

MID-KAWEAH GROUNDWATER SUSTAINABILITY AGENCY V1.0 WATER MARKET PILOT PROJECT PARTICIPATION AGREEMENT

This Agreement is entered and effective on this ____ day of _____ 2024, by and between _____, representing _____, and the Exchange Administrator.

For the purposes of this Agreement, “Exchange Administrator” refers to technical consultants Environmental Market Specialists, Inc. in its capacity operating a water market under authorization from the Mid-Kaweah Groundwater Sustainability Agency (MKGSA) and the supporting Resolution adopted by the MKGSA; and “Participant” means _____. By signing this Agreement as specified below, the Participant agrees to all the provisions contained herein.

Recitals

MKGSA passed and adopted a Resolution to authorize the Kaweah Version 1.0 Water Market Pilot (hereafter referred to as “Authorizing Resolution” and attached as Exhibit A). The Kaweah Version 1.0 Water Market Pilot (hereafter referred to as “the Pilot”) is set to run until June 14, 2024. MKGSA selected Environmental Market Specialists, Inc. to serve as the Exchange Administrator for the Pilot. MKGSA has adopted GSA Allocations for lands within their jurisdiction. These GSA Allocations will be included and embedded in the Water Accounting Dashboard (the online tool developed by the Kaweah GSAs allowing landowners to view and manage their allocations).

Participant Details

Dashboard ID:	<u>WA</u>
GSA:	<u>Mid-Kaweah GSA</u>
GSA Allocation:	<u>Water Supply:</u>
PIN	<u>_____</u>

Agreements

The Participant agrees to comply with all applicable GSA regulations including the Authorizing Resolution. The Participant agrees to follow all the Rules, as outlined in Kaweah v1.0 Water Marketing Pilot Rules and Regulations (2023-24) (hereafter referred to as “the Rules” and attached as Exhibit B). The Participant agrees and confirms it acts as the Water Account User on the

Dashboard, has the authorization to manage and represent the parcels identified in the participant details above in the Dashboard and for purposes of the Water Market Pilot.

Termination from Participation

The Participant understands that participation in the Pilot is voluntary, and the Participant may voluntarily withdraw from the Pilot at any time by providing written notice to the Exchange Administrator.

Waiver of Claims Regarding Water Rights

The Pilot does not include, require, or rely upon any determination of water rights. The Participant recognizes that in participating in the Pilot, it accepts the GSA Allocation, not as a determination of right, but as a valid allocation for purposes of participating in the Pilot. Participation does not waive or otherwise affect the ability of the Participant to make any claims, take any position, develop or present any information in support of a claimed water right in an adjudication or other administrative or judicial proceeding related to the determination of a water right. However, because of the above recognitions and preservations of right, the Participant waives any ability to challenge, sue, litigate or otherwise take action against the Dashboard Administrator, the Exchange Administrator or MKGSA if such challenge, suit, litigation, or action includes a claim that the Pilot violates a Participant's water rights, the Pilot amounts to a taking, adjudication, or other action related to water rights title.

Liability for Compliance with Agency Regulations

The Exchange Administrator is not responsible or liable for determining individual compliance with the terms of any applicable rules, regulations and any surcharges resulting from a violation of those regulations. The Exchange Administrator is responsible only for enrolling Participants in the water market, matching Bids and Offers, executing transfers of part of a Participant's GSA Allocation, reporting transfers to the responsible GSA, and receiving and distributing funds to Participants.

Hold Harmless and Indemnification

Except for damages resulting from willful misconduct, gross negligence, or breach of fiduciary obligation in connection with this Agreement, the Exchange Administrator and its affiliates and each of its officers, directors, employees, agents, and consultants (each a "Disclaiming Party") and MKGSA or the Review Committee shall not be liable to any person for any losses, damages, costs or expenses (including, but not limited to, loss of profits, loss of use, and direct, indirect, incidental, consequential or punitive damages) arising from:

- Any failure, malfunction, fault in delivery, delay, omission, suspension, inaccuracy, interruption, termination, or any other cause, in connection with the furnishing, operation, maintenance, use of or inability to use all or any part of any of the systems or services of the Water Market or services, equipment or facilities used to support such systems and services;
- Any failure, malfunction, fault in delivery, delay, omission, suspension, inaccuracy, interruption, termination, or any other event of the Exchange Administrator or the Water Market or services, equipment, or facilities used to support the Water Market caused by any third party including independent software vendors or network providers;
- Any errors or inaccuracies in information provided by the disclaiming party or in any of the disclaiming party's systems, services, equipment, or facilities.

