

EMERGENCY ORDINANCE – D
(Revision #1, December 2, 2009)

**AN EMERGENCY ORDINANCE TO IMPOSE A TEMPORARY MORATORIUM ON
CONSTRUCTION OF NEW WELLS AND TO PROVIDE AN UPPER LIMITATION TO
EFFICIENCY EXTRACTION ALLOCATION WITHIN THE
WEST, EAST, AND SOUTH LAS POSAS GROUNDWATER BASINS PENDING
DEVELOPMENT OF A BASIN-SPECIFIC MANAGEMENT PLAN**

The Board of Directors of the Fox Canyon Groundwater Management Agency, State of California, hereby ordain as follows:

ARTICLE 1. Findings

The Board of Directors hereby finds that:

A. There is a serious water resource problem that constitutes a very real and immediate threat to groundwater quality and quantity to the West, East, and South Las Posas Basins (“Basins”) and to any and all basins tributary to it.

B. The Fox Canyon Groundwater Management Agency’s (“Agency”) adopted 2007 Update to the Fox Canyon Groundwater Management Agency Groundwater Management Plan (“Management Plan”) documents unique characteristics of the Basins which include:

- Rising groundwater coincident with increasing salinity in the unconfined aquifers affected by surface water in the Arroyo Las Posas;
- Expanding degradation of groundwater quality (salinity) in those areas of the Basin under the influence of the Arroyo Las Posas.
- Continuing overdraft in the confined aquifers of the Basins;
- Masking of East Las Posas Basin overdraft conditions as a result of the temporary storage of State Project Water (“SWP”) in Calleguas Municipal Water District’s (“Calleguas”) aquifer storage and recovery facility (“ASR Project”); and
- Developing a customized management plan, distinct from the management of the remainder of the basins within the Agency jurisdiction, is an appropriate strategy to implement an approach that preserves the long-term integrity of the water resources in the Basins for all reasonable and beneficial uses.

C. Continued drought conditions and restrictions on pumping from the Sacramento – San Joaquin River Delta have reduced SWP supplies available to the region. As a result, Metropolitan Water District of Southern California (“MWD”) terminated its Interim Agricultural Water Program, which had provided supplemental water for agricultural irrigation in the Basins.

D. As a further response to statewide drought conditions, MWD has requested withdrawal of water from the ASR Project.

E. Degrading groundwater quality continues to migrate into the East Las Posas Basin threatening the water quality of water stored in the ASR Project and limiting the suitability of groundwater for agricultural irrigation. The Agency has an approved agreement with Calleguas confirming the importance of the ASR Project and guaranteeing Calleguas’ right to recapture water stored through the ASR Project.

F. In response to the U.S. Environmental Protection Agency's (EPA) finding that surface waters in the Calleguas Creek watershed (including the Arroyo Las Posas) were impaired for salts, the California Regional Water Quality Control Board adopted Basin Plan Amendment Resolution R4-2007-016 ("Resolution R4-2007-016"). Resolution R4-2007-016 imposes Total Maximum Daily Loads limits for Boron, Chloride, Sulfate, and TDS (salts) in the Calleguas Creek Watershed. With State Water Resources Control Board and EPA approval of Resolution R4-2007-016, watershed stakeholders must develop a work plan to manage salts by June 2009. Due to the surface water influence on groundwater quality, any successful work plan must include groundwater management as an element of the plan.

G. The Agency has the authority to adopt ordinances to regulate, conserve, manage, and control the use and extraction of groundwater within its territory. The Board has previously adopted emergency ordinances in an attempt to limit groundwater extractions within the Basins:

- On January 26, 1990, the Board adopted Emergency Ordinance "A," which prohibited the drilling of new water wells for use on undeveloped property during the six-month period between the Ordinance's adoption and July 26, 1990;
- On July 20, 1990, the Board adopted Emergency Ordinance "B," which replaced Emergency Ordinance "A" and extended the prohibition against new water wells for use on undeveloped property for an additional six-month period through January 20, 1991; and
- On March 24, 1999, the Board adopted Emergency Ordinance "C," which instituted a moratorium on the construction of new wells within the East Las Posas Groundwater Basin as a temporary hold on groundwater extractions and a means of preventing further degradation of water quality and quantity. Emergency Ordinance "C" was in effect through September 30, 1999.

