the entire Subbasin. The CDMGSA is one of eight GSAs that collaborated to develop the NCDM GSP. The NCDM GSP was adopted on January 6, 2020 and submitted to DWR on January 23, 2020.

As part of implementation of the NCDM GSP, the CDMGSA is committed to developing accurate information regarding groundwater extraction, water levels above and below the Corcoran clay, and evaluating the relationship between the Subbasin and the San Joaquin River. To provide specific solutions that are not overly burdensome, the CDMGSA needs to accurately assess the condition of the aquifers and identify those areas that may be considered Undesirable Results. In order to avoid a one-size-fits-all GSA-wide solution and to reduce dependence on assumptions in calculating groundwater balance, the CDMGSA needs to obtain accurate information. This information will be used to make area-specific determinations to resolve concerns about potential Undesirable Results, such as overdraft and subsidence, in order to achieve sustainability. Use of real-time groundwater use data will reduce or eliminate the reliance on potentially conservative estimations of groundwater use and lead to more accurate groundwater modeling.

PURPOSE & PROCEDURES:

The purpose of this Policy is to obtain accurate and consistent well data information by requiring all wells be registered with the CDMGSA. If deemed necessary by the CDMGSA, an inspection of a registered well may be required to verify data. Those wells owners who completed a well census form through the CDMGSA's voluntary well registration effort in early 2020, will automatically be registered. However, additional information may be required for those wells as the CDMGSA develops its database. Owners of remaining unregistered or new wells will need to comply with the following procedures.

The CDMGSA will follow these procedures to ensure adequate information is collected for all groundwater extractions as a commitment to evaluate and develop accurate data to implement the NCDM GSP.

1) **Well Types** (Definitions) - With regard to groundwater well types, registration is to include all existing wells and new wells, as defined by the following:

- Domestic Well – A well primarily used to supply water for the domestic needs of a single-family homeowner for private utilization and consumption. Domestic wells will be considered a De-Minimis extractor under SGMA if the following conditions are met:
 - a. Not more than one domestic well per parcel equal to or less than 5 acres in size, or the ratio of number of domestic wells per parcel size does not exceed 1 well per 5 acres for parcels larger than 5 acres in size.
 - b. The pump discharge orifice at the well head does not exceed 2 inches in diameter.
 - c. Domestic well is not capable of producing a flow rate exceeding 10 gallons per minute.
 - d. Domestic well's casing size does not exceed 6 inches in diameter, as identified in the well's completion report.
 - e. The owner submits the well's Well Completion Report, which indicates the well type as a domestic well.

If a domestic well does not meet the above criteria, the well owner may petition the Board of Directors of the CDMGSA to designate the well as De-Minimis, based on information provided by the well owner, using reliable and verifiable metered records, that the well does not exceed two acre-feet per year of total extraction.

- Production Well – A well that is not considered a De-Minimis Well, nor a Monitoring Well, nor a Cathodic Protection Well, shall be considered a Production Well, including non-De-Minimis Domestic Wells.
- Monitoring Well – A well that is used to (a) monitor the fluctuations in groundwater levels, (b) monitor the quality of underground waters, (c) monitor the presence or concentration of contaminants in subsurface soil and water, or (d) monitor vapors. Monitoring wells include remediation wells. Any well with a casing diameter greater than four inches will be considered a domestic or production well, unless designated as a monitoring well under the discretion of the CDMGSA.
- Inactive or Standby Well – A well that is not routinely operated, but capable of being made operable with the placement of a pump or other appurtenances.
- Abandoned Well – A well that has not been in use for a period of one year, unless the owner demonstrates in writing his/her/its intention to use the well again for a water supply.
- Cathodic Protection Wells – Groundwater wells specified as cathodic protection wells on their well completion report and exclusively utilized for

the purpose of providing cathodic protection will not be required to register and will not be considered by the CDMGSA for the purposes of SGMA.