The foregoing limitation of liability:

- Shall apply whether a claim arises in contract, tort, negligence, strict liability, contribution or otherwise and whether the claim is brought directly or as a third party claim.

The Exchange Administrator and the Participant shall each bear the responsibility for the consequences of their own willful misconduct, gross negligence, and breach of fiduciary obligation in connection with this Agreement. The Participant shall indemnify, defend and hold harmless the Exchange Administrator and its affiliates and each of their officers, directors, employees, agents, and consultants including the GSA, from the consequences of any Participant willful misconduct, gross negligence, and breach of fiduciary obligation, to the extent allowed by law.

Inspections

The MKGSA, or representatives of the Agency and the Exchange Administrator, may, at any and all reasonable times, enter upon any land for the following purposes: (a) to inspect any device related to the estimate of evapotranspiration for proper installation, operation and maintenance; (b) to determine the amount of groundwater used by a program participant; (c) to verify any information provided by a program participant in support of an application for water transfer or in an application for efficiency allocation; and (d) to otherwise determine compliance with the Agreement.

No Warranties

There are no express or implied warranties or representations (including warranties of merchantability and fitness for a particular purpose or use) provided by any disclaiming party relating to the Exchange, or any system or service of the disclaiming party or services, equipment, or facilities used to support the Exchange systems or services.

Amendments

This Agreement may be amended or modified only by a written instrument executed by the Exchange Administrator. The Participant will be given prior notice of any amendments to this Agreement.

Partial Invalidity

If, after the date of execution of this Agreement, any provision of this Agreement is held to be illegal, invalid, or unenforceable under the present or future laws effective during the term of this Agreement, such provision shall be fully severable. However, in lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

Choice of Laws

This Agreement shall be interpreted according to the laws and regulations of the State of California (not including California's choice-of-laws rules) and any applicable Federal laws and regulations. Any action brought under this Agreement must be brought in Tulare County, California.

Compliance with Law

In performing their respective obligations under this Agreement, the parties shall comply with and conform to all applicable laws, rules, regulations, and ordinances.

Dispute Resolution

If a dispute arises between the Participant and the Exchange Administrator with reference to the proper interpretation of the terms of this Agreement or the Rules of the Pilot, the Participant agrees to submit such a matter to the Review Committee for a decision before seeking other legal remedy and then to submit such a matter to binding arbitration in accordance with the rules and procedures of the American Arbitration Association. The Participant and the Exchange Administrator agree to share equally the cost of the arbitration; however, each party will be responsible for its own attorney's fees and costs of presentation in its respective case.

I understand that I have voluntarily entered into participation with this program and agree to abide by the terms and provisions of this program as outlined within this Agreement. By signing this statement, I also certify that I am the rightful property owner or Lessee of the property in question, or I am an authorized representative of the corporation, partnership or individual that owns or leases the property.

Participant

Signature of Authorized Representative

Date

Printed Name

Title

Mid-Kaweah Groundwater Sustainability Agency

Signature of Authorized Representative

Date

Printed Name

Title

Exchange Administrator

Signature of Authorized Representative

Date

Printed Name

Title

Exhibit A

Resolution No. 2024-04 – Resolution of the Mid-Kaweah Groundwater Sustainability Agency
Adopting the Version 1.0 Kaweah Water Market Pilot

RESOLUTION NO. 2024-04

RESOLUTION OF THE MID KAWEAH GROUNDWATER SUSTAINABILITY AGENCY ADOPTING THE VERSION 1.0 KAWEAH WATER MARKET PILOT

The Board of Directors of the Mid-Kaweah Groundwater Sustainability Agency (MKGSA) hereby declare and resolve as follows:

ARTICLE 1. Findings

The Board of Directors hereby finds as follows:

