The minimum threshold for groundwater elevations adopted in section 8.6.2 do not comply with SGMA's requirement that each minimum threshold be coordinated to ensure that *all* undesirable results be avoided. The section 8.6.2 groundwater level thresholds are set at only one foot above the 2015 levels, which were entirely insufficient to prevent seawater intrusion advancement.

THE PROPOSED STORAGE REDUCTION MINIMUM THRESHOLD DOES NOT COMPLY WITH SGMA BECAUSE IT DOES NOT PREVENT SEAWATER INTRUSION: SVGBGSA must also revise its section 8.7.2 minimum threshold for annual reduction of groundwater storage (i.e., groundwater pumping of natural recharge amounts). The GSP sets this threshold at 112,000 afy, representing the "future long-term sustainable yield of the Subbasin under reasonable climate change assumption."

As LandWatch explained in comments on Chapter 6, until SVGBGSA has a validated groundwater model that reconciles historic and modeled future conditions, it should adopt the most conservative estimate of sustainable yield for this minimum threshold, i.e., the 95,700 afy estimated using the historic model. (See GSP Table 6-31.)

Adopting a conservative estimate of sustainable yield might be sufficient to *maintain* protective groundwater elevations, but pumping the sustainable yield will not *restore* protective groundwater elevations. It is evident that the cumulative storage deficit from prior years of overdraft conditions must also be addressed.

The GSP's announced rationale for setting the storage reduction minimum threshold (maximum natural recharge pumping threshold) at 112,000 afy was that stakeholders "suggested a preference for increasing groundwater storage, but not a preference for restricting average year pumping." (GSP, section 8.7.2.) In short, stakeholders want to see the problem solved, but are not willing to do what is needed to solve it.

However, to meet its adopted minimum threshold for seawater intrusion, SVGBGSA must immediately reduce pumping in the 180/400 Foot Aquifer Subbasin. The pumping reduction must not merely avoid overdraft conditions; it must also replace the historic storage depletion that has resulted in lowered groundwater levels. Regardless whether the SVGBGSA has 20 years to attain overall sustainability, it must take immediate action to meet the seawater intrusion minimum threshold because there is no evidence that seawater intrusion can be reversed once the aquifer is contaminated.

The necessary pumping reductions may eventually be matched by deliveries of additional water from new projects. But even if there is no new water in the short term, SVGBGSA cannot consistently reconcile its obligation to halt seawater intrusion at the current line of advancement with its proposed adoption of minimum thresholds for groundwater levels and storage reductions that would continue to induce seawater intrusion.

3. **Chapter 10 does not disclose realistic project start-up projections.**

The GSP identifies various timelines for the nine identified priority water projects in Chapter 9 that include necessary actions in a necessary sequence, such as studies and preliminary engineering, obtaining agreements and right of way, CEQA, permitting, design, bid and construction, and startup. Some projects might be implemented in 3 years from commitment; but most are projected to take from 5 to 9 years from commitment to start-up. Chapter 9 does not disclose when the timelines for each project would *commence* running, so it is impossible to determine when these projects would actually deliver results.

The Chapter 10 implementation schedule proposes that no projects commence "implementation" before the adoption of the GSP for the remainder of the SVGB in 2023 so that the projects can be coordinated on a basin-wide basis. As noted above, Chapters 9 and 10 do not include realistic estimates of proposition 218 compliance.

Furthermore, Chapter 10 does not even purport to identify project start up dates. As discussed above, it is not reasonable to assume that the SVGBGSA will be able to "implement" all nine projects between 2023 and 2025, as might be implied by Figure 10-1.

Chapter 10 should be revised to reflect realistic timelines for each project and management action that provide a best current estimate of start-up.

4. **Unlike projects, pumping restrictions are feasible in the very near term.**

It is evident that the development, permitting, and financing of water projects to replace reliance on current levels of groundwater pumping will take years. It is unlikely that any actual or substantial results toward halting seawater intrusion can be expected from the proposed projects and management actions by 2025, when Figure 10-1 indicates that the projects will be implemented.

Pumping restrictions are legally feasible because they could be imposed based on the regulatory authority of GSAs to "control groundwater extractions by regulating, limiting, or suspending extractions from individual groundwater wells or extractions from groundwater wells in the aggregate, construction of new groundwater wells, enlargement of existing groundwater wells, or reactivation of abandoned groundwater wells, or otherwise establishing groundwater extraction allocations." (Water Code, § 10726.4(a)(2).)

SVGBGSA could adopt pumping restrictions much more quickly than it could actually complete a project. In particular, SVGBGSA would not need to complete the proposed three-year negotiation of a water charge framework and would not need to conduct a multi-year Proposition 218 process. And it is likely that pumping restrictions would be exempt from CEQA as a measure to protect natural resources and the environment.[4] (14 CCR §§ 15307, 15308.)

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[4] And if the SVGBGSA could not or would not adopt needed pumping restrictions through such an exemption, then the SWRCB could do so. (Water Code, § 10736.2.)

5. **Unlike projects, pumping restrictions do not require extensive additional data acquisition.**

Pumping restrictions could be imposed on the basis of readily available information. For example, the Brown and Caldwell report has already been used to in Chapter 6 to identify the historic sustainable yield of 95,700 afy. (GSP, section 6.8.4.) The Brown and Caldwell Report also provides an estimate of the cumulative storage deficit, which should be retired through pumping reductions. In its 2013 study for MCWRA, *Protective Elevations to Control Seawater Intrusion in the Salinas Valley*, Geoscience quantified the needed reductions in groundwater pumping (via in lieu recharge) to control seawater intrusion in the northern Salinas Valley.[5]

Although more precise data may eventually be available to closely calibrate the needed pumping reductions, there is no reason not to require some reductions in pumping immediately. Furthermore, there is simply no question that some pumping reductions are essential to halt sweater intrusion. Again, the only rationale advanced in the GSP for avoiding a pumping restriction is that stakeholders did not express a "preference for restricting average year pumping." (GSP, section 8.7.2.) SGMA neither requires nor permits the SVGBGSA to honor a mere preference when that precludes meeting the mandates to meet the minimum thresholds, including the minimum threshold for seawater intrusion.

The GSP already proposes some pumping restrictions in the form of an immediate moratorium on pumping the Deep Aquifer pending completion of a study. There is no reason that the GSP should not also address the need for immediate measures to address seawater intrusion.

6. **Comment responses are required.**

LandWatch has appreciated the opportunity to provide comments on draft chapters of the GSP as they have been released and looks forward to review of a revised plan document that takes its comments into account.

SGMA provides that, in evaluating the sufficiency of a Groundwater Sustainability Plan, DWR should consider "[w]hether the Agency has adequately responded to comments that raise credible technical or policy issues with the Plan." (23 CCR § 355.4(b)(10).) LandWatch asks that the revised Plan to be issued for final public review address the comments LandWatch has already made, explaining how the GSP was revised to address those comments or, if not, why not.

Sincerely,

Michael DeLapa
Executive Director

[5] Available at https://www.co.monterey.ca.us/home/showdocument?id=19642.)

MARINA COAST WATER DISTRICT

11 RESERVATION ROAD, MARINA, CA 93933-2099
Home Page: www.mcwd.org
TEL: (831) 384-6131 FAX: (831) 883-5995

16 September 2019

Mr. Gary Petersen
General Manager
Salinas Valley Basin Groundwater Sustainability Agency
1441 Shilling Place
Salinas, CA 93901

Mr. Derrik Williams
Montgomery & Associates
1232 Park Street, Suite 201B
Paso Robles, CA 93446

Dear Mr. Peterson and Mr. Williams,

Thank you for taking the time to meet with our SGMA consultant EKI Environment & Water, Inc. on 15 August 2019. This letter

(1) Provides MCWD GSA's comments on draft 180/400 Foot Aquifer Subbasin Groundwater Sustainability Plan (GSP) Public Review Draft Chapter 9 (dated 2 August 2019) and Draft Chapter 10 (dated 28 July 2019); and
(2) Summarize agreements reached regarding coordination with MCWD GSA representatives Proposition 68 grant application for the 180/400 Foot Aquifer Subbasin and Monterey Subbasin.

COMMENTS TO CHAPTER 9 PROJECTS AND MANAGEMENT ACTIONS

1. Water Charges Framework (Section 9.2)

The sentence below was added to Public Review Draft Chapter 9, Section 9.2 Water Charges Framework:

> *"The fee structures in each subbasin will be developed in accordance with all existing laws, judgements, and established water rights."*

We understand that SVBGSA will further revise this sentence to include existing water management agreements as part of the basis for developing fee structure and pumping allowances, pursuant to our discussion during the 10 July 2019 meeting and MCWD's comment letter for Chapter 9 dated 1 August 2019. We understand that SVBGSA has received the comment letter but have yet to incorporate those comments into Chapter 9.

Additionally, it appears that this sentence and the associated paragraph discuss the fee structure as well as the sustainable pumping allowance. Therefore, the sentence should be revised to begin with "The fee structures and pumping allowance in each subbasin…"

2. Pumping Barrier Extraction Rate Calculation (Appendix 9-C)

Appendix 9-C mentions that the estimated pumping rates of the barrier project is calculated based on an analytical solution published by Javandel and Tsang (1987). This analytical solution assumes a constant background gradient. However, it is highly unlikely that a constant background gradient will be maintained over the project lifetime, because once sea water intrusion is stopped water levels inland of the barrier will begin to decline as seawater stops recharging the basin. As recognized in the GSP, numerical modeling is needed to assess rates of groundwater extraction that will be required to halt saltwater intrusion.

As discussed in Comment #5 to Chapter 10 below, the SVIHM will likely not have the resolution or adequate calibration in proposed project area and cannot be used to model density driven flow. Therefore, the GSP should acknowledge that alternative models will likely be required to evaluate the proposed pumping barrier project.

3. Estimated Pumping Barrier Extraction from Monterey Subbasin (Appendix 9-C)

Appendix 9-C estimates that the pumping barrier will have a total extraction volume of 30,000 AFY; 22,500 AFY of which would be extracted from the 180/400 Foot Aquifer Subbasin. Per discussion, it is understood that the remaining 7,500 AFY would be extracted from the Monterey Subbasin.

4. Mitigation of Overdraft (Section 9.6 and Table 9-5)

Section 9.6 discusses the overdraft estimated in Chapter 6 and stated that "[t]he priority projects include more than ample supplies to mitigate existing overdraft, as presented in Table 9-5." As agreed during the meeting, SVBGSA should add a discussion that Section 9.6 is included per requirements of GSP Regulations (and cite relevant sections) and that mitigating the overdraft as estimated does not meet all of the basin's sustainable management criteria. Specifically, without a hydraulic barrier, seawater intrusion will continue to occur if groundwater extraction within the basin occurs at the identified sustainable yield. As SVBGSA stated in Chapter 6, "simply reducing pumping to within the sustainable yield is not proof of sustainably, which must be demonstrated via Sustainable Management Criteria (SMC)."

Additionally, given the technical uncertainties of the proposed seawater intrusion pumping barrier project and the potential project cost that may not be approved by groundwater basin users, the GSP should provide an estimate of the sustainable yield of the 180/400 Foot Aquifer Subbasin (or the larger Salinas Valley Basin) without the pumping barrier project. This estimate is required under SGMA, which defines "Sustainable Yield" as "the maximum quantity of water, calculated over a base period representative of long-term conditions in the basin and including any temporary surplus, that can be withdrawn annually from a groundwater supply without causing an undesirable result."

We understand that due to modeling limitations and data gaps, SVBGSA is reluctant to provide an estimate the "sustainable yield" of the basin when sustainable management criteria for seawater intrusion are considered. However, analytical methods, similar to those used to estimate extraction rate of the pumping barrier project, could be utilized to provide a preliminary estimate of the Sustainable Yield of the basin if the extraction barrier is not installed. For example, previous studies conducted on this topic by Geoscience (2013), *Protective Elevations to Control Sea Water Intrusion in the Salinas Valley,* estimated that approximately 60,000 AFY would be needed for the Salinas Valley Water Project to recharge the Salinas Valley Basin sufficiently to stop seawater intrusion. Alternatively, the GSP could compare and discuss the volume of water needed for an injection barrier, as presented in Appendix 9-C.

COMMENTS TO CHAPTER 10 GSP IMPLEMENTATION

5. Additional Data Gaps and Analyses to be Addressed (Section 10.3)

As discussed in our comments to the previous chapters, the following additional data gaps and analyses should be identified Chapter 10:

- Seawater intrusion cross-sections (Chapter 5 comments dated 18 April 2019)
  Per GSP Regulations Section 354.16 (c), a GSP should provide "seawater intrusion conditions in the basin, including maps and cross sections of the seawater intrusion front for each principal aquifer". The GSP should commit to development of such cross-sections, once data gaps have been filled. These data are needed to inform placement of seawater intrusion barrier wells.

- Groundwater extraction within individual aquifers (Chapter 6 comments dated 2 July 2019)
  We suggest that SVBGSA collect information needed to identify groundwater extraction from each principal aquifer, to allow the development of a water budget for each aquifer. As discussed in MCWD's Chapter 6 comments dated 2 July 2019:

  "Water budget information for each principal aquifer is necessary to verify that proposed future operations of the basin, including implementation of projects and management actions, will not lead to undesirable results in each principal aquifer. Seawater intrusion is occurring in both the 180 Foot Aquifer and the 400 Foot Aquifer, and inland gradients exist within the Deep Aquifer. In order to reach sustainability, hydraulic gradients in each of these aquifers will need to be reversed either through decreasing groundwater extraction and/or future supply augmentation projects. As such, water budgets for each aquifer must be established to verify that undesirable effects do not occur.

  We understand that information related to groundwater extraction within individual aquifer zones is currently limited and that water budgets cannot be developed for each principal aquifer zone. As such, we recommend that the GSP acknowledge this uncertainty and identify it as a data gap. The GSP should provide a plan to further assess rates of extraction and inflows within principal aquifer zones so undesirable results, such as seawater intrusion can be mitigated. This information is critical, as achieving sustainability in the basin requires implementation of projects and management actions, which will need to be evaluated against sustainable management criteria in each principal aquifer."

  However, as discussed and agreed upon during the meeting, this data gap may be extremely difficult to fill and water level data/gradients in each aquifer may serve as a proxy for evaluating the effectiveness of projects and management actions to address saltwater intrusion within each of these zones. However, given the uncertainties associated with groundwater recharge and groundwater levels within the Deep Aquifer (consistent with data gaps identified in Section 10.3), quantification of all groundwater extraction from the Deep Aquifer, should be clearly identified as a Data Gap that will be filled as under the GSP.

We further recommend that the GSP identify actions that will be implemented to allow:

- Development of Sustainable Management Criteria for the deep aquifer; and

- Development of Sustainable Management Criteria that consider project implementation. For example, alternative groundwater elevation Sustainable Management Criteria will be required near the coast if a pumping barrier is constructed.

6. Plans to Refine and Evaluate the Seawater Intrusion Barrier Project (Sections 10.6 and 10.7)

The GSP should acknowledge that alternative models will likely be required to evaluate certain projects, such as the pumping barrier or injection wells, because the SVIHM does not have the resolution or adequate calibration in proposed project areas and cannot model density driven flow.

Further, The GSP states that SVIHM model will be available for use within one year. Per discussion during the meeting, we understand that within one year, the SVIHM model will be released for public use by USGS. Additionally, we understand that the model will be made publicly available consistent with GSP Regulations Section 352.4 (f)(3), "[g]roundwater and surface water models developed in support of a Plan after the effective date of these regulations shall consist of public domain open-source software."

PROPOSITION 68 GRANT COORDINATION

MCWD is considering applying for Proposition 68 Grant (SGM Grant Round 3) for Monterey Subbasin. We understand that SVBGSA is also planning to apply for this grant for other basins under its jurisdiction. As agreed, both parties will coordinate and support each other in grant funding processes.

Thank you for this opportunity to provide these comments. We look forward to working with you to discuss, evaluate, and refine the proposed Chapter 9 actions and projects.

Sincerely,

Keith Van Der Maaten
General Manager, Marina Coast Water District

COMMUNITY WATER CENTER
EL CENTRO COMUNITARIO POR EL AGUA

San Jerardo Cooperative, Inc.

November 25, 2019

Salinas Valley Basin Groundwater Sustainability Agency
Attn: Gary Peterson, General Manager
1441 Schilling Place
Salinas, CA 93901

Submitted electronically to:

Salinas Valley Basin Groundwater Sustainability Agency

Gary Peterson, General Manager

Salinas Valley Basin Groundwater Sustainability Agency Board of Directors

Ron Stefani, Castroville CSD

Adam Secondo, Secondo Farms

Bill Lipe, Rava Ranches

Tom Adcock, Alco Water Service

Colby Pereira, Costa Farms

Janet Brennan, LandWatch

Supervisor Luis Alejo, Monterey County

Mayor Joe Gunter, City of Salinas

City Manager Mike McHatten, City of Soledad

Steve McIntyre, Monterey Pacific/McIntyre Vineyards

Caroline Chapin Hodges, The Don Chapin Company

cc'd:

Department of Water Resources Director, Karla Nemath

Department of Water Resources Deputy Director, Taryn Ravazzini

Department of Water Resources, 180/400 Ft Aquifer Subbasin, Thomas Berg

State Water Resources Control Board Chair, Joaquin Esquivel

State Water Resources Control Board, Natalie Stork

CalEPA Deputy Secretary, Kristin Peer

Central Coast Regional Water Quality Control Board, John Robertson

Re: Comments on the Draft 180/400 Foot Aquifer Subbasin Groundwater Sustainability Plan

Dear Salinas Valley Basin Groundwater Sustainability Agency:

The Community Water Center (CWC) and the San Jerardo Cooperative would like to offer several comments and recommendations in response to the draft Groundwater Sustainability Plan (GSP) for the 180/400 Foot Aquifer Subbasin that was released on October 10, 2019 by the Salinas Valley Basin Groundwater Sustainability Agency (SVB GSA).

Community Water Center (CWC) is a 501(c)3 nonprofit that acts as a catalyst for community-driven water solutions through organizing, education, and advocacy. CWC seeks to build and enhance leadership capacity and local community power around water issues, create a statewide movement for water justice in California, and enable every community to have access to safe, clean, and affordable drinking water. San Jerardo Cooperative is a housing cooperative, built and owned by farmworkers, located in the Salinas Valley that has faced many drinking water quality challenges. CWC and San Jerardo Cooperative have worked to facilitate effective Sustainable Groundwater Management Act (SGMA) implementation that meets the needs of vulnerable communities through San Jerardo Cooperative serving on the GSA advisory committee and through both of our participation in SVB GSA meetings (board, advisory, and planning). Many of our comments are reflected in the public record. We have also connected SVB GSA staff directly via email and in person to publicly available resources and data sources to fill the current data gaps in the plan related to disadvantaged community boundaries, state and local small water system data (collected and maintained by the Monterey County Environmental Health Bureau), and private domestic well data (collected by the Central Coast Regional Water Quality Control Board as part of their Irrigated Lands Regulatory Program). We co-hosted two community workshops - on July 31, 2019 and October 24, 2019 - to share information about groundwater planning in the Salinas Valley and to receive feedback on how community members would like to see groundwater managed and get involved in the process.[1]

The comments and recommendations contained in this letter are provided in an effort to protect the drinking water sources of the vulnerable, and often underrepresented, groundwater users. These beneficial users of groundwater include: domestic well owners, community water systems, public water systems, severely disadvantaged communities (SDAC), and disadvantaged communities (DAC). The submitted comments are intended to assist the SVB GSA in developing a groundwater sustainability plan that accomplishes the following objectives:

1. Understands disadvantaged communities' unique vulnerabilities and adequately addresses their drinking water needs;
2. Avoids developing groundwater management actions that cause negative impacts to drinking water supplies or cause a disparate impact on low-income and communities of color;
3. Achieves the objectives required by the SGMA regulations and California's Human Right to Drinking Water in order to ensure the 180/400 Foot Aquifer Subbasin GSP adequately addresses the requirements necessary for GSP approval by the Department of Water Resources (DWR); and
4. Achieves the goals required by SGMA without negatively affecting the implementation of the Newsom Administration's newly passed Safe and Affordable Drinking Water Fund (SB 200, Monning, 2019), by limiting or preventing further contamination (or salinization) of drinking water sources or the dewatering of wells that serve low-income communities of color.

The Department of Water Resources (DWR) will be considering AB 685, which established the Human Right to Water as state law, when reviewing and approving GSPs. The Human Right to Water is a

[1] Notes and materials from the July 31, 2019 *Protecting Drinking Water and Groundwater Planning in the Salinas Valley Workshop* co-hosted by Community Water Center, San Jerardo Cooperative, and the Union of Concerned Scientists are available online:
https://www.communitywatercenter.org/salinas_gsp_workshop

California law that recognizes that "every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes." GSPs that do not support access to sufficient and affordable quantities of drinking water, or GSPs that impact access to safe drinking water, may require costly and time-consuming revisions prior to approval from DWR, if not outright or eventual rejection of the GSP.

We are unfortunately very concerned that, without significant changes which we lay out in this comment letter, the proposed GSP will have significant negative impacts for access to safe and sustainable drinking water in our most vulnerable populations within the GSA -- low-income communities and domestic well owners. Here is a summary of some key comments and recommendations:

The GSP Should Include Immediate Actions To Take Effect in 2020 While Projects Are Being Developed
The GSP should be revised to lay out a clear and robust plan to achieve sustainability. The GSP delays any decisions on approving projects or actions to address conditions of critical overdraft in the 180/400 foot aquifer subbasin until 2023 and later. This is not acceptable as a significant portion of the drinking water supplies in the subbasin, including drinking water systems serving disadvantaged communities in Castroville and Moss Landing, are already impacted or are at imminent risk of seawater intrusion impacts. The GSA should immediately adopt management actions to slow seawater intrusion and protect vulnerable communities and drinking water supplies.

Chapter 9 Projects and Management Actions: Well Impact Prevention/Mitigation Program
Given delays in described in the plan and negative impacts to drinking water wells, the SVB GSA should develop a robust drinking water well program to prevent or mitigate impacts (e.g. dewatering, increases in contaminant levels, increases in salinity). This should include a vulnerability analysis of DACs and drinking water supplies in order to protect drinking water for these vulnerable beneficial uses and users.

Chapter 3 Description of Plan Area
Include a map of all disadvantaged communities (DACs) (census block groups, census designated places, and census tracts) in the subbasin. Include a map of service areas for all drinking systems that depend on groundwater in the subbasin. This map should include all state small water systems (SSWS), local small water systems (LSWS), and public water systems.

Chapter 5: Groundwater Conditions
Include spatial and temporal water quality data trends in the subbasin based on publicly available, historic drinking water well data from SSWS, LSWS, public water systems, and private wells. Include all known constituents that impact public health that have been found in groundwater in the subbasin including (but not limited to) hexavalent chromium, arsenic, and 123-trichloropropane.

Chapter 6: Water Budget
Revise the basin setting and water budget of the draft 180/400 Foot Aquifer Subbasin GSP to better articulate and quantify the needs of drinking water users within the GSA, and address key missing information and assumptions about drinking water users. The water budget and sustainable yield calculation must take into account the proposed project(s) to address sea water intrusion as well as the significant uncertainty inherent in these projects.

Chapter 7 Monitoring Network

Provide the locations and depths of all public water systems, state and local small water systems, and private domestic wells in the subbasin using the best available information, and present this information on maps along with the proposed SGMA-compliance monitoring network so that the public can evaluate how well the monitoring network addresses these key beneficial users. Expand water quality monitoring network with currently available data to better capture impacts to domestic wells and state and local small water systems who rely on the shallow aquifer.

Chapter 8 Measurable objectives, minimum thresholds, and undesirable results
Clearly identify and describe the current level of contamination and salinity at each representative monitoring well and attribute specific numeric values for MTs/MOs for each contaminant of concern. Revise sustainable criteria to be protective of drinking water users.

--
We urge SVB GSA to make changes to better protect the beneficial uses for low-income and communities of color that live within the GSA. Detailed comments and recommendations for individual sections of the GSP developed are included below. We also conducted a focused technical review of certain sections of the GSP. Figures and maps from this review are included as attachments and are referenced in this comment letter. We have also included comments and reflections throughout this comment letter from the SVB GSA public meetings we have attended as well as the GSP workshops we have hosted.

