

South Fork Kings Groundwater Sustainability Agency

Groundwater Data Protection Policy

Policy No. 2020-01

Purpose of Policy

The purpose of this Groundwater Data Protection Policy (“Policy”) is to provide property owners within the jurisdiction of the South Fork Kings Groundwater Sustainability Agency (“SFK GSA”) with assurance that all groundwater information and data that they agree to provide to the SFK GSA will be held and remain confidential to the maximum extent allowable by law.

Scope of Policy

This Policy applies to all groundwater data currently in the possession of the SFK GSA or that the SFK GSA will acquire in the future.

Background Information Supporting Policy

The SFK GSA is a joint powers authority formed pursuant to the Joint Exercise of Powers Act (Gov’t Code section 6500 et seq.) and acts pursuant to that authority. Its primary mission is to sustainably manage, protect and maintain the groundwater resources within its jurisdiction consistent with the Sustainable Groundwater Management Act of 2014 (“SGMA”) for the benefit of water users within its jurisdiction. The SFK GSA is located in the Tulare Lake Subbasin, Basin No. 5-22.12 as identified in the Department of Water Resources’ (“DWR”) Bulletin 118, and is designated therein as being presently in “critical overdraft.” The activities of the SFK GSA include coordination with the other Groundwater Sustainability Agencies (“GSAs”) within and adjacent to the boundaries of the Tulare Lake Subbasin, as well as groundwater management activities throughout the region.

Water Code section 10725.2 and the SFK GSA Joint Powers Agreement authorize the SFK GSA Board of Directors to adopt policies, rules, regulations, ordinances and resolutions for the purpose of complying with SGMA. The SFK GSA, in carrying out its mission, has need to acquire confidential, technical and proprietary groundwater information and data (“Confidential Information”), including, but not limited to:

- Well location.
- Ground surface elevation at well location, including elevation datum
- Level of standing water in well at development and up to last monitoring action.

- Well driller's logs.
- Well specifications/information (perforated intervals, seal depth, pumping capacity, water quality, etc.).
- Agricultural practices (crop type, irrigation method (flood or drip), surface or groundwater application, etc.).
- Irrigation facility information (location, dimension, capacity, etc.).
- Subsidence data.

The SFK GSA intends to compile, manage and maintain the Confidential Information in a manner to ensure confidentiality. However, the SFK GSA cannot be required to maintain confidentiality for any data or information that is in the public domain at the time of the disclosure.

The SFK GSA's Groundwater Sustainability Plan ("GSP") necessitates that it has and plans to continue pursuing investigations of groundwater conditions within its jurisdiction, and in that process will necessarily develop and/or acquire Confidential Information. The SFK GSA desires to ensure that the Confidential Information that may be disclosed to it is treated in the strictest confidence consistent with the requirements of the law. Where such Confidential Information is not general public knowledge and is being disclosed on a limited basis under the terms and conditions of this Policy, the SFK GSA will take every action within its legal authority to maintain confidentiality, including but not limited to entering into a data privacy confidentiality agreement made directly with property owners or their agents.

In the event that a property owner submits Confidential Information to and enters into a confidentiality agreement with the SFK GSA, and subsequently transfers title to the property associated with the Confidential Information, the SFK GSA will coordinate with the new record owner to continue to protect the Confidential Information as confidential, either pursuant to an assignment of the rights in the confidentiality agreement, if any, from the former property owner to the current property owner, or some other legal mechanism, if so desired by the new property owner.

The SFK GSA may, from time to time, need to utilize Confidential Information in conjunction with SGMA requirements that it coordinate with the other GSAs within or adjacent to the boundaries of the Tulare Lake Subbasin, or in consultation with government agencies with SGMA regulatory oversight responsibilities for the purpose of complying with the requirements of SGMA. Similarly, the SFK GSA may need to utilize Confidential Information for purposes of obtaining grant funding or complying with the requirements for grants awarded to the SFK GSA. Whenever the SFK GSA utilizes the Confidential Information for the above described purposes, the SFK GSA will only do so in a general manner and format that maintains the confidentiality of the property

owner's Confidential Information. The SFK GSA may, from time to time, seek the property owner's consent to disclose certain Confidential Information for the above purposes where it could be mutually beneficial to both parties.

The SFK GSA is a California public agency, and therefore is subject to the requirements of the California Public Records Act (Gov't Code §§ 6250 et seq.) ("CPRA"). The fundamental intent of the CPRA is that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in the state. The SFK GSA Board of Directors acknowledge and understand that the CPRA includes a certain level of tension with the intent and the goals of this Policy. Nevertheless, in furtherance of the goals of this Policy and compliance with the CPRA, the following noteworthy exemptions to the CPRA do coincide with the goals and intent of this Policy, including:

- Geological and geophysical data. Gov't Code § 6254(e).
- Disclosure of a public record to a public agency pursuant to an agreement to treat the material as confidential. Gov't Code § 6254.5(e).
- Utility Usage Data. Gov't Code § 6254.16.
- Any information where, based on the particular facts of the case, the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record. Gov't Code section 6255.

When the SFK GSA receives a CPRA request for records which implicates any Confidential Information provided to the SFK GSA pursuant to this policy, it will seek to maintain that confidentiality to the maximum extent allowable under the law, and will provide the submitting property owner with notice of the scope and nature of the request.

Policy Implementation

The SFK GSA, by and through its employees and agents, shall take the following actions consistent with the intent of this Policy.

1. Seek out the cooperation of property owners within the SFK GSA to open a dialogue about sharing Confidential Information about groundwater usage, including by regularly requesting from Kings County Community Development a list of well permits issued to obtain property owner name, location and contact information.
2. Any groundwater data containing Confidential Information provided to the SFK GSA under a claim of confidentiality shall be marked by the SFK GSA as confidential and maintained at a to be designated secure location by the employees or authorized agents of the SFK GSA. Preferable formats for the submission of Confidential Information include paper copies or common unencrypted digital file formats such as pdf's or jpeg's.

3. All Confidential Information submitted to the SFK GSA shall be pursuant to a confidentiality agreement for SFK GSA to treat the information and data submitted pursuant to same as confidential.
4. The SFK GSA shall maintain all groundwater data as confidential, pursuant to the claims at the time of submission. Only persons authorized in writing by an authorized representative of the SFK GSA shall obtain the Confidential Information on behalf of the SFK GSA and only for the purposes that are consistent with this Policy and existing law.
5. The SFK GSA may assert any applicable exclusion or privilege to prevent disclosure of the Confidential Information subject to this Policy, either on its own behalf or on behalf of a landowner.
6. The SFK GSA may not disclose any data to the public without first providing notice to and obtaining the express authorization of the submitting landowner, unless otherwise authorized pursuant to a consent authorization and/or other agreement between the SFK GSA and the consenting landowner.
7. The SFK GSA shall immediately notify a submitting landowner of any request for information from a member of the public in order to allow sufficient time to assert any exclusions or privileges that may be available by law.
8. If any information is required to be disclosed pursuant to law or court order, the SFK GSA shall work to comply with the disclosure request while limiting the disclosure in a manner to preserve the confidential and proprietary nature of the Confidential Information, as allowed by existing law.
9. The SFK GSA may disclose Confidential Information to a public agency only if: (1) the public agency requires the information to perform its legally mandated duties; and (2) the public agency agrees in writing to protect the confidentiality of the Confidential Information and to limit disclosure to only those persons who are employed or retained by the agency and who have signed an agreement to maintain the confidentiality of the records.