- A. The Kaweah Subbasin was awarded a grant from the United States Bureau of Reclamation to develop a groundwater marketing strategy.
- B. Groundwater in the Kaweah Subbasin is managed by three groundwater sustainability agencies (GSA) [Mid-Kaweah Groundwater Sustainability Agency (MKGSA), Greater Kaweah Groundwater Sustainability Agency (GKGSA), and East Kaweah Groundwater Sustainability Agency (EKGSA)] who have each developed and adopted groundwater sustainability plans (GSP) to achieve sustainability by 2040 pursuant to the Sustainable Groundwater Management Act (SGMA).
- C. The MKGSA GSP includes projects and management actions that MKGSA has determined will achieve the sustainability goal for the basin.
- D. Among the management actions identified in each GSAs adopted GSP is the development of market-based mechanisms to reduce the economic impact of reduced groundwater use.
- E. Water markets in other jurisdictions have been shown to provide water users with flexibility in meeting regulatory constraints on groundwater use and create incentives for groundwater conservation and the development of new water sources.
- F. Implementation of a water market on a temporary basis with the voluntary participation of landowners in a single groundwater basin is a reasonable means of evaluating whether the program can help the Kaweah Subbasin achieve the sustainability goals for the basins within its jurisdiction.
- G. Accurate and timely measurement of groundwater use is an essential component of a well-designed water market, and implementation of an established evapotranspiration estimate of water is the most effective means of evaluating water use for the Kaweah water market pilot program.
- H. This Resolution is intended to adopt a Water Market version 1.0 Pilot to allow the MKGSA to study and assess the impact of a water market and its feasibility as a groundwater management strategy and represents an opportunity to collect information, monitor results and elicit recommendations for the purpose of implementing a groundwater sustainability

plan and achieving sustainability. The pilot will not encourage or otherwise facilitate the expansion of groundwater use and will not result in either a direct or reasonably foreseeable indirect physical change in the environment.

- I. The MKGSA previously approved Resolution No. 2023-03, Resolution No. 2024-01 and Resolution No. 2024-02 authorizing the MKGSA Pilot Water Market to run through February 28, 2024, March 31, 2024, and May 31, 2024 respectively. This Resolution 2024-04 supersedes these previous Resolutions, which are no longer in effect.

ARTICLE 2. Purpose

The purpose and intent of this Resolution is to adopt a pilot program to evaluate the feasibility of implementing a water market within the jurisdiction of MKGSA.

ARTICLE 3. Definitions

The following terms have the meaning set forth below:

- A. MKGSA means the Mid-Kaweah Groundwater Sustainability Agency.
- B. Landowner means an owner or operator of a facility from which the groundwater produced is used for agricultural irrigation.
- C. Evapotranspiration is estimated based measurements utilizing satellite imagery and analysis provided by Land IQ.
- D. Board means the Board of Directors of the Mid-Kaweah Groundwater Sustainability Agency.
- E. Dashboard Administrator means a third-party administrator authorized by the MKGSA to run the Water Accounting Dashboard online website.
- F. Exchange Administrator means a third-party administrator responsible to enroll market participants, collect and match bids and offers, and facilitate transfers of allocation and financial transactions which result from transfers.
- G. GSA Allocation means the amount of pumping allowed by the MKGSA under the allocation emergency ordinance adopted on May 1, 2022.
- H. Program Participant means a landowner or other defined authorized representative approved and enrolled through the Dashboard that has signed the program participation agreement to participate in the version 1.0 pilot.
- I. Program Period for the version 1.0 pilot means from October 1, 2023, through June 30, 2024.
- J. Transfer means the trade of all or any portion of a GSA Allocation for use during the program period.