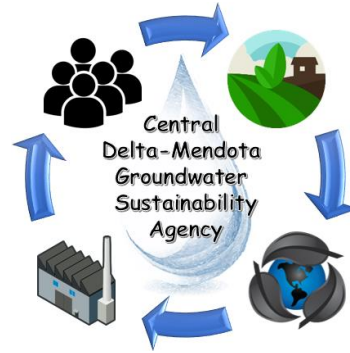
- 2) **Registration** – The owner of any groundwater well within the CDMGSA must register the well with the CDMGSA.
 - a. Registration of existing wells shall be completed by April 1, 2021.
 - b. Registration of new wells shall be completed within 30 days of the completion of the drilling of such a well.
 - c. Registration of any well shall be done so on a form provided by the CDMGSA.
- 3) **Notification** – The CDMGSA will provide notice of its adoption of this Policy as required by law.
- 4) **Meter Requirement** – At this time, the CDMGSA will not be requiring a meter to be installed on existing or new wells, but may consider a metering and reporting requirement at a future date.
- 5) **Fees and Penalties for Non-Compliance** – The CDMGSA will establish a fee schedule and penalty process for non-compliance. Non-compliance includes two separate penalties: (a) failing to register a well using the CDMGSA form, and (b) operating a well that has not been registered. Fees for failure to register a well in the prescribed time will result in a quarterly fee until such time as the well is registered. Penalties for activities such as operating an unregistered well could include legal action taken to cease and desist the use. A fee schedule is attached hereto and will be implemented in accordance with the final fee and penalty schedule adopted by resolution or ordinance by the CDMGSA Board of Directors pursuant to the CDMGSA's rate study and following a public hearing.
- 6) **GSA Issuance of Notice of Non-Compliance to Local Agency** – The CDMGSA will issue a notice of Non-Compliance to the local member agency for any non-compliant well that has been out of compliance for more than one quarter. The Non-Compliance notification will serve as an official request of the local member agency to enact its powers of enforcement for non-compliance.
- 7) **Request for Additional Time; Penalty Waiver** – The owner of a groundwater well may submit a written request to CDMGSA for a single extension of time to comply with Section 2 above and/or a request for a one-time penalty fee waiver (if after April 1, 2021). A request for an extension of time must be submitted prior to April 1, 2021 to avoid penalties as described in Section 5 above and a grant of an extension of time, in total, shall not exceed a period of three (3) months. The chairman of the CDMGSA Board of Directors may grant the extension if a finding of good cause can be made. For purposes of this Policy, good causes include, but are not limited to, (a) a demonstrated undue financial hardship, (b) factors outside the control of the owner, or (c) proof that the owner was not properly notified of the requirement.

- 8) **Amendment** – This Policy is subject to changes in the regular operation of the CDMGSA, as it may be revised from time to time by the Board of Directors.
- 9) **Policy Review** – This Policy shall be reviewed by the CDMGSA regularly, but in no event less than once every five (5) years.

Attachment 1

**Central Delta-Mendota Groundwater Sustainability
Agency Administrative Policy Number 1 Well
Registration Policy Fee Rate Study
November 16, 2020**

CENTRAL DELTA-MENDOTA GROUNDWATER SUSTAINABILITY AGENCY



Eagle Field WD • Fresno County • Fresno Slough WD • Merced County • Mercy Springs WD • Pacheco WD • Panoche WD • San Luis WD • Santa Nella County WD • Tanquility ID

Central Delta-Mendota Groundwater Sustainability Agency Administrative Policy Number 1 Well Registration Policy Fee Rate Study November 16, 2020

1.0 Introduction

The Sustainable Groundwater Management Act (SGMA) comprised of California Assembly Bill 1739, California Senate Bill 1319 and California Senate Bill 1168, was signed into law in September 2014. SGMA mandated the formation of local Groundwater Sustainability Agencies (GSAs) to develop and implement area specific Groundwater Sustainability Plans to achieve sustainable groundwater management. SGMA provides statutory authority to GSAs to impose fines and/or taxes as necessary for their efforts to achieve sustainability. The Central Delta-Mendota Groundwater Sustainability Agency (CDMGSA) was formed by several local agencies in 2017. The Northern and Central Regions Groundwater Sustainability Plan (N-C GSP) was developed by the CDMGSA in coordination with the other GSAs within the Northern and Central Delta-Mendota Groundwater Sustainability Plan Group, and was finalized in September 2019 and adopted by the CDMGSA and submitted to the California Department of Water Resources in January 2020 where it is currently under review. The CDMGSA is currently implementing the N-C GSP. Using the best available data and science, the N-C GSP concluded that the CDMGSA area is in a state of groundwater overdraft. The N-C GSP identifies data gaps in section 5.3.8 within the CDMGSA and N-C GSP area resulting in limited data and uncertainty in the calculation of groundwater extraction and overdraft in the CDMGSA and sustainable yield estimates.

Upon adoption, the CDMGSA's Administrative Policy Number 1 – Well Registration Policy (Registration Policy) will be the first policy developed by the CDMGSA intended to provide the authority for the collection of data necessary to accurately determine groundwater use within the CDMGSA area. Furthermore, to equitably implement management actions and distribute costs related to N-C GSP implementation and sustainability efforts, an accurate and comprehensive accounting of all wells within the CDMGSA's boundaries is critical. To

ensure that the outcome of the Registration Policy results in a comprehensive and accurate accounting of all wells, the CDMGSA has developed the following administrative fee and penalty (Fee) schedule to assist in the administrative effort to collect the data.

1.1 Purpose

This study is pertinent only to the Fees that the CDMGSA charges associated with its Registration Policy. These Fees are exclusively intended as a compliance enforcement mechanism. The CDMGSA's finances are not dependent upon revenue collected from these Fees and it is not anticipated that these Fees will be a consistent source of revenue.

1.2 Proposition 26 Process

Under Proposition 26, all levies, charges, and exactions "imposed" by state or local governments are taxes, unless they fit into one of the seven stated exceptions for local government:

1. "A charge imposed for a specific benefit conferred or privilege granted directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of conferring the benefit or granting the privilege.
2. A charge imposed for a specific government service or product provided directly to the payor that is not provided to those not charged, and which does not exceed the reasonable costs to the local government of providing the service or product.
3. A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.
4. A charge imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property.
5. A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law.
6. A charge imposed as a condition of property development.
7. Assessments and property-related fees imposed in accordance with the provisions of Article XIID."