Thank you for reviewing this letter and for the consideration of our comments on the draft GSP. We look forward to working with the SVB GSA to ensure that the 180 / 400 Foot Aquifer Subbasin GSP is protective of the drinking water sources of vulnerable, and often underrepresented, groundwater stakeholders. Please do not hesitate to contact us with any questions or concerns, or if you would like to meet to further discuss these important sets of issues.

Sincerely,

Heather Lukacs
Community Water Center

Horacio Amezquita
General Manager, San Jerardo Cooperative, Inc.

COMMUNITY WATER CENTER
EL CENTRO COMUNITARIO POR EL AGUA

San Jerardo Cooperative, Inc.

Table of Contents

Attachments to this Comment Letter 34

GSP Chapter 1: Introduction

Sustainability Goal

We encourage the GSA to move the Sustainability Goal section from Chapter 8 to the start of this first chapter. It is important to start the plan with the sustainability goal to set the stage for why this plan matters. We agree that part of the sustainability goal is to "ensure long-term viable water supplies" as you say in Chapter 8. The "sustainability goal" should be revised to explicitly state and include a commitment to the Human Right to Water in the Salinas Valley - that "every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes."

At public workshops hosted by CWC, community members have commented that their vision for water in the Salinas Valley Basin includes:

- "Water is for everyone. This is why we passed the human right to water resolution and we are fighting to defend it."
- It is not contaminated ("No contaminada"),
- We are not contaminating the earth, that it is clean for all ("No estamos contaminada la tierra - limpiar para todos")
- The water is like it was in the past, no filters needed, so fresh ("Fuera el agua como pues años atrás. Sin filtros o nada. Tan fresca.)

Our shared vision for groundwater is groundwater that is free of contaminants, available for both private and public uses, available without the need for in-home filtration, and available 24-hours a day. We reject a definition of "sustainability" which allows domestic or municipal wells to become salty, go dry, or become contaminated before management actions are enacted. This vision for the future of groundwater in the Salinas Valley is not currently captured in the draft GSP. In order to improve this section, we recommend the following:

- **Revise the opening paragraph in Section 1.1 to clearly state that the 180/400 Foot Aquifer Subbasin has been designated by the California Department of Water Resources as a "Critically Overdrafted Basin."** This designation means that "the continuation of present water management practices would probably result in significant adverse overdraft-related environmental, social, or economic impacts. (DWR 2019)."[2] It is important that the SVB GSA explain clearly to the public why this GSP is needed, that current practices are resulting in critical overdraft, and that the status quo is unacceptable.
- **Revise introduction to clearly describe why this GSP matters and clearly articulate the current challenges.** The Subbasin should be described in a manner that clearly explains baseline conditions for all sustainability criteria and the significant challenges facing Salinas Valley groundwater managers in terms of sea water intrusion, lowering groundwater levels, and extensive water quality contamination.
- **Include a reference for the following comment on page 1-2**: "There is some, although potentially limited, hydraulic communication between the Eastside Aquifer Subbasin and the 180/400-Foot Aquifer Subbasin." This has potentially significant implications for the relationship

[2] California DWR (2019) Critically Overdrafted Basins. Accessed November 17, 2019. https://water.ca.gov/Programs/Groundwater-Management/Bulletin-118/Critically-Overdrafted-Basins

between pumping that is causing the significant cone of depression in the East Side aquifer and seawater intrusion impacting the 180/400 foot aquifer.

GSP Chapter 2: Agency Information

Clarify the legal authority Monterey County has as a GSA eligible entity and JPA signatory to take over the management of the 180/400 foot aquifer sub-basin(Section 2.3.1.1). Given recent public comment (both written and oral) in October and November 2019 regarding SVBGSA authority, it is requested that the SVB GSA clarify this authority.

GSP Chapter 3: Description of Plan Area

The description of the plan area can be improved by clarifying the descriptions of the drinking water users in the area. In order to develop a GSP that addresses the needs of all beneficial users, it is critical that the location and groundwater needs of DACs and domestic well communities are explicitly addressed early on in the GSP. The plan should be updated to include DAC boundaries and service areas for all drinking water systems including all state small water systems (SSWS), local small water systems (LSWS), and public water systems. Our comments in this section identify key data sources and recommended terminology. We have shared information with the GSA directly on this topic during public meetings and also via emails on December 6, 2018 and then again on April 5, 2019, which included information and a link to an online map viewer with all of these data layers.[3] In order to improve this Chapter, we recommend the following:

- **Clearly define all drinking water system types and use those terms consistently in this chapter and plan.** A straight-forward and concise explanation of drinking water system definitions and how drinking water systems are regulated can be found in the *Integrated Plan to Address Drinking Water and Wastewater Needs of Disadvantaged Communities in the Salinas Valley and Greater Monterey County IRWM Region (2017).*[4] We recommend using the following terms consistently throughout the plan:
    - Public Water Systems - this includes community water systems (as discussed in the GSP) and also non-transient, non-community water systems (e.g. schools), as well as transient non-community water systems (e.g. restaurants, gas stations).[5]
    - State Small Water Systems (SSWS) - serve 5-14 service connections.
    - Local Small Water Systems (LSWS) - serve 2-4 service connections.

[3] The Greater Monterey Community Water Tool (Database and Map Viewer) has been created to show the locations of disadvantaged and suspected disadvantaged communities, geographic areas with water quality contamination (including nitrate, arsenic, and hexavalent chromium contamination), and the boundaries of nearby water districts. More information and a link to the tool is available here: http://www.greatermontereyirwmp.org/documents/disadvantaged-community-plan-for-drinking-water-and-wastewater/

[4] See Chapter 3, Pages 3-1 to 3-3 of the Plan by the Greater Monterey County Regional Water Management Group, which is downloadable: http://www.greatermontereyirwmp.org/documents/disadvantaged-community-plan-for-drinking-water-and-wastewater/

[5] See EPA's website with helpful classification information for public water systems: https://www.epa.gov/dwreginfo/information-about-public-water-systems

- **Include a map of all disadvantaged communities (DACs) and their drinking water sources in the subbasin including Castroville, Moss Landing, and private wells.** Disadvantaged communities are on the front lines of the sea water intrusion front with the public water supplies of Castroville and Moss Landing right on the sea water intrusion minimum threshold line for the 400 foot aquifer (see CWC Figure 1- Attached). What these maps do not show is the number of wells already lost due to sea water intrusion and the ways in which these DACs have already been adapting to poor groundwater management. Castroville, the City of Salinas, and numerous other drinking water users in the subbasin have lost wells due to sea water intrusion. In setting the stage for the plan area, it is important to include the location of all DACs in the subbasin as determined both by census data (block groups, census designated places, and census tracts) and median household income surveys conducted in accordance with state and federal agency guidelines. DACs are defined by California Water Code §79505.5 as communities with an annual median household income that is less than 80 percent of the statewide annual median household income[6].

- **Revise description of plan area to include the sources of water for all DACs, percentage of groundwater dependance, type of water system, current groundwater quality conditions, and number of people served.** Adequately characterizing the other public water systems, state and local small water systems, DACs, and domestic well communities in the GSA is important in order to better identify areas that are vulnerable to groundwater level, groundwater quality, or sea water intrusion challenges in order for the SVB GSA's actions to respond accordingly. Table 3.2 Well Count Summary could be a good place to list the names, ID numbers, populations served, and other key attributes of the over 40 public supply systems in the subbasin.

  We estimate that approximately 50,000 DAC residents in the 180/400-Foot Aquifer Subbasin are entirely dependent on groundwater for their drinking water needs (See CWC Figure 1 - Attached).[7] Clarifying the different types of systems that provide drinking water (private domestic well, public water system, or state or local small water system), population served by each system, and current groundwater quality conditions is important context to set the stage to: (1) quantify drinking water demand in the subbasin for both the current and projected water budget, (2) provide a basis for the monitoring network of drinking water supplies, and (3) ensure inclusive and representative engagement of DACs in the planning process.

- **Describe highly vulnerable drinking water systems, including Castroville and Moss Landing, in more detail to better explain the challenges that groundwater management must address.** Castroville Community Services District (CSD) owns and operates an extremely vulnerable

[6] The DWR DAC Mapping Tool can be used to help identify the locations of these communities and their populations: https://gis.water.ca.gov/app/dacs/.

[7] Several Census Block Groups and Tracts extend beyond the boundary of the subbasin, and thus not all of the population represented by the Tract lies within the basin. In addition to the DACs identified through the DWR-provided DAC Mapping tool (based on 2011-2016 estimates), the community of Moss Landing, which had insufficient data when the tool was developed, has been determined to be a DAC. Thus, the total population based on DWR-provided census data for the Block Groups and Tracts located within and across subbasin boundaries, and Moss Landing is 49,244.

drinking water system (CA2710005) that serves approximately 7,250 residents in the unincorporated community of Castroville. A median household income (MHI) survey was completed by the Rural Community Assistance Corporation in 2017 in accordance with California state standards that qualifies Castroville as a Severely Disadvantaged Community, with a MHI of $35,000. Castroville CSD has wells that have already been impacted by sea water intrusion - making them unusable. They have one well in the deep aquifer that must be blended with another more shallow well in order to reach acceptable temperature levels for potable water. Water levels in this deep well are declining. The CSD has installed an award winning arsenic treatment system due to levels of arsenic in one well water with source water exceeding 20 parts per billion (ppb), which is more than double the drinking water standard. Recent science demonstrates that the way groundwater is managed (groundwater levels and pumping rates) can cause inert arsenic to be released from sediments into groundwater in its aqueous form.[8]

Moss Landing is another extremely vulnerable disadvantaged community located in the sea water intrusion zone. Pajaro Sunny Mesa CSD owns and operates the Moss Landing Harbor Water System which is a community water system (CA2701515) that serves approximately 400 residents. The drinking water supply well for this water system, located inland from its service area, is in close proximity to the 2017 extent of the 400 foot sea water intrusion line, thus making it vulnerable to any further sea water intrusion beyond that point. Castroville CSD owns and operates the Moss Landing County Sanitation District (MLCSD), which is located in the unincorporated town of Moss Landing. California Rural Water Association conducted an MHI survey in 2018 which found Moss Landing to be a Disadvantaged Community (DAC) with an MHI of $47,600. Census data shows insufficient data in the Moss Landing area to determine median household income, thus the State has required the MHI survey in order to determine funding eligibility for state grants.

- **Revise Chapter 3 and Figure 3.4 to include a map of the service areas of the over 100 state and local small water systems in the 180/400 foot aquifer subbasin.** The Monterey County Environmental Health Bureau (EHB) maintains publically available data which includes shape files of state and local small water system service areas (e.g. polygons of all parcels served by each state or local small water system) to water system IDs. Lists of state and local small service areas and out-of-compliance water systems are available online on their state and local small water

[8] Stanford, 2019. A Guide to Water Quality Requirements Under the Sustainable Groundwater Management Act.

Community Water Center, 2019. Guide to Protecting Drinking Water Quality Under the Sustainable Groundwater Management Act. https://d3n8a8pro7vhmx.cloudfront.net/communitywatercenter/pages/293/attachments/original/1559328858/Guide_to_Protecting_Drinking_Water_Quality_Under_the_Sustainable_Groundwater_Management_Act.pdf?1559328858

Community Water Center and Stanford University, 2019. Factsheet "Groundwater Quality in the Sustainable Groundwater Management Act (SGMA): Scientific Factsheet on Arsenic, Uranium, and Chromium" for more information.https://d3n8a8pro7vhmx.cloudfront.net/communitywatercenter/pages/293/attachments/original/1560371896/CWC_FS_GrndwtrQual_06.03.19a.pdf?1560371896

system webpage.[9] Monterey County EHB also maintains individual files for each SSWS and LSWS in the County, which often contain well completion reports for each system. All water quality data, location data, and well completion reports are publically available upon request from the Monterey County EHB.

- **Revise Figure 3.6 to add table to clearly define and identify service areas of all drinking water systems *that depend on groundwater in the subbasin*.**
    - **Clarify the definition of "municipal areas" used in Figure 3-6.** We recommend changing "municipal areas dependent on groundwater" to "public water system service areas dependent on groundwater."
    - **Add the Moss Landing water system, which is groundwater dependent, to this map as well as any other water systems that are missing.**
    - **Include groundwater dependent private domestic wells, SSWS, and LSWS.**

  DACs and other communities receive their drinking water from hundreds of domestic wells located within the subbasin, over 100 state and local small water systems, and numerous public water systems, including approximately 30 separate community water systems. We request that all public water system service areas and state and local small service areas be included in this chapter as well as a list of all these system names, water system ID numbers, and number of service connections (or population served).[10] Private wells should also be identified as being groundwater-dependent drinking water supplies. Figure 3.4 includes cities, community service districts and water districts, but does not but does not include smaller public water systems. Figure 3.6 includes "municipal areas" but does not clearly define these areas as "public water system" service areas. All smaller public water systems including Dolan Road Mutual Water Company (CA2700548), Green Acres Water Association (CA2701647), Hidden Valley WA (2700594), Elkhorn Rd WS #4 CA 2700579), and Strawberry Road Water System #06 (CA2700766) should be clearly listed and labeled maps in this chapter. All public water systems and state/local small water systems are important to identify and include in this chapter because all are reliant on groundwater, many are highly vulnerable to water level and water quality changes, and all will be impacted by the way groundwater is managed in the basin.

- **Move Section 3.8.5 Title 22 Drinking Water Program from its current location under "Groundwater Regulatory Program" to a new section - which could be titled "Drinking Water Regulatory Programs."** This could eliminate redundancy in current Section 3.6.3.2 which describes "municipal and community water purveyors" and the section on Title 22 Drinking Water Program which is more extensive and discusses public water systems. The "Drinking Water Regulatory Programs" section could detail the differences between water systems overseen by Monterey County Environmental Health which include state and local small water systems (e.g. those that serve 2-14 connections) and public water systems serving 15-199 connections. It could also discuss requirements for all public water systems serving more than 15 connections.

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[9] https://www.co.monterey.ca.us/government/departments-a-h/health/environmental-health/drinking-water-protection/state-and-local.

[10] All of the drinking water wells and small water systems mentioned in Chapter 7, page 7-24 of the 180/400-Foot Aquifer Draft GSP (October 1, 2019) should be included in a map and have an associated list with key information. The GSP mentions: "Small water system wells, regulated by Monterey County Department of Public Health include a total of 136 wells in the current network." All 136 water systems should be clearly mapped, labelled, and named.

- **List domestic water use under the Water Use Section (Section 3.4.2).**This section indicates that, "Domestic use outside of census-designated places is not considered urban use." Even if MCWRA does not report rural residential use, it is an important beneficial use and should be listed as a "water use sector."
- **Revise Chapter 3 (Section 3.6.3.1) to recognize and incorporate MCWRA research and recommendations related to seawater intrusion.** In addition to the MCWRA Seawater Intrusion Monitoring, it is vital that the GSP acknowledge the large body of MCWRA research and recommendations compiled over decades related to sea water intrusion.[11] At least the following reports should be summarized and referenced in Chapter 3:
    - Recommendations To Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin (October 2017)
    - State of the Salinas River Groundwater Basin Report (January 2015)
- **Revise Section 3.6.5 to include Ag Order 3.0 reporting data as well as the forthcoming Ag Order 4.0 data.** This data should be included in the final draft of the plan as it is readily and publically available. It important to include to understand the current state of the basin. We again recommend that section be revised to use the same terminology as other sections for drinking water supply systems for consistency and completeness.
- **Include date and complete reference (including website link) for the Integrated Regional Water Management Plan referenced in Section 3.7.2.**
- **Revise Section 3.8.2 on the Agricultural Order for the following:**
    - The Ag Order 4.0 will not longer be available in early 2020, it is recommended that this is corrected to "2020."
    - The Ag Order 4.0 is for the "entire central coast region, including the Salinas Valley Groundwater Basin area." We recommend adding this text.
    - If the GSA uses Ag Order data as part of the monitoring network, it is critical that this GSP includes a more in depth information about the data (historic and most recent data), how it is collected, reporting requirements, enforcement procedure, and a plan to ensure that all wells are monitored and that reporting is required and enforced.
- **Define "replacement well" and also define and include map of "area of impact" and in Section 3.8.6 on the County Moratorium on Accepting and Processing New Well Permits.** Because the GSA will likely need to build upon or extend the ordinance, a map of the area of impact should also be included.

GSP Chapter 4: Hydrogeologic Conceptual Model

- **Revise Section 4.6 on Water Quality to acknowledge that "natural groundwater quality in the Subbasin" can be influenced by pumping and the way groundwater is managed.**[12] In particular,

[11] See Monterey County Water Resources Agency, Hyrdrogeologic Reports. Accessed November 21, 2019. https://www.co.monterey.ca.us/government/government-links/water-resources-agency/documents/hydrogeologic-reports#wra

[12] Stanford, 2019. A Guide to Water Quality Requirements Under the Sustainable Groundwater Management Act.

Community Water Center, 2019. Guide to Protecting Drinking Water Quality Under the Sustainable Groundwater Management Act.
https://d3n8a8pro7vhmx.cloudfront.net/communitywatercenter/pages/293/attachments/original/1559328858/G

contaminants like arsenic, uranium, and chromium (including hexavalent chromium) are more likely to be released under certain geochemical conditions influenced by pumping rates, geological materials, and water level fluctuations.

- **Include the spatial extent of arsenic and hexavalent chromium in all drinking water supply wells in the subbasin.** Data sources should include those described previously in this comment letter (public water system data, state/local small water system data) as well as data available on GAMA from the Central Coast Regional Water Quality Control Board's private well testing program.

GSP Chapter 5: Groundwater Conditions

- **Include the MCWRA management area data layer on all maps that use MCWRA data in order to make the data gaps transparent when presenting data on groundwater conditions.** To make the data gap very clear to the reader, the data layer in Figure 5-21 MCWRA Management Area should be included in all figures that use MCWRA data. For example, Figure 5-1 CASGEM Well Locations should include this as a data layer to illustrate the significant data gap in the north part of 180/400 Foot Aquifer Subbasin where the highest concentrations of domestic wells are located. Same with Figures 5-23 and 5-24 that illustrate the extent of sea water intrusion.
- **Clearly identify data gaps on existing maps and in Section 5.1 on Groundwater Elevations.** Figure 5-21 MCWRA Management Area is a very helpful illustration that the MCWRA areas do not include the northern part of the 180/400 foot aquifer as well as the vast majority of the Langley basin.
- **Revise Section 5.1.2 to present all currently available monitoring data and hydrographs of deep aquifer wells from CASGEM, from public water system water level monitoring (e.g. from Castroville CSD and others), and from other sources.** CASGEM data and also reports from groundwater users themselves demonstrate that groundwater levels are dropping in the deep aquifer. In addition, the GSA should include a report in this section of all data that has been submitted to the GSA and MCWRA as required by Monterey County Ordinance 5302. On page 7-12 of the GSP, it states: "This ordinance, adopted in 2018, limits the number of wells that can be drilled into the Deep Aquifers and requires that all new wells in the Deep Aquifers meter groundwater extractions, monitor groundwater levels and quality, and submit all data to MCWRA and SVBGSA." Clarify if wells in the deep aquifer that replace former wells in the 400 foot aquifer are also required to submit all their data, and include such data if and when available.

Sea Water Intrusion

- **Revise Figures 5-23 and 5-24 to add MRCWA management area boundaries and specific monitoring points to better understand data gaps and uncertainties in sea water intrusion**

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Community Water Center and Stanford University, 2019. Factsheet "Groundwater Quality in the Sustainable Groundwater Management Act (SGMA): Scientific Factsheet on Arsenic, Uranium, and Chromium" for more information.https://d3n8a8pro7vhmx.cloudfront.net/communitywatercenter/pages/293/attachments/original/1560371896/CWC_FS_GrndwtrQual_06.03.19a.pdf?1560371896

contours. Data from vulnerable drinking water supply wells, including Castroville CSD and Moss Landing Harbor Water System, located both in and around the sea water intrusion contours should also be included in this section as there is a margin of error in the contour data.

- **Revise the first paragraph on page 5-40 to discuss the limitations of Ordinance 5302 and what the GSA plans to do to address these limitations.** This is the same comment we provided on Section 3.8.6 —it is our understanding that this ordinance is limited in the geographic scope of the "area of impact." This ordinance is also limited in that there are many new wells being permitted in the deep aquifer because of an allowance for wells in the 400 foot aquifer to be replaced by wells in the deep aquifer when the 400 ft aquifer wells become unusable (due to sea water intrusion). This is of utmost importance as there are reports of several new wells in the deep aquifer being permitted and drilled around Castroville CSD right now.
- **Revise paragraph on page 5-40, to add date and complete reference including website for the State of the Salinas River Groundwater Basin report.** All stakeholders will need to understand this important report, its recommendations, limitations, and analysis in order to make informed decisions about sea water intrusion abatement measures.

Groundwater Quality Distribution and Trends

- **Revise Section 5.5 of the GSP to include a clear and transparent assessment of the spatial and temporal water quality trends in the subbasin with respect to the drinking water beneficial use (23 CCR § 354.16(d))**. This section should include water quality data (both in map and tabular form) for all constituents with minimum thresholds listed in Tables 8-6 through 8-9 for all public drinking water wells (including those listed in Appendix 7E), state and local small water system wells, and private domestic wells.[13] It is also important to highlight data gaps in drinking water data here and in Chapter 7.
- **Clearly state in the introduction to this section that the amount and location of pumping can impact groundwater quality distribution and trends.**
- **Revise Section 5.5.3, paragraphs 2 and 3, to clarify in the text and on the figure itself the years of the nitrate data and also the well type (on farm domestic well, irrigation well, all wells) of information presented in Figures 5-32 and 5-33.** Because domestic wells often rely on more shallow aquifers that are susceptible to nitrate and other contamination, it is recommended that nitrate maps of domestic wells are separated out from maps of irrigation wells (as you mention further down in this section when discussing the Regional Water Board staff report).
- **Revise Section 5.5.3, paragraphs 4 to 6, to add the complete reference for the May 2018 staff report to the Regional Water Quality Control Board data on nitrate contamination and clarify that the tables referenced in the GSP are located in the staff report not in the GSP.**[14] We also recommend adding information and maps from this staff report to the GSP on other

[13] The review of water quality data in the groundwater conditions section of the draft GSP (Section 5.5) is very limited and focused almost entirely on nitrate. The draft GSP identifies numerous constituents that have been detected in groundwater above drinking water standards, but, with the exception of nitrate, does not present this data spatially or even in tabular format. Even though the draft GSP sets water MTs for these constituents (Table 8-6 through 8-9), the supporting data are not presented, and no analyses of spatial or temporal water quality trends are presented.

[14] Central Coast Regional Water Quality Control Board (CCRWQCB), May 2018. Central Coast Water Board staff report on groundwater quality conditions in Central Coast Groundwater basins: https://www.waterboards.ca.gov/centralcoast/board_info/agendas/2018/may/item8/item8_stfrpt.pdf

contaminants present in the 180/400-Foot Aquifer Subbasin in addition to nitrate including salts, industrial chemicals, arsenic, and pesticides.

- **Consult Guide to Water Quality Requirements Under the Sustainable Groundwater Management Act (2019), published by Stanford University, for a comprehensive overview of data sources on water quality available for use in GSPs in California.**[15] It is important that this GSP includes all publicly available data on groundwater conditions so that groundwater can be managed in a way that improves water quality or, in the least, does not cause further degradation.

GSP Chapter 6: Water Budgets

The GSP water budget requirements are intended to quantify the water budget in sufficient detail in order to build local understanding of how historical changes have affected the six sustainability indicators in the basin. Ultimately, this information is intended to be used to predict how these same variables may affect or guide future management actions[16]. Another important reason for providing adequate water budget information is to demonstrate that the GSP adheres to all SGMA and GSP regulation requirements and can demonstrate the ability to achieve the sustainability goal within 20 years, and maintain sustainability over the 50 year planning and implementation horizon. The calculations of sustainable yield and the water budget in this chapter *greatly overestimate the actual sustainable yield of this subbasin*, and this chapter is also missing key information on data and assumptions used in the development of these sections. We recommend the following changes:

- **Better articulate and quantify the needs of drinking water users within the GSA and address key missing information and assumptions about drinking water users.**
    - This GSP chapter should include more information about all drinking water users in the subbasin (e.g. all small and large public water systems, all state and local small water systems and all private domestic wells) including number of connections, population served, current, historical and projected demands by each system/user.
    - Revise Figure 6-7 to clarify whether the "municipal pumping" and "rural/domestic" include all drinking water users (e.g. all small and large public water systems, all state and local small water systems and all private domestic wells).
    - Revise Table 6-30 Projected Annual Groundwater Pumping by Water Use Sector to include all drinking water users in this model. Currently, rural domestic is not simulated in model and is considered minimal. All drinking water users should be considered including all small and large public water systems, all state and local small water systems and all private domestic wells.