ARTICLE 4. Kaweah Water Market Pilot Program

- A. The program shall be open to landowners meeting the eligibility criteria set forth in this Article 4. Under the pilot program, any market allocation or portion thereof may be transferred subject to the requirements of this Resolution.
- B. Program Eligibility - A landowner/operator in the MKGSA jurisdictional boundary may participate in the pilot program provided: (1) the landowner has registered in the Dashboard; (2) the landowner/operator is in compliance with all rules and regulations of the Dashboard Administrator and the terms and conditions of any participation agreement or any allocation transfer agreement; and (3) the landowner/operator is otherwise in compliance with all Agency ordinances and regulations.
- C. Application Requirement - An operator wishing to participate in the version 1.0 water market pilot shall register with the Exchange Administrator by submitting a signed Water Market Participation Agreement and demonstrate satisfaction of the program eligibility requirements set forth in this article 4.
- D. GSA Allocation - Each program participant's GSA allocation shall be set by the rules, ordinance, or other regulations adopted by the GSA that has jurisdiction over the land upon which the well is located. A GSA allocation may not be combined with any other type of allocation.
- E. Transfers Allowed -A GSA allocation or portion thereof and in the case of the pilot program it shall be the minimum of either the balance of the allocation or 10-inches per acre for the for a designate parcel may be transferred from one landowner in the Kaweah Basin to another landowner in that basin. All such transfers shall be approved by the Exchange Administrator with notice of the transfer to the GSA or GSAs with jurisdiction over the lands involved in the transfer. No transfer shall be approved that violates the applicable restrictions then in place regarding trading zones and limitations related to complying with minimum thresholds, measurable objectives or protecting disadvantaged communities (DAC). If approved, a transfer shall be effective for the remainder of the program period which includes water year 2022, ending on September 30, 2023.
- F. Exchange Administrator Duties and Responsibilities - The Exchange Administrator shall be responsible for establishing and operating the water market through a Water Marketing platform or other method for transferring market allocations approved by the MKGSA. MKGSA may adopt rules and regulations for participation in the version 1.0 pilot which will guide the Exchange Administrator's resolution of disputes among program participants or refer any such dispute to the Review Committee for determination. On a monthly basis, the Exchange Administrator shall submit to MKGSA a report summarizing water market activity during the reporting period.
- G. GSA Fees – Any fees or other liability resulting from exceeding GSA allocations shall be exacted by the GSA with jurisdiction over the land subject to the fee. Payment of

any fees, debts, or liabilities resulting from violation of GSA allocation rules, ordinances, or regulations will be processed through MKGSA.

- H. Report - The Exchange Administrator shall submit a report on the pilot program no later than 90 days after completion of the Program Period of the Kaweah Water Market Pilot Program that includes: (1) the level of participation in the program; (2) the total number of allocation transfers made; (3) the total amount of allocation transferred; (4) the quantity and price for each allocation transfer; (5) the total amount of extractions by all program participants; (7) the points of extraction; and (8) findings and recommendations for future water markets.

ARTICLE 5. Inspections

The Agency, or representatives of the Agency, may, at any and all reasonable times, enter upon any land for the following purposes: (a) to inspect any device related to the estimate of evapotranspiration for proper installation, operation and maintenance; (b) to determine the amount of groundwater used by a program participant; (c) to verify any information provided by a program participant in support of an application for water transfer or in an application for efficiency allocation; and (d) to otherwise determine compliance with this Resolution.

ARTICLE 6. Conflicts

If a provision of this Resolution conflicts with any other MKGSA action, the provisions of this Resolution shall prevail.

ARTICLE 7. Duration

This Resolution shall remain in place through the Program Period.

ARTICLE 8. Effective Date

This Resolution shall take effect and be operative 2 days after its adoption.

PASSED AND ADOPTED this 14th day of May, by the following vote:

AYES: Directors Nelsen, Wynn, Wilbur, Bixler, and Alternate Director Whitfield

NOES: None

ABSTAIN: None

ABSENT: Directors Martin and Mederos

By: 
Steve Nelsen, Chair, Board of Directors

ATTEST: I hereby certify that the above is a true and correct copy.


By: 
Aaron Fukuda, Secretary of the Board

Exhibit B
Kaweah v1.0 Water Marketing Pilot Rules and Regulations

KAWEAH v1.0 WATER MARKET PILOT RULES & REGULATIONS

Basics

Program Period: 2022/23 Water Year October 1, 2022 – September 30, 2023

Unit Traded – One acre-foot of allocation measured as one acre-foot of measured evapotranspiration (ET)

- Water eligible for trade
 - Water Allocated through Mid-Kaweah Groundwater Sustainability Agency (MKGSA) allocation rules.
- Type of allowable trades
 - Temporary, one-time transfer of up to 10 inches per acre, to be used during the Program Period.

