

# EAST KAWEAH GROUNDWATER SUSTAINABILITY AGENCY

## RULES AND REGULATIONS

(Revised April 24, 2023)

### ARTICLE I DEFINITIONS

**1.00. Acre-Foot.** “AF” means an acre-foot of water equivalent to one acre of ground covered one foot deep in water or 325,851 gallons.

**1.01. Allocation Year.** “Allocation Year” means, for any given year, the 12-month period beginning October 1 and ending September 30 of the immediately following calendar year. Each Allocation Year is designated by the calendar year in which it ends. For example, the Allocation Year ending September 30, 2022 is the “2022” Allocation Year.

**1.02. Board.** “Board” means the Board of Directors of East Kaweah Groundwater Sustainability Agency.

**1.03. Consumptive Use.** “Consumptive Use” means water leaving the land due to evaporation and transpiration.

**1.04. EKGSA or Agency.** “EKGSA” or “Agency” means East Kaweah Groundwater Sustainability Agency.

**1.05. Eligible Land.** “Eligible Land” means parcels of land, designated by Assessor Parcel No., greater than two acres within the boundaries of EKGSA, excluding all land within the boundaries of the city of Lindsay as those city boundaries may exist from time to time.

**1.06. Eligible Landowner.** “Eligible Landowner” means a Landowner of Eligible Land.

**1.07. ET.** “ET” means Evapotranspiration.

**1.08. Excess ET Credit.** “Excess ET Credit” means a credit to a Landowner’s water usage account in an amount equal to any Excess ET included in the Agency’s measurement of water use and groundwater extraction for a Landowner in an Allocation Year.

**1.09. ET Credit Acreage.** “ET Credit Acreage” means land that, at the time of ET measurement by the Agency, is either (a) Fallowed, (b) is a parcel consisting of five acres or less with less than two of those five acres devoted to agricultural use, or (c) Non-Irrigated Land.

**1.10. Excess ET.** “Excess ET” means the amount by which any ET calculated by the Agency for ET Credit Acreage exceeds effective precipitation for the subject ET Credit Acreage as a result of any limitations in ET calculation.

**1.11. Evapotranspiration.** “Evapotranspiration” means the process, as measured utilizing satellite imagery and ground-based truthing stations, by which water is transferred from the land to the atmosphere by (a) evaporation from the soil and other surfaces, (b) plant transpiration, or (c) both (a) and (b).

**1.12. Fallowed.** “Fallowed” means Irrigated Land that is no longer used for agricultural purposes.

**1.13. Groundwater Credit.** “Groundwater Credit” means any unused Native Allocation or Transitional Pumping allocations from a prior Allocation Year and credited to an Eligible Landowner’s EKGSA account.

**1.14. Irrigated Land.** “Irrigated Land” means Eligible Land irrigated as of January 31, 2020, which is (a) identified as enrolled in the Irrigated Lands Regulatory Program or other regulatory programs that document historical irrigation use (e.g., Dairy General Order), (b) identified by other certified crop map datasets, or (c) shown with sufficient evidence to the reasonable satisfaction of the Agency to have been historically irrigated.

**1.15. Non-Irrigated Land.** “Non-Irrigated Land” means Eligible Land that has not been irrigated as of January 31, 2020. Non-Irrigated Lands is land without a surface water supply and having groundwater use less than two acre feet per acre (e.g., vacant ground or land used for cattle grazing ground).

**1.16. Landowner.** “Landowner” means an owner of fee title to land within the EKGSA’s boundaries, as those boundaries may exist from time to time.

**1.17. Native Allocation.** “Native Allocation” means an allocation measured in AF of native sustainable yield for all Eligible Land within the EKGSA’s boundaries.

**1.18. Precipitation Credit.** “Precipitation Credit” means 92 percent of Rainfall.

**1.19. Rainfall.** “Rainfall” means the total amount of rainfall measured by rain stations within designated management areas of the EKGSA, as those areas may exist from time to time.

**1.20. SGMA.** “SGMA” means the Sustainable Groundwater Management Act as it may exist from time to time.

**1.21. Subbasin.** “Subbasin” means the Kaweah Subbasin with the boundaries identified in the report of the Department of Water Resources entitled “California Groundwater: Bulletin 118.”

**1.22. Surface Water Credit.** “Surface Water Credit” means a credit attributable to the delivery of surface water to an Eligible Landowner, whether for direct irrigation, or groundwater recharge and banking.