Sustainable Yield

- **Revise calculations of sustainable yield in Section 6.8.5 to include and avoid all six undesirable results as enumerated in the Sustainable Groundwater Management Act (SGMA).** We reiterate and reaffirm our July 11, 2019 comment letter on Draft GSP Chapter 6 which is included as an attachment to this comment letter. The definition of Sustainable Yield in this draft GSP has not

[15] Moran, T. and Belin, A. (2019). A guide to Water Quality Requirements Under the Sustainable Groundwater management Act. Stanford Digital Repository. Available at: https://purl.stanford.edu/dw122nb4780
[16] DWR, 2016. Best Management Practices for the Sustainable Management of Groundwater, Modeling (BMP #5), December 2016.

changed since the draft GSP we commented on in July 2019. Sustainable yield is still defined in the 180/400-Foot Aquifer Subbasin GSP (October 1, 2019, page 6-32) as "an estimate of the quantity of groundwater that can be pumped on a long-term average annual basis without causing a net decrease in storage." Establishing a sustainable yield that adequately takes into consideration all undesirable results is a foundational step for developing appropriate sustainable management criteria and for accurately planning for the management actions and projects necessary to meet sustainable management criteria. We repeat our request that this GSP include a calculation of sustainable yield calculation that informs the public of the actual net amount of water that can be extracted from the subbasin while avoiding all six undesirable results, including sea water intrusion.

- **We strongly urge the GSA in Section 6.10.5 to justify the assumption that a proposed seawater intrusion project will result in "zero seawater intrusion," to clearly explain that the sustainable yield calculations and water budget depend on such proposed project, and to detail the level of pumping reductions necessary to prevent damages to public water supplies if the project is not built.**
    - In public meetings, GSA staff have been clear that a sea water intrusion project will be necessary in order to meet the minimum threshold for sea water intrusion. Section 6.10.5 currently states: "It is important to recall that simply reducing pumping to within the sustainable yield is not proof of sustainability, which must be demonstrated by achieving the SMC that are outlined in Chapter 8. While the sustainable yield estimates in Table 6-31 assume zero seawater intrusion, they do not account for temporary pumping reductions that may be necessary to achieve higher groundwater levels that help stop seawater intrusion." This section needs to include more justification for this assumption - what evidence can the GSA provide that there will be zero seawater intrusion if the project is built? In order to meet interim milestones and/or prevent damages to public water supplies prior to the project being built, what level of pumping reductions will be necessary?

Uncertainties in Projected Water Budget Simulations

- **Revise Section 6.11 to discuss the uncertainty around the assumption that a future project (e.g. sea water extraction barrier) will be built and will successfully stop sea water intrusion.**[17] The largest uncertainty in the projected water budget is not the uncertainty described in this section, but rather the uncertainties related to this future project. Overall, the impacts to DACs and drinking water supplies are *certain* and are, in fact, already happening, but the proposed projects to stop sea water intrusion are very *uncertain* in terms of timeline, effectiveness, how they will impact the water budget of the basin (e.g. how much groundwater will they pull from the ocean-side versus how much will be extracted from the inland side), how the gradient of groundwater may be impacted, how climate change will impact project viability, whether this

[17] The draft GSP identifies a seawater intrusion pumping barrier and estimates that operation will require withdrawing up to 30,000 AFY of groundwater, which would then be conveyed to discharge into the Pacific Ocean or to a new or existing desalination plant (Section 9.4.3.7). The draft GSP also states that an "optional barrier using injection instead of extraction was also considered" and that this option would require injection of approximately 46,000 AFY of water to create a protective mounding effect.

scale of project will be permitted in the coastal zone, what will be the long-term energy demand, what will this project cost to install, maintain, and monitor, and who will pay.

- **Revise Chapter 6 to account for this uncertainty surrounding the extraction barrier, and clearly explain the predicted amount of water that will come from the inland side of the extraction barrier and the uncertainty around that estimate.** There is substantial uncertainty around how much water this project would extract from the subbasin— from the inland side of the extraction barrier and from the ocean side of the extraction barrier. The groundwater gradient is currently moving inland with seawater being pulled from the ocean into the intruded area. The sea water intrusion project will impact the gradient in one of two ways: 1) The gradient will either continue or slow in the same inland direction, or 2) the gradient will reverse and water will be pulled by the extraction barrier toward the coast (at least for some distance). Either way, the project needs to be accounted for in the water budget. If the gradient continues inland, then the sea water intrusion MT will not be met unless pumping is restricted. If the gradient reverses, then the projected water budget will need to include the amount of water being extracted by the subbasin by the sea water intrusion project. In both cases, the project ***will*** impact the MTs and water budget.
- **Include another calculation of sustainable yield that assumes that the seawater extraction barrier is not built because this project itself is highly uncertain**. Sustainability of this subbasin should not hinge on unproven technology. To take into account uncertainty around this project, the GSA should include evidence that sea water intrusion projects of this scale in similar groundwater basins have been successful. The GSA should include actual operation and maintenance costs, including energy demand, of installed projects of similar scale to know how much would need to be charged in the water charges framework to cover these costs. While some numbers are presented in Chapter 9, it is not clear how these numbers were calculated (no mention of comparable projects that are already in operation) and how funding for this project relates to the water charges framework.

GSP Chapter 7: Monitoring Network

Robust monitoring networks are critical to ensuring that the GSP is on track to meet sustainability goals. GSAs undertaking recharge, significant changes in pumping volume or location, conjunctive management or other forms of active management as part of GSP implementation, must consider the interests of beneficial users, including domestic well owners and S/DACs. As currently developed, the monitoring network does not adequately monitor how groundwater management actions related to groundwater levels could impact vulnerable communities. The following public comments were submitted by public comment letter or provided during public workshops hosted by Community Water Center and San Jerardo Cooperative:

> "There is absolutely no monitoring well data from the hill areas in the northern part of the 180/400 ft. aquifer. The monitoring wells are located on the flatland areas only. SVBGSA has NO IDEA what the condition of wells are in the hill areas where thousands of rural residents live. They do not know how many wells are already at risk in terms of groundwater level and how the proposed projects and

continued high pumping rates could exacerbate those low levels." - public comment letter
"We don't know what salt water intrusion is at the Elkhorn Slough." - Public Workshop comment
"How can individuals know what the level the aquifer is where they are? - Public Workshop comment

We recommend the following changes:

- **Provide the locations and depths of all drinking water supply wells in the subbasin.** Use the best available information and present this information on maps along with the proposed SGMA-compliance monitoring network so that the public can evaluate how well the monitoring network addresses these key beneficial users.
- **Clearly describe in Section 7.1.2 how the GSA will establish a representative monitoring network in areas of the basin with vulnerable drinking water supplies and DACs with limited and insufficient data (as previously discussed in our comments on Chapter 5).** As has been acknowledged in many public meetings, one of the biggest challenges to the Salinas Valley GSP implementation is the confidentiality of monitoring data. It is required by SGMA that the monitoring networks be representative.
- **Revise Section 7.1.3 to include management areas and more frequent monitoring around and near vulnerable drinking water systems and private domestic well clusters**.
- **Conduct an in-depth study of groundwater levels, sea water intrusion, and water quality impacts in the northern most "general data gap area" in the subbasin, due to the variable topography and high concentration of private domestic wells (See Figures 7-4 and 7-5 and Section 7.2.4).** We have included CWC Figure 2 (attached to this comment letter) to illustrate the representative monitoring wells proposed for water levels as well as the locations of domestic wells, public supply wells, DACs and public water systems in the subbasin, and the seawater intrusion measurable objectives and minimum thresholds. This map suggests that the data gap identified in the GSP is for a much larger and highly variable geographic area. In order to better understand the scope of this data gap, the GSA should engage local residents and small water systems in this area to support additional monitoring of groundwater levels, sea water intrusion, and water quality in order to best identify representative monitoring points in this geographic area to be included in the GSP monitoring network. We understand that specific data gaps have been recognized in Figure 7-4, Figure 7-5 and Figure 7-6, and that these data gaps will be addressed in the future by adding an existing well in each area to the monitoring network. This is likely insufficient to represent groundwater conditions in some part of the subbasin.
- **Use the same terminology throughout the report and change the first bullet of this section and first paragraph of Section 7.3 to say "Public Water Systems" instead of "municipal groundwater users and small water systems."** It is helpful that you included the definition of a "public water system" and also the source of the information. This is important because the state does not collect this information, nor (to the best of our knowledge) does the county, *for state and local small water systems*. Estimates of total water withdrawn by state and local small water systems is also important to include in this section.
- **Require flowmeter calibration to ensure consistent and fair monitoring among all agricultural groundwater users (Section 7.3.1).** We agree with the data gaps mentioned in Section 7.3.2 with respect to drinking water users and recommend this data gap is filled as soon as possible.

- **Revise Section 7.4 to include more frequent monitoring around and near drinking water systems and private domestic well clusters that are already or that are likely to be impacted by sea water intrusion.** Figures 7-7 and 7-8 should include a data layer that includes drinking water wells (or service areas for state and local small water systems) in order to better determine whether the proposed monitoring network is sufficient to protect these beneficial uses. We have included CWC Figure 1 and CWC Figure 2 which illustrate how different data layers in this report can be brought together to better connect specific drinking water sources with the monitoring network and minimum thresholds.
- **Acknowledge and include the data gap of no seawater intrusion monitoring points in the northern part of the sub-basin and mention that this area is outside of the MCWRA management area (Section 7.4.2).** This includes the area near Elkhorn Slough which has experienced loss of agricultural wells due to sea water intrusion (as reported by local residents) and also the area further inland.

Section 7.5 Water Quality Monitoring Network

- **Revise Section 7.5 to acknowledge that drinking water contaminants such as arsenic, 123-trichloropropane, hexavalent chromium, and nitrate have been found in public supply wells in the 180/400 foot aquifer subbasin.**
- **Determine if there are confined or semi-confined aquifers that have water quality problems that require special monitoring at specific depth intervals.** We know that the underground strata in the GSA is non-homogeneous and we know contaminates such as nitrate vary in concentration by depth. We also know that hexavalent chromium has been found in many wells in the northern part of the subbasin (and a few other locations throughout) and that arsenic is present in some deeper wells. The SVB GSA groundwater quality monitoring network must recognize that well depth (and depth of perforations) is an important parameter for accuracy of level and location of contamination.
- **Clearly identify on both a map and in tabular form each of the wells to be used as representative monitoring sites for water quality as required under 23 CCR §354.34(h).** The GSP must include "The location and type of each monitoring site within the basin displayed on a map, and reported in tabular format, including information regarding the monitoring site type, frequency of measurement, and the purposes for which the monitoring site is being used." Without this information, the public cannot review and assess the adequacy of the proposed GSP to monitor impacts to beneficial users of groundwater, in particular those reliant on domestic wells for drinking water purposes.
- **Include all public water system wells in the monitoring network i**n order to monitor trends in drinking water quality**.** Change or clarify the language in this section that says, "Wells were selected that had at least one of the constituents of concern reported from 2015 or more recently, and totaled 51 wells (Burton and Wright, 2018)." It is unclear if the GSP means to include only public supply wells where contamination has already been detected. Either way, please include all public supply wells in the monitoring network as those without contamination will also need to be monitored and protected from future contamination.
- **Revise this section to include all state small water system and local small water system service areas (by APN) that are publically available from Monterey County Environmental Health Bureau (a division of Monterey County Health Department).** It is critical that this publically available data is included in the monitoring network as it fills, in part, a significant data gap related to water quality in the more shallow aquifers. This section of the GSP should be revised

to include a map of state and local small water systems and include them as representative monitoring points. Clarify the language in this paragraph to make it clear that all 136 wells regulated by Monterey County Department of Environmental Health will be included in the GSP monitoring network. We believe that this is the intent of this paragraph, of this GSP (based on Table 8-4: Summary of Constituents Monitored at Each Well Network and Table 8-5: Groundwater Quality Minimum Thresholds), and of the GSA based on all public meetings and input, but as written, it is not clear whether these systems are RMWs and part of the GSP network. If it is not feasible to include these systems in this draft GSP, these must be clearly listed this as a data gap that will be filled. "Small public water systems" regulated by Monterey County include public water systems that serve 15-199 connections and state and local small water systems that serve 2-14 connections. Because the 15-199 connection systems must meet all statewide requirements for public water systems (e.g. extensive water quality monitoring, groundwater usage reporting), it is recommended to distinguish these systems from state and local small water systems that have different requirements.

- **Expand GSP monitoring network to include reliable monitoring of wells that are representative of the shallow aquifer. Do not rely solely rely on ILRP domestic well data.** Similar to CASGEM, the groundwater quality monitoring network could include monitoring points on private property including ILRP domestic wells, but it should not be restricted to ILRP sites only. While onfarm domestic wells monitored through the ILRP provide a potentially good source of water quality information, additional representative monitoring wells in the shallow aquifer are important to include for several reasons: (1) The ILRP network only includes private domestic wells located on agricultural irrigated lands. While this is the primary land use in the subbasin, there are private domestic wells in areas with different primary land uses (e.g. rural). (2) There are other, more robust networks established by USGS, GAMA, and Monterey County that could be drawn on and included to make the groundwater quality monitoring network more comprehensive and representative of conditions in the shallow aquifer, and (3) Ag Order 4.0 will likely not be adopted until the end of 2020 or early 2021, which means the first year of monitoring data will not be available until 2022. Furthermore, the GSA has no authority to determine the robustness or enforcement of monitoring in the Ag Order 4.0 network.
- **Representative Water Quality Monitoring Wells for the shallow aquifer should be established in this GSP based on all currently available data sources with direct agreements with landowners or public entities established.** If the GSA plans to use Ag Order data as part of the monitoring network, it is critical that this GSP includes and discloses more in depth information about Ag Order 3.0 data (historic and most recent data), how it is collected, reporting requirements, gaps in reporting, and enforcement procedure. The GSA must also include a plan to ensure that all representative monitoring sites have reliable monitoring schedules and that those monitoring schedules are enforced in Ag Order 4.0.
- **Develop long-term access agreements for Representative Monitoring Wells (RMWs) that use private wells.** Collecting data from private wells is not a reliable approach due to access challenges, lack of well construction information, and unreliable accounting of pumping or non-pumping measurements. The GSP should specifically identify the RMW owners and operators, include signed long-term access agreements, and identify a plan to obtain adequate monitoring data, if for any reason the well owners decide to not grant access to the wells or provide associated data to the SVB GSA. It also appears the SVB GSA plans to rely on data collected by growers through the Ag Order. In our experience, not all growers are consistent with their water quality and other reporting, despite the regulatory requirements in place. In order to

maintain consistency for future sustainability analyses, the SVB GSA should also consider conducting its own water quality analysis of wells and establish access agreements to water quality RMWs.

- **Distinguish between on farm domestic wells and irrigation wells in Figure 7-10 and in the text.** We previously made this request during public comment at a GSA meeting in April 2019 and also with a written request on April 27, 2019. All Ag Order 3.0 data - including monitoring data by well type - is public and available upon request from the Central Coast Regional Water Quality Control Board.
- **Include well construction information for all Representative Monitoring Wells (RMWs) included in the GSP.** We recognize that this has been listed as a data gap, and also that some well construction information is already available.
- **Clarify that groundwater quality monitoring network will include domestic wells and state and local small water systems.** Chapter 7 should be updated to be consistent with the rest of the GSP that there will be representative monitoring of the shallow aquifer. We specifically recommend updating language in this chapter around data gaps, domestic wells, and state and local small water systems to be more specific and consistent in this chapter and throughout the GSP, including these particular sections:
    - "Small public water systems wells, regulated by Monterey County Department of Public Health, include a total of 136 wells in the current network. The limitation of this dataset is that the well location coordinates and construction information are currently missing; this is a data gap. SVBGSA work with the County to assess if the data gap can be filled and if additional wells from this network are appropriate to be added to the public water supply wells network for water quality monitoring."
    - "The SVBGSA will use the data developed under this monitoring program to determine if domestic supply wells have constituents of concern above drinking water limits… The SVBGSA will identify a select number of ILRP wells as representative sites after Ag Order 4.0 is issued; not all wells sampled under Ag Oder 4.0 will be included in the GSP's ***agricultural*** water quality monitoring network." Please clarify as described in Chapter 8 that onfarm domestic wells will also be part of the monitoring network.
- **Clarify how the GSA plans to align groundwater monitoring efforts and the sustainable management criteria with any emerging contaminants of concern and new MCLs.**

GSP Chapter 8: Sustainable Management Criteria

At the community GSP workshops, community members shared questions, concerns and recommendations regarding minimum thresholds and groundwater management. The following are community comments[18] that relate to the sustainable management criteria of the 180/400 Foot Aquifer Subbasin GSP and Salinas Valley Integrated Sustainability Plan that the SVB GSA can consider to improve the sustainable management criteria chapter of the GSP:

Question: "Cómo van a ayudar a pozos privados si el pozo se seca a causa de umbral mínimo?"

[18] Comments in red were received at the Salinas Valley GSP at San Jerardo in July 2019.

How will the GSA help private wells that go dry because of the minimum thresholds?
Question: "Are two minimum thresholds in conflict?"
Concern: "Groundwater levels will cause well failure."
Concern: "No improvement of contaminated wells"
Concern: "Que no vuelva contaminación [a nuestro pozo]." "How to avoid water contamination [in our well] again."
Concern: "Groundwater over pumping in Langley where there is confined aquifer and dry wells."
Concern: "My water system has good groundwater quality and supply - how will SGMA impact long term access."
Recommendation: "Consider how to improve groundwater quality for wells above MCL."

During a detailed review of this complete GSP, CWC identified several data gaps and potential significant impacts to public water systems and domestic wells. The current GSP does not adequately consider the groundwater impacts that may affect the supply and beneficial uses of groundwater as required by GSP Regulations Chapter 354.16. As currently written, the GSP is insufficient and is at risk of being deemed inadequate by DWR. The following are concerns that need to be addressed:

- A significant portion of the drinking water supply in the subbasin is at imminent risk of seawater intrusion impacts if seawater intrusion is not halted, including: 1) a high concentration of domestic well users located east of Moss Landing and north of Castroville, 2) domestic well users in and around the DAC of Boranda, 3) public supply wells located near Castroville (a DAC), and 4) public supply wells located near Salinas (which includes DACs).
- Groundwater Level MTs will not halt seawater intrusion and are inconsistent with the seawater intrusion MT, thus drinking water supplies for DACs and other vulnerable populations are not adequately protected (and depend on future projects that are uncertain).
- The GSP does not include the quantification of demand reduction necessary to mitigate overdart and achieve all MTs and undesirable results in this chapter as required by SGMA regulations 354.44.
- Significant data gaps exist in the monitoring network for the shallow aquifer, upon which many small water systems and domestic wells depend. The GSP needs to include these systems in the monitoring network and/or clearly list the data gaps in this GSP.

We recommend the following changes:

- **Undertake a drinking water well impact analysis that adequately quantifies and captures well impacts at the minimum thresholds, measurable objectives, and proposed undesirable results.** Include this analysis during the annual reporting process. We have included CWC Figure 3A and CWCFigure 3B as attachments to this comment letter to illustrate potential changes to water levels at proposed MTs and MOs. This type of analysis should be expanded to include:

  - Locations of potentially impacted wells overlayed on a map so the public can better assess well impacts specific to DACs, small water systems, or other beneficial users of water
  - Quantify the number of potentially impacted wells of each well type (irrigation, domestic, state/local small water system, public water system) for water quality, water levels, and sea water intrusion MTs
  - Quantify the costs associated with impacted wells including desalinization/treatment, lowering pumps, well replacement and increased pumping costs associated with the increased lift at the projected water levels
- **Clarify the process for evaluating minimum threshold exceedance and the potential actions to address exceedance.** This clarification should describe the evaluation process, potential actions taken, and the funding to implement actions. Without an adequate well mitigation plan in place, impacts to wells are significant and unreasonable.
- **Develop and include a plan that outlines steps that will be taken is a drinking water well goes dry, becomes contaminated, or becomes unusable due to sea water intrusion (chloride or TDS levels) as a result of the SVB GSA's management actions and projects.** More detailed recommendations of a drinking water well mitigation program is included in the Projects and Management Actions Section.
- **Analyze how groundwater gradients will influence all MTs and all six undesirables results with and without the proposed seawater extraction barrier.** The importance of understanding groundwater gradients with and without the proposed seawater extraction barrier is described in more detail in our Chapter 6 comments of this comment letter and our July 2019 Comment letter submitted previously (*CWC Attachment 5*). An analysis of groundwater gradients is essential to achieve sustainability in the subbasin.

Groundwater Levels

- **Develop a protective minimum threshold near vulnerable communities, including domestic wells, to avoid localized impacts and ensure the protection of these important water sources.** Near small community water systems and domestic well users, SVB GSA should reconsider the approach of setting MTs as the current proposal may leave key beneficial users in the subbasin, specifically domestic well users and S/DACs vulnerable to significant impacts. It is important to protect vulnerable communities access to a reliable source of water, thus minimum thresholds for groundwater levels should be set at a level above the screen of the shallowest domestic well. If SVB GSA decides to define and reach its sustainability criteria in a way that allows for the dewatering or seawater intrusion of drinking water wells, it must provide a robust drinking water protection program to prevent impacts to drinking water users and mitigate drinking water impacts that occur. Recommendations for this type of program are included in the Management Actions and Projects section of this comment letter.

Sea Water Intrusion

- **Clearly identify the data gaps in sea water intrusion data for the northern part of the subbasin, explain that the GSA plans to fill these data gaps in the monitoring network, and describe plan and timeline to update the seawater intrusion MTs when new data becomes available.**

Specifically, Figure 8-6 and Figure 8-7 showing MTs contours for seawater intrusion should include MCWRA management area boundaries and make data gaps transparent to the reader.

- **Include a map of vulnerable drinking water supplies, monitoring network locations (with current TDS and chloride levels), and the seawater MTs to ensure that these beneficial uses are adequately monitored and protected.** This figure could be placed in Section 8.8.2.4 on "Effects on Beneficial Users and Land Uses."

Groundwater Quality

We are pleased that the draft 180/400 Foot Aquifer Subbasin GSP establishes MTs/MOs based on maximum contaminant levels (MCLs) for contaminants of concern for drinking water supply systems, and that this chapter indicates that state and local small water systems and private domestic wells will be added to the monitoring network with these same MTs/MOs. There are however a few areas in regards to groundwater quality sustainable management criteria that are not clear and could cause significant impacts to drinking water users if not adequately addressed. In order to avoid these challenges, we recommend the following changes:

- **If a contaminant is already above the MCL, this GSP should set a minimum threshold to prevent further degradation or aim to improve groundwater quality conditions where possible.** Increased contamination levels can require water systems to utilize more expensive treatment methods and/or to purchase additional alternative supplies as blending may become more difficult or impossible. Communities reliant on domestic wells who are aware of contamination in their water and use a point of use/point of entry (POU/POE) treatment systems may no longer be able to use their devices if contaminate levels rise too high. Higher contaminant levels can also result in higher costs of waste disposal from certain types of treatment systems. Increased contamination levels result in unreasonable impacts to access to safe and affordable water and are, thus, inconsistent with SGMA and the Human Right to Water.
    - Consider developing management areas to protect areas where drinking water wells have water quality that is currently below the MCLs.
- **For monitoring network wells with contamination less than 75% of the MCL for all contaminants, the GSP should set minimum threshold exceedance action triggers of 75% of the MCLs.** The GSP should include an action trigger at 75% of the MCL so that groundwater can be managed in that area to prevent a minimum threshold exceedance at a representative monitoring well. If the GSA waits until the minimum threshold is exceeded, it may be too late or difficult for actions to be effective. Actions to prevent minimum threshold exceedances should also be clearly explained in this chapter including a description of what action will be taken, what type of evaluation will be used, under what time period action will take place, and how this action will be funded.
- **Clearly identify and describe past and present levels of contamination and salinity at each representative monitoring site (RMS) and attribute specific numeric values for MTs/MOs at each RMS for each contaminant of concern.** Quantitative values need to be established for MTs/MOs for each applicable sustainability indicator at each RMS as required by 23 CCR §354.28 and 23 CCR §354.30. The GSP should include a map and tables that include each individual RMS along with water quality data for each RMS (this data is currently summarized in Table 8-6, Table

8-7, and Table 8-8). This information should be presented clearly so that both the public and DWR can evaluate how the proposed monitoring network and sustainability management criteria (SMCs) relate to their own drinking water well or water supply system.

