

POLICY PRINCIPLES FOR PORTERVILLE IRRIGATION DISTRICT

GROUNDWATER BANKING PROGRAM

December 12, 2017

In furtherance of the District’s project to manage surface and groundwater supplies available within the District, the District authorizes landowners within the District to develop, operate and maintain groundwater banking projects within District boundaries according to the following principles:

1. Rules & Regulations. Subject to the District rules and regulations relating to the availability, priority of use, and pricing of District water supply, a landowner in the District may operate a groundwater banking project within District boundaries.
2. Legal. California law permits a party who has a separate legal right to surface water developed from a source that is separate and distinct from the natural or native groundwater supplies existing in a common Basin aquifer to use the developed water for beneficial use. A party that owns a developed water supply “may use the supply by commingling the water with the native supplies and may subsequently recapture the developed water.” (*City of Los Angeles v. City of Glendale* (1943) 23 Cal.2d 68, 76-78.) The recapture right includes the amount equivalent to the augmentation contributed by the water stored (either by direct recharge or return flows from water deliveries) (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 260.) Banking projects are permitted to recharge, store and recover water placed in the Basin aquifer so long as the quantity recovered does not exceed the amount contributed and none of the banking activities cause injury to any Basin resource or the rights of other users of water in the process.
3. District Objectives. The District adopts these policy principles based on its determination that District approval of groundwater banking activities conducted according to these principles will benefit the District, its landowners and water users, in the following respects:
  - a. Increase the total water supply available in the District.
  - b. Improve groundwater conditions within the Tule Subbasin (Bulletin 118, Subbasin 5-22.13, hereafter “Basin”) and the District.
  - c. Contribute to the reduction of District and landowner costs to produce groundwater.
  - d. Increase the diversification of water supplies available in the District.
  - e. Facilitate landowners needs to obtain water for beneficial use in the District; and
  - f. Facilitate the District’s compliance with the Sustainable Groundwater Management Act.
4. Groundwater Banking Agreement. A party eligible to develop, operate and maintain a groundwater bank within the District is required to be a current owner (in good standing) of land within the District boundaries and/or a third party with a written agreement with such a landowner of the District (“Banker”). Prior to commencement of construction or operation

of banking facilities, the Banker shall enter into a groundwater banking agreement with the District to provide for groundwater banking activities consistent with these principles. Any written agreement between a landowner authorizing a third party to develop, operate and maintain a groundwater bank within the District boundaries on behalf of a landowner shall be submitted and approved by the District. The District does not currently intend to directly develop, operate and maintain a groundwater bank but does expressly reserve its authority to revise these principles to include District groundwater banking in the future should it be deemed necessary and proper.

5. Banking Facilities. The Banker shall be solely responsible for determining the nature, location and extent of the necessary banking facilities. All costs of design, permitting, construction, operation, maintenance, repair and replacement and all other costs and expenses of a groundwater banking facility shall be the sole responsibility of the Banker. Prior to commencement of construction and operation of groundwater banking facilities the Banker shall submit and obtain approval from the District of a written report containing the following information:
  - a. The banking site location (Assessor Parcel Number, legal description, and GIS map).
  - b. The conveyance and distribution facilities and manner and method of operation.
  - c. The recharge facilities and the manner and method of operation.
  - d. The recovery facilities (landowner and/or project extraction wells) and the manner and method of operation.
  - e. The energy facilities (electric, diesel, solar, etc.).
  - f. The schedule for permitting, construction and commencement of operation.
  - g. The plan of operation, maintenance, repair and replacement of banking facilities.
  - h. The intended source of all banking water supplies (e.g., Central Valley Project, local surface waters [Tule River], third party exchange/transfer supplies, other).
  - i. The banking accounting, measurement, monitoring and reporting procedure.
  - j. A Monitoring and Operational Constraint Plan (MOCP) to ensure that unacceptable impacts to neighboring crops, well flow rates, water levels and quality are prevented and/or adequately mitigated.
  
6. Banking Leave Behind. In order to insure that a groundwater banking project will protect the Basin and benefit the District, its landowners and water users, the Banker shall leave in storage in the Basin aquifer to the credit of the District's storage master account the percentage amount of the total water reported, on an annual basis, to have augmented the storage in the Basin according to the following table:

WATER SUPPLY	PLACE OF USE			
	PORTERVILLE ID	EAST-TULE GSA	REMAINDER OF TULE SUB-BASIN	ANY OTHER LAWFUL PLACE
WATER AVAILABLE TO THE DISTRICT AND DESIGNATED FOR IRRIGATION DELIVERY	20%	X	X	X
WATER AVAILABLE TO THE DISTRICT AND DESIGNATED FOR GROUNDWATER RECHARGE	10%	20%	X	X
WATER AVAILABLE TO THE DISTRICT AND DESIGNATED FOR OUT OF DISTRICT SALE	10%	20%	30%	X <sup>1</sup>
NON-DISTRICT WATER FROM THE TULE RIVER TRIBUTARY TO THE BASIN	10%	20%	30%	X <sup>2</sup>
OTHER NON-DISTRICT WATER SUPPLY	15%	15%	15%	15%

