

**BOARD OF DIRECTORS
SANTA CLARA VALLEY WATER DISTRICT**

RESOLUTION NO. 18-

**MEMORIALIZING THE PROCESS TO REGULATE GROUNDWATER
EXTRACTION UNDER THE SUSTAINABLE GROUNDWATER MANAGEMENT
ACT, IF NEEDED**

WHEREAS, the Santa Clara Valley Water District Act (California Water Code Appendix, Chapter 60) provides the District with broad groundwater management authority, including the authority to protect, spread, store, retain, and cause water to percolate in the soil within Santa Clara County; and

WHEREAS, on September 16, 2014, the Sustainable Groundwater Management Act (SGMA) was signed into law and adopted into the California Water Code, commencing with Section 10720; and

WHEREAS, Water Code Section 10720.1 states that, in enacting SGMA, the intent of the legislature is to provide for the sustainable management of groundwater basins, to enhance local management of groundwater consistent with rights to use or store groundwater, to establish minimum standards for sustainable groundwater management, to provide local groundwater agencies with the authority and the technical and financial assistance necessary to sustainably manage groundwater, and to achieve other listed intents; and

WHEREAS, on May 24, 2016, the District Board of Directors adopted Resolution 16-51 on the Decision to Become the Groundwater Sustainability Agency (GSA) for the Santa Clara and Llagas Subbasins; and

WHEREAS, on June 13, 2017, the District Board of Directors adopted Resolution 17-38 on the Decision to Become the GSA for the Portions of the Hollister and San Juan Bautista Subbasins Located Within Santa Clara County; and

WHEREAS, Water Code Section 10733.6(b)(1) identifies a plan developed pursuant to Part 2.75 (commencing with Section 10750) or other law authorizing groundwater management as an acceptable alternative to a Groundwater Sustainability Plan; and

WHEREAS, the 2016 Groundwater Management Plan (GWMP) describes the District's comprehensive framework to ensure continued, sustainable groundwater conditions in the Santa Clara and Llagas Subbasins; and

WHEREAS, on November 22, 2016, the District Board of Directors adopted the GWMP through Resolution 16-78; and

WHEREAS, the District submitted the GWMP to the California Department of Water Resources as an alternative pursuant to SGMA; and

WHEREAS, the GWMP acknowledges new authorities granted by SGMA, including the potential to regulate groundwater extraction, control well spacing or operation, and collect different types of fees, within the constraints identified in SGMA; and

WHEREAS, the existing groundwater management framework, which includes coordination with water retailers and other stakeholders, is expected to support continued, sustainable groundwater conditions; and

WHEREAS, the District Board of Directors directed the Water Conservation and Demand Management Committee (Committee) to engage stakeholders in evaluating the new SGMA authorities as potential tools that may be needed to ensure continued sustainability; and

WHEREAS, the Committee engaged water retailers and other interested stakeholders during nine publicly-noticed meetings between December 2016 and December 2017; and

WHEREAS, the Committee considered stakeholder input in developing the Process to Regulate Groundwater Extraction under the Sustainable Groundwater Management Act, if Needed, attached hereto as Exhibit A; and

WHEREAS, the Process to Regulate Groundwater Extraction under the Sustainable Groundwater Management Act, if Needed, describes the approach to respond to worsening basin conditions, including the steps that would be taken prior to implementing SGMA authorities to regulate extraction.

NOW, THEREFORE BE IT RESOLVED that the Board of Directors of the Santa Clara Valley Water District:

1. Hereby adopts the Process to Regulate Groundwater Extraction under the Sustainable Groundwater Management Act, if Needed; and
2. All the recitals in this Resolution are true and correct and the District so finds, determines, and represents.

PASSED AND ADOPTED by the Board of Directors of the Santa Clara Valley Water District by the following vote on February 27, 2018:

AYES: Directors

NOES: Directors

ABSENT: Directors

ABSTAIN: Directors

SANTA CLARA VALLEY WATER DISTRICT

By: _____
RICHARD P. SANTOS
Chair/Board of Directors

ATTEST: MICHELE L. KING, CMC

Clerk/Board of Directors

EXHIBIT A COVERSHEET

PROCESS TO REGULATE GROUNDWATER EXTRACTION UNDER THE SUSTAINABLE GROUNDWATER MANAGEMENT ACT, IF NEEDED

No. of Pages: 6

Exhibit Attachment: Attachment 1: Process to Regulate Groundwater Extraction under
the Sustainable Groundwater Management Act, if Needed

PROCESS TO REGULATE GROUNDWATER EXTRACTION UNDER THE SUSTAINABLE GROUNDWATER MANAGEMENT ACT, IF NEEDED

INTRODUCTION

The Santa Clara Valley Water District (District) has sustainably managed the Santa Clara and Llagas Subbasins for many decades under the authority of the District Act. In 2014, the Sustainable Groundwater Management Act (SGMA) was enacted as California's first comprehensive, statewide regulatory program for groundwater. SGMA provides Groundwater Sustainability Agencies (GSAs), like the District, with various authorities to manage groundwater.

SGMA authorities include the ability to regulate pumping and assess different types of groundwater charges. These authorities have been discussed in various meetings of the District Board of Directors (Board) Water Conservation and Demand Management Committee (Committee) in an open forum and with input from interested stakeholders.

The existing, proven groundwater management approach, which includes strong partnerships with large groundwater pumpers, is expected to result in continued, sustainable groundwater management in the future and is the preferred approach to addressing future challenges. This document describes the approach to implementing SGMA authorities to regulate groundwater extraction, should such regulation become needed in the future.

BACKGROUND

SGMA established new requirements for GSAs, including the development of Groundwater Sustainability Plans (GSPs) or prescribed Alternatives. In 2016, the District prepared the 2016 Groundwater Management Plan (GWMP), which was approved by the Board following a public hearing on November 22, 2016. The District submitted the GWMP as an alternative to a GSP to the California Department of Water Resources (DWR) in December 2016. The GWMP acknowledged the new SGMA authorities and committed the District to work collaboratively with groundwater pumpers and other stakeholders to further evaluate the authorities. The Board referred related stakeholder engagement to the Committee.

The Committee, stakeholders, and the Board have indicated interest in the use of a fixed charge as a component of the groundwater production charge, and the District will further explore this concept. Committee items on the potential regulation of pumping and related discussion with stakeholders have led to the development of this process, or implementation framework.

SGMA provides GSAs with various authorities to ensure groundwater management and use do not cause undesirable results, which are defined as one of more of the following per Water Code §10721:

1. Chronic lowering of groundwater levels indicating a significant and unreasonable depletion of supply if continued over the planning and implementation horizon.
2. Significant and unreasonable reduction of groundwater storage.
3. Significant and unreasonable seawater intrusion.
4. Significant and unreasonable degraded water quality, including the migration of contaminant plumes that impair water supplies.

5. Significant and unreasonable land subsidence that substantially interferes with surface land uses.
6. Depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the surface water.

Per Water Code §10726.4(a), in regulating groundwater extraction, SGMA allows a GSA to:

1. impose spacing requirements on new wells and impose reasonable operating regulations on existing wells to minimize well interference by restricting or suspending well production;
2. control groundwater extractions by regulating, limiting, or suspending extractions, new well construction, well enlargement, or abandoned well reactivation, or by establishing allocations;
3. authorize temporary and permanent transfers of extraction allocations; and
4. establish rules to allow unused extraction allocations to be carried over from one year to another and voluntarily transferred.

However, SGMA acknowledges limitations on the regulation of pumping. Local agencies are not authorized to make a binding determination of the water rights of any person or entity (Water Code §§ 10720.5(b) and 10726.8(b)). Also, any actions to control extractions generally must be consistent with the city or county general plans (Water Code §§ 10726.4, 10726.8(f), and 10726.9).

Research into the use of similar authorities in other jurisdictions indicates that few agencies regulate pumping, and highlights related challenges. Where used, pumping regulation has been in response to significant basin problems like long-term overdraft or salt water intrusion, most commonly through the well permitting process. These agencies have struggled with well owner concerns, enforcement, and legal challenges. Others have decided against regulation due to concerns with water rights and the potential to trigger adjudication, focusing instead on financial incentives or groundwater replenishment.

