



Sent via ELECTRONIC MAIL to SGMA-TulareLake@waterboards.ca.gov

December 8, 2023

Ms. Courtney Tyler
Clerk to the Board
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

RE: Comment Letter – Tulare Lake Subbasin Probationary Hearing Draft Staff Report

Dear Ms. Tyler:

The Association of California Water Agencies, the California Chamber of Commerce, the California Farm Bureau Federation, the California State Association of Counties, the Rural County Representatives of California, and the Western Growers Association appreciate the opportunity to provide public comments on the Tulare Lake Subbasin Probationary Hearing Draft Staff Report (Draft Staff Report). We recognize that the State Water Resource Control Board (State Water Board) plays an important role in the Sustainable Groundwater Management Act (SGMA) and that this process demands significant staff time and resources. As the Draft Staff Report notes, the report and its associated public comment period are not required by statute. We appreciate that the State Water Board has taken this opportunity to share its thinking and to engage with the public.

SGMA implementation has and will continue to have serious and far-reaching consequences for California's residents, businesses, growers, and environment. Our organizations are committed to supporting implementation of the law in an efficient, practical, and balanced way. To that end, we respectfully offer the following comments:

1. Develop a clear process for exiting probation before probationary hearings begin.

SGMA appropriately recognizes that groundwater sustainability will be achieved most effectively and with the least disruption through local action that aligns with the needs and priorities of different communities around the state. The State Water Board has an important and necessary role to play as a backstop where local efforts fail to meet the goals of SGMA. The goal of the

State Water Board should be to return basins to local management as quickly as possible while maintaining fidelity to the requirements of SGMA.

The State Water Board has not sufficiently described the criteria for a basin designated as “probationary” to exit probationary status. Page 52 of the Draft Staff Report states, “after [groundwater sustainability agencies (GSAs)] have adopted a revised [groundwater sustainability plan (GSP)] (or plans) that resolve the deficiencies, they can seek to exit probationary status by submitting the plan (or plans) to the State Water Board. If the State Water Board determines that deficiencies were addressed, the Board may resolve to have the GSA (or GSAs) exit probation.”

We request that the State Water Board provide more certainty to GSAs and other interested parties and address the following questions in its guidance to basins that seek to exit probation:

- Will the State Water Board allow a GSA to resubmit just the portions of its GSP that require corrective actions, or will an entirely new GSP be required?
- How far in advance must a revised GSP be submitted to the State Water Board in order to avoid a probationary hearing? (see comment below)
- How much time will the State Water Board require to review a revised GSP before the State Water Board votes on removing the basin’s probationary determination?
- The State Water Board may implement an interim plan for a basin in probation after one year. If a subbasin submits a revised GSP close to the one-year mark, will the State Water Board begin implementation of an interim plan while it reviews the revised GSP?

2. Develop a process by which a basin could submit a revised GSP that addresses deficiencies before a probationary hearing.

As the State Water Board prepares to hold probationary hearings for the each of the six subbasins whose GSPs were determined by the Department of Water Resources (DWR) to be “inadequate”, some basins are actively working to revise and adopt GSPs that address the deficiencies before their scheduled probationary hearing. In support of the State’s goal to return basins to local management as quickly as possible, the State Water Board should define a process through which a basin could submit a substantively updated GSP that addresses DWR’s concerns and, if applicable, any deficiencies the State Water Board has identified before that basin’s probationary hearing.

We recognize that GSPs are large and complex documents, and that the State Water Board could not reasonably be expected to accept a revised GSP submitted shortly before a basin’s probationary hearing. We suggest that the State Water Board accept revised GSPs up to 60 days before a scheduled probationary hearing. We also suggest that probationary hearings for subbasins that have submitted a substantively revised GSP be postponed (or altered as needed to meet noticing requirements), if needed, in order to allow State Water Board staff to review the revised document if it is clear that substantial changes have been made to address deficiencies.

3. Provide information about the format of probationary hearings.

The Draft Staff Report details the meeting and notice requirements established in statute as part of the process by which a subbasin is designated as “probationary.” We request that the State Water Board make publicly available its planned format for the Tulare Lake Subbasin’s probationary hearing as soon as possible, including how the State Water Board will provide opportunities for the GSAs in the Tulare Lake Subbasin to meaningfully engage in the hearings beyond the public comment portion of the meeting. We suggest that a panel of representatives from the GSAs be invited to attend the public hearing and given time on the agenda to allow the GSAs to respond to staff’s recommendations and provide other information and context as needed as the State Water Board weighs its decision whether or not to place the basin in probation.

4. Focus on implementing SGMA as written and do not expand the scope of SGMA to include the implementation of other board priorities.

Section 10727.2 of the California Water Code establishes required plan elements for GSPs. These requirements include a) a description of the basin, b) measurable objectives, c) a planning and implementation horizon, d) components that include monitoring and mitigation of overdraft, e) a summary of monitoring sites, measurements, and other basin conditions, f) monitoring protocols, and g) a description of applicable general plans. Additionally, a plan must include other components (where applicable), such as control of saline water intrusion, wellhead protection areas and recharge areas, among many others.

Page 53 of the Draft Staff Report states that, “in some cases, a GSP revision may resolve a deficiency identified by the Board, but the Board may find the revision adversely affects other management criteria or may be inconsistent with other board priorities,” (emphasis added) such as the State Water Board’s Antidegradation Policy, the SAFER Program, and others. While we understand the State Water Board’s desire to advance the goals of its other programs, this approach effectively requires GSAs to take responsibility for initiatives that are well outside the scope of SGMA. The adequacy of a GSP should be measured against its adherence to the criteria established in statute against which all other GSPs – approved or not – were evaluated. Adding another layer for GSAs to navigate at this stage of SGMA is not appropriate.

The focus of the State Water Board should be to assist basins in crafting a GSP that meets the goals of SGMA and returns the administration of that basin’s GSP(s) to local management as quickly as possible while limiting disruption to local communities. Requiring basins that already face extremely challenging local conditions to be responsible for other State Water Board programs is not required by the law and is not consistent with SGMA’s intent. We respectfully request that the State Water Board remove this section from the final report and not consider this a requirement as part of approving a revised or amended GSP.

5. Remain cognizant of the important relationship between GSAs and extractors.

SGMA emphasizes the role of local agencies in developing and implementing GSPs that will guide a subbasin to sustainability by 2040 or 2042, depending on the basin’s priority determined by DWR. While the State Water Board has characterized designation as “probationary” as just the first step in the process, the title is taken very seriously by both GSAs and their constituents.

Many GSAs have worked diligently to develop rapport with extractors and community members in their jurisdictions to create buy-in for full implementation of SGMA. The relationships fostered by GSAs with their communities are the foundation of achieving sustainability in the timeframe laid out by SGMA. As the State Water Board moves forward with state intervention, great care should be taken not to undermine those relationships.

For instance, it is our understanding that copies of the notices sent to extractors were not shared with their corresponding GSA. This approach undermines GSAs' efforts to serve as a trusted resource to their communities and is inconsistent with the goal of SGMA to support local efforts to achieve groundwater sustainability. We encourage the State Water Board to make every effort to support these relationships and to be thoughtful in the way that it communicates with extractors and GSAs as the probationary hearing process continues.

6. Understand the role of mitigation in SGMA.

SGMA requires GSPs to define undesirable results and implement project and management actions (PMAs) that provide reasonable means to avoid those results. SGMA does not require GSPs to address the impacts of chronically lowered groundwater levels, subsidence, legacy water quality issues, or any other undesirable result identified in SGMA that occurred prior to 2015 – and for good reason. While GSAs have authority to levy fees to finance PMAs, the Draft Staff Report identifies mitigation obligations that go beyond what is required and what a GSA could reasonably raise from its extractors.

As part of their GSP(s), some GSAs have worked to develop a domestic well mitigation framework that exceeds what is required by the law in order to avoid unacceptable consequences for their communities that would come as a result of drastic changes in pumping. Such mitigation plans are an important tool for some GSAs that have limited options to avoid further declines in groundwater levels in the near term. However, a well mitigation plan is not needed in all areas and should not be viewed as a default approach for all GSPs in all basins. Implementation of a well mitigation strategy is a decision that should be made at the local level.

7. Reevaluate pumping fees before placing basins in probation.

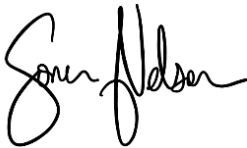
SGMA requires groundwater extractors in probationary basins to file groundwater extraction reports with the State Water Board and to pay a report filing fee. The current annual fee for groundwater extractions in a probationary groundwater basin is a base filing fee of \$300 per well (excluding de minimis extractors) and \$40 per acre-foot of water extracted in probationary basins.

The Draft Staff Report notes that the Tulare Lake Basin's 2022 GSP estimates that agricultural pumping demand averages 318,410 acre-feet per year, ranging from as low as 77,780 acre-feet to as high as 618,840 acre-feet per year. Depending on the number of wells assessed and the volume of water pumped, the State Water Board could collect in excess of \$20 million per year in pumping fees in the Tulare Lake Subbasin alone. The State Water Board may only use funding raised from pumping fees for limited purposes.

GSA's will increasingly rely on their own fee authority to fund implementation of their GSPs. In probationary basins, a groundwater extractor may be required to pay pumping fees to both the State Water Board and their GSA, possibly creating an untenable financial situation that erodes support for SGMA implementation and jeopardizes the ability of GSA's to fund their PMAs. We request that the State Water Board reevaluate its pumping fee structure so that fees are correlated with the State Water Board's actual costs of administration before any basins are placed in probation.

We appreciate the State Water Board's consideration of these comments. If you have any questions or would like to discuss these comments, please contact Soren Nelson at sorenn@acwa.com or (916) 669-2367.

Sincerely,



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CC: The Honorable E. Joaquin Esquivel, Chair, State Water Board
The Honorable Dorene D'Adamo, Vice Chair, State Water Board
The Honorable Laurel Firestone, State Water Board
The Honorable Sean Maguire, State Water Board
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