The term “water available to the District” means all Central Valley Project, Tule River or any other water supply which the District owns and is otherwise required to manage and deliver to landowners and water users within the boundaries of the District. An example illustrating application of the leave behind requirements in the table above is, if 1,000af of water available to the District and designated for out of district sale was banked by the Banker and reported as augmenting the storage in the Basin pursuant to this policy then: 900af could be extracted by the Banker if used within Porterville ID; 800af could be extracted if used within the East-Tule GSA boundary; and 700af could be extracted if used within the remainder of the Tule-Basin but outside of the East-Tule GSA boundary. The District’s storage master account would be credited respectively in the amount of 100af, 200af or 300af. The District

<sup>1</sup> The District reserves the right to approve additional uses on a case-by-case basis.

<sup>2</sup> The District reserves the right to approve additional uses on a case-by-case basis.

will determine, in its sole discretion, the use of the water stored and credited to the District in its storage master account resulting from any groundwater banking activities.

7. Place of Use. Any water credited to the Bankers storage sub-account originating from a District water supply, along with water originating from the Tule River, shall only be extracted and beneficially used within the boundaries of the District, the East-Tule Groundwater Sustainability Agency, or the Tule Subbasin (Bulletin 118, 5-22.13) to the extent provided in the leave behind requirements stated in Paragraph 6 above. Any water recharged, stored and credited to the Bankers storage sub-account originating from other non-District imported water supplies may be extracted and beneficially used at any place permitted by law in accordance with the leave behind requirements stated in Paragraph 6 above. It is anticipated that the District will review the leave behind (Paragraph 6) and place of use (Paragraph 7) provisions of this policy, and any other provision deemed necessary by the District, in conjunction with the five year review conducted by the Department of Water Resources following the District's initial submittal of its Groundwater Sustainability Plan in 2020.
8. Priority of Use of District Water. All District water supplies available for groundwater banking shall be subject to the District policies, rules and regulations regarding priority for allocation and use of water by landowners and water users within the District.
9. Water Quality Standards. The Banker shall insure that all water diverted into groundwater banking recharge facilities and stored in the Basin aquifer does not result in unacceptable deterioration of groundwater quality contrary to applicable Tulare Lake Basin Plan water quality objectives or as required in any MOCP approved by the District.
10. Banking Accounting, Measurement, Monitoring and Reporting Procedure. The Banker shall be responsible for developing and implementing a procedure to accurately account for all banking activities on a monthly and annual basis including the following: the source of all water delivered to each turnout, recharge discharges, percolation rates, recharge losses to evaporation and soil profile, net augmentation to storage in the Basin, pumping extractions, amounts of water in storage and recovery, the place of use of all banked water deliveries, changes in local groundwater conditions (including depth to groundwater, water quantity, quality, groundwater gradient and migration). All water recharged, stored and credited to the Banker according the groundwater banking agreement shall be identified by source of water as a separate storage sub-account exclusively for use by the Banker but under the name of the District. Prior to commencement of construction and operation of groundwater banking facilities the Banker shall submit a written report and obtain approval from the District of its proposed banking accounting, measurement, monitoring and reporting procedure. The Banker shall provide the District on a monthly and annual basis a written report of all groundwater banking activities in a form approved by the District.
11. Legal Compliance. The Banker shall be solely responsible for complying with all applicable Federal, State and local laws, rules and regulations relating to its banking activities. At the

District's discretion, the Banker shall provide the District with a copy of any permit, order, agreement, environmental document, judgment or other record requested by the District indicating the Banker's compliance with applicable laws.

12. California Environmental Policy Act. The District shall act as the lead agency under the California Environmental Policy Act (Public Resources Code §21000, et. seq., "CEQA") regarding the preparation of documents required to carry out or approve a groundwater banking project authorized pursuant to this policy. Implementation of this policy and the approval of any groundwater banking project pursuant to this policy are subject to compliance with CEQA and the Banker shall be responsible for the payment of all costs and expenses incurred by the District and the Banker relating to such compliance.
13. Indemnification. The Banker shall indemnify, defend and hold harmless the District, its board of directors, officers, employees, agents, assigns on account of damage or claim of damage of any nature whatsoever for which there is legal responsibility, including property damage, personal injury, or death, and including attorneys' fees and other costs of litigation, arising out of or connected with the development, operation and maintenance of a groundwater bank.
14. District Administration. The Banker shall reimburse the District for its reasonable costs and expenses incurred, as determined by the District, to prepare or review the agreements, reports, plans and other documents and materials relating to the administration of the groundwater banking agreement with the Banker.