H. Pursuant to Section 4.2.1.1 of Ordinance 8.1, to protect the water resources in the Basins, a permit must be obtained from the Agency prior to initiating any new or increased use of groundwater in the Expansion Area or prior to constructing a new or replacement extraction facility in the Basins.

I. Prohibition on the construction of new water wells, the replacement of existing wells with wells of greater capacity, and the prohibition of increased groundwater extractions, as hereafter provided, is necessary to immediately (i) protect the public health, safety, and welfare of those reliant on these water resources, (ii) prevent a worsening of the existing conditions in the Basins; and (iii) allow time to implement a definite and long-term solution to improve conditions in the Basins to ensure their long-term reliability as renewable resources.

J. The adoption of this Emergency Ordinance is exempt from the California Environmental Quality Act pursuant to CEQA Guidelines Sections 15307 and 15308. These provisions exempt a project if the activity is taken "to ensure the maintenance, restoration, or enhancement of natural resources or the environment." This Emergency Ordinance will conserve and improve the availability of Agency water resources, particularly within the Basins, and will help ensure the maintenance and sustainability of certain local and imported water resources.

ARTICLE 2. Purpose

A. The purpose and intent of this emergency ordinance is to: a) prevent a worsening of the groundwater overdraft in the aquifer systems within the Basins; b) facilitate the development of a basin-specific management plan for the Basins; and c) bring groundwater extractions within the Basins into balance with recharge. This ordinance is only one means by which this goal will be met.

ARTICLE 3. Prohibition

A. Pursuant to the California Water Code Appendix, Chapter 121, Sections 403 and 701, the Board hereby prohibits the issuance of any permit, pursuant to Section 4.2.1 of Ordinance 8.1, allowing the initiation of any new or increased use of groundwater within the Expansion Area or the construction of any new well or replacement well of greater capacity in the Basins. However, an individual may seek approval for such a permit pursuant to Section 4.2.1 of Ordinance 8.1, by applying for a variance permit.

B. The issuance of a variance permit hereunder shall be deemed a discretionary, act and issuance shall be at the sole discretion of the Agency per Section 4.2.1 of the Ordinance Code. In approving discretionary permits, the Agency's Executive Officer or his or her designee is hereby authorized to impose any reasonable conditions, modifications, or limitations in granting a permit variance which are deemed necessary to eliminate or substantially mitigate any material adverse impact on the environment, particularly including the Basin's groundwater resources, and otherwise carry out the purpose and goals of this Ordinance.

C. Notwithstanding Section 5.6.1.2 of Ordinance Code 8.1 concerning Annual Efficiency Extraction Allocations, groundwater use, obtained from within the Basins and applied under the referenced Annual Efficiency Extraction Allocation in excess of 4.0 acre-feet per acre per year for the period from January 1, 2009 to December 31, 2009 shall be subject to the extraction surcharge established by the Agency pursuant to Section 5.8 of Ordinance Code 8.1. The adoption of this 4.0 acre-feet per acre limitation is acknowledged as an interim measure to set a maximum limit on water use and does not represent an action that will adequately restore sustainable use of the Basins, or substitute for the development of a comprehensive basin-specific management plan.

ARTICLE 4. Duration

A. The duration of this Emergency Ordinance "D" shall be from the date of adoption until June 30, 2010. It shall remain in force until the stated date of expiration, unless the effective period is extended by action of the Agency Board of Directors.

ARTICLE 5. Effective Date

A. This ordinance shall become effective on the date of adoption and shall automatically expire on June 30, 2010. PASSED AND ADOPTED this 2nd day of December 2009 by the following vote:

AYES: 5
NOES: 0
ABSENT: 0

By: 
Lynn Maulhardt, Chair, Board of Directors
Fox Canyon Groundwater Management Agency

ATTEST: I hereby certify that the above is a true and correct copy of Emergency Ordinance D

By: 
Tammy Butterworth, Clerk of the Board