- **Include more current maps of existing nitrate and other contamination in the 180/400 Foot Aquifer Subbasin and describe potential impacts to drinking water users.** As required by 23 CCR § 354.16, each GSP needs to provide a description of "groundwater quality issues that may affect the supply and beneficial uses of groundwater, including a description and a map of the location of known groundwater contamination sites an plumes." While the maps of nitrate contamination in Chapter 5 present useful information to start to identify nitrate hotspots and trends in the subbasin, these maps do not provide an accurate understanding of current conditions affecting shallow, domestic wells and deeper public supply wells. GSP Figure 5-33 Nitrate Concentrations, 1950-2007 (from MCWRA), does not present current data and it is also unclear what depth of aquifer or well type (irrigation or domestic) that this data represents. GSP Figure 5-32 presents data from the Central Coast Groundwater Coalition includes wells with "multiple sample dates from 2000 to 2014, the maximum nitrate concentrations were used for each well. (page 5, LSCE 2015)[19] - while this map is helpful in identifying potential hot spots for nitrate contamination, it does not provide a clear representation of current conditions, nor are well types or depths distinguished, making it difficult to determine the extent and impact of current contamination. Both the Central Coast Regional Water Quality Control Board and the USGS GAMA groundwater quality assessment and trend analysis would be good additions to better understanding trends and drinking water supply threats in the subbasin, and could also help contribute to a representative monitoring network.
- **Include hexavalent chromium as a contaminant of concern and plan to add emerging contaminants to monitoring network.** While there is currently not a Maximum Contaminant Level for hexavalent chromium, there is still a Public Health Goal and public health threat posed by this contaminant in drinking water. The State is required to adopt an MCL for chromium-6 again and is in the process of updating the method used in the cost analysis. In addition to including hexavalent chromium, the draft GSP would benefit from an explanation of how the plan will be updated to align groundwater monitoring efforts and the sustainable management criteria with any emerging contaminants in the basin and any future new MCLs.
- **Include an analysis of the relationship between changes in groundwater levels and groundwater quality concentrations.** Section 8.9.2.5 of the draft GSP mentions that, "a change in groundwater levels may cause a change in groundwater flow direction which in turn could cause poor water quality to migrate into areas of good water quality." The text should also acknowledge that groundwater pumping can not only cause the movement of contaminant plumes, but can also cause the release of naturally occurring contaminants such as arsenic and chromium, and that pumping from deeper portions of the aquifer and then irrigating can bring up contaminants found in deeper portions of the aquifer and cause them to impact shallow well users. In order to clearly evaluate the relationship between changes in groundwater levels and groundwater quality, SVB GSA should undertake an analysis of the change in water quality

[19] http://www.centralcoastgc.org/wp-content/uploads/2015/08/Northern-Report-and-Figures.pdf

constituent concentrations relative to change in water levels[20], particularly over drought periods, to evaluate the potential relationship between water quality and groundwater management activities[21].

GSP Chapter 9: Projects and Management Actions

The following are community comments that relate to the projects and management actions of the 180/400 Foot Aquifer Subbasin GSP[22] :

Concerns: "No limit on extraction, lack of enforcement, lack of well meters."
Question: "Los rancheros pagan por su uso de agua?" Do the agricultural users pay for their pumping of groundwater?
Recommendations: "Meter every user." "[Require] reduction during drought." "Reducción en riego." Reduce agricultural water usage. "Exigir reducción de todos los usuarios." Require reduction of groundwater pumping for all users.
Recommendation: "Create a water district for long-term solution."
Recommendation: "Put in larger community water system (better than individual wells)."
Recommendation: "Help protect drinking water. Balance need for all beneficial uses."

Community member comments highlight a few key issues. While so many projects are possible and on the horizon, it is important to focus on management actions that can be taken today to move toward

[20] See P.A.M. Bachand et. al. Technical Report: Modeling Nitrate Leaching Risk from Specialty Crop Fields During On-Farm Managed Floodwater Recharge in the Kings Groundwater Basin and the Potential for its Management https://suscon.org/wp-content/uploads/2018/10/Nitrate_Report_FInal.pdf. See also, Groundwater Recharge Assessment Tool, created by Sustainable Conservation to help groundwater managers make smart decisions in recharging overdrafted basins, including modeling whether a particular recharge project would result in short or long term benefits or harms to water quality, http://www.groundwaterrecharge.org/.

[21] More information about groundwater quality and the relationship between changes in groundwater levels can be found in the following resources:

Stanford, 2019. A Guide to Water Quality Requirements Under the Sustainable Groundwater Management Act. Community Water Center, 2019. Guide to Protecting Drinking Water Quality Under the Sustainable Groundwater Management Act. https://d3n8a8pro7vhmx.cloudfront.net/communitywatercenter/pages/293/attachments/original/1559328858/Guide_to_Protecting_Drinking_Water_Quality_Under_the_Sustainable_Groundwater_Management_Act.pdf?1559328858

Community Water Center and Stanford University, 2019. Factsheet "Groundwater Quality in the Sustainable Groundwater Management Act (SGMA): Scientific Factsheet on Arsenic, Uranium, and Chromium" for more information.https://d3n8a8pro7vhmx.cloudfront.net/communitywatercenter/pages/293/attachments/original/1560371896/CWC_FS_GrndwtrQual_06.03.19a.pdf?1560371896

[22] Community comments were received workshops hosted by CWC and San Jerardo on Drinking Water Protection and Groundwater Planning in the Salinas Valley in July and October 2019.

sustainability. They also highlight the need to look for long-term solution options for vulnerable drinking water users who rely on private wells. **It is not acceptable to wait until 2023 for the water charges framework to start to voluntarily incentivize efficiency and conservation.Well meters, meter calibration, monitoring requirements, and water charges should be implemented immediately to incentivize efficiency and achieve the goals of SGMA. This should happen at the same time that projects and the water charges framework are being developed.**

We recommend the following changes to strengthen this section:

- **Revise Chapter 9 to clarify how the proposed projects and management actions will achieve sustainability by 2040. The GSP should describe the decision-making process and key milestones that will be used to select projects and management actions.** The descriptions of the projects are helpful, but it is still not clear how each project will contribute to the cumulative mitigation needed to achieve sustainability by 2040. It will be important to convene the Seawater Intrusion Working Group, but this group within itself it not a "management action" it is a working group to develop "management actions."

- **Quantify demand reductions necessary to meet all minimum thresholds in the short and long-term.** The GSP should more transparently lay out and quantify the deficit that needs to be addressed by projects and management actions, and also quantify and present the degree of continued seawater that will occur before the projects and management actions are implemented. These two steps are necessary in order to inform immediate measures that the GSA needs to take, and/or to mitigate for damages if these actions are not taken.

- **Immediately adopt management actions based on short-term demand reductions necessary to protect vulnerable drinking water supplies and demonstrate progress for interim milestones, including the following:**
    - Clearly articulate past recommendations from MCWRA and other agencies related to sea water intrusion, barriers to adoption of these measures, and specific actions the GSA can take immediately based on this past body of work and what has been learned during GSP development.
    - Require an additional drinking water impact assessment prior to the construction of new wells with high production capacity. This analysis would include an assessment of potential adverse impacts to drinking water supplies, such as the analysis of how the proposed high production well pumping would influence long-term groundwater level fluctuations and the identification of the zone of influence of the pumping well.
    - Create management zones with pumping restrictions in areas with vulnerable drinking water wells.
    - Require monitoring and reporting for all groundwater extraction in the 180/400 Foot Aquifer Subbasin, fill all gaps in existing monitoring including for the deep aquifer
    - Stop all new agricultural wells from being drilled in the deep aquifer. There has been much discussion about the County Ordinance 5302: County Moratorium on Accepting and Processing New Well Permits during public meetings, especially regarding the inadequacy of the provision which allows replacement wells to be drilled into the "deep aquifer." The Castroville CSD general manager has commented during advisory committee meetings regarding the high number of wells going salty in the 400 foot

aquifer and the frenzy of drilling drilling deeper wells by the coast. The GSA needs to immediately address this and other gaps in the ordinance.
  - Require all wells to be metered and charge fees based on the amount of water pumped (to pay for future projects and incentivize voluntary reductions)
  - Incentivize demand reduction (land fallowing, conservation, etc.)

- **SB GSA should conduct a deep aquifer study or provide funding for MCWRA to conduct the unfunded study that they have planned, as described in Section 9.3.6.** It is not acceptable to have such a critical study be left to uncertain funding, which also indicates an uncertain timeline as discussed in this section. "MCWRA plans to complete this study of the Deep Aquifer over the next three years, when funding becomes available. (GSP Page 09-18)." SVB GSA should take ownership of this study as it is a data gap.

- **Register all wells in the subbasin and begin program to install meters and monitor extraction from all wells by the end of 2020.** Revise Section 9.2.1 to clarify that the well registration program *will be implemented* in the first two year of GSP implementation (not that it will be developed in the first two years).

Improve Seawater Intrusion Project and Clarify Funding Source

- **Provide more information about potential projects to address sea water intrusion including costs, benefits, risks, and uncertainty. Discuss specific cases where these types of projects are currently active, include actual monitoring data and O&M costs of installed projects.** The GSP depends on one of these projects in order to address the biggest threat to sustainability. Yet the proposed projects to stop sea water intrusion, as described in this Chapter, are very uncertain in terms of the following: timeline, effectiveness, how they will impact the water budget of the basin (e.g. how much groundwater will they pull from the ocean-side versus how much will be extracted from the inland side), how the gradient of groundwater may be impacted, how climate change will impact project viability, whether this scale of project will be permitted in the coastal zone, what will be the long-term energy demand, what will this project cost to install, maintain, and monitor, and who will pay. To lessen this uncertainty, the GSA should include evidence that sea water intrusion projects of this scale in similar groundwater basins have been successful. The GSA should include actual operation and maintenance costs, including energy demand, of installed systems to know how much would need to be charged in the water charges framework to cover these costs.
- **Amend the water charges framework text (page 9-3) to clarify whether sustainable pumping allowances will pay for seawater intrusion project capital cost of ~100M and annual O&M of ~$10M in the 180/400 Foot Aquifer Subbasin. If a different of funds will be used, clarify in the text.** Explain the apparent contradiction between the Water Charges framework in which the "sum of all sustainable pumping allowances is the sustainable yield of the subbasin" and the calculation of sustainable yield in Chapter 6 which does not include a calculation of pumping restrictions necessary to address seawater intrusion.
- **Clarify what a "total project yield for the Seawater Intrusion Pumping Barrier" refers to in Section 9.4.3.7.6**. If 30,000 AF/year is the amount of water to be extracted from the subbasin, then it should be subtracted from the projected sustainable yield for the basin (as currently defined).

Consider Partnerships for Multi-Benefit Remediation Projects

- **Consider working with local and regional water agencies or the county to implement groundwater quality remediation projects that could improve both quality as well as levels and to ensure groundwater management does not cause further degradation of groundwater quality.** The strategic governance structure of GSAs can uniquely leverage resources, provide local empowerment, centralize information, and help define a regional approach to groundwater quality management unlike any other regional organization. When implemented effectively, GSAs have the potential to be instrumental in reducing levels of contaminants in their regions, thus reducing the cost of providing safe drinking water to residents. GSAs are the regional agency that can best comprehensively monitor and minimize negative impacts of declining groundwater levels and degraded groundwater quality that would directly impact rural domestic well users and S/DACs within their jurisdictions. When potential projects are proposed, SVB GSA should consider how projects could potentially both positively and negatively impact groundwater quality conditions and should take leadership in coordinating regional solutions.

Design Recharge Projects to Protect Drinking Water

- **Develop criteria for recharge projects that prevent unintended impacts to drinking water.** Groundwater recharge projects can have multiple benefits such as increasing groundwater storage and levels, as well as diluting contaminant plumes and improving groundwater quality. However, if not properly designed, recharge projects may mobilize nitrates, pesticides, and fertilizers, as well as naturally occurring contaminants, and can lead to the further degradation of groundwater quality, impacting drinking water wells. Currently, it is unclear if these proposed projects include precautions of groundwater quality degradation or if groundwater quality is included in the monitoring plan of these projects. In order to develop recharge projects that move the subbasin towards sustainability, avoid the further degradation of groundwater, and improve drinking water conditions, we recommend the following considerations for this recharge criteria[23]:

    1. When selecting sites for on-farm recharge projects, GSAs can work with growers who are implementing some or all of the following in order to minimize the mobilization of pesticides and fertilizers:

        - Using best management practices that optimize chemical use so residuals do not enter recharge water;
        - Growing crops that require fewer fertilizers (e.g. legumes);
        - Recharging during winter months (when less/no fertilizer is being used);
        - Minimizing fall applications of fertilizers and pesticides;

[23]Community Water Center. Guide to Protecting Drinking Water Quality Under the Sustainable Groundwater Management Act. https://d3n8a8pro7vhmx.cloudfront.net/communitywatercenter/pages/293/attachments/original/1559328858/Guide_to_Protecting_Drinking_Water_Quality_Under_the_Sustainable_Groundwater_Management_Act.pdf?1559328858

- Not surrounded by dairy operations.

2. When implementing on-farm recharge projects, recharge on the same plot of land annually for a consecutive number of years in order to most effectively flush out and dilute residual contaminants (especially nitrate) left behind from previous applications. Continued flushing will also help reduce bicarbonate, calcium, and organic carbon transport which will limit their impact on the dissolution and release of uranium and/or arsenic.

3. Prior to implementing any recharge project, identify all nearby drinking water wells (both public supply and private wells). Additional monitoring wells that collect groundwater quality samples may need to be installed in key areas to protect public health.

4. Prior to implementing any recharge project, collect data to characterize the upper soil zone and groundwater quality, including the amount of fertilizer applied and any naturally occurring contaminants present in the soil. Monitor and adjust the quality of water being recharged in order to limit the mobilization of naturally occurring contaminants (e.g. monitoring oxygen, pH, electrical conductivity, and nitrate levels).

5. Consider recharging through excavated points, ditches/canals, and other designated recharge basins in order to bypass soil layers with naturally occurring contaminants, pesticides, and/or nitrate.

Add Drinking Water Well Mitigation Program

If SVB GSA defines its sustainability criteria in a way that allows for the dewatering of drinking water wells, increased levels of contamination, or seawater intrusion, it must provide a robust drinking water protection program to prevent impacts to drinking water users and mitigate the drinking water impacts that occur. Based on the draft GSP water budget, rural domestic and small water system demand does not contribute substantially to the overdraft conditions, yet the risks imposed on these drinking water users are overlooked and neglected, creating a disproportionate impact on already vulnerable communities. Without any clear actions regarding establishing a groundwater allocation, addressing reductions in groundwater pumping, or addressing seawater intrusion, drinking water users could face significant impacts, particularly if the region faces another drought.

A GSP which lacks a mitigation program to curtail the effects of projects and management actions as to the safety, quality, affordability, or availability of domestic water, violates both SGMA itself and the Human Right to Water. The Human Right to Water (AB 685) (HR2W) was signed in 2012 and added § 106.3 to the California Water Code, declaring, "the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes."[24] The California legislature has recognized that water used for domestic purposes has priority over all other uses since 1913[25] in Water Code § 106, which declares it, "established policy of this State that the use of water for domestic purposes is the highest use of water

[24] WAT § 106.3 (a).
[25] Senate Floor Analysis, AB 685, 08/23/2012.

and that the next highest use is for irrigation."[26] The passage of the Safe and Affordable Drinking Water Act by Governor Newsom indicates a clear State-level commitment in providing safe and affordable drinking water to California's most vulnerable residents. To ensure compliance with the legislature's long established position, the HR2W requires that agencies, including the Department of Water Resources and the State Water Board, must consider the effects on domestic water users when reviewing and approving GSPs[27]. Therefore, GSPs that cause disproportionate impacts to domestic water use are in violation of the HR2W, SGMA, and Water Code § 106.

A Drinking Water Well Mitigation Program could include a combination of different strategies including: replacing impacted wells with new, deeper wells, connecting domestic well users to a nearby public water system, or providing interim bottled water. Key considerations and recommendations, including examples from existing well mitigation program, will be shared with the SVB GSA separately.

GSP Chapter 10: GSP Implementation

- **Include a schedule for immediate actions that the GSA will take in the first months and year of operation in order to protect drinking water supplies and vulnerable users.** While large scale projects need to be developed, many management actions should be taken to protect groundwater today (see our list in GSP Chapter 9 comments). The intent of designating the 180/400 Foot Aquifer as a "critically overdrafted basin" and to have this subbasin on a shorter timeframe than the other nearby subbasins, was to require action and abatement also on a shorter timeline (to match the impacts already happening).
- **Complete the "Registration/ Install Well Meters / DeMinimum Certification" program development by the end of 2020.** Update Figure 10-1 and describe this program in the written text of this chapter as it is the first item scheduled to be completed for the 180/400 Foot Aquifer Subbasin Plan and will set the stage for all other management actions and projects.
- **Include the implementation schedule for major projects in this implementation chapter** and clarify which aspects of these projects the GSA will move forward with immediately in year 1 and according to schedules in chapter 9, and which aspects of the projects will be delayed will until 2023 according to project schedules in chapter 10 (Figure 10-1).

GSP Chapter 11: Stakeholder Engagement and Community Outreach

Public engagement, when done well, goes far beyond the usual participants to include those members of the community whose voices have traditionally been left out of political and policy debates.[28] It invites citizens to get involved in deliberation, dialogue, and action on public issues that are important to them. More importantly, it helps leaders and decision-makers have a better understanding of the perspectives, opinions, and concerns of citizens and stakeholders, especially the underrepresented ones. Barriers to participation of underrepresented stakeholders in the Salinas Valley Basin and in general include:

[26] This policy is also noted in the Legislative Counsel's Digest for AB 685.
[27] WAT § 106.3 (b)
[28] DWR. (2018) Stakeholder Communication and Engagement.

(1) Accessibility - information is accessible, in a language and with sufficient background so that all present can understand what is presented
(2) Self-efficacy - community member participation makes a difference in the outcome of this plan and groundwater management
(3) Time commitment / logistics - meetings are held in familiar locations, close enough to where community members live or work, and at a time when most are available
(4) Relevance - the meeting and information is important enough and relevant for community members to prioritize

We have appreciated the opportunity to participate in many of the GSA public meetings to discuss this GSP - the planning committee, advisory committee, board of directors meetings, as well as the more recent GSP outreach meetings. We have appreciated that GSA staff have hosted outreach meetings and worked to make these forums accessible, in the evenings, and in locations throughout the Salinas Valley. The outreach meetings hosted as part of the GSA formation, and associated outreach, were particularly well done. We appreciate the opportunity to provide comments on this GSP in its entirety.

In this GSP, the SVB GSA can reaffirm your past community engagement practices and also improve by considering the following recommendations for effective public engagement:

- Consider changing the regularly scheduled board and advisory committee meetings for the afternoon outside of work hours so more community members would be able to attend.
- Provide more information regarding how communication and updates related to GSP implementation will take place and how this will be accomplished after the plan is approved.
- Consider developing a Stakeholder and Outreach Communication Strategy (similar to the one in Appendix 11D) for 2020 to 2025. This strategy could include the following:
    - **Continue to provide translation services at public meetings. Continue to provide bilingual (English and Spanish) information and materials on the website and via email. Consider inserting short notices (notices must include key messages, visuals and information that is relevant to the average water user) in water bills and/or community newsletters.** The Dymally-Alatorre Bilingual Services Act requires that public agencies serving over 10% of non-English speaking constituents provide appropriate translation services[29]. At a minimum, this information should be provided during plan updates, and prior to critical decisions. In particular, the draft GSP released during the formal comment period should include bilingual materials highlighting key summaries of the GSP. Critical decision points can also include the adoption of groundwater fees, or the approval of new groundwater projects or management actions.
    - **Identify community social media (Facebook, Instagram, etc.) groups, pages and websites and post information.** Continue to develop media advisories, press releases and work with local media outlets, such as local radio stations, television stations, and local newspapers to captivate a broader audience that are not being reached via the electronic-based outreach currently used.
    - **Identify, and work with key community leaders / trusted messengers to distribute information and encourage community participation.**

[29] California Government Code Section 7290.

  - **Partner with other educational programs to leverage resources and explore opportunities to educate different generational groups.**
  - **Consider hosting Spanish-only outreach meetings** as it is difficult to realtime translate technical groundwater terms and concepts in a way that is understandable and promotes participation.

- Reinstate the Stakeholder and Outreach Communications committee that helped plan the outreach associated with SVB GSA formation and provide GSA staff support to implement action items from this committee.
- Consider hiring a bilingual Stakeholder and Outreach Communication specialist as part of the SVB GSA staff
- Partner with the Monterey County Health Department to host GSA workshops throughout the Salinas Valley for DAC residents and residents who rely on small water systems and private wells. This stakeholder group is under-represented in the GSA and other public forums.
- Continue to work to make all forums for stakeholder input more inclusive and accessible to all stakeholders.
- Invest GSA staff time and resources to develop a more representative structure within the GSA itself.
  - During GSA formation, limited work was done to engage all DAC residents and small water systems in the nominating group structure. This process could be further developed to move beyond public notification with the goal of having board directors that represent and are accountable to their constituencies. Agricultural representatives have already built this into the structure of their nominating process, but the less organized and under-resourced stakeholders have not.
  - Consider amending the JPA agreement to allow for more balanced representation and power on the board. The GSA includes directors that represent the public, environmental, or small water system/DAC stakeholders that do not hold voting power to impact substantive changes to this GSP including a sense of urgency to act now to address critical overdraft. (Any decision related to imposing fees and/or limitations on well extractions must be approved by a "Super Majority Plus" or "eight of eleven board members, including an affirmative vote by three of the four agricultural representatives.")
- **We request that there be full disclosure to the public regarding the agricultural subbasin working groups, what was discussed at meetings that informed this GSP, when these meetings were held, and why these meetings were not open to the public when they were so influential on all key decisions of this GSP.** The Agricultural Subbasin Working Group meetings and their accompanying meetings notes should be noticed publicly and easily accessible on the website. As active participants in GSA public meetings, it was our experience that the projects, management actions, minimum thresholds, sustainable yield calculation, water budget, and other important GSP elements were brought to the planning committee and advisory committee after consensus had already been reached by the agricultural subbasin specific working groups and that no substantive changes were made with input these public forums. Examples include:

- At the very first public meeting when Chapter 9 on projects and management actions was discussed (planning committee meeting in July 2019), Community Water Center staff asked for more information regarding when "stakeholder" meetings were held to shape the projects selected and prioritized in the project chapter.[30] The GSA consultant responded that they had shaped the recommendations with the agricultural stakeholders, presumably the same agricultural subbasin specific working groups.
- At the most recent advisory committee meeting on November 21, 2019, two advisory committee members (who represent non-agricultural interests) requested changes in the minimum thresholds for water levels stating the current minimum thresholds would cause significant impacts to those relying on small systems and private wells and that the threshold should be revised to a water level during a non-drought time. The GSA consultant responded that these types of "policy" decisions would need to go before the whole board. The advisory committee member asked how and when these "policy" decisions were made since the proposed levels were already decided when the chapter came to the advisory committee.
- GSP Section 8.3 discusses the process for developing sustainable management criteria and mentions "Subbasin Specific working groups (page 8-5)" - it is important here, in the projects chapter, and in the plan in general to be transparent about how "policy" and other decisions are being made.
- It might be a good step to open the agricultural subbasin working groups to the public as part of the GSP review process, as planned, for the other subbasins in the Salinas Valley. We encourage the SVB GSA to think critically about how to make these forums inclusive and accessible for all stakeholders drawing on suggestions in these comments.

