

ORDINANCE NO. 2118

AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE TEHAMA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT ACTING AS THE TEHAMA COUNTY GROUNDWATER SUSTAINABILITY AGENCY ADOPTING AN ORDINANCE ESTABLISHING RULES FOR THE ADOPTION OF GROUNDWATER SUSTAINABILITY REGULATIONS

The Board of Directors of the Tehama County Flood Control and Water Conservation District ordains as follows:

ARTICLE 1. Purpose and Authority

Pursuant to California Water Code Section 10725.2 and Water Appendix Section 82-3, the Tehama County Flood Control and Water Conservation District acting as the Tehama County Groundwater Sustainability Agency (the "Agency") may adopt and enforce ordinances and regulations not in conflict with general laws to ensure that sufficient water may be available for any present or future beneficial use or uses of lands or inhabitants of both incorporated and unincorporated lands within the borders of the County of Tehama. It is the purpose and intent of this Ordinance to establish rules for the adoption of groundwater sustainability regulations.

ARTICLE 2. Findings

- A. The Board of Directors of the Tehama County Flood Control and Water Conservation District (the "Board") adopts this Ordinance pursuant to its power for the purpose of ensuring that sufficient water may be available for any present or future beneficial use or uses of lands or inhabitants within the borders of the County of Tehama.
- B. The Agency has tasked the Tehama County Groundwater Commission ("Commission"), as the subject matter experts, with developing the Agency's response to State requirements including developing the Groundwater Sustainability Plans ("GSPs"), regulations, and identifying a funding mechanism for the Agency to ensure the long term vitality of the basins within the Agency's jurisdiction.
- C. This ordinance is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15061(b)(3) (there is no possibility the activity in question may have a significant effect on the environment). Each exemption stands as a separate and independent basis for determining this ordinance is not subject to CEQA.
- D. The Board determines that the enforcement of this Chapter is essential.

ARTICLE 3. Ordinance.

Chapter 1. Groundwater Sustainability Agency Regulation and Rulemaking.

Section 1. **Title**

This Chapter shall be called Groundwater Sustainability Agency Regulation and Rulemaking.

Section 2. **Definitions**

For the purposes of this Chapter, the following definitions shall apply, unless the context clearly and unambiguously indicates otherwise. If a word is not defined in this Chapter, the common and ordinary meaning of the word shall apply. All citations to federal or state law shall refer to the act, statute, or regulations as may be amended from time to time.

- A. "Agency" shall mean the Tehama County Flood Control and Water Conservation District acting as the Tehama County Groundwater Sustainability Agency.
- B. "Board" shall mean the Board of Directors of the Tehama County Flood Control and Water Conservation District.
- C. "Commission" shall mean the Tehama County Groundwater Commission.
- D. "Department" means the Department of Environmental Health for the County of Tehama.
- E. "Emergency" shall mean a situation that calls for immediate action to avoid serious harm to the public peace, health, safety, or general welfare.
- F. "Groundwater Sustainability Executive" shall mean the Deputy Director of Public Works – Water Resources and designated representatives.
- G. "Regulation" shall mean every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by the Agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.
- H. "Proposed action" shall mean the regulatory action, notice of which is submitted to the Tehama County Groundwater Commission.