**1.23. Undesirable Results.** “Undesirable Results” has the same meaning used in SGMA and defined in Water Code section 10721(w).

## **ARTICLE II GENERAL PROVISIONS**

**2.00. Purpose.** The purpose of these Rules and Regulations is to provide for the sustainable management of groundwater within the boundaries of the EKGSA.

**2.01. Authority.** The Agency may adopt rules, regulations, ordinances, and resolutions for the purpose of SGMA, in compliance with any procedural requirements applicable to the adoption of a rule, regulation, ordinance, or resolution by the Agency. (Wat Code, § 10725.2.)

**2.02. Groundwater Sustainability Plan.** The intent of these Rules and Regulations is to implement the provisions of the EKGSA Groundwater Sustainability Plan and may be amended at any time, as determined to be necessary by the Board, to achieve consistency with that groundwater sustainability plan and groundwater sustainability within the Agency’s boundaries.

**2.03. Effective Date and Changes.** These Rules and Regulations shall become effective upon adoption by the Board, and may be added to, amended and/or repealed at any time by later resolution of the Board with any such additions, amendments, and/or repeals becoming effective upon adoption of the resolution, or as otherwise specified by the Board. However, adoption of these Rules and Regulations will not affect the effective date of any Agency policies existing as of the date the Board adopts these Rules and Regulations.

**2.04. Actions Against EKGSA.** Nothing contained in these Rules and Regulations may be deemed a waiver by the Agency or estop the Agency from asserting any defenses or immunities from liability as provided by law, including those provided in Division 3.6 of Title 1 of the Government Code.

**2.05. Rights of Access.** Before exercising any right of access, Agency staff, and/or others duly authorized by the Agency, shall take reasonable steps to notify the subject Landowner before entry thereon. Any such entry must be for the sole and exclusive purpose of conducting Agency business.

**2.06. Severability.** If any provision of these Rules and Regulations, or the application thereof to any person or circumstance, is held invalid, the remainder of these Rules and Regulations, and the application of its provisions to other persons or circumstances, shall not be affected thereby.

**2.07. Emergency Ordinances.** Nothing in this Article will prevent the Agency from, in the event of any emergency determined by the Board to exist, from enacting emergency regulations or ordinances to prevent harm to Landowners within the boundaries of the EKGSA.

**ARTICLE III  
GROUNDWATER ALLOCATION**

**3.00. Determination of Allocation.** Before October 1 of each Allocation Year, if reasonably possible to do so with available information, the Board, by resolution, shall determine the allocations under this Article III available for use within the EKGSA's then-existing boundaries together with any limitation on the maximum volume of groundwater any Eligible Landowner may extract in the subject Allocation Year. The Agency shall promptly thereafter cause written notice of those allocations and any maximum limitation to be (a) mailed to each affected Eligible Landowner using the Eligible Landowner's address of record maintained by the Agency and (b) posted on the Agency's website.

**3.01. East Kaweah Management Area.**

(a) **Domestic and De Minimis Allocation.** In determining allocations under this Article III, the Agency shall assume an annual groundwater demand of up to 4,500 AF within EKGSA's boundaries attributable to domestic and de minimis (i.e., 2 AF per year or less) users and make an allocation to satisfy that demand.

(b) **Native Allocation.** The Agency shall establish a Native Allocation for each Allocation Year. The Native Allocation for the 2022 Allocation Year is .85 AF per acre of Eligible Land. The allocation for each parcel of Eligible Land in each subsequent Allocation Year will be calculated as follows:

(1) The Agency will first determine the total inflow to EKGSA. This total inflow includes mountain course inflow from rainfall, natural infiltration from lakes and streams, and other natural inflows. The Agency will next determine the amount of those total inflows available for allocation to Eligible Landowners and then divide that amount by the total acreage of Eligible Land to establish an allocation of groundwater per acre of Eligible Land.

(2) Each Assessor's parcel of Eligible Land will receive a Native Allocation in an amount equal to (a) the subject parcel's gross Assessor's parcel acreage within the EKGSA's boundaries multiplied by (b) the allocation per acre established under section 3.01(b)(1) above.