Becoming a Participant

To be admitted as a Participant, an Applicant must:

- Submit an accurately completed and signed Participant Agreement form to the Exchange Administrator.
 - Each **Participant** and **Participant’s Authorized Representative** agrees to observe and to engage in conduct required by the Rules. Each Participant and Participant’s Authorized Representative agrees to abide by any procedures, regulations, notices, directions, decisions, requirements and conditions issued by the Exchange Administrator and by the MKGSA.
- Satisfy the eligibility requirements specified below.

Eligibility Requirements

- Only landowners in the MKGSA boundary may participate.
- Only landowners who hold an allocation managed by MKGSA may participate.
- Only landowners who are in compliance with all applicable MKGSA resolutions, ordinances, rules, and regulations may participate.

Commencement of Participation

- The Applicant will be admitted as a Participant and commence participation in the Water Market Pilot when the Exchange Administrator notifies the Applicant of confirmation of admission and communicates instructions for participating in the market.

Participant’s Authorized Representative

A Participant may apply to the to the MKGSA to have an employee, lessee or other individual approved as a Participant’s Authorized Representative. Written authorization must be on file with the MKGSA and the Exchange Administrator.

TRADING

Basics

- Only a Participant or Participant's Authorized Representative may participate in auctions.
- Auctions will be conducted in May and June 2024, on the days specified by the Exchange Administrator. Two auctions will be held during which Participants may transfer unused allocation from the 2022/23 Water Year, which ended on September 30, 2023.
- Auctions are conducted through the matching of offers and bids submitted through the Exchange platform.
- Auctions are anonymous with respect to other market participants and matching will be conducted by the Exchange Administrator.
- A Participant may withdraw a Bid or Offer at any time before an auction is closed for Matching. Each auction will close at 5pm on the day of Matching.
- A Participant may not submit both a Bid and an Offer which are active at the same time.
- The Exchange Administrator may cancel a Bid or Offer at any time before it is matched in the circumstance that the Bid or Offer does not comply with the Rules or to otherwise ensure a fair, orderly and transparent market.

Offers

- Offers must be submitted electronically through the Exchange platform.
- Offers must include:
 - Maximum number of acre feet being offered for transfer (this number may not exceed the amount of allocation Available for Transfer according to the Water Accounting Dashboard)
 - APN from which the allocation is being offered.
 - Reservation Price (the lowest price that a seller is willing to receive for a transfer of allocation)
 - Expiration date of offer (14 days unless otherwise specified)
- When submitting an Offer, the Participant is authorizing the Exchange Administrator to transfer the quantity of acre feet specified in the Offer to the extent that the Offer (or part of an Offer) is Matched with a Bid. When submitting an Offer, the Participant is authorizing the MKGSA to revise the Participant's MKGSA Allocation based on the quantity of acre feet transferred.
- After submitting an Offer, a Participant may not submit a Bid until the Offer has been Matched or withdrawn or the Offer has expired.

Bids

- Bids must be submitted electronically through the Exchange platform.
- Bids must include
 - Maximum quantity of acre feet sought for transfer
 - APN to which the Participant seeks to transfer allocation
 - Maximum Price the Participant is willing to pay

- Expiration date of bid (14 days unless otherwise specified)
- When submitting a Bid, the Participant is authorizing the Exchange Administrator to transfer the quantity of acre feet specified in the Bid to the extent that the Bid (or part of a Bid) is matched with an Offer. When submitting a Bid, the Participant is authorizing the MKGSA to revise the Participant's MKGSA Allocation based on the quantity of acre feet transferred.
- After submitting a Bid, a Participant may not submit an Offer until the Bid has been Matched or withdrawn or the Bid has expired.

Matching

- The Exchange Administrator shall seek to facilitate all potential matches. For example, a single offer may be matched with multiple bids and a single bid may be matched with multiple offers. Also, part of an Offer may be matched with a Bid and part of a Bid may be matched with an Offer.
- The Bid with the highest Maximum Price and Offer with the lowest Reservation Price will be matched first. In the event of two bids (offers) with the same price, priority will be given to the bid (offer) which was submitted first.
- The sale price is the midpoint between the buyer's Maximum Price and the seller's Reservation Price.
- Matching will occur at 5 pm on the date designated by the Exchange Administrator in each of the weeks when an auction is held.
- Any Units which are part of an active Bid or Offer and which cannot be Matched in a given auction will be included in the following auction's Matching, unless the Bid or Offer has expired or is withdrawn.
- The Exchange Administrator will begin accepting Bids and Offers on the first day of the matching round and will continue accepting Bids and Offers until the close of the round, the specific dates will be identified by the Exchange Administrator in communications to eligible participants.

Clearing and Settlement

- When Bids and Offers are Matched, the Exchange Administrator will send notification to both parties including the number of units transferred and the average price. Following notification, buyer will transfer the specified amount of money (Units purchased times the average price) to the designated financial account.
 - Buyers will make only one payment through the Exchange Administrator, even if their Bid is Matched with multiple Offers.
 - Failure to submit payment within 14 days will result in suspension of participation in future auctions.
- Once payment is received from buyer(s), the Exchange Administrator will authorize payment to the seller
 - If a single offer is matched with multiple bids, the Exchange Administrator will collect payment from all buyers and authorize a single payment to the seller.

Approval

The Exchange Administrator will submit a Transfer Form to the MKGSA for each Bid (or part of a Bid) and Offer (or part of an Offer) that are Matched for approval of a transfer of MKGSA Allocation.

- Upon Approval of a Transfer, each Participant's MKGSA Allocation will be revised by the Units transferred and potential MKGSA fees, surcharges, or penalties may apply based on each party's revision.

Price Information

The quantity and price for each Match, will be reported to market participants by the Exchange Administrator. The Kaweah Subbasin MKGSAs will strive to make this information available for groundwater users.

Limitations on Trade

- Transfers shall be limited if they are likely to result in non-compliance with minimum thresholds or measurable objectives and protection of disadvantaged communities (DAC).
- Each MKGSA will designate specific areas into Trading Zones based on minimum thresholds and DAC protection.
- Depending on existing conditions and compliance with minimum thresholds, and DAC protection, specific zones may be restricted from accepting or initiating transfers.
- A Participant whose APN is located in a Trading Zone that is in danger of non-compliance with minimum thresholds may not receive a transfer of allocation from another Participant's APN which is located in a different Trading Zone.
- A Participant whose APN is located in a Trading Zone that is in danger of non-compliance with protection of disadvantaged communities (DAC) may not receive a transfer of allocation or initiate a transfer of allocation to any other Participant's APN.

Market-related Disputes

- Any Participant may notify the Exchange Administrator of any market-related dispute between the Participant and another Participant or between the Participant and the Exchange Administrator arising in relation to any of the Rules.
- Disputes between Participants will be handled by the Exchange Administrator. Any Participant who is party to a decision by the Exchange Administrator relating to a dispute may request to have the decision reviewed by the Review Committee.
- Disputes between a Participant and the Exchange Administrator will be referred to the Review Committee. The Participant agrees to submit such a matter to the Review Committee for a decision before seeking other legal remedy and then to submit such a matter to binding arbitration in accordance with the rules and procedures of the American Arbitration Association.

MONITORING, INVESTIGATION & SANCTIONS

Monitoring & Investigation

- The Exchange Administrator will monitor compliance by Participants and Participant's Authorized Representatives with the Rules and may at any time investigate the activities of a Participant.
- As part of any investigation, the Exchange Administrator may require a Participant to provide any information, document or record relating to the Participant's activities in the Pilot or the performance of its obligations under the Rules.

Sanctions

The Exchange Administrator may restrict, suspend or terminate participation for any violation of the Rules upon confirmation with the Review Committee. With approval from the Review Committee, the Exchange Administrator may impose additional sanctions for violations of the Rules. These could include:

- A public statement identifying the Participant
- Fees adopted by the MKGSAs
- Recoup any money arising from the contravention of the Rules

The Participant will be given written notice by the Exchange Administrator of any sanction.

Confidentiality

The Exchange Administrator will endeavor to take all reasonable measures to protect trading information from unauthorized use or disclosure, except as required by law or as expressly specified herein.