GUIDING PRINCIPLES

The District's existing groundwater management framework has maintained sustainable groundwater conditions over many decades. This proven framework, including strong collaboration with stakeholders, is the preferred approach to address future challenges. However, SGMA authorities are available as potential tools if the need arises. The process to regulate groundwater extraction, if needed, is based on these guiding District principles:

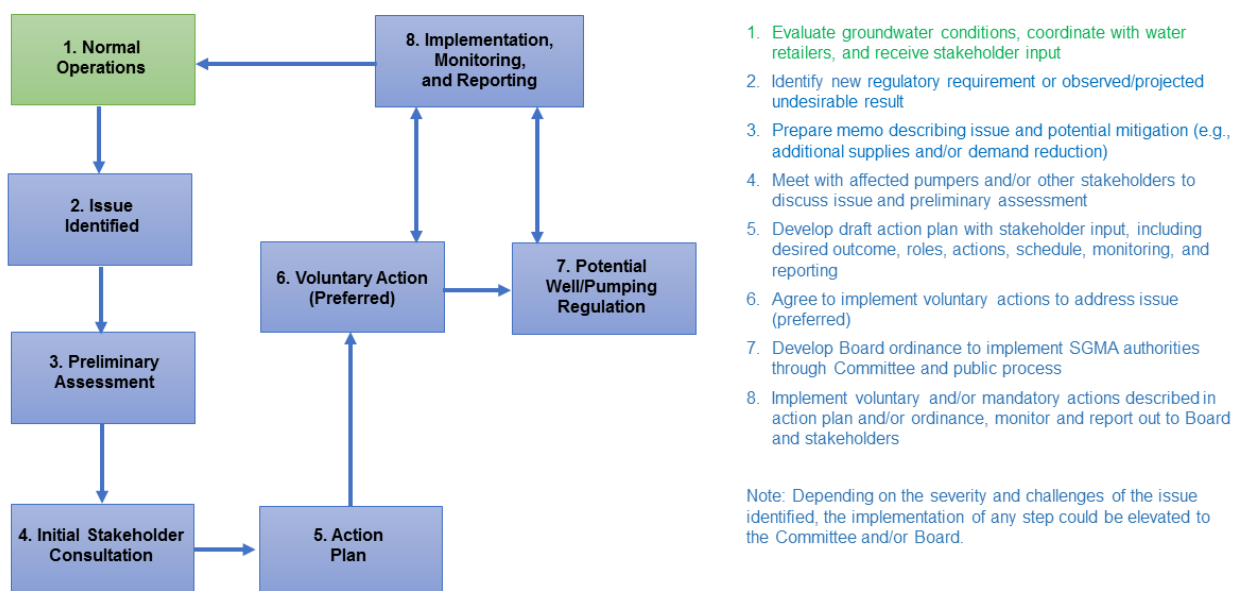
1. The District will sustainably manage local groundwater as part of our mission to provide Silicon Valley safe, clean water for a healthy life, environment, and economy.
2. The District will continue to conduct comprehensive water supply planning and invest in diverse water supplies to ensure reliability and avoid chronic shortages.
3. Through ongoing water supply operations, the District will continue to optimize the use of available water supplies while protecting groundwater storage.
4. Transparency in fulfilling the District mission remains an important driver and the District will continue to encourage input and participation from all interested stakeholders.

5. The District will continue to seek solutions that effectively and efficiently address identified water supply issues as they arise.
6. The District will work with water retailers and other stakeholders to continue to improve our understanding and management of groundwater basins and conditions, including sustainable use.
7. Strong partnerships with water retailers and other large groundwater users have been effective in avoiding undesirable results and are critical to future sustainability.
8. Collaboration with groundwater users and interested stakeholders will continue to be the preferred approach to address observed or projected undesirable results, and District regulation of pumping will only be considered if there is no viable alternative.
9. Given the uncertainty in the timing, location, and severity of potential future undesirable results, the process to regulate groundwater extraction avoids prescriptive triggers and requirements; instead, it clarifies how to respond to worsening conditions. This will maintain maximum flexibility to respond to changing conditions and avoid unnecessary or ineffective actions.

PROCESS TO REGULATE GROUNDWATER EXTRACTION, IF NEEDED

The existing groundwater management framework is expected to support continued, sustainable conditions, and pumping regulation may never be needed. The process described below and summarized in Figure 1 describes the fundamental approach to respond to worsening basin conditions, including the steps that would be taken prior to implementing SGMA authorities to regulate extraction. As mentioned above, the focus is on providing certainty as to the process, while avoiding prescriptive requirements that may not be appropriate. This process allows for moving between the various steps linearly or using feedback loops.

Figure 1. Process to Regulate Groundwater Extraction, if Needed



Step 1: Normal Operations

Comprehensive planning through the District's Urban Water Management Plan and Water Supply Master Plan ensures long-term water supply reliability (including groundwater) in accordance with level of service targets. Development of these plans includes coordination with water retailers and land use agencies, and the District encourages input from interested stakeholders. This regular, proactive planning avoids chronic shortages.

Operations planning helps meet near-term demands, protect groundwater reserves, and ensure adequate carryover supplies. Through this ongoing process, District staff develops operations scenarios based on the availability of imported and local supplies, including their optimal use and distribution. Water supply conditions are discussed with water retailers at least quarterly through Water Retailers Committee and Groundwater Subcommittee meetings, but operational or water supply issues often require more frequent communication and coordination. Current water supply information is also communicated to interested stakeholders through monthly Water Tracker updates and Groundwater Condition Reports, and the availability of groundwater level and other water supply data at www.valleywater.org.

Receiving input on groundwater management issues from interested stakeholders is an important part of normal operations. Accordingly, the District maintains a list of interested parties that includes water retailers, land use agencies, regulatory agencies, adjacent GSAs, non-governmental organizations, community groups, agricultural users, and private individuals, among others. The District notifies these interested parties of upcoming groundwater-related Board and Committee items and relevant information such as completion of the Annual Groundwater Report. The District also provides updates to all well owners on general topics of interest through regular mailings.

The District will continue to explore ways to ensure interested stakeholders are aware of groundwater management activities and opportunities for engagement, including participation in public meetings, Board correspondence, Access Valley Water inquiries, or direct communication with staff. The District evaluates all input and inquiries to determine if additional action is needed to protect groundwater resources.

Step 2: Issue Identified

Through the ongoing assessment of groundwater conditions described above, an issue requiring further action may be identified. This could be a new regulatory requirement, such as the need to limit water supply well construction near an indirect potable reuse project, or an observed or projected undesirable result as defined in Water Code §10721 and listed above. The GWMP identifies numeric outcome measures related to groundwater conditions that indicate the need for action; observed or projected failure to meet one of the outcome measures could lead to an undesirable result. There may also be unanticipated situations that do not trigger failure of an outcome measure, but require action to protect groundwater resources. If an issue requiring further action is identified, the District will inform potentially affected stakeholders and immediately move to the next step in the process.

Step 3: Preliminary Assessment

Once an issue requiring further action has been identified, District staff will use available information to evaluate the issue and summarize the findings in a technical memorandum. The memorandum will describe the nature and extent of impacts, suspected cause(s), potential

effects of taking no action, and potential mitigation options. These options may include District action, such as more focused monitoring, recommended shortage response per the Water Shortage Contingency Plan, efforts to acquire supplemental supplies, or incentives for the use of treated water. Mitigation options could also include the reduction of pumping within the impacted area.

Step 4: Initial Stakeholder Consultation

After completing the prior step, District staff will meet with selected stakeholders within the affected area to discuss groundwater conditions and the preliminary assessment. This initial consultation targets those likely needing to take action to help address the issue. In most cases this is expected to include higher-volume pumpers like water retailers that more strongly influence basin conditions. Depending on the nature of the issue, other affected stakeholders may also be consulted during this stage.

The District will work with stakeholders to evaluate additional data and update the preliminary assessment as necessary. The District and affected stakeholders will identify the schedule to develop an action plan as well as related roles and responsibilities.

It should be noted that this consultation may result in quick consensus on the need to act and what needs to be done. This occurred in 2014 when the District met with staff from the San Jose Water Company and the City of Santa Clara to discuss concerns with groundwater levels approaching subsidence thresholds within their service areas. In that case, a single meeting led to quick agreement on the need to voluntarily adjust pumping. This process is intended to support similar decisive action at the staff level when possible.

Step 5: Action Plan

Based on the timeline and roles identified during the initial stakeholder consultation, District staff and/or affected stakeholders will develop a draft action plan to address the issue. This action plan will identify the desired outcome and clearly define actions needed, roles and responsibilities, implementation schedule, and how the issue will be monitored. The action plan will also explain the mechanism and timing of status reports to the Board and interested stakeholders. If the proposed mitigation involves pumping curtailment, staff recommends that affected pumpers have the first opportunity to propose an action plan to meet the desired outcome.

In the 2014 example mentioned above, District and retailer staff collaborated quickly and effectively to reduce localized pumping and minimize the risk of subsidence. Similarly, it is expected that some issues can be effectively resolved at the staff level, with ongoing reporting to the Board Committee and stakeholders as appropriate. However, effective action plans for more severe, challenging, or widespread issues may need to be elevated to allow for more extensive input. In these cases, it may be appropriate to develop the action plan in consultation with all potentially interested stakeholders through the open forum of the Board Committee.

Step 6: Voluntary Action (Preferred Option)

Staff, affected pumpers, and other interested stakeholders will work to finalize an action plan that is likely to be effective in addressing the identified issue. This is the preferred option, which avoids resorting to the need to potentially regulate pumping under SGMA authorities. If

agreement for voluntary action is reached, all entities responsible for implementing the action plan will need to concur with the action plan prior to implementation.

Step 7: Potential Well/Pumping Regulation

The District and affected pumpers may not reach consensus on a voluntary action plan or implementation of a voluntary action plan may not prove effective in addressing the identified issue. In those cases, the District may need to consider implementing any of the authorities provided by SGMA under the following process:

1. Discuss groundwater conditions and the potential need for pumping regulation at the Water Conservation and Demand Management Committee and receive input from the Committee and stakeholders;
2. Implement action recommended by the Committee, which may include, but not be limited to, discussion with the full Board, further District action, or additional attempts to reach consensus on voluntary action;
3. Prepare a draft ordinance to regulate groundwater extraction in accordance with Water Code §10726.4 or otherwise exercise authorities provided by SGMA; and
4. Conduct a public hearing for Board consideration of the proposed ordinance.

Step 8: Implementation, Monitoring, and Reporting

The District, affected pumpers, and other identified stakeholders will implement the voluntary and/or mandatory actions described in the action plan and/or ordinance. District staff will monitor the status of action commitments, groundwater conditions, and performance in meeting the desired outcome. Related reporting to the Committee and/or Board as well as interested stakeholders will be in accordance with the action plan or ordinance. Based on the monitoring results and progress toward meeting the desired outcome, operations may return to normal or the voluntary/mandatory action may need to be modified. Successful execution of this step will require close tracking/monitoring and good communication.

TIME FRAME FOR IMPLEMENTATION OF THE PROCESS

There are no fixed time frames assigned to each step above due to the wide range of possibilities in terms of potential issues and related action needed, including whether it is voluntary or mandated. Staff anticipates that, for more manageable issues, effective voluntary action could be implemented within six months. More severe or widespread issues may take longer to address, even through voluntary action, as they may require consideration by a city council, board, or regulatory agency, or due to implementation lead time.

It is expected that if pumping regulation became necessary, implementation of the process listed under Step 7 would take several months to provide adequate noticing and opportunity for input. This time frame should be considered to correspond to the most extreme and severe conditions, with more time likely needed to fully engage potentially affected pumpers and interested stakeholders on this complex and controversial issue.

The severity of the issue will correspond to the response, with more resources and urgency allocated to more extreme issues. In any case, the District will work to expedite an effective response to minimize the risks to beneficial users or groundwater resources, and will remain committed to prioritizing voluntary collaboration over regulation whenever possible.