(c) **Transitional Pumping Allocations.** In addition to the Native Allocation, the Board may, in its discretion, establish for each Allocation Year an allocation referred to as "**Transitional Pumping.**" The Agency may allocate Transitional Pumping only to Irrigated Land. The Board will allocate Transitional Pumping as a "**Tier 1 Penalty Allocation**" or a "**Tier 2 Penalty Allocation.**" For the 2022 Allocation Year, the Tier 1 Penalty Allocation is 0.3 AF per acre of measured Consumptive Use, and the Tier 2 Penalty Allocation is 0.5 AF per year of measured Consumptive Use.

(1) Transitional Pumping will be allocated under these Rules and Regulations until the Board determines to cease all allocations of Transitional Pumping. Once a parcel has been identified as Irrigated Land for purposes of this

section 3.01(c), the parcel will receive a Transitional Pumping allocation each Allocation Year until the Board ceases Transitional Pumping.

(2) If a parcel is not identified as Irrigated Land as of January 31, 2020, the Eligible Landowner of that parcel may submit a written request to the Agency requesting an allocation of Transitional Pumping. For agricultural development of parcels after January 31, 2020, an Eligible Landowner may submit a written request to the Agency requesting Transitional Pumping, with that allocation being prorated based on the date the Eligible Landowner developed the subject parcel for agricultural use. The Agency shall develop forms as needed to assist Landowners with these requests. Eligible Land approved under any of those requests will be deemed Irrigated Land as of the date of the approval, unless otherwise expressly stated by the Agency.

(3) Changes in the total acreage of Irrigated Land will affect Transitional Pumping. To achieve consistency with the Agency's Groundwater Sustainability Plan, the amount of Tier 1 Penalty Allocations and/or Tier 2 Penalty Allocations may vary from Allocation Year to Allocation Year.

(d) **Precipitation Credit.** The Agency will track monthly Rainfall. Each Eligible Landowner will receive a Precipitation Credit based on the amount of that Rainfall. The credit will be applied toward any water usage during the month following its allocation and carried over until used. Precipitation Credit will be the first amount debited from an Eligible Landowner's EKGSA account, regardless of any priority elected by the Eligible Landowner under section 6.03 below.

(e) **Carryover and Transfer.**

(1) **Carryover.** If an Eligible Landowner uses less than its Native Allocation and/or any Transitional Pumping in a given Allocation Year, the difference between the total of those allocations for that year and the amount of groundwater used and/or transferred by that Eligible Landowner during that year may be carried over to the next Allocation Year. Unused allocations carried over from the previous Allocation Year shall be credited to the Landowner's EKGSA account as a Groundwater Credit. The Agency will account for Groundwater Credits according to the form of allocation (i.e., Native Allocation or Transitional Pumping). Groundwater Credits may remain in an Eligible Landowner's EKGSA account for a rotation of five years. For purposes of this five-year rotation, the Agency will apply Groundwater Credits on a "first in, first out" basis. Any Groundwater Credits unused after those five years will be removed from an Eligible Landowner's EKGSA account as of the first day of the sixth Allocation Year after the Groundwater Credit is created. For example, any unused 2022 Native Allocation will become Groundwater Credits on October 1, 2022 and will remain available for use or transfer under these Rules and Regulations through September 30, 2027. Any unused portion of those Groundwater Credits will be removed from

the subject account on October 1, 2027. The impact of the total quantity of water used within EKGSA in any five-year period must be consistent with the provisions of the EKGSA's GSP.

(2) **Transfer within EKGSA.** Eligible Landowners may transfer their Native Allocation, Transitional Pumping, and Groundwater Credits within the EKGSA. Rainfall Credits may not be transferred. All transfers of Native Allocation, Transitional Pumping, and Groundwater Credits must be memorialized in writing, using a form provided by the Agency and approved by the Agency's Executive Director before the subject transfer will be recognized as effective by the Agency. All transferred allocations will be credited to the transferee's account as a Groundwater Credit. Transferred Transitional Pumping, even if carried over as a Groundwater Credit, must be used within the Allocation Year of transfer and within the EKGSA's boundaries. All transfers will be subject to final review and approval by the Agency to avoid potential Undesirable Results.

(3) **Transfers Between Subbasin GSAs.** Eligible Landowners may transfer (i) all or any portion of their Native Allocation for use in another groundwater sustainability agency within the Subbasin, and (ii) the equivalent of EKGSA's Native Allocation from another groundwater sustainability agency within the Subbasin for use on Eligible Land in EKGSA. All transfers under this section 3.01(e)(3) are subject to final review and approval by (i) the Agency to avoid potential Undesirable Results, and (ii) the groundwater sustainability agency identified to receive the transfer.