Thank you, again, for reviewing this letter and for the consideration of our comments on the draft GSP. Please do not hesitate to contact us with any questions or concerns, or if you would like to meet to further discuss these important sets of issues.

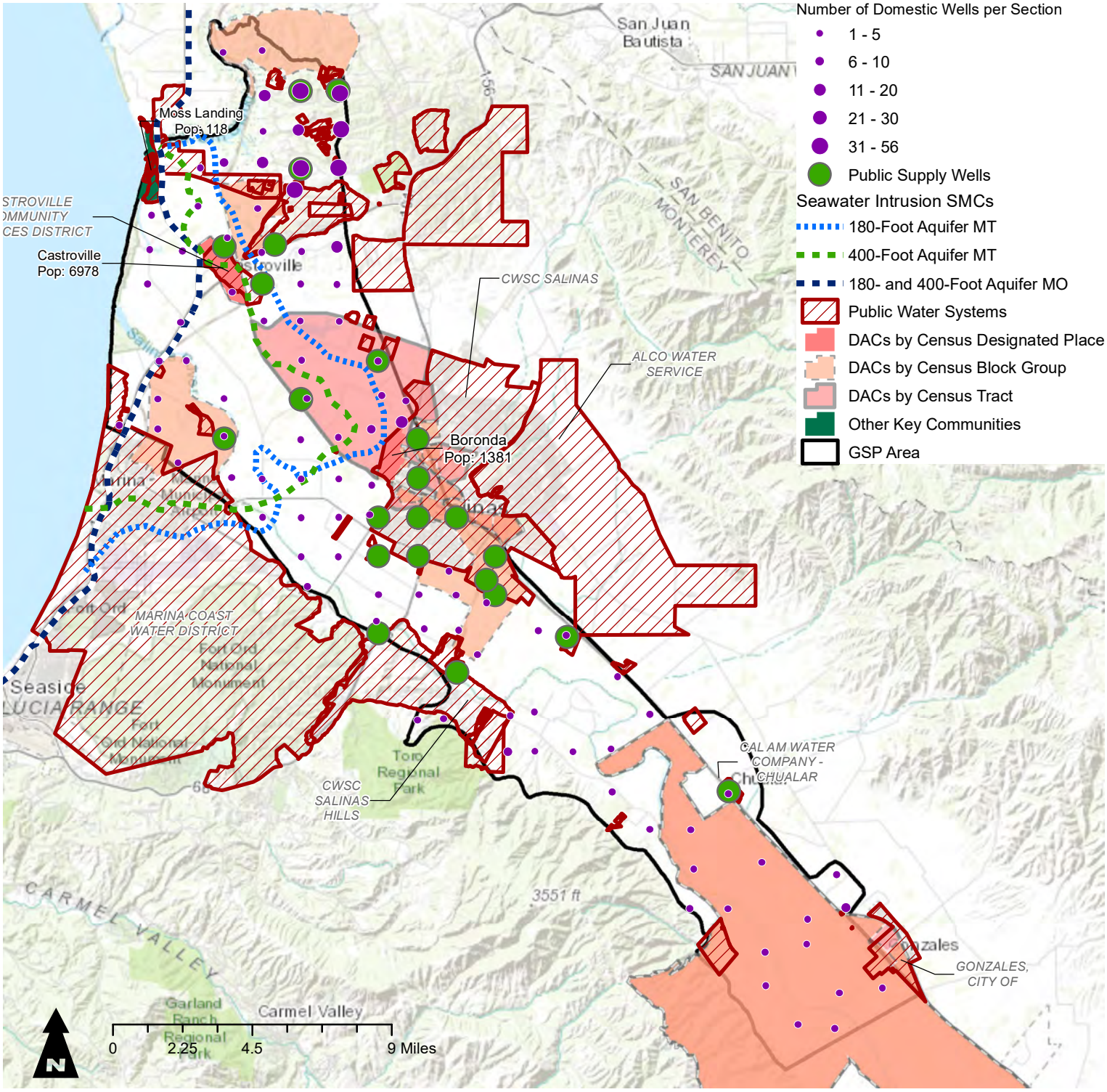
Attachments to this Comment Letter

1. Figure 1 – Seawater Intrusion SMCs Relative to Domestic Wells, Public Supply Wells, DACs, and Community Water Systems
2. Figure 2 – Representative Monitoring Network for GW Levels Relative to Domestic Wells, Public Supply Wells, DACs, and Community Water System
3. Figure 3A – Estimated Water Level Decline at Minimum Thresholds in the 180-Foot Aquifer
4. Figure 3B – Estimated Water Level Decline at Minimum Thresholds in the 400-Foot Aquifer
5. CWC Comment Letter on Chapter 6: Water Budgets, July 10, 2019

[30] "Eight projects were selected as the most reliable, implementable, cost-effective, and acceptable to stakeholders. (Page 22, July 2019 Draft of Chapter 9 for Planning Committee).

Figure 1 - Seawater Intrusion SMCs Relative to Domestic Wells, Public Supply Wells, DACs, and Community Water Systems

Salinas Valley Basin GSA



Notes

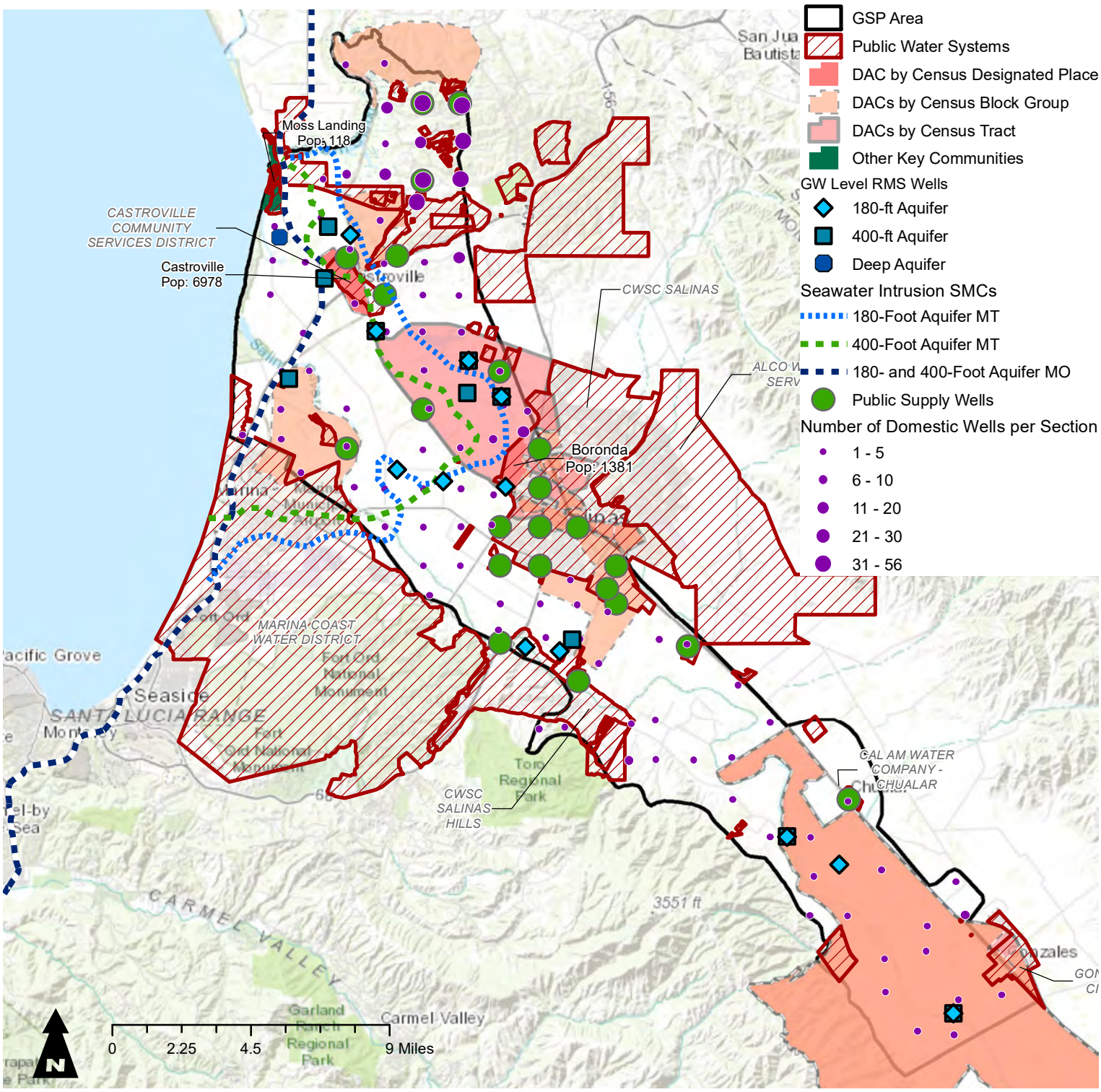
1. All locations are approximate.

References

1. Domestic Well Densities: Research to develop the CWC Vulnerability Tool draft as of August 6, 2019.
2. Public supply well data: DWR Well Completion Reports downloaded on August 30, 2018 from https://atlas-dwr.opendata.arcgis.com/datasets/.
3. Disadvantaged and other key community data (place, tract, and block group): downloaded on August 6, 2019 from the DAC Mapping Tool: https://gis.water.ca.gov/app/dacs/.
4. Public Water System data: downloaded on August 6, 2019 from Tracking California: https://trackingcalifornia.org/water/map-viewer. The dataset includes "community" and "non-community" water systems.
5. Seawater Intrusion MOs and MTs: Figure 8-6 and Figure 8-7 of the 180/400-Foot Aquifer Subbasin GSP - Public Review Draft, dated October 2019.

Figure 2 - Representative Monitoring Network for GW Levels Relative to Domestic Wells, Public Supply Wells, DACs, and Community Water Systems

Salinas Valley Basin GSA



Notes

1. All locations are approximate.
2. Location of Water Level Representative Monitoring Site Wells is based on Table 7-2 of the SVBGSA GSP (2019).

References

1. Domestic Well Densities: Research to develop the CWC Vulnerability Tool draft as of August 6, 2019.
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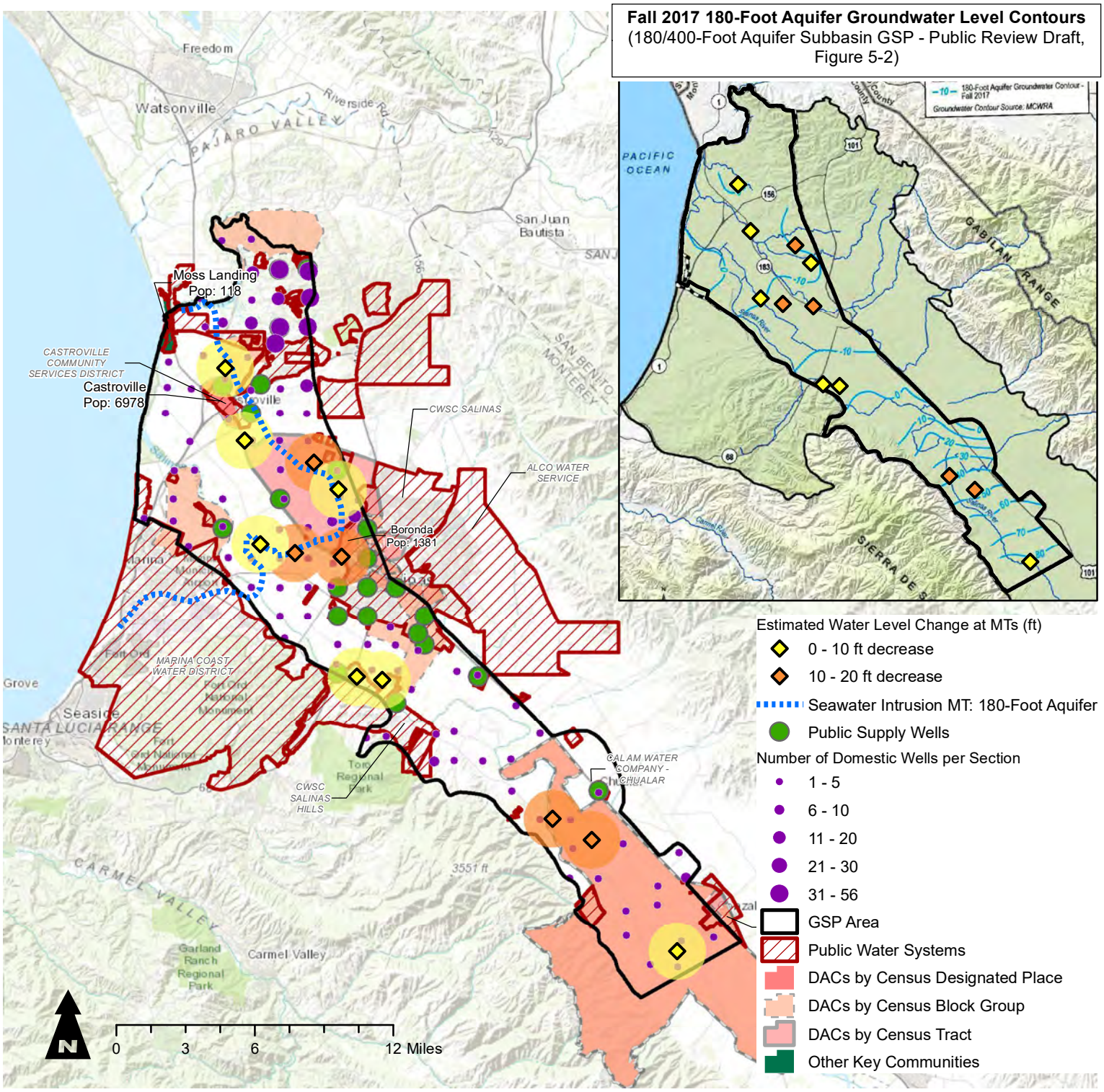
4. Public Water System data: downloaded on August 6, 2019 from Tracking California: https://trackingcalifornia.org/water/map-viewer. The dataset includes "community" and "non-community" water systems.
5. Water Level RMW locations: Table 7-2 of the 180/400-Foot Aquifer Subbasin GSP - Public Review Draft, dated October 2019.
6. Seawater Intrusion MOs and MTs: Figure 8-6, Figure 8-7, and Section 8.8.3.1 of the 180/400-Foot Aquifer Subbasin GSP - Public Review Draft, dated October 2019.

Figure 3A - Estimated Water Level Decline at Minimum Thresholds in the 180-Foot Aquifer

Salinas Valley Basin GSA



Notes

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References

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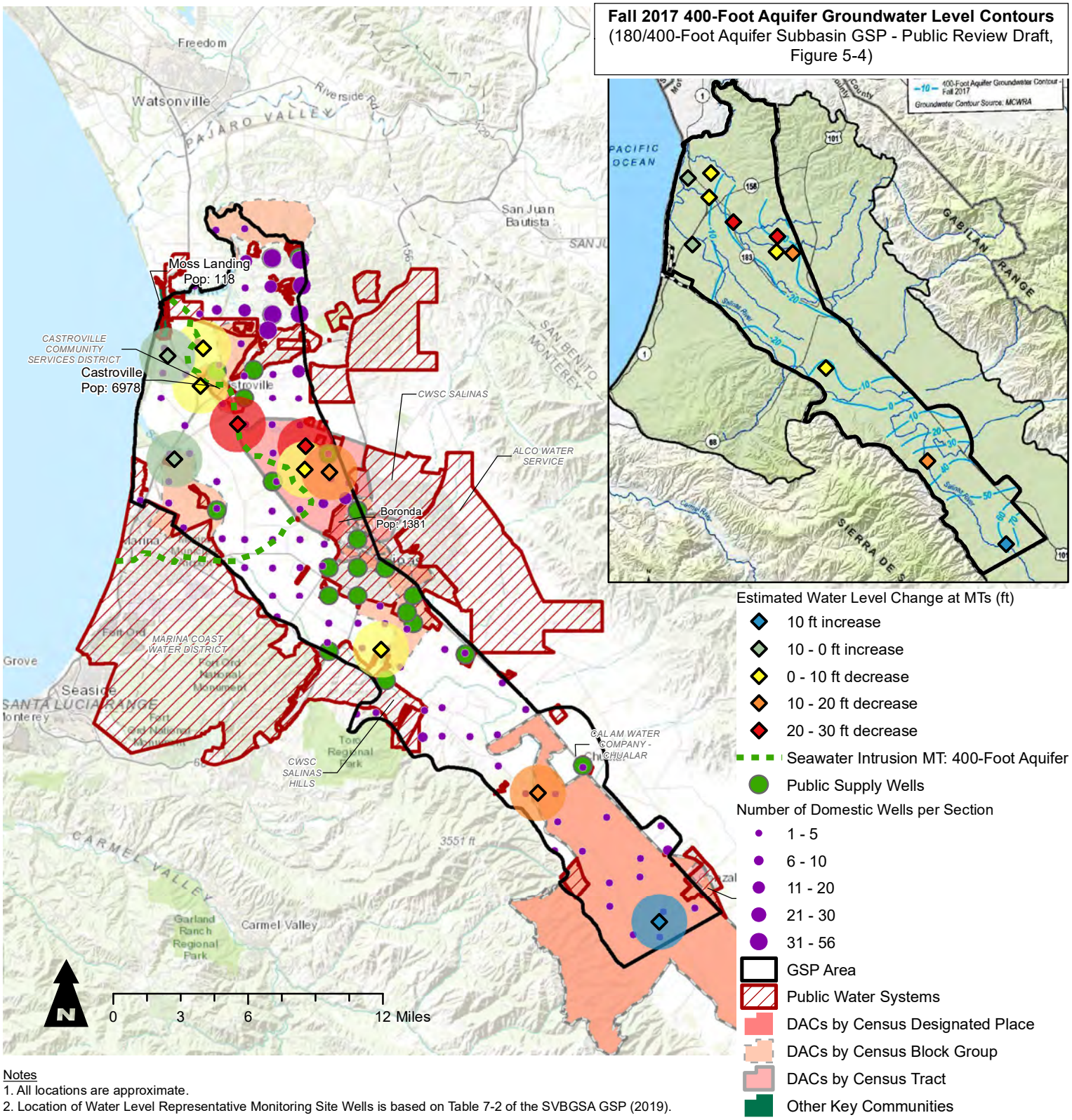
2. Public supply well data: DWR Well Completion Reports downloaded on August 30, 2018 from https://atlas-dwr.opendata.arcgis.com/datasets/.
3. Disadvantaged and other key community data (place, tract, and block group): downloaded on August 6, 2019 from the DAC Mapping Tool: https://gis.water.ca.gov/app/dacs/.
4. Public Water System data: downloaded on August 6, 2019 from Tracking California: https://trackingcalifornia.org/water/map-viewer. The dataset includes "community" and "non-community" water systems.
5. Water Level RMW locations, MTs, and contour map: Tabel 7-2, Table 8-2, and Figure 5-2 of the 180/400-Foot Aquifer Subbasin GSP - Public Review Draft, dated October 2019.
6. Seawater Intrusion MTs for the 180-Foot Aquifer: Figure 8-6 of the 180/400-Foot Aquifer Subbasin GSP - Public Review Draft, dated October 2019.

Figure 3B - Estimated Water Level Decline at Minimum Thresholds in the 400-Foot Aquifer

Salinas Valley Basin GSA



Notes

1. All locations are approximate.
2. Location of Water Level Representative Monitoring Site Wells is based on Table 7-2 of the SVBGSA GSP (2019).

References

1. Domestic Well Densities: Research to develop the CWC Vulnerability Tool draft as of August 6, 2019.
2. Public supply well data: DWR Well Completion Reports downloaded on August 30, 2018 from https://atlas-dwr.opendata.arcgis.com/datasets/.
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4. Public Water System data: downloaded on August 6, 2019 from Tracking California: https://trackingcalifornia.org/water/map-viewer. The dataset includes "community" and "non-community" water systems.
5. Water Level RMW locations, MTs, and contour map: Tabel 7-2, Table 8-2, and Figure 5-4 of the 180/400-Foot Aquifer Subbasin GSP - Public Review Draft, dated October 2019.
6. Seawater Intrusion MTs for the 400-Foot Aquifer: Figure 8-7 of the 180/400-Foot Aquifer Subbasin GSP - Public Review Draft, dated October 2019.

COMMUNITY WATER CENTER
EL CENTRO COMUNITARIO POR EL AGUA

UC Davis Aoki
Water Justice Clinic

July 10, 2019

Salinas Valley Basin Groundwater Sustainability Agency
Attn: Gary Peterson, General Manager
peterseng@svbgsa.org
VIA ELECTRONIC MAIL

Re: Comments on Draft Chapter 6 ("Water Budgets") for the 180/400-Foot Aquifer Subbasin Groundwater Sustainability Plan

Dear Salinas Valley Groundwater Sustainability Agency Board Directors, General Manager Peterson, and Advisory Committee:

We thank you for the opportunity to comment on draft chapters of the Groundwater Sustainability Plan ("GSP") for the 180/400-Foot Aquifer Subbasin of the Salinas Valley Basin.

Recommendation 1: For both practical and legal reasons, we strongly encourage you to revise your calculations of sustainable yield to include and abate all six undesirable results enumerated in the Sustainable Groundwater Management Act (SGMA).

As currently written, Chapter 6's definition of sustainable yield fails to comport with the statutory definition. SGMA defines sustainable yield as "the maximum quantity of water . . . that can be withdrawn annually from a groundwater supply without causing an undesirable result." Water Code § 10721(w). SGMA explicitly requires that groundwater be managed in a way that avoids negative impacts to beneficial users *and* all six undesirable results. Those undesirable results include: (1) chronic lowering of groundwater levels indicating a significant and unreasonable depletion of supply if continued over the planning and implementation horizon; (2) significant and unreasonable reduction of groundwater storage; (3) significant and unreasonable seawater intrusion; (4) significant and unreasonable degraded water quality, including the migration of contaminant plumes that impair water supplies; (5) significant and unreasonable land subsidence that substantially interferes with surface land uses; and (6) depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of that surface water. *Id.* § 10721(x). The undesirable results are cumulative, not disjunctive. GSPs must evaluate all six undesirable results, and any interactions between those results, to satisfy SGMA.

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(831) 288-0450

Despite SGMA's clear definition of sustainable yield and sustainable groundwater management, the current draft of Chapter 6 relies on only one indicator of sustainability and one undesirable result. The proposed draft defines sustainable yield as "an estimate of the quantity of groundwater that can be pumped on a long-term average annual basis without causing a net decrease in storage." *See* Draft Chapter 6 180/400-Foot Aquifer Subbasin GSP page 24, section 6.8.4 (June 17, 2019, included in advisory committee meeting packet). There is no legal or scientific basis for that definition of sustainable yield.

We are concerned that the current sustainable yield calculation fails to inform the public and GSA of the actual net amount of water that can be extracted from the subbasin while avoiding all six undesirable results. Establishing a sustainable yield that adequately takes into consideration all undesirable results is a foundational step for developing appropriate sustainable management criteria and for accurately planning for the management actions and projects necessary to meet sustainable management criteria. For example, during the project development phase, the GSA will need to understand the scale and size of recharge or other projects required to stop seawater intrusion. At a minimum, the sustainable yield calculation must adequately consider all undesirable results in order to provide a reliable foundation for setting and meeting minimum thresholds and measurable objectives, determining extraction and recharge levels, and monitoring.

The Department of Water Resources' (DWR) Draft Best Management Practices for Sustainable Management Criteria ("Draft BMP")[1] states that "[s]ustainable yield can only be reached if the basin is not experiencing undesirable results . . . [u]ndesirable results must be eliminated through the implementation of projects and management actions, and progress toward their elimination will be demonstrated with empirical data (e.g., measurements of groundwater levels or subsidence)." From a practical perspective, the 180/400-foot aquifer subbasin GSP already faces several undesirable results, and it will need to develop projects and regulations that rely on the sustainable yield measure to avoid exacerbating all six undesirable results. As currently drafted, the sustainable yield calculation does not provide the GSA with the information it needs to be able to prevent or improve groundwater conditions that cause those undesirable results.