Section 3. **Presentation, Publication, and Public Participation**

- A. The Groundwater Sustainability Executive shall transmit any proposed regulation to the Department.
- B. Within 15 days of receiving the proposed regulation, the Department shall transmit all comments, if any, on the proposed action to the Groundwater Sustainability Executive.
- C. The Groundwater Sustainability Executive may incorporate any comments from the Department into the proposed regulation and will present the proposed action, along with any proposed edits, to the Commission at its next meeting, regular or special.
- D. The Groundwater Sustainability Executive shall include all comments received from the Department when it presents the proposed action to the Commission.
- E. The Commission shall receive the proposed action, notify any person who has submitted to the Commission a request to be notified of proposed actions, and cause a notice of the proposed action to be published in some newspaper of general circulation within the county pursuant to Government Code Section 6066.
- F. That notice shall include all of the following:
 - 1. Identify at least one office of a public entity open to the public between the hours of 8 am and 5 pm at which the proposed action can be reviewed by the public.
 - 2. Identify at least one Internet Web site url address at which the proposed action shall be publicly posted so that it can be reviewed by the public online.
 - 3. Identify specific instructions for submitting any written comments to the Groundwater Sustainability Executive.
 - 4. Identify a date, no less than 30 days from the meeting at which the proposed action was presented to the Commission, for a public hearing at which all of the public comments submitted to the Groundwater Sustainability Executive will be presented to the Commission.
- G. The Groundwater Sustainability Executive shall keep or cause to be kept, at the Agency's primary location, a record of the regulation process and actions taken by the Commission and Board.

Section 4. **Emergency Regulations**

- A. The adoption, amendment, or repeal of an emergency regulation is not

subject to the provisions of this Article except that the Commission shall notify any person who has submitted to the Commission a request to be notified of proposed actions.

1. The notice shall include the specific language proposed to be adopted and the findings of an emergency required in subdivision D.
 2. The agency is not required to provide the notice described in D if the emergency clearly poses such an immediate threat of serious harm that delaying the action to allow for public comment would be inconsistent with the public interest and the findings declare the facts to support this.
- B. If the Board finds that the adoption of a regulation or order of appeal is necessary to address an emergency, the regulation or order of repeal may be adopted and effective immediately as an emergency regulation or order of appeal.
- C. The Board shall cause notice of the emergency regulation to be published in some newspaper of general circulation within the county pursuant to Government Code Section 6066.
- D. The Notice shall include all of the following:
1. Identify at least one office of a public entity open to the public between the hours of 8 am and 5 pm at which the emergency regulation can be reviewed by the public.
 2. Identify at least one Internet Web site url address at which the emergency regulation shall be publicly posted so that it can be reviewed by the public online.
 3. Identify specific instructions for submitting any written comments to the Groundwater Sustainability Executive.
 4. Identify a date, no less than 30 days from the meeting at which the emergency regulation was adopted by the Board, for a public hearing at which all of the public comments submitted to the Groundwater Sustainability Executive will be presented to the Commission.
- E. No regulation, amendment, or order of repeal initially adopted under an emergency pursuant to this Ordinance shall remain in effect more than 180 days unless the Agency has complied with Section 4.
- F. If an emergency amendment or order of repeal is adopted and the Agency fails to comply with subdivision E the regulation as it existed prior to the emergency amendment or order of repeal shall thereupon become effective.

- G. If a regulation is originally adopted as an emergency and the Agency fails to comply with subdivision E., this failure shall constitute a repeal of the regulation.
- H. The Board may approve not more than two readoptions of the emergency regulation that is the same or substantially equivalent to an emergency regulation previously adopted by the Agency, each for a period not to exceed 90 days. Readoption shall only be valid if the Agency has made substantial progress and proceeded with diligence to comply with subdivision E.
- I. The Groundwater Sustainability Executive shall keep or cause to be kept, at the Agency's primary location, a record of the emergency regulation process and actions taken by the Commission and Board.

Section 5. **Review of Proposed Regulations**

- A. If the Groundwater Sustainability Executive presents adequate responses to public comment, or the public comment will not cause substantive modification and any amendments are stated during the public hearing and initial presentation to the Board, then adoption can occur and items A-D of this section bypassed.
- B. The Commission may meet no less than 14 days and no more than 30 days after the public hearing.
- C. At that meeting, if the Groundwater Sustainability Executive is able to provide responses, the Groundwater Sustainability Executive may present any responses to the public comments and submit a final proposed regulation.
- D. The Commission shall, after considering all of the submitted public comments and the responses of the Groundwater Sustainability Executive, either approve the proposed regulation or disapprove it.
 - 1. If the Commission disapproves the proposed regulation it shall provide written findings that specify all of the reasons for the disapproval within seven (7) days of the decision.
 - 2. If the Commission disapproves the regulation, the Groundwater Sustainability Executive may amend the regulations based on the Commission's written findings and submit the proposed regulation to the Board.
 - 3. If the Commission fails to act within 30 days of submission of the proposed regulation, the regulation shall be moved to the Board of Directors for acceptance or denial.
- E. Once approved by the Commission, the Groundwater Sustainability

Executive shall present the regulation to the Board by putting the regulation on the Board's agenda.