(f) **Opt Out.** A Landowner may request to opt out of its right to receive and obligation to be assessed for a Native Allocation and Transitional Pumping Allocation, and any other allocation (other than a domestic or de minimis allocation) to which it may become entitled pursuant to EKGSA's allocation policies by submitting a "Request to Opt Out of Groundwater Allocation" form to be made available by the Agency. Upon Agency approval, the request shall be effective and will remain in place until Landowner recommences receipt of the allocations by submitting a "Groundwater Allocation Opt-In" form to be provided by the Agency.

**3.02. Community Management Areas.** The Board may from time to time establish community management areas.

**3.03. Protest of Allocations.**

(a) Any Eligible Landowner may protest in writing its allocations made by the Agency under this Article III. However, the written protest must be submitted to the Executive Director at the Agency's office within 30 days of the mailing date of the notice under section 3.00 above. The Executive Director shall investigate matters related to the protest, may consult with the Agency's technical group, and shall present any relevant information, along with a recommendation regarding the protest, to the Board within 60

days of receipt of the protest. The Board shall act on the protest and any supporting documentation within 120 days of receipt of the Executive Director's recommendation.

(b) Except for protests arising from allocations made for the 2022 Allocation Year, no protest is allowed unless, for the Allocation Year in which a protest is made, the protesting Eligible Landowner is in full compliance with these Rules and Regulations, is not in default of any EKGSA obligation, and is in good standing with the Agency as of the first day of that Allocation Year.

#### **ARTICLE IV SURFACE WATER CREDITS**

**4.00. Surface Water Reporting.** All Eligible Landowners within the EKGSA utilizing surface water shall cause to be reported, from the applicable surface water entity, the delivery of surface water for direct irrigation, or groundwater recharge or banking. The Agency will not credit any Eligible Landowner's EKGSA account with Surface Water Credits without receiving all delivery information deemed necessary by the Agency to substantiate the allocation of Surface Water Credits for those deliveries of surface water. The Eligible Landowner claiming Surface Water Credits must provide the Agency with all information deemed necessary by the Agency within a reasonable time following delivery of surface water to enable the Agency to provide the requested credit, but in no event later than 30 days following the Allocation Year during which the Eligible Landowner to delivery of the subject surface water.

(a) **Recharge and Banking Activities.** Before crediting or debiting an Eligible Landowner's EKGSA account with Surface Water Credits, the Agency may ensure that the recharge or banking of any related surface water is consistent with any applicable groundwater banking or recharge policies. The EKGSA acknowledges that several special districts operate within EKGSA's boundaries. Several of those districts have adopted and implemented groundwater banking and recharge policies to facilitate the underground storage and beneficial use of surface water. EKGSA will honor those groundwater banking and recharge policies in its crediting of Surface Water Credits.

**4.01.** The Agency shall provide Eligible Landowners with Surface Water Credits resulting from surface water deliveries reported to the Agency using a ratio of 1:1 (one Surface Water Credit for each net AF of surface water delivered after any leave-behind and evaporation losses determined by the Agency, if applicable).

## **ARTICLE V WATER USE MONITORING**

**5.00. Well Registration.** The Agency does not require registration of wells with the EKGSA at this time.

**5.01. Water Use Measurement.** The Agency will measure water use and groundwater extraction using the Evapotranspiration method. The Agency will estimate crop ET using remote sensing data from satellites. The satellite data will be entered into a model utilized by the Agency which will then be used to estimate the ET rate and ET spatial distribution of an area in any given time period. When calibrated to land-based ET and/or climate stations and validated with crop surveys, the satellite-based model will provide an estimate of crop ET (i.e., Consumptive Use). If the Agency determines that its measurement of a Landowner's water use and groundwater extraction is inaccurate due to Excess ET, the Agency may issue an ET Credit to the Landowner's water usage account maintained by the Agency under Article VI below. ET Credits may not be transferred or carried over, and will be accounted for as part of the Landowner's Native Allocation in the Allocation Year for which the credit is given.

**5.02. Restriction on Management Area Extractions.** To avoid potential Undesirable Results, the Agency may establish by resolution a limitation (i.e., cap) on all extractions of groundwater within a management area or areas, regardless of allocations and accumulated Groundwater Credits.

## **ARTICLE VI GROUNDWATER ACCOUNTING AND MANAGEMENT OF ALLOCATIONS**

**6.00. Online Water Accounting Dashboard.** The Agency shall establish an online dashboard for Eligible Landowners to account for total water usage within the EKGSA boundaries. Eligible Landowners may allow operators access and control of their account(s) after providing any documentation authorizing that access and control reasonably required by the Agency.

**6.02. Categories of Water.** The online dashboard will account for groundwater using the following six categories: (a) Precipitation Credits, (b) Surface Water Credits, (c) Native Allocation, (d) Tier 1 Penalty Allocation, (e) Tier 2 Penalty Allocation, and (f) Groundwater Credits.

**6.03. Priority of Use.** Until the Agency's online dashboard is capable of allowing Eligible Landowners with more than one category of credits under these Rules and Regulations to elect the order in which those categories of credits are to be debited or transferred, and after the online dashboard has that capability if an Eligible Landowner makes no election, the default order of priority by category for debit and transfer will be in the order of section 6.02.(a) through (f) above. When the Agency's online dashboard has the capability, as determined by the Board, for Eligible Landowners to elect the order in which categories of credits are to be debited or transferred, Eligible Landowners will be entitled to make that election, except for Precipitation Credits, which will be the first credits debited as provided in section 3.01(d) above. Any election



by an Eligible Landowner under this section 6.03 must be made before the Agency makes the calculation and debit under section 6.04 below.

**6.04. Net Consumptive Use Reporting and Debiting.** Within 30 days of the end of the prior month, the Agency shall calculate and debit each Eligible Landowner's net Consumptive Use from the applicable category. If a watercourse, including canals, ditches, or riparian areas, is located within the boundaries of a parcel of Eligible Land, the area of that watercourse will not be included in the evaluation of any Consumptive Use.

## **ARTICLE VII FEES & PENALTIES**

**7.00. Penalty for Excess Use.** The Agency shall assess each Eligible Landowner extracting groundwater in excess of its Native Allocation in an Allocation Year a penalty equal to \$500 multiplied by the excess volume measured in AF. All penalties must be paid within 30 days of the issuance of an invoice for that penalty by the Agency, or within any other period established by the Board and shown on the subject invoice. Additionally, the Agency may deduct all or a portion of the excess volume from the Eligible Landowner's allocations for the immediately following Allocation Year.

**7.01. SGMA Penalties.** Any Eligible Landowner, operator, or other person who violates the provisions of these Rules and Regulations is subject to the criminal and civil sanctions set forth in SGMA.

**7.02. Civil Remedies.** Upon the failure of any person to comply with any provision of these Rules and Regulations, including any allocations of groundwater and limitations on extraction of groundwater established by the Agency under these Rules and Regulations, the Agency may petition the Superior Court for a temporary restraining order, preliminary or permanent injunction, or such other equitable relief as may be appropriate. The right to petition for injunctive relief is an additional right to those, which may be provided elsewhere in these Rules and Regulations or otherwise allowed by law. The Agency may also petition the Superior Court to recover any sums due to the Agency.

**7.03. Protest of Usage Measurement and Penalty Assessment.** Each Eligible Landowner may protest the Agency's measurement of the Eligible Landowner's usage of water and any assessment by the Agency of a penalty. As a condition to its entitlement to protest under this section 7.03, an Eligible Landowner must be in full compliance, at the time of the protest, with these Rules and Regulations and not in default of any obligation owed to the Agency. The procedures for resolving a protest are as follows:

(a) All protests must be submitted in writing to the Agency's Executive Director no later than 30 days of receipt of billing.

(b) If the protest cannot be resolved within 60 days of receipt by the Executive Director, the Executive Director shall submit the protest to the Board, which shall issue a ruling on the protest.

(c) Eligible Landowners may protest the Consumptive Use as defined by evapotranspiration.

(d) Any protest must include data of applied usage from instrumentation registered with the Agency, properly installed, and operating within the manufacturer's specifications. Otherwise, the protest will be disallowed.

(e) Any protest must include the maintenance records of all equipment and instrumentation upon which the protest is based. Otherwise, the protest will be disallowed.

(f) If the protest is not resolved in favor of the protestor, the protestor must reimburse the Agency for the Agency's reasonable costs incurred in the protest.