(Cal. Const., art. XIII C, § 1, subd. (e).) A detailed analysis of these exceptions appears *infra*.

1.3 Proposed Administrative Fee and Penalty Schedule and Justification

- 1) Domestic Wells or Monitoring Wells as defined in the Registration Policy.
 - a. Failure to Register by April 1st, 2021 shall result in an administrative fee of \$100 for each unregistered Domestic Well or Monitor Well.
 - b. Continual failure to register a Domestic Well or Monitor Well shall incur an additional \$100 penalty fee on the first day of each new quarter after the initial deadline. For the purpose of this policy a quarter is defined as a period of three consecutive months starting April 1st 2021.

Justification: The registration of domestic and monitoring wells in the CDMGSA under SGMA is vital for understanding groundwater use and aquifer characteristics within the CDMGSA and will provide important data for implementation of the N-C GSP. Registration Policy. The Fees are intended to cover a portion of the administrative effort required to notice and collect these fees.

- 2) Non-Operational Production Wells – production wells as defined in the Registration Policy that are incapable of extracting groundwater.
 - a. Failure to Register by April 1st, 2021 shall result in an administrative fee of \$100 for each unregistered Non-Operational Production Well.
 - b. Continual failure to register a Non-Operational Production Well shall incur an additional fee of up to \$500 on the first day of each new quarter after the initial deadline.

Justification: The registration of Non-Operational Production Wells in the CDMGSA under SGMA is vital for understanding groundwater use and aquifer characteristics within the CDMGSA and will provide important data for implementation of the N-C GSP. Registration Policy. The Fees were intended to cover a portion of the administrative effort required to notice and collect these fees. The penalty fee is also intended to cover the cost of additional outreach to the well owner in order to bring the well into compliance. It is recognized that the registration of Non-Operational Production Wells would be beneficial to the CDMGSA, and a failure to register these wells could threaten sustainability efforts should the well be restored to operational condition or exist in a condition that could cause a negative impact to water quality.

- 3) Operational Production Wells as defined in the Registration Policy.
 - a. Failure to Register by April 1st, 2021 shall result in an administrative fee of up to \$1,000 for each unregistered Operational Production Well.
 - b. Continual failure to register an Operational Production Well shall incur an additional penalty fee of up to \$90 per day beginning on the first day of the second quarter after initial deadline. The daily late fee will increase 100% each quarter thereafter until a maximum amount of \$1,800 per day.
 - c. A well owner may petition the board to reduce their fee if they provide a third-party pump test demonstrating the maximum flowrate of the unregistered well. The fee will be equal to the following formula:

$$\text{Fee} = \text{Up to } \$900 \times (\text{maximum well flow rate in cubic feet per second}) \times (\text{number of days late}) \times (\text{Number of Quarters late} - 1) / 10$$

Justification: The registration of Operational Production Wells in the CDMGSA under SGMA is vital for understanding groundwater use and aquifer characteristics within the CDMGSA and will provide important data for implementation of the N-C GSP. This information is critical for groundwater utilization management and equitable distribution of SGMA related expenses. The Fees were intended to cover the administrative effort required to notice and collect these fees, and serve as significant the derived assuming the resulting cost of the CDMGSA to purchase open market water and recharge into the aquifer to offset the extractions of an unregistered well. It is assumed that an average well produces at a flow rate of 1.0¹ cubic feet per second (two acre-feet per day) and the average cost of market water from 2013 – 2019 was \$450² dollars per acre foot. At two acre-feet per day and \$450 dollars per acre foot, the replacement cost of this water is

\$1,800 per day. Furthermore, it is recognized that the registration of Operational Production Wells is necessary for equitable groundwater management and cost distribution, and a failure to register these wells will undermine groundwater usage accounting and threaten sustainability.

¹ 1/3 rounded to the nearest 0.5 cfs of the average flow rate of the Warren Act Delta-Mendota Canal Wells within the CDMGSA per independent meter test records from the San Luis Delta Mendota Water Authority.

² Average supplemental water cost of San Luis Water District from 2013 to 2019.

1.4 Conclusion of Fees as Exempted from designation as a “Tax”

As the exclusive intent of any fees imposed resulting from the Registration Policy is for compliance with the Registration Policy, in order to comply with SGMA, and not as a revenue source which the CDMGSA's budget is dependent upon, these fees conclusively fall under the fifth exemption stated in Proposition 26: "A charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof. A fine, penalty, or other monetary charge imposed by the judicial branch of government or a local government, as a result of a violation of law."

Therefore, the Board of Directors of the CDMGSA may adopt these fees at their board of directors meeting without further consideration provided it provides public notice of the meeting and agenda as is consistent with regular or special board meetings and holds a agenized public hearing and vote.