1. The Board shall accept the regulation as approved which will be effective immediately or set a public hearing, to be held within 30 days, to reconsider the regulation.
 2. If a public hearing is set, the Board shall, after that hearing, either accept the regulation as approved by the Commission, which will be effective immediately, or return the regulation to the Commission.
 3. If the Board returns the regulation to the Commission, it shall provide written findings that specify all of the reasons for the return of the regulation within seven (7) days of the decision.
- F. If the Groundwater Sustainability Executive submits the proposed regulation to the Board, the written findings from the Commission shall be included with that submission.
1. The Board shall have the submission from the Groundwater Sustainability Executive along with the written findings from the Commission placed on its next meeting agenda.
 2. The Board shall either accept the proposed regulation as submitted, reject the proposed regulation, or set a public hearing to be held within 30 days, to consider the regulation.
 3. If a public hearing is set, the Board shall, after that hearing, either accept the proposed regulation as submitted by the Groundwater Sustainability Executive or transmit the proposed regulation to the Commission for reconsideration.
 4. If the Board transmits the regulation to the Commission, it shall provide written findings that specify all of the reasons it wants the commission to reconsider the regulation within seven (7) days of the decision.

Section 6. Review of Existing Regulation

- A. The Commission, upon submission of a request from the Board, shall initiate a priority review of any regulation that the Board believes does not meet the purpose of ensuring that sufficient water may be available for any present or future beneficial use or uses of lands or inhabitants within the borders of the County of Tehama.
- B. The Groundwater Sustainability Executive shall notify any person who

has submitted to the Commission a request to be notified of proposed actions and shall cause notice of the proposed action to be published in some newspaper of general circulation within the county pursuant to Government Code Section 6062a.

C. That notice shall include all of the following:

1. Identify at least one office of a public entity open to the public between the hours of 8 am and 5 pm at which the regulation and proposed action can be reviewed by the public.
2. Identify at least one Internet Web site url address at which the regulation and proposed action shall be publicly posted so that they can be reviewed by the public online.
3. Identify a date, no more than 30 days from the date of the submission of the request from the Board for a public meeting at which the Commission shall review the regulation.

D. The Commission shall review the regulations identified by the Board and if it determines that the regulation, or any portion of the regulation does not meet the purpose of ensuring that sufficient water may be available for any present or future beneficial use or uses of lands or inhabitants within the borders of the County of Tehama, shall issue an order that the Groundwater Sustainability Executive either show cause why the regulation should not be repealed or initiate the process to amend or repeal the regulation pursuant to Section 3 of this Ordinance.

1. In issuing the order the Commission shall specify in written findings the reasons for its determination.
2. These reasons shall be made available for public inspection at least one office of a public entity open to the public between the hours of 8 am and 5 pm and on at least one Internet Web site url address publicly posted so that it can be reviewed by the public online.
3. If the Groundwater Sustainability Executive does not initiate the process pursuant to Section 3 in a manner that addresses the written findings of the Commission within 30 days of the issuance of the order, the Groundwater Sustainability Executive shall appear before the Commission at the next regular meeting of the Commission to show cause why the regulation should not be repealed or amended.
4. If after the Groundwater Sustainability Executive has appeared before the Commission, the Commission determination remains unchanged, the Commission may issue a decision that the

regulation should be repealed which will be immediately delivered to the Board along with any written documentation supporting the Groundwater Sustainability Executive's presentation to retain the regulation and the Commission's written findings supporting the decision.

- i. The Board shall consider the decision of the Commission within 30 days and either confirm Commission's decision by issuing an order of repeal of the regulation, overrule the Commission's decision on the written documentation provided by the Groundwater Sustainability Executive, or set the matter for a public hearing.
- ii. If a public hearing is set, the Board shall, after that hearing, either accept the decision by the Commission by issuing an order of repeal of the regulation, which will be effective immediately, or overrule the Commission's decision.
- iii. If after a public hearing, the Board overrules the Commission's decision, it shall, within seven (7) days, provide written findings that specify the reasons for overruling the Commission's decision.

Section 7. Judicial Review

- A. Any interested person may obtain a judicial declaration as to the validity of any regulation or order of repeal by bringing an action for declaratory relief in the Superior Court in accordance with the Code of Civil Procedure. The regulation or order of repeal may be declared to be invalid for a substantial failure to comply with this Ordinance, or, in the case of an emergency regulation or order of repeal, upon the ground that the facts recited in the finding of emergency prepared pursuant to this Ordinance do not constitute an emergency according to the criteria established in this Ordinance.
- B. In addition to any other ground that may exist, a regulation or order of repeal may be declared invalid if the court finds that the Agency's determination that the regulation or order of repeal is reasonably necessary to meet the purpose of ensuring that sufficient water may be available for any present or future beneficial use or uses of lands or inhabitants within the borders of the County of Tehama is not supported by substantial evidence.
- C. The fact that a regulation or order of repeal was approved by the Commission or the Board's overruling of a decision of the Commission disapproving a regulation or order of repeal shall not be considered as evidence by a court in any action for declaratory relief brought with

respect to a regulation or order of repeal.

- D. In a proceeding under this section, a court may only consider the following evidence:
1. The rulemaking file prepared under Section 3.
 2. The finding of emergency prepared pursuant to subdivision (b) of Section 3.
 3. An item that is required to be included in the rulemaking file but is not included in the rulemaking file, for the sole purpose of proving its omission.
 4. Any evidence relevant to whether a regulation used by the Agency is required to be adopted under this chapter.
- E. Any interested person may obtain a judicial declaration as to the validity of a regulation which the Commission has disapproved pursuant to Section 4, or of a regulation that has been ordered repealed pursuant to Section 5 by bringing an action for declaratory relief in the superior court in accordance with the Code of Civil Procedure. The court may declare the regulation valid if it determines that substantial evidence exists that the regulation meets the purpose of ensuring that sufficient water may be available for any present or future beneficial use or uses of lands or inhabitants within the borders of the County of Tehama and that the Agency has complied with this Ordinance. If the court so determines, it may order the Board to immediately approve the regulation.

ARTICLE 4. Validity

If any provision, clause, sentence, or paragraph of this ordinance, or any application thereof to any person or circumstance, is held to be unconstitutional or otherwise invalid for any reason, such invalidity shall not affect the validity of the remainder of this ordinance which can be given effect without the invalid provision, clause, sentence, paragraph, or application. To this end, the provisions, clauses, sentences, and paragraphs of this ordinance are hereby declared to be severable. The Board of Directors hereby declare that they would have passed this ordinance, and each provision, clause, sentence, or paragraph thereof, irrespective of the fact that one or more provision, clause, sentence, or paragraph be declared invalid or unconstitutional.

ARTICLE 5. Effective Date and Term

This ordinance shall become effective thirty (30) days after its passage and adoption. The Clerk shall cause this to be published as required by law.

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Tehama County Flood Control and Water Conservation District, State of California, on this 16th of May 2022 to wit:

AYES: Directors Garton, Leach, Moule, Williams, Carlson

NOES: None

ABSENT: None

ABSTAIN: None



Chairperson, Board of Directors
Tehama County Flood Control
and Water Conservation District
State of California

ATTEST:
Clerk of the Board of Directors
Tehama County Flood Control
and Water Conservation District State of California

By:  _____
Clerk