Moreover, the Groundwater Sustainability Plan Regulations ("Regulations") do not recognize change in storage as an acceptable proxy for the other sustainability indicators or undesirable results. The Regulations clearly state that only groundwater elevation may be used as a proxy

[1]https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Sustainable-Groundwater-Management/Best-Management-Practices-and-Guidance-Documents/Files/BMP-6-Sustainable-Management-Criteria-DRAFT.pdf

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metric for the sustainability indicators for minimum thresholds and measurable objectives. 23 CCR §§ 354.28(d) & 354.30(d). Groundwater elevation can only be used as a proxy metric if both of the following conditions are met:

> (1) Significant correlation exists between groundwater elevations and the sustainability indicators for which groundwater elevation measurements serve as a proxy. (2) Measurable objectives established for groundwater elevation shall include a reasonable margin of operational flexibility taking into consideration the basin setting to avoid undesirable results for the sustainability indicators for which groundwater elevation measurements serve as a proxy. 23 CCR § 354.36(b)).

By focusing solely on groundwater storage, draft Chapter 6 fails to identify the relationship between the water budget, current undesirable results, and the possibility of worsening all six undesirable results if the water budget is improperly calculated. As a result, the draft water budget reinforces current unsustainable groundwater uses, risks further degradation of groundwater supplies, and fails to adequately prioritize beneficial uses and protect groundwater stakeholders' interests.

The calculation of sustainable yield is at the heart of all Groundwater Sustainability Plans, and those Plans derive all other components from this important determination. Because the draft GSP ties sustainable yield to an improper metric that is not recognized by statute or regulation as acceptable, it is likely that DWR will find the draft 180/400-Foot Aquifer Subbasin GSP to be inadequate, creating the risk that the Basin will fall under probationary status.

Recommendation 2: We request that you release the data and assumptions underlying Chapter 6's sustainable yield calculations, water budget calculations, and groundwater model. We encourage the GSA to ensure compliance with SGMA and California administrative law by releasing the data, methodologies, technical appendices, model assumptions, model inputs/outputs, sources, and all other relevant model parameters when draft chapters are released to the public for review and comment. We request that the GSA ensure that all relevant data is released concurrently with draft chapters for all future draft chapters.

SGMA, California administrative law, and the Brown Act require GSAs to release to the public all data, research, sources, assumptions and inputs, outputs, the formulae applied to those inputs, and the ultimate results of a formula or model as part of the public comment process.

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23 CCR §§ 352.4(f) & 354.14. DWR's Draft BMP also encourages transparency in the use and disclosure of models used to support SGMA's requirements.

In the context of GSPs, the purpose of public comment is to allow the public to engage meaningfully in the public decision making process, which in turn will strengthen the reliability and accuracy of GSPs. That data must be publicly accessible and is a critical factor in gaining consensus on groundwater projects, groundwater pumping restrictions, potential groundwater fees, prioritization of beneficial uses, and other groundwater regulations. Draft Chapter 6 currently fails to provide the GSA and the public with sufficient background information to support the chapter's sustainable yield calculations and the groundwater model itself.

Timely disclosing source material and key assumptions is necessary to ensure the GSP is accurate and that the public is able to ground truth those assumptions. For example, during the June 20, 2019, advisory committee meeting, the GSA's consultant informed the public that the proposed "sustainable yield" calculation assumes that the Castroville Seawater Intrusion Project (CSIP) will function "perfectly." Many of those in attendance questioned that assumption, as it is impossible to ensure a project will operate perfectly. Failure to account for the reality that the project will not always operate "perfectly" introduces unquantified uncertainty into the sustainable yield calculation. As a result, the proposed calculation may be inaccurate, which may exacerbate undesirable results—including seawater intrusion—in the subbasin. At a minimum, the GSP must consider alternative calculations that account for the reasonable and foreseeable possibility that the project may operate below "perfect" performance in order to create an accurate accounting of sustainable yield. In fact, in its Draft BMP, DWR explicitly notes that GSPs must acknowledge uncertainty and address how the plan will address that uncertainty. By failing to disclose to the public the assumptions incorporated in draft Chapter 6, the GSP may rely on any number of faulty assumptions that undermine the reliability, reality, and accuracy of the sustainable yield calculation and groundwater model.

We are asking the GSA to make all assumptions transparent and clear in the plan itself, to engage stakeholders and the public in discussion of those parameters and assumptions, and to make decisions with knowledge of the limitations of whatever formulae or models are adopted. When DWR reviews plans, it will assess "[w]hether the projects and management actions are feasible and likely to prevent undesirable results and ensure that the basin is operated within its sustainable yield." 23 CCR § 355.4(b)(5). Failure to account for and disclose the assumptions in the sustainable yield calculation places the basin at substantial risk of failing to pass DWR's evaluation or to ensure sustainable yield is met.

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It is challenging to provide feedback regarding Chapter 6's models and its sustainable yield calculation without publicly available supporting documentation on how calculations have been made. We request that the GSA immediately:

1. Disclose the technical appendix, supporting documentation and research, groundwater model,, sustainable yield formula, methodologies for the groundwater model and sustainable yield formula, and model assumptions and limitations at the time it releases draft Chapter 6 for public review and comment. Disclosure should be made by posting this information to the GSA website and contacting all interested parties.
2. Update its timeline to ensure technical appendices, supporting data and research, and all related information are released when public comment opens for each draft chapter and the final draft GSP;
3. Distribute a revised draft Chapter 6 that includes the Advisory Committee and stakeholders' requested changes.

We look forward to working with the Salinas Valley Basin GSA to ensure that the GSP complies with its legal obligations, that the GSP adequately addresses drinking water needs, and that stakeholders and the public have access to the information necessary to be able to engage in this process.

Sincerely,

Heather Lukacs
Community Water Center

Camille Pannu
Founding Director, UC Davis Aoki Water Justice Clinic

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(831) 288-0450

Chevron

Dallas H. Tubbs
Manager – Subsurface Optimization

November 21, 2019

Mr. Gary Petersen
General Manager – SVBGSA
c/o Regional Government Services
P.O. Box 1350
Carmel Valley, CA 93924

Salinas Valley: 180/400-Foot Aquifer Sub-basin Groundwater Sustainability Plan https://svbgsa.org/groundwater-sustainability-plan/180-400-ft-aquifer/

Dear Mr. Petersen:

Chevron North America Exploration and Production (Chevron) operates facilities in the San Ardo area of Monterey County. As an active member of the Salinas Valley Basin Groundwater Sustainability Agency's Advisory Committee, Chevron offers the following comments with respect to the captioned Groundwater Sustainability Plan (GSP).

3.4.1 Water Source Types:

- It is stated in the GSP, that the 180/400-Foot Aquifer Sub-basin has three water source types: groundwater, surface water, and recycled water. However, there is inconsistent use of terminology: both "recycled" and "reclaimed" water appear to be used interchangeably in the document. Chevron recommends the consistent use of the term reclaimed as opposed to recycled. While the terms are synonyms, reclaimed better describes the conversion of wastewater into water that can be reused for other purposes.
- Chevron recommends that the SVBGSA include a fourth category, that being "desalinated water". This will include the desalinated new water that is expected to be produced by the California American Water (Cal-Am) Monterey Peninsula Water Supply Project. It will also allow for the inclusion of water sources created via reverse osmosis or equivalent processes.

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3.9 Conjunctive Use Programs:

- Chevron recommends that the California American Water (Cal-Am) Monterey Peninsula Water Supply Project also be included in this section. While not reclaimed water, the Cal-Am desalination project will represent a new source of water that will be used for urban uses in the Monterey Peninsula, which will offset water demand from the other water sources within the Sub-basin.

Figure 5-25: Cross-Section of Estimated Depth of Seawater Intrusion

- It appears that the seawater intrusion is represented in this cross-section with different shading. If so, Chevron recommends that Figure 5-25 include a legend.

6 WATER BUDGETS

- The "future" water budget is based on output from a groundwater model still under developed by the USGS. Chevron notes that the Salinas Valley Integrated Hydrologic Model (SVIHM) has not been made available for public review. Chevron formally requests that a copy of the model and its relevant input parameters be provided for review. Without external review, the water budget lacks foundation for broad stakeholder acceptance and becomes a matter of faith.
- Although this GSP is for the 180/400-Foot Aquifer Sub-basin, the SVIHM is dependent on flow parameters for the entirety of the Salinas Valley Basin. Chevron notes that the amount of monitoring well data at the southern boundary of the Salinas Valley - Upper Aquifer Sub-basin is sparse (between Monterey and San Luis Obispo counties). This could be a consequential source of error in the USGS model.

6.2.2 Groundwater Budget Components

- Chevron notes that the Groundwater budget inflows does not include desalinated water and recommends that it be added to the "Inflows" budget. This will account for new source of desalinated water expected from projects like the California American Water (Cal-Am) Monterey Peninsula Water Supply Project

6.11 Uncertainties in Projected Water Budget Simulations

- In answer to a Chevron question posed at a meeting of the Advisory Committee, it was learned that the USGS model has not been history matched using actual data from prior years. Replicating historical data seems an obvious first step in validating the efficacy of the model. Accordingly, what is the technical foundation for the expressed confidence in the SVIHM Model?

Table 7-5. Datasets Available for Use in Populating the DMS

- Table 7-5 contains placeholders for data not yet populated. Will data for desalination projects be include in the data field labeled "Recharge"? If not, Chevron recommends that an additional column be added to capture desalination projects.
- The Irrigated Lands Regulatory Program (ILRP) is not included in this table. If it is not included, how will deep percolation from excess irrigation be accounted for?

Sincerely,

Dallas H. Tubbs

Dallas H. Tubbs
Manager – Subsurface Optimization

cc: file

FARELLA
BRAUN + MARTEL LLP

PAUL P. SPAULDING, III
sspaulding@fbm.com
D 415.954.4918

January 8, 2020

By Hand Delivery and E-Mail

Board of Directors
Salinas Valley Basin Groundwater
Sustainability Agency
1411 Schilling Place
Salinas, California 93901
board@svbgsa.org
camela@svbgsa.org

Re: Finalizing Groundwater Sustainability Plan and Adopting Cooperation Agreement with the County of Monterey–SVBGSA Board of Directors January 9, 2020 Meeting, Agenda Items # 7a and # 7b

Dear Salinas Valley Basin Groundwater Sustainability Agency Board of Directors:

On behalf of the City of Marina ("City" or "Marina") and the Marina Groundwater Sustainability Agency ("MGSA"), we submit these comments opposing the adoption of two proposed resolutions on the Agenda for the Salinas Valley Basin Groundwater Sustainability Agency ("SVBGSA") Board of Directors' January 9, 2020 meeting: (1) the resolution adopting SVBGSA's final groundwater sustainability plan ("GSP") for the 180/400 Foot Aquifer Subbasin ("Subbasin"); and (2) the resolution adopting a cooperation agreement between SVBGSA and the County of Monterey ("County") for management of an approximately 400-acre parcel within the Subbasin.

INTRODUCTION

The City and MGSA previously opposed both resolutions when the SVBGSA Board of Directors first considered them on December 12, 2019. A copy of the City/MGSA letter in opposition to those resolutions is enclosed as Exhibit 1 and incorporated herein by reference. After considering the resolutions, the SVBGSA Board of Directors continued them to its January 9, 2020 meeting. However, in the intervening time, SVBGSA has failed to address the concerns of the City and MGSA regarding both resolutions. As a result, the City and MGSA continue to oppose the resolutions for the reasons set forth in our December 12, 2019 opposition letter and for the further reasons set forth herein.

The City and MGSA oppose both of SVBGSA's proposed resolutions as impermissible interference with the City and MGSA's sustainable management of groundwater in MGSA's jurisdictional area ("MGSA Area") and MGSA's performance of its obligations as a groundwater sustainability agency ("GSA") under the Sustainable Groundwater Management Act ("SGMA"). On December 11, 2019, the Monterey County Board of Supervisors adopted Resolution 19-171, which attempts to utilize Water Code Section 10724 to become the "exclusive" GSA for the MGSA Area. County staff then filed a GSA notification with the California Department of Water Resources ("DWR") to become the GSA for the MGSA Area, and on December 18, 2019, DWR posted the County's notification and designated the County as the "exclusive" GSA for the MGSA Area.

On December 30, 2019, the City and MGSA filed a Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief in Monterey County Superior Court against Monterey County and DWR, with SVBGSA and its Board of Directors named as Real Parties in Interest (Case No. 19CV005270). This Petition was served on the SVBGSA parties on January 2, 2020. The City and MGSA allege that SVBGSA is participating in an unlawful scheme to conduct a hostile takeover of MGSA's jurisdiction for the purpose of divesting MGSA of its SGMA jurisdiction and substituting SVBGSA management and the SVBGSA GSP for the MGSA Area. Since adoption of this proposed cooperation agreement with the County would represent a further step to consummate this unlawful scheme, the City and MGSA strongly advise SVBGSA not to take this action.

Together, SVBGSA's two proposed resolutions purport to deny the City and MGSA the opportunity to contribute to the sustainable management of the portions of the Subbasin within the City's jurisdiction either as a local entity or as a SGMA GSA. First, SVBGSA's proposed resolution to adopt its Final GSP without fully considering or incorporating the City and MGSA's public comments would deny the City its right to contribute to the management of the entire 180/400 Foot Aquifer Subbasin as a local government entity under Water Code Section 10728.4. That section mandates that a GSA "shall review and consider comments from any city or county" within its GSP's area. Cal. Water Code § 10728.4; *see also* Cal. Code Regs. tit. 23, § 354.10(c) (requiring a GSP to include the public comments on the GSP "and a summary of any responses by the [GSA]"). SVBGSA's decision to almost completely ignore the City and MGSA's comments not only leaves critical gaps in SVBGSA's GSP, but it also leaves MGSA's role as a GSA with its own GSP as the only way for the City and MGSA to shape groundwater management in the MGSA Area.

Second, SVBGSA's resolution proposing to adopt a cooperation agreement with the County further attempts to quash the City and MGSA's right to contribute to groundwater management in the Subbasin through MGSA's GSP. This cooperation agreement would effectively install SVBGSA as the exclusive GSA for the MGSA Area by assigning SVBGSA the responsibility of complying with SGMA, including reviewing, adopting, and implementing the GSP for the Marina Area. As a result, the cooperation agreement improperly attempts to cement the County's efforts to strip the City and MGSA of their groundwater management authority under SGMA.

Accordingly, SVBGSA's proposed resolutions would collectively deprive the City and MGSA of their ability to ensure sustainable management of the Subbasin and protect the beneficial groundwater uses and users in the City's coastal areas. Therefore, the City and MGSA strongly urge SVBGSA to (1) immediately revise its Final GSP to incorporate the comments of the City and MGSA, and (2) decline to adopt the cooperation agreement.

I. SVBGSA's Failure To Address The City And MGSA's Public Comments In Its Final GSP Results In A Deficient Final GSP.

The City and MGSA oppose SVBGSA's resolution to adopt its Final GSP. SVBGSA's staff report for the January 9, 2020 Board of Directors' meeting maintains that SVBGSA will not respond to all of the timely comments it received on its Draft GSP before its November 25, 2019[1] comment deadline. Unfortunately, SVBGSA has only considered and responded to a fraction of the City and MGSA's public comments.[2] Instead, SVBGSA's proposed resolution still seeks to approve its Final GSP without fully considering these comments or addressing them through changes to its GSP. This approach violates SGMA, essentially nullifies the important public comment process, and impairs the due process rights of all commenters whose comments SVBGSA did not choose to consider. Accordingly, SVBGSA's Board cannot legally approve the Final GSP without first completing the comment review, response, and GSP revision processes.

SVBGSA's Final GSP fails to address the critical gaps in SVBGSA's GSP previously identified by the City and MGSA in their public comments on the Draft GSP.[3] In particular, SVBGSA's GSP still does not correctly characterize, monitor, or manage the groundwater resources in the coastal region south of the Salinas River or recognize the critical municipal,

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[1] *See* SVBGSA, *Public Notice Release of Groundwater Sustainability Plan 180-400 Foot Aquifer Subbasin*, available at https://svbgsa.org/groundwater-sustainability-plan/180-400-ft-aquifer/.

[2] SVBGSA's comment response matrix indicates that SVBGSA has considered and responded to only seven of the City and MGSA's public comments. In addition to a cover letter and four attachments, the City and MGSA submitted a table outlining 39 separate comments on SVBGSA's Draft GSP. SVBGSA's Staff Report notes that it will not consider or respond to "[c]omments that are not individually addressed in this matrix." SVBGSA Board Agenda, *Staff Report on Agenda Item 7a* at p. 15. Instead, those comments "will be addressed as the GSP is implemented and refined." *Id.* This means SVBGSA has not considered or addressed the vast majority of the City and MGSA's public comments. A copy of SVBGSA's comment response matrix is available at https://svbgsa.org/wp-content/uploads/2020/01/Master_Review_Comments_ 20191231- CF.pdf.

[3] The City and MGSA submitted comments on the SVBGSA's Draft GSP including a cover letter, four attachments, and a comment table on November 25, 2019. Those comments are available at https://svbgsa.org/wp-content/uploads/2019/12/WholeGSP_Comment_letters_compiled_reduced.pdf and are incorporated by reference herein.

domestic, groundwater-dependent ecosystems ("GDEs"), and other beneficial uses or users in that area. SVBGSA also fails to utilize the newest and best available science for its GSP, including state-of-the-art airborne electromagnetic investigations performed by Stanford University researchers and others that have generated three-dimensional groundwater maps and cross-sections of the Subbasin. These studies reveal critical characteristics and complexities in the Subbasin that SVBGSA must consider to manage and protect groundwater resources in the Subbasin.

SVBGSA's failure to consider these studies also contributes to the Final GSP's inadequate protections against ongoing and worsening seawater intrusion. This failure puts the City's water supply and coastal beneficial groundwater users at risk. Furthermore, and without limitation, SVBGSA's Final GSP also fails to (1) designate, protect, and manage the Dune Sand Aquifer as a principal aquifer; (2) meaningfully recognize, address, monitor, and manage GDEs as a beneficial groundwater use; (3) consider state and federal protections for habitats and species in and near the MGSA Area; and (4) include an adequate monitoring network in the coastal portion of the Subbasin. The Final GSP is thus deficient in its current form.

Adopting SVBGSA's GSP without addressing the deficiencies delineated in the City and MGSA's comments will result in a GSP that lacks the necessary protections for the Subbasin's coastal areas as well as local beneficial uses and users of groundwater. SVBGSA's failure to address the crucial factual, technical, and scientific issues that MGSA and the City raised in their comments undermines the integrity and validity of SVBGSA's Final GSP. Further, SVBGSA's failure to revise its GSP in response to the City and MGSA's valid comments denies the City of its right to contribute to groundwater management in its jurisdiction in violation of SGMA. It also leaves the City and MGSA with only a future undefined "implemented and refined" GSP process to voice and address local concerns regarding groundwater management in the MGSA Area.[4]

II. The Proposed Cooperation Agreement Unlawfully Attempts To Eliminate The City And MGSA's Groundwater Management Authority.

The City and MGSA oppose SVBGSA's proposed resolution to approve a cooperation agreement between SVBGSA and the County of Monterey GSA. SVBGSA failed to negotiate in good faith with MGSA over the terms of a coordination agreement for four months and instead requested that the County take over MGSA's jurisdictional area. The proposed cooperation agreement would further the County's hostile takeover of the MGSA Area by attempting to

[4] In correspondence with MGSA, SVBGSA confirmed that it would only agree to meet with MGSA to coordinate on a GSP if MGSA "agrees to give up its GSA." Relinquishing its GSA status would leave the City with only the public comment process to influence groundwater management in its jurisdiction. Therefore, SVBGSA's improper refusal to fully consider MGSA's comments and revise its GSP to address the gaps identified by MGSA further illustrates why SVBGSA's negotiation demand that MGSA give up its valid GSA status was a complete non-starter.

legitimize the illegal efforts of the County and SVBGSA to deprive MGSA of any groundwater management authority and circumvent SGMA's coordination requirements.

The cooperation agreement seeks to bar the City and MGSA from exercising any groundwater management authority in the MGSA Area. In the proposed agreement, the County purports to delegate complete management authority for the MGSA Area to SVBGSA, including the responsibility of "comply[ing] with SGMA at the CEMEX Site," as well as "taking actions to review, adopt and implement the GSP." SVBGSA and Monterey County Cooperation Agreement at p. 4. The agreement further provides that the "County GSA authorizes SVBGSA to exercise any and all legal authorities in compliance with applicable law for the CEMEX Site." *Id.*

These provisions effectively eliminate any voice that the City or MGSA has in the management of the MGSA Area. They also demonstrate that the County has no interest in acting as the GSA for the MGSA Area. The County instead only seeks to become a GSA to remove MGSA, so its agency partner SVBGSA, can manage the site. Indeed, through the cooperation agreement, the County and SVBGSA aim to do what SVBGSA cannot do under the SGMA on its own—adopt SVBGSA's GSP for the MGSA area without coordinating with MGSA and its GSP. Accordingly, the proposed cooperation agreement functions as a key part of the unlawful scheme to circumvent the local voices and local concerns contained in MGSA's GSP.

CONCLUSION

For all of these reasons, the City and MGSA oppose SVBGSA's proposed resolutions. Together, SVBGSA's resolutions threaten to silence MGSA both as a local agency participating in the public comment process and as a validly formed GSA. The City and MGSA therefore strongly urge SVBGSA to (1) immediately revise its Final GSP to incorporate the comments of the City and MGSA, and (2) decline to adopt the cooperation agreement.

Sincerely,

Paul P. "Skip" Spaulding, III

PPS:jla
Enclosures

cc: Layne Long, Marina City Manager
(via e-mail llong@cityofmarina.org)
Marina City Council (via e-mail)
Robert Wellington, Marina City Attorney
(via e-mail rob@wellingtonlaw.com)
Deborah Mall, Marina Assistant City Attorney
(via e-mail deb@wellingtonlaw.com)
Robert Rathie, Marina City Attorney

FARELLA BRAUN + MARTEL LLP

(via e-mail attys@wellingtonlaw.com)
Keith Van Der Maaten, Marina Coast Water District GSA
(via e-mail kvandermaaten@mcwd.org)

EXHIBIT 1

FARELLA
BRAUN + MARTEL LLP

PAUL P. SPAULDING, III
sspaulding@fbm.com
D 415.954.4918

December 12, 2019

By Hand Delivery

Board of Directors
Salinas Valley Basin Groundwater
Sustainability Agency
1411 Schilling Place
Salinas, California 93901

Re: Finalizing Groundwater Sustainability Plan and Adopting Cooperation Agreement with the County of Monterey–SVBGSA Board of Directors
December 12, 2019 Meeting, Agenda Items # 7.a and # 7.b

Dear Salinas Valley Basin Groundwater Sustainability Agency Board of Directors:

On behalf of the City of Marina ("City" or "Marina") and the Marina Groundwater Sustainability Agency ("MGSA"), we submit these comments opposing the adoption of two proposed resolutions on the Salinas Valley Basin Groundwater Sustainability Agency ("SVBGSA") Board of Directors' December 12, 2019 Agenda: (1) the resolution adopting SVBGSA's final groundwater sustainability plan ("GSP") for the 180/400 Foot Aquifer Subbasin ("Subbasin"); and (2) the resolution adopting a cooperation agreement between SVBGSA and the County of Monterey ("County") for management of an approximately 400-acre parcel within the Subbasin.

INTRODUCTION

The City and MGSA oppose both resolutions before the SVBGSA Board of Directors' for different reasons. First, the City recognizes the hard work that has gone into the preparation of SVBGSA's GSP. As required by the Sustainable Groundwater Management Act ("SGMA"), SVBGSA circulated its Draft GSP for a 45-day public comment period, and we understand that SVBGSA received a considerable volume of comments. However, according to the Staff Report, SVBGSA has no intention to respond to the timely comments it received after mid-November or to make any changes to its Draft GSP based on those comments. Rather, SVBGSA's proposed resolution seeks to approve its Final GSP without taking these comments into account.

SVBGSA's approach violates SGMA and essentially nullifies the important public comment process. The City and MGSA submitted comments on November 25, 2019 (within the public comment period), but SVBGSA is disregarding these comments and making no changes

to its GSP based on them. This procedural misstep by SVBGSA fundamentally impairs the due process rights of all commenters who filed comments after mid-November. It also undermines the integrity and validity of SVBGSA's Final GSP because it does not address the crucial factual, technical, and scientific issues that MGSA and the City raised in their comments. Accordingly, SVBGSA's Board cannot legally approve the Final GSP without first completing the comment review, response, and GSP revision processes. The Final GSP is thus deficient in its current form.

Second, the City and MGSA oppose the resolution approving a cooperation agreement between SVBGSA and the County of Monterey. SVBGSA failed to negotiate in good faith with MGSA over the terms of a coordination agreement for four months and instead requested that the County take over MGSA's jurisdictional area. This is no less than a "hostile takeover" of MGSA's entire groundwater area. Pursuant to this plan, on December 11, 2019, the County adopted a resolution to utilize Water Code Section 10724 to pursue becoming the groundwater sustainability agency ("GSA") for the approximately 400-acre parcel within the Subbasin where MGSA and SVBGSA have filed overlapping GSA notifications.

However, the County cannot lawfully invoke Section 10724, in part because as a member, majority funder, and architect of SVBGSA and its GSP, the County "is creating or contributing to the [GSA] overlap" it allegedly seeks to solve by becoming a GSA. State Water Resources Control Board, *Frequently Asked Questions on GSAs*, at 3 (Nov. 22, 2017). The County thus has no legal basis for disregarding MGSA, a properly-formed GSA with jurisdiction over the MGSA area. Furthermore, the County's efforts to install SVBGSA's GSP and to delegate management of the overlapping area expose the County's real motive. Together, SVBGSA and the County seek to contravene SGMA's GSA coordination requirements and effectively designate SVBGSA as the exclusive GSA for the Subbasin through a prohibited "backdoor" maneuver. These actions violate SGMA and attempt to unlawfully block the City of Marina and MGSA from exercising their rights under SGMA.[1]

Both of these resolutions would undermine the efforts of the City and MGSA to contribute to the sustainable management of the Subbasin and protect the critical coastal areas in the City's jurisdiction. Accordingly, the City strongly urges SVBGSA not to adopt either proposed resolution and instead begin coordinating with MGSA to develop a GSP or set of GSPs to sustainably manage the Subbasin.

I. SVBGSA's Proposed Resolution To Finalize Its GSP Unlawfully Disregards Timely Filed Public Comments And Has Resulted In A Deficient Final GSP.

The City and MGSA oppose SVBGSA's proposed resolution to adopt its Final GSP after only considering and addressing a portion of the public comments on it. The deadline to submit

[1] The City and MGSA provided a detailed description of these issues in their December 10, 2019 joint opposition letter to the County's GSA Resolution, which is enclosed herewith as Attachment 1 and incorporated herein by reference.

public comments on SVBGSA's GSP was November 25, 2019.[2] Now, after that deadline has passed, SVBGSA seeks to impose an earlier comment deadline by failing to consider and address public comments received "[b]etween mid-November and prior to the closing comment date of November 25, 2019." SVBGSA Board Agenda, *Staff Report on Agenda Item 7a* at 63.

SVBGSA openly admits that "not all" public comments "will be initially addressed individually in the comment matrix." *Id.* SVBGSA plans instead to wait until after it approves and submits its Final GSP before addressing all of the comments. It tries to justify this deferral by stating that it can take the comments into account "as the GSP is implemented and refined." *Id.* Because of SVBGSA's newly announced mid-November comment cutoff, the unaddressed comments include the City and MGSA's November 25, 2019 comment letter and matrix.[3]

SVBGSA's failure to consider the City and MGSA's comments violates SGMA, which mandates that a GSA "shall review and consider comments from any city or county" within its GSP's area. Cal. Water Code § 10728.4; *see also* Cal. Code Regs. tit. 23, § 354.10(c) (requiring a GSP to include the public comments on the GSP "and a summary of any responses by the [GSA]"). SVBGSA's failure to consider and address these comments undermines the purpose of the public comment process and potentially deprives local governments, beneficial users, and interested parties of the opportunity to provide input on the GSP. *See* Cal. Water Code § 10727.8. Accordingly, SVBGSA's efforts to adopt its GSP without considering or addressing the City and MGSA's comments present a clear violation of SGMA.

Failing to consider the City and MGSA's comments also leaves critical gaps in SVBGSA's GSP unaddressed. These gaps include the GSP's failure to (1) utilize the newest and best available science; (2) designate, protect, and manage the Dune Sand Aquifer as a principal aquifer; (3) provide sufficient protections against ongoing or worsening seawater intrusion; (4) meaningfully recognize, address, monitor, and manage groundwater-dependent ecosystems as a beneficial groundwater use; (5) consider state and federal protections for habitats and species in and near the MGSA area; and (6) include an adequate monitoring network in the coastal portion of the Subbasin. These and the other deficiencies delineated in the City and MGSA's comments only heighten the harm from SVBGSA's refusal to consider them. Adopting SVBGSA's GSP without addressing these issues will fail to protect the Subbasin's coastal areas as well as local beneficial uses and users of groundwater.

When taken together, SVBGSA's instigation of the County's new effort to become a GSA and failure to consider the City's public comments would deny the City of its right to contribute to the management of the MGSA area as either a DWR-recognized GSA or a local government entity. In correspondence with MGSA, SVBGSA has confirmed that it will only

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[2] *See* SVBGSA, *Public Notice Release of Groundwater Sustainability Plan 180-400 Foot Aquifer Subbasin*, available at https://svbgsa.org/groundwater-sustainability-plan/180-400-ft-aquifer/.

[3] City of Marina and MGSA, *Comments on SVBGSA Draft Groundwater Sustainability Plan* (Nov. 25, 2019).

agree to meet with MGSA to coordinate on a GSP if MGSA "agrees to give up its GSA."[4] Relinquishing its GSA status would leave the City with only the public comment process to influence groundwater management in its jurisdiction. However, SVBGSA has thus far failed to consider MGSA's public comments before finalizing its GSP. These efforts collectively would deprive the City and MGSA of their ability to ensure sustainable management of the Subbasin and protect the City's coastal areas.

II. The County And SVBGSA's Proposed Cooperation Agreement Confirms SVBGSA's Role As The County's Affiliate In The County's GSA Takeover.

SVBGSA's proposed resolution adopting a cooperation agreement with the County to install SVBGSA's GSP and manage the overlap area demonstrates SVGBSA's role in the County's proposed unlawful GSA takeover. Indeed, both SVBGSA's proposed resolution and the cooperation agreement provide further proof of the unlawful nature of the County's efforts and SVBGSA's status as the County's affiliate. The City and MGSA oppose the adoption of this proposed cooperation agreement because it formalizes the County and SVBGSA's joint effort to exclude MGSA from the management of the MGSA area.

First, the cooperation agreement evidences the County's and SVBGSA's shared intent to deny MGSA the opportunity to collaborate on groundwater management issues in the Subbasin and circumvent SGMA's coordination requirements. SVBGSA's Staff Report demonstrates that SVBGSA had no intention of coordinating with MGSA and instead has sought ways to work with the County to implement its GSP. Only two days after MGSA released its Draft GSP on October 8, 2019, the SVBGSA Board voted to "request[] that Monterey County take all necessary steps to become the GSA for either the entire 180/400 Foot Aquifer Subbasin or the CEMEX site." SVBGSA Board Agenda, *Staff Report on Agenda Item 7b* at 502. This motion included a request that the County also adopt SVBGSA's GSP. *Id*. Thus, before MGSA and SVBGSA even submitted comments on each other's GSPs, SVBGSA already solicited the unlawful intervention of its member and majority funder to override MGSA and implement its GSP.

Second, SVBGSA and the County's proposed cooperation agreement also confirms their plan to have the County become a GSA, not to manage the overlap area, but instead to effectively install SVBGSA as the exclusive GSA for the MGSA area. In particular, Section 5.2 assigns SVBGSA the responsibility of "comply[ing] with SGMA at the CEMEX Site, including taking actions to review, adopt and implement the GSP." SVBGSA and Monterey County Cooperation Agreement at 4. Section 5.3 then provides that the "County GSA authorizes SVBGSA to exercise any and all legal authorities in compliance with applicable law for the CEMEX Site." *Id.* These provisions demonstrate that the County has no interest in acting as the GSA for the overlap area. The County instead only seeks to use Section 10724 to remove MGSA, so its affiliate, SVBGSA, can manage the site. In other words, the County's resolution

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[4] *See* Letter from Layne Long to Gary Petersen (Nov. 21, 2019) (stating SVBGSA's position) (enclosed as Attachment 2).

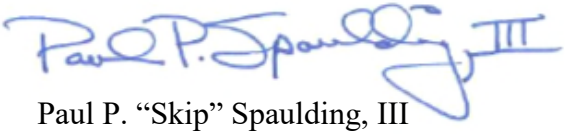
and the cooperation agreement aim to use Section 10724 to do what SVBGSA cannot on its own—adopt SVBGSA's GSP for the MGSA area without coordinating with MGSA and its GSP.

Third, as explained in the City and MGSA's letter opposing the County's GSA resolution, the County is indisputably creating and contributing to the overlap situation, as a member, majority funder, and driving force in the SVBGSA. The proposed cooperation agreement further links the County and SVBGSA through provisions like Section 14.13's joint defense provision. It provides that SVBGSA and the County may "further coordinate and cooperate by undertaking joint defense, including utilizing a common interest/joint defense agreement" to defend against "any challenge to the Subbasin GSP as it relates to the CEMEX Site." *Id.* at 10. The County created and contributed to the overlap with MGSA through SVBGSA. Now, the two affiliates seek to jointly defend their bad faith takeover of the MGSA area against a potential legal challenge from the City and MGSA. This confirms the County and SVBGSA's affiliation as joint actors and further cements the County's status as a creator and contributor to the overlap area.

CONCLUSION

For the reasons outlined above, the City and MGSA oppose SVBGSA's proposed resolutions. Together, SVBGSA's resolutions threaten to silence MGSA both as a local agency participating in the public comment process and as a DWR-recognized GSA. Accordingly, the City and MGSA strongly urge SVBGSA not to adopt either resolution and instead begin working with MGSA to coordinate on a GSP or set of GSPs to sustainably manage the Subbasin.

Sincerely,



Paul P. "Skip" Spaulding, III

PPS:jla
Enclosures

cc: Layne Long, Marina City Manager
(via e-mail llong@cityofmarina.org)
Marina City Council (via e-mail)
Robert Wellington, Marina City Attorney
(via e-mail rob@wellingtonlaw.com)
Deborah Mall, Marina Assistant City Attorney
(via e-mail deb@wellingtonlaw.com)
Keith Van Der Maaten, Marina Coast Water District GSA
(via e-mail kvandermaaten@mcwd.org)

ATTACHMENT 1

FARELLA
BRAUN + MARTEL LLP

PAUL P. SPAULDING, III
sspaulding@fbm.com
D 415.954.4918

December 10, 2019

Via Hand Delivery

Monterey County Board of Supervisors
168 West Alisal Street, First Floor
Salinas, California 93901

Re: Formation of Groundwater Sustainability Agency and Related Actions
County Board of Supervisors December 11, 2019 Meeting, Agenda Item #4

Dear Chair Phillips and Honorable Monterey County Supervisors:

On behalf of the City of Marina ("City" or "Marina") and the Marina Groundwater Sustainability Agency ("MGSA"), we submit these comments opposing the adoption of a resolution by Monterey County ("County") to become the Groundwater Sustainability Agency ("GSA") for a portion of the 180/400 Foot Aquifer Subbasin ("Subbasin") and to take related actions.

INTRODUCTION

The City of Marina and MGSA strongly object to Monterey County's unlawful effort to subvert the intent and explicit text of the Sustainable Groundwater Management Act ("SGMA"). The County proposes to undertake a "hostile takeover" of MGSA's entire groundwater area and then turn over the management of this groundwater to its affiliate, the Salinas Valley Basin Groundwater Sustainability Agency ("SVBGSA").

The County is hopelessly conflicted and therefore disqualified from taking these actions. It was the moving force in founding SVBGSA, has provided 60% of its funding so far and, until only two months ago, provided all legal services for SVBGSA's SGMA activities and management, including the preparation of SVBGSA's draft groundwater sustainability plan ("GSP"). The County is masquerading as a "neutral" agency coming in to resolve a local agency "overlap" in jurisdiction, but in fact, its sole motivation is to eliminate MGSA and supplant MGSA's GSP in favor of the SVBGSA GSP that it supervised and approved as the most prominent SVBGSA member.

Notably, the County's proposed resolution fails to consider MGSA's GSP, recognize the need for sustainable groundwater management in and near the MGA Area, or make any findings on the merits of SVBGSA's GSP to address these needs. Instead, the proposed resolution demonstrates that the County's true motivation is not collaborative management of the Subbasin,

but rather is to strip the City of Marina of any voice in the management of groundwater within its own jurisdiction.

MGSA is a validly formed SGMA GSA. It took all required SGMA steps and filed all appropriate notices with the Department of Water Resources ("DWR") for MGSA's formation and GSP preparation, and DWR accepted these notices and posted them on its website.[1] MGSA authorized a $275,000 contract for preparation of the GSP and continues to expend these funds as its GSP preparation proceeds. MGSA issued a draft GSP on October 8, 2019, and accepted comments on it until November 25, 2019. Responses to comments and any necessary revisions to the GSP will be completed in the next few weeks, and the GSP is scheduled for MGSA consideration in January 2020. Thus, it is "on track" to be submitted to DWR by the January 31, 2020 deadline prescribed in SGMA.

These actions by the County have been orchestrated by California-American Water Company ("CalAm"), which has encouraged the SVBGSA Board and Committees to eliminate the City of Marina and the MGSA by requesting that the County attempt to "take over" MGSA's groundwater area. CalAm, of course, has no interest in sustainable groundwater management – rather, its sole goal is to eliminate any potential impediments to its foundering Monterey Peninsula Water Supply Project ("MPWSP" or "Project").[2] CalAm does not want the City of Marina to have any groundwater management role in this area, primarily because they prefer the "hands off" approach of SVBGSA. Once SVBGSA made this request to the County, the County immediately notified DWR of its "takeover" plans in a letter and has now published the proposed resolution.

This proposed County action has no precedent under SGMA. The statutory sections which the County relies on are intended to apply only to areas that are "unmanaged" because *no* GSA has filed to manage the groundwater in that area (rather than the situation here where two agencies have filed for the same area). In the only other case where a County has stepped in to

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[1] The County and SVBGSA have tried to create the incorrect impression that MGSA is not a valid GSA because it supposedly did not file to be a GSA by a deadline in SGMA. However, this contention has been completely debunked and has never been supported by DWR. We enclose as Exhibit "1" hereto and incorporate herein a copy of a letter dated August 28, 2019 sent to DWR on behalf of MGSA that explains why this contention lacks any merit.

[2] CalAm has suffered severe, and potentially fatal, setbacks in its efforts to obtain agency permits and authorizations for the MPWSP. After the City of Marina (the certified local coastal agency) denied the primary Coastal Development Permit ("CDP") for the Project, California Coastal Commission Staff recommended that both the appealed CDP application and the CDP application within its original jurisdiction be denied. The Coastal Commission will not consider these permits until March 2020 or later. In the meantime, as the result of a lawsuit brought by Marina Coast Water District, a Monterey County Superior Court Judge has entered an Order enjoining any construction of the Project's desalination plant until at least March 2020. CalAm has also failed to apply for or pursue other key federal and state permits necessary for the Project. If the Project is ever fully approved and constructed, it will be many years behind schedule.

resolve an overlap in jurisdiction, the local agencies *supported* the county action. According to DWR: *"No county has yet sought to use Section 10724 [the SGMA section relied on by the County] to form a GSA against the wishes of agencies within their jurisdiction."*

Monterey County appears to be adopting the simplistic position that DWR has supposedly blessed this action through a letter dated November 5, 2019 ("DWR Letter"). However, the County is making a serious mistake. DWR actually said that the County might be able to do so if certain conditions are satisfied. Ultimately, a court will determine whether SGMA allows the County to take this action in the current context. And under California administrative law, courts give no deference to inconsistent agency statutory interpretations. *See, e.g., Yamaha Corp. of Am. v. State Bd. of Equalization*, 19 Cal. 4th 1, 13 (1998)("*Yamaha*"). DWR has taken inconsistent positions over time on this issue, and the County's current position directly contradicts its position only two months ago. Indeed, on the crucial "creating or contributing" test discussed below, the County's action would violate the published guidance of the State Water Resources Control Board ("State Board") on this issue. Moreover, the latest DWR advice runs directly counter to SGMA's text and purpose. Given the lack of case precedent and the shifting DWR positions, it would be extremely risky for the County to adopt this resolution.

This dispute must be viewed against the larger backdrop of the MGSA and SVBGSA GSPs. The SVBGSA GSP is a regional approach to the management of the Subbasin which is primarily oriented to protecting the interests of the agricultural producers north of the Salinas River and inland from the coastal region. The GSP ignores or disregards the recent site-specific studies by a Stanford University research team and others, based on state-of-the-art airborne electromagnetic ("AEM") techniques, that have resulted in three-dimensional maps and cross-sections of the Subbasin groundwater, which forms the best scientific information on Subbasin groundwater conditions.

The SVBGSA GSP contains a wholly deficient monitoring network south of the Salinas River. No meaningful monitoring of any kind is proposed within several miles of the coast, leaving the area effectively unmanaged under SGMA. The SVBGSA GSP also fails to consider and manage groundwater resources in the Dune Sand Aquifer that are designated by the State Board to be protected, and fails to acknowledge or protect the interconnected surface water features such as the vernal pools and wetlands in and near the City of Marina. Thus, the County's proposed takeover of the MGSA as an "unmanaged area" will have exactly the opposite effect – it will perpetuate a lack of management of groundwater resources in this area by failing to protect local beneficial uses and users of groundwater in favor of the policy preferences of a select group of inland beneficial users.

In contrast, MGSA has prepared a locally-focused GSP that uses the best available science and information to ensure sustainable groundwater management in the MGSA Area, to protect local beneficial users and property, and to support regional efforts to address seawater intrusion and other undesirable results. Unlike the SVBGSA GSP, the MGSA GSP characterizes, monitors and manages the Subbasin groundwater resources south of the Salinas

River in the coastal region and recognizes the important municipal, domestic, groundwater dependent ecosystem, and other beneficial uses and users in this area, including the urban and other users who depend on this drinking water source in the Subbasin and the adjacent Monterey Subbasin.

Five independent reasons, discussed below, prevent Monterey County from invoking Section 10724 in attempt to become the new GSA for the overlap portion of the Subbasin:[3]

- Because Monterey County is creating and/or contributing to the overlap, it cannot invoke Section 10724;
- Section 10724 does not authorize a county to file a GSA notice for areas covered by multiple GSA notices;
- Monterey County's decision to invoke Section 10724 is premature and would unlawfully circumvent SGMA's explicit local agency coordination requirements and GSP resolution provisions;
- Monterey County's resolution to become the GSA for the overlapping area cannot nullify MGSA's GSA notice or solve the underlying coordination problem; and
- Monterey County cannot become the GSA for the overlap portion in time to submit a GSP before SGMA's January 31, 2020 deadline.

The County should be clear that the City of Marina and MGSA view this proposed action and resolution as a direct and unlawful attempt to eliminate the City's SGMA rights and responsibilities and that the City and MGSA will take all necessary steps to protect their SGMA jurisdiction. The City strongly advises Monterey County not to undertake this misguided action.

SGMA CONTEXT

Both MGSA and SVBGSA filed notices of their GSA formation and of their intent to prepare GSPs for the Subbasin. While SVBGSA's notice covers the entire Subbasin, MGSA's notice applies only to an approximately 400-acre portion of the Subbasin within the City of Marina's jurisdictional boundaries that is not under the jurisdiction of a local water agency. Thus, MGSA and SVBGSA have overlapping claims to this portion of the Subbasin.

When competing GSA notices cause overlapping boundaries, SGMA prevents a GSA decision from "tak[ing] effect unless the other notification is withdrawn or modified to eliminate any overlap in the areas proposed to be managed." Cal. Water Code § 10723.8(c). Here, DWR has not recognized an exclusive GSA for the Subbasin. *See* DWR SGMA Portal, *All Posted GSA*

[3] We enclose as Exhibit "2" hereto and incorporate herein a copy of a October 21, 2019 letter on behalf of MGSA to DWR explaining these factual and legal issues.

Notices.[4] SGMA instructs the local agencies to "seek to reach agreement to allow prompt designation of a groundwater sustainability agency." Cal. Water Code § 10723.8(c). SGMA further requires GSAs "intending to develop and implement multiple groundwater sustainability plans" to "coordinate with other agencies preparing a groundwater sustainability plan within the basin." *Id.* § 10727.6. The GSAs must "jointly submit" their GSPs with a coordination agreement "to ensure the coordinated implementation of the groundwater sustainability plans for the entire basin." *Id.* § 10733.4(b); *see also* Cal. Code Regs. tit. 23, § 357. 2.

Accordingly, when GSAs file overlapping claims, SGMA envisions a process where those agencies negotiate in good faith to reach a compromise and enter into a coordination agreement which they submit with their GSPs. MGSA and SVBGSA must file their GSPs and coordination agreement for the Subbasin by January 31, 2020.

LEGAL AND FACTUAL ANALYSIS

I. Monterey County Cannot Invoke Section 10724 Because It Is A Creator And Contributor To This GSA Overlap.

A county cannot invoke Section 10724 if it "is creating or contributing to the [GSA] overlap." State Board, *Frequently Asked Questions on GSAs*, at 3 (Nov. 22, 2017) ("SWRCB FAQs"). The State Board's limitation on Section 10724 prevents counties that contribute to overlapping areas from circumventing SGMA's GSA collaboration requirements.

Here, the County is indisputably creating and contributing to the GSA overlap as a member, majority funder, and architect of SVBGSA and its GSP. As a result, the State Board's limitation precludes the County's proposed resolution, which weaponizes Section 10724 in an attempt to install its affiliate's GSP and disregard a properly-formed GSA with jurisdiction over the MGSA Subbasin area. The necessary implications of SGMA's GSA coordination requirements mandate that the County cannot override MGSA's GSP and deny MGSA the opportunity to collaborate with SVBGSA on the management of groundwater within Marina's jurisdiction.

A. Based On Its Close Affiliation with SVBGSA, The County Is Creating Or Contributing To The Overlap Area.

As discussed in Section II, the Legislature intended counties to use Section 10724 as a backstop to protect groundwater users from facing Water Code Section 5202(a)(2)'s reporting requirements. The County's proposed resolution would attempt to improperly exploit this backstop to install a GSP commissioned by the County as a member of SVBGSA.

The County was the moving force behind SVBGSA's formation and even "pushed for the establishment of the Joint Powers Authority" ("JPA"). SVBGSA Minutes at 2 (Sept. 19, 2019). Section 10.4 of the JPA Agreement for SVBGSA shows that the County has provided almost

[4] Available at https://sgma.water.ca.gov/portal/gsa/all.

60% of all initial funding for SVBGSA during the 2017–19 period, totaling $1.34 million. Monterey County remains a member of SVBGSA, and the County Administrative Officer position (who authored the County's October 9, 2019 letter to DWR) is designated as the official County representative to SVBGSA. *See* Exhibit A to SVBGSA's JPA Agreement. Further, the County played an integral role in the development of SVBGSA's GSP. The Monterey County Counsel's office has served as the attorney for SVBGSA as it filed GSA and GSP notices and prepared the GSP that the County's resolution seeks to adopt after it overrides MGSA.

In short, contrary to the resolution's purported findings, the County, as a member, majority funder, and driving force in the SVBGSA, is indisputably creating and contributing to the overlap situation. The County therefore cannot credibly pose as a disinterested county coming in under a ministerial application of Section 10724 to resolve a dispute among two local GSA agencies. This is precisely the kind of conflict situation that disqualifies a county from attempting to invoke Section 10724 under the "creating or contributing" limitation.

B. The County's Proposed Resolution Would Represent A Bad Faith Attempt To Circumvent SGMA's Coordination Requirements And Implement The GSP Of Its Close Affiliate.

Monterey County's proposed resolution vividly illustrates the dangers of a county misusing Section 10724 to override a local agency instead of cooperating with it. The County's proposed resolution responds to a request by an affiliated entity (SVBGSA) to prevent the City of Marina from exercising its GSA authority. Monterey County then seeks to adopt the same GSP that the County helped design as a member of SVBGSA. Notably, Monterey County fails to even consider adopting any part of MGSA's GSP, addressing SGMA management gaps identified by MGSA, or providing any justification for adopting SVBGSA's GSP. The County likewise fails to present any groundwater management justification for asserting control over the overlap area.

It is striking that the County actually has no intention of managing the overlap area, which is exactly what it would be required to do under Section 10724. Rather, the County blatantly announces its intention to instead delegate management authority to SVBGSA, whose GSP provides no framework for sustainable groundwater management in or near the MGSA Area, and does not consider the needs and rights of coastal beneficial groundwater users and uses. These County actions lead to only one conclusion. The County's resolution seeks to use Section 10724 to do what the County's affiliate SVBGSA cannot: adopt only the SVBGSA GSP for the MGSA jurisdictional area without coordinating with MGSA and its GSP. Indeed, the intent appears to be retain the area as essentially unmanaged under SGMA, leaving CalAm to implement the MPWSP unhindered by any requirements for sustainable groundwater management for the benefit of beneficial users in inland portions of the Subbasin. The State Board's guidance aims to quash these exact types of bad-faith maneuvers.

While the County's proposed resolution blames the overlap on Marina's GSA notice, the County and SVBGSA continue to contribute to the overlap by refusing to collaborate with MGSA. The County and SVBGSA are engaging in this waiting game at the behest of CalAm,

which has encouraged these actions to promote its Project. In its October 9, 2019 letter to SVBGSA, copied to the Monterey County Administrative Officer, CalAm requests both entities to "defer any action on a coordination agreement" with MGSA and instead advocates that the County should become the GSA for the overlap area. CalAm takes the ridiculous position that MGSA is only preparing a GSP to stop its Project and attempts to enlist the County's help so that it can build the Project. CalAm is not a GSA, and, as a private corporation intent on profit, it has no interest in ensuring sustainable groundwater management in the Subbasin. Rather, it is a third party with no official role in this SGMA process, attempting to pressure public agencies to achieve its corporate goals. By advocating to stop any coordination agreement discussions, CalAm wanted to artificially create an impasse in hopes of a County takeover. And by acquiescing to CalAm's demands, the County and SVBGSA have needlessly created this situation.

We note that the MGSA has been working in good faith to negotiate a Coordination Agreement with SVBGSA and, in August 2019, prepared, approved and transmitted to SVBGSA a draft agreement based on a template provided by SVBGSA. Since that time, SVBGSA staff has not negotiated in good faith with MGSA to reach agreement. In contrast, in the last month, SVBGSA has developed a Coordination Agreement with the County, which is being considering for adoption at the SVBGSA Board meeting on December 12, 2019. This backroom Coordination Agreement effort with the County vividly illustrates that SVBGSA knows how to negotiate such an Agreement when it really wants to.

SGMA, in contrast, "requires the agencies to resolve" boundary disputes. SWRCB FAQs at 3. The State Board only deems an area unmanaged until the GSAs resolve their conflict. *Id.* This limitation aligns with the intended purpose of Section 10724 to function as a backstop, allowing a county to assume the role of a GSA in a ministerial manner as a last resort or as a temporary solution before a local agency can take control. Instead of serving that purpose, Monterey County's proposed resolution uses Section 10724 to target only the City of Marina and block it from exercising its GSA authority and implementing its GSP. This bad-faith effort contravenes SGMA's emphasis on and processes for local agency cooperation and basin management.

C. DWR's Latest Inconsistent Interpretation Of Section 10724 Does Not Apply.

DWR has articulated inconsistent standards for when a county is disqualified from invoking Section 10724. First, DWR guidance authored in May 2019 prohibits a county who "is responsible for creating the overlap" from becoming a GSA under Section 10724. DWR, *GSA Frequently Asked Questions,* at 4 (May 10, 2019) ("DWR FAQs"). A DWR representative (Tom Berg) expanded on DWR's position at the September 19, 2019 SVBGSA Advisory Committee meeting, stating to SVBGSA that:

> **Monterey County can remove itself from the SVBGSA and become the GSA for the unmanaged area and enter into a coordination agreement.** The cleaner approach is if Monterey County decides there is an overlap and becomes the GSA for the

> entire 180/400 Subbasin. **They can become the GSA for only Marina if they do not create the GSA with the intent to take over Marina's portion.** You can resolve the overlap and trust Marina will timely submit their Plan. If the Plan is determined to be insufficient during the two-year review, the Water Board could determine the entire Subbasin to be insufficient. He expects legal fights if Monterey County takes over the Subbasin. **Mr. Berg referenced the determination that Kern County had created their overlap conflict, and they were prevented from becoming the GSA as a result.**
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> * * *
>
> Tom Berg stated that during the telephone conversation with Mr. Nordberg, DWR, it was suggested that the cleaner approach is for Monterey County to become the GSA for the entire basin. **If the County becomes the GSA only for Marina, it is no longer ministerial in terms of taking out Marina instead of just trying to clear the overlap.**[5]

Id. at 3–4 (emphasis added).

As you can see, the requirements for County use of Section 10724 articulated by DWR at this meeting contains several important elements. First, the County would need to remove itself as a member of the SVBGSA before undertaking any action under Section 10724 to eliminate the conflict of interest and associated County contribution to the overlap. Second, the County is barred from creating the GSA "with the intent to take over Marina's portion." Third, if the County does not take over management of the entire Subbasin, it would contravene SGMA because it is clearly only trying to take out Marina. The County's resolution fails to address and follow these DWR requirements. It plans to remain a member of the SVBGSA, its transparent intent is to take over Marina's portion, and it is not installing itself as the GSA for the entire Subbasin.

Despite recently articulating these positions, DWR's November 5, 2019 letter attempts to constrict the standard for precluding a county from invoking Section 10724. The DWR Letter states, "that it would be inappropriate to accept a Section 10724 notice from a county that had deliberately created the overlap that led to the existence of an unmanaged area with the purpose of doing so, and simply waited out other actual or potentially overlapping agencies."[6] DWR

[5] The minutes reflect that a representative of Monterey County (Charles McKee) attended this meeting.

[6] Even under its narrower test, DWR also appears to share concerns about Monterey County's contribution to the overlap. In particular, the DWR Letter requests further "information related to the decision-making role of the County as part of the SBVGSA, and the intent of the SBVGSA in filing the notice that resulted in overlap" if the County decides to submit a GSA notification. DWR Letter at 2.

Letter at 2. This standard purports to narrow and change the exception that DWR previously recognized in its own guidance and articulated to SVBGSA. And unlike the State Board's "creating or contributing" standard (SWRCB FAQs at 3), DWR's new standard potentially only guards against situations where a county files a GSA notice after another GSA. However, as the County's current actions demonstrate, a county can act in bad faith even if it or its affiliate filed its GSA notice first by refusing to coordinate with the other GSP and invoking Section 10724 to install its affiliate's GSP.

DWR's failure to consistently articulate its standard for precluding bad-faith actions under Section 10724 undermines the weight a reviewing court will grant it. Although California courts consider an agency's interpretation of a statute, "the binding power of an agency's interpretation of a statute or regulation is contextual . . . and depend[s] on the presence or absence of factors that support the merit of the interpretation." *Yamaha*, 19 Cal. 4th at 7. When applying this standard, courts further recognize that an agency's "vacillating position . . . is entitled to no deference." *United Artists Theatre Circuit, Inc. v. Reg'l Water Quality Control Bd.*, No. A152988, 2019 WL 6337763, at *18 (Cal. Ct. App. Nov. 27, 2019) (quoting *Yamaha*, 19 Cal. 4th at 13) (internal quotation marks omitted).

Here, the DWR Letter attempts to change its previous standard and limit its Section 10724 exception to situations where a county or its affiliate files its GSP notice after another GSA. This limitation contradicts DWR's previously issued guidance and statements to SVBGSA. Further, the DWR's Letter fails to explain or even acknowledge this switch. DWR likewise offers no justification for the fact that its new standard potentially only covers one of many scenarios in which a county could use Section 10724 in bad faith to override an overlapping GSA and circumvent SGMA's coordination requirements. DWR's interpretation warrants even less deference given the unprecedented nature of the County's actions. DWR Letter at 2 (noting that "[n]o county has yet sought to use Section 10724 to form a GSA against the wishes of agencies within their jurisdiction"). Accordingly, a Court will likely disregard DWR's latest articulated standard, and that standard cannot serve as the basis for the County's proposed resolution.

D. The County's Bad Faith Intentions Also Preclude It From Invoking Section 10724.

As described in Section I(A), the County's failure to (1) offer a groundwater management justification for invoking Section 10724, (2) consider adopting any part of MGSA's GSP, or (3) support its decision to adopt SVBGSA's GSP, demonstrate that the County's intention in adopting the proposed resolution is only to adopt its affiliate's GSP without coordinating with MGSA. The County's plan to delegate management of the overlap area to SVBGSA provides further evidence of its bad faith intentions. Indeed, the County's plan to adopt the SVBGSA GSP will leave the coastal area south of the Salinas River without a monitoring and management framework for sustainable groundwater management in violation of SGMA and its own General Plan policies. These intentions contravene SGMA's purpose of promoting collaborative groundwater basin management, and as result, they cannot be permitted.

As DWR's representative stated to SVBGSA, the County "can become the GSA for only Marina if they do not create the GSA with the intent to take over Marina's portion." SVBGSA Minutes at 3 (Sept. 19, 2019). For example, a determination that Kern County created its overlap conflict prevented it from becoming the GSA. *Id.* Only one county has successfully relied on Section 10724 to become a GSA for an area with overlapping GSAs. DWR Letter at 2. And unlike the current situation, the overlapping GSAs there *supported* the county's decision. *Id.* Indeed, no county has ever attempted to form a GSA using Section 10724 "against the wishes of agencies within their jurisdiction." DWR Letter at 2. Therefore, Monterey County is the first county to invoke Section 10724 as part of a strategy to veto the GSP of a valid GSA within its jurisdiction. Moreover, the proposed resolution creates a dangerous precedent, not intended by SGMA, that enables counties to ignore and override the actions of GSAs within their county area.

II. SGMA Section 10724 Does Not Apply To This Situation Because Multiple GSAs Have Asserted SGMA Jurisdiction Over The Overlap Area.

The County relies primarily on Water Code Section 10724(a) for its potential plan to eliminate MGSA and take over its SGMA jurisdictional area. This provision states:

> In the event that there is an area within a high- or medium-priority basin **that is not within the management area of a groundwater sustainability agency**, the county within which that unmanaged area lies will be presumed to be the groundwater sustainability agency for that area.

Cal. Water Code § 10724(a) (emphasis added).

The County is mistaken in asserting that this provision applies here. As SGMA's legislative history reflects,[7] the Legislature intended Section 10724 to cover situations where *no* GSA asserts jurisdiction over an area within a basin, not where multiple GSAs assert jurisdiction and prepare GSPs for a particular area. Indeed, the DWR Letter characterizes Section 10724 as a "backstop" to prevent Section 5202(a)(2)'s reporting requirements from applying. DWR Letter at 2. Section § 5202(a)(2) requires persons who extract groundwater within a high- or medium-priority basin on or after July 1, 2017, to file a report of groundwater extraction if (1) the area "is not within the management area of a groundwater sustainability agency" and (2) "the county does not assume responsibility to be the groundwater sustainability agency" for that area. This implicitly provides that the overlapping GSA notices did not render the area unmanaged under

[7] The Legislature intended Section 10724 to apply "in the case of an area where no local agency has ***assumed*** management." S. Rules Comm., Floor Analysis on S.B. 11168 at 4 (Aug. 29, 2014) (emphasis added). In particular, the Legislature linked this provision to whether a local agency has acted to assume management over an area—not whether the local agency has become the exclusive GSA.

Section 5202(a)(2).[8] The overlapping GSA notices likewise do not render the Subbasin unmanaged under Section 10724. Indeed, because no reporting requirements currently apply to the Subbasin, no need exists for the County to intervene to prevent the triggering of Section 5202(a)(2)'s reporting requirements.

The County's interpretation of Section 10724 inaccurately conflates the provisions for establishing an exclusive GSA under SGMA Section 10723.8 with Section 10724 to reach a faulty conclusion that, because of the overlapping area in MGSA's and SVBGSA's GSA notices, SGMA deems the areas "unmanaged." Section 10724(a) does not address disputes arising under the process for determining an exclusive GSA under Section 10723.8, and the purpose of Section 10724 weighs against reading Sections 10723.8 and 10724 together in this manner. Rather, these GSA and GSP provisions are best understood as operating at the same time on parallel tracks. Consistent with this interpretation, the plain language of Section 10724(a) does not require that a basin be within the management area of an exclusive GSA. Therefore, where multiple GSAs file to manage the same basin area, Section 10724(a)'s text cuts against the County's ability to claim the area is unmanaged. This is especially true when, as here, both of the GSAs are on track to submit their GSPs, and a coordination agreement is not due for any overlapping areas until the January 31, 2020 GSP submittal deadline.

Accordingly, when multiple GSAs adopt GSPs to manage a basin, that area falls within the management area of several GSAs, and Section 10724 does not apply. No DWR regulations or any judicial decisions interpret this section or alter its plain meaning.[9]

III. Monterey County's Resolution Is Premature And Would Fatally Undermine SGMA's Required GSA Collaboration Process.

SGMA establishes a specific process for GSAs who file overlapping notices to coordinate and submit a joint GSP or set of GSPs. *See* Cal. Water Code §§ 10727.6 and 10733.4(b). The Water Code likewise provides a process for resolving disputes if GSAs fail to coordinate and submit joint GSPs for a critically overdrafted basin by the January 31, 2020 deadline. In that situation, the State Board can designate that basin as probationary. *Id.* §§ 10735.2(a)(2) and 10735.2(a)(3) (providing that the State Board can also make a probationary designation after finding that a GSP is inadequate). The State Board must give the local agencies or GSAs "180 days to remedy the deficiency," and "[t]he board may appoint a mediator or other facilitator . . . to assist in resolving disputes, and identifying and implementing actions that will remedy the

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[8] Although State Board guidance suggests that overlapping GSA notices would trigger Section 5202(a)(2)'s reporting requirements, this has not been the case in practice. State Board, Frequently Asked Questions on GSAs, at 5 (Nov. 22, 2017) ("SWRCB FAQs").

[9] MGSA acknowledges that one guidance document from the State Board opines that "[i]f two or more local agencies overlap, the combined area will be deemed unmanaged" and asserts that a county potentially could become a GSA in this situation. SWRCB FAQs at 3. However, this interpretation is not consistent with the intent, legislative history, and text of Section 10724 and is unsupported by any official regulation or case law.

deficiency." *Id.* § 10735.4(a). This provision covers disagreements over overlapping portions of the basin.

The County's resolution seeks to strip MGSA of its authority over the overlap area and to intervene as the exclusive GSA. In doing so, the County is misusing Section 10724 to implement the GSP of its affiliated GSA entity, violating State Board and DWR guidance directly on point, and undermining SGMA's dispute resolution processes. This action would set a dangerous precedent that could incentivize the misuse of Section 10724 by counties.

IV. Monterey County Cannot Use Section 10724 To Nullify MGSA's GSA Notice Or The Need For MGSA And SVBGSA To Resolve The Overlap.

The County appears to assume that by invoking Section 10724 and becoming the GSA for the overlap area, the County will nullify MGSA's GSA notice. However, nothing in SGMA or its regulations provides that a county or other local agency can nullify the GSA notice of another. Indeed, SGMA specifically provides that to resolve an overlapping area, a GSA "notification [must be] withdrawn or modified to eliminate any overlap in the areas proposed to be managed"—not overridden by another local agency. Cal. Water Code § 10723.8(c). Similarly, Section 10724 does not change this fundamental premise or grant a county the power to nullify a GSA notification. Accordingly, even if the County attempts to become the GSA for the overlap area, MGSA's GSA notification will remain valid.

Section 10724 also does not give the County the power to designate another local agency as an exclusive GSA. Instead, DWR has responsibility for posting GSA notifications. *See* § 10723.8(b). On the SGMA portal, DWR currently does not list either MGSA or SVBGSA as the exclusive GSA for any portion of the Subbasin. See DWR SGMA Portal, All Posted GSA Notices; DWR SGMA Portal, Salinas Valley Basin GSA - 180/400 Foot Aquifer Map.[10] DWR instead identifies the GSA notices of both MGSA and SVBGSA as overlapping. *Id.* DWR will not recognize MGSA's and SVBGSA's notices until they resolve their conflict,[11] and the County's intervention under Section 10724 for the overlapping portion will not change this. Both MGSA's and SVBGSA's notices will remain valid, but non-exclusive, GSA notifications. Accordingly, the only way for SVBGSA to become the exclusive GSA for any part of the Subbasin is for MGSA and SVBGSA to reach a coordination agreement.

The fact that SVBGSA and MGSA will remain nonexclusive GSAs even if the County invokes Section 10624 raises additional logistical issues. Under SGMA, a GSP or set of GSPs must "cover[] the entire basin." Cal. Water Code § 10727(b); *see also* Cal. Code Regs. tit. 23,

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[10] This map is available at https://sgma.water.ca.gov/portal/gsa/print/461.P

[11] Indeed, State Board guidance provides that "[i]f two local agencies file notices with DWR to be a GSA for the basin, and all or a portion of their proposed management areas overlap as of June 30, 2017, neither of the local agencies will become a GSA. As a result, the proposed management areas of both local agencies will be unmanaged." SWRCB FAQs at 4; *see also* DWR FAQs at 4 ("If overlap exists, the decision to become a GSA will not take effect unless the overlap is eliminated.").

§ 355.4(a)(3); Cal. Water Code § 10733.4(b)) ("If groundwater sustainability agencies develop multiple groundwater sustainability plans for a basin, the submission" of a GSP "shall not occur until the entire basin is covered by groundwater sustainability plans"). Thus, if the County maintains that only GSAs who DWR has designated as exclusive GSAs may file a GSP, then SVBGSA and MGSA will not be able to file GSPs. The County likewise will not be able to file a GSP for the overlapping area because the GSP would not cover the entire basin. As a result, the County would instead have to become the GSA and submit a GSP for SVBGSA's entire jurisdiction in the Subbasin. The County would then have to manage the entire Subbasin until MGSA and SVBGSA resolve the overlap. This would cause needless and extensive organizational and financial harm to all the parties involved and would completely undercut SGMA's goals. Therefore, the County's attempt to become the GSA for only the overlap area will not result in efficient or effective management of the Subbasin or relieve SVBGSA of the need to coordinate with MGSA to resolve the overlap.

V. The County Must Wait 90 Days For Its GSA Notice To Take Effect, So It Cannot Meet SGMA's January 31, 2020 Deadline.

Although the DWR Letter asserts that the County would immediately become the exclusive GSA when DWR posts the County's GSA notice, DWR fails to cite any legal authority for instantly granting a county exclusive GSA status.[12] DWR Letter at 3. Instead, DWR states that its "practice has been to immediately declare the GSA exclusive." DWR Letter at 3. However, this statement contradicts DWR's statement earlier in the letter that no other county has attempted to use Section 10724 despite opposition from a GSA within its jurisdiction – so, in fact, DWR has *never* immediately posted a county notice letter in this situation. *Id.* at 2.

The DWR Letter also states that it "adopted that practice on the assumption that counties would be taking responsibility for areas in which no other agency had any interest," and that "same logic applies for notices filed in areas that are unmanaged as a result of the overlapping GSA notices of other entities." *Id.* at 3. However, the same logic does not apply because SGMA provides a specific process for GSAs who file overlapping notices to coordinate and submit a joint GSP or set of GSPs. *See* Cal. Water Code §§ 10727.6 and 10733.4(b).

Further, in an overlap situation, multiple GSA's have an "interest" in an area and applying the 90-day notice period allows the overlapping GSAs to engage in the coordination process before the county's GSA notice takes effect. This interpretation promotes SGMA's collaboration process. It also recognizes the fact that given the opportunity, GSAs may resolve an overlap situation without the need for county intervention, which aligns with Section 10724's purpose of serving as a backstop for when SGMA's other processes fail. As a result, the County must wait 90 days before becoming a GSA for the overlapping area to allow SVBGSA and MGSA to resolve the overlap and collaborate on a GSP or set of GSPs. The County therefore could not submit a GSP before the January 31, 2020 deadline.

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[12] MGSA acknowledges that State Board guidance also states that "[t]here is no 90-day waiting period for the county's intent to become the GSA to take effect" in this scenario. SWRCB FAQs at 4.

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CONCLUSION

For the foregoing reasons, the County cannot lawfully invoke Section 10724 to become the GSA for the overlap portion of the Subbasin. Bending to the will of CalAm and its reluctance to be governed and monitored by the government entity with the overlying interest (or to be subject to negotiation under sustainable management criteria at all), is fatally inconsistent with SGMA and the intention of the Legislature to sustainably manage groundwater. The City of Marina formed MGSA to prepare its own GSP to govern critical groundwater resources within its jurisdiction in this Subbasin and is completely consistent with the spirit and language of SGMA.

MGSA is complying in all respects with SGMA and MGSA is prepared to take the necessary steps to protect its jurisdiction over the CEMEX site. In the first instance, this means continuing its efforts to finalize and submit its GSP for the overlapping area by the January 31, 2020 deadline. By committing significant financial resources and following the prescribed SGMA process, MGSA has been doing exactly what the law requires and is entitled to complete the process.

The proposed resolution by which the County would attempt to take over MGSA's jurisdictional area and to install its affiliate SVBGSA as the manager of this area using SVBGSA's GSP is a bad faith attempt to misuse SGMA to eliminate MGSA and achieve a hostile takeover of its area. This action, which was conceived and encouraged by CalAm and SVBGSA, would violate SGMA and deprive the City of Marina and MGSA of their SGMA rights, leaving the area effectively unmanaged under SGMA. The City and MGSA strongly oppose this resolution and encourage the County not to pursue this misguided course of action.

Sincerely,

Paul P. "Skip" Spaulding, III

PPS:jla

cc: Layne Long, Marina City Manager
(via e-mail llong@cityofmarina.org)
Marina City Council (via e-mail)
Robert Wellington, Marina City Attorney
(via e-mail rob@wellingtonlaw.com)
Deborah Mall, Marina Assistant City Attorney
(via e-mail deb@wellingtonlaw.com)
Keith Van Der Maaten, Marina Coast Water District GSA
(via e-mail kvandermaaten@mcwd.org)

EXHIBIT 1

FARELLA
BRAUN + MARTEL LLP

PAUL P. SPAULDING, III
sspaulding@fbm.com
D 415.954.4918

August 28, 2019

Via SGMA Portal and E-Mail

Ms. Taryn Ravazzini (*taryn.ravazzini@water.ca.gov*)
Deputy Director of Statewide Groundwater Management
Department of Water Resources
P.O. Box 942836
Sacramento, California 94236-0001

Re: City of Marina GSA Groundwater Sustainability Plan
Response to California-American Water Company Comment Letter

Dear Ms. Ravazzini:

We submit this letter on behalf of the City of Marina Groundwater Sustainability Agency ("MGSA"), which recently filed an initial notification of its intent to prepare a Groundwater Sustainability Plan ("GSP") for a portion of the 180/400 Foot Aquifer Subbasin ("Subbasin") as authorized by the Sustainable Groundwater Management Act ("SGMA"). This letter responds to the August 12, 2019 comment letter submitted by the Ellison Schneider law firm on behalf of California-American Water Company ("CalAm").

In this "comment letter," CalAm requests that the Department of Water Resources ("DWR") "reject" MGSA's Groundwater Sustainability Agency ("GSA") formation notice and its GSP initial notification. However, CalAm has no legal standing under SGMA to make the request and lacks any legal authority or precedent to obtain the relief it seeks. In fact, CalAm's letter is no more than a misguided attempt by a third party to short-circuit the processes prescribed by SGMA for resolution of local groundwater management issues. Moreover, CalAm has mischaracterized the underlying facts and invented non-existent policy reasons to support its unprecedented request. DWR is not required to respond to or to take any action in response to this letter. *See* 23 C.C.R. § 353.8(f). However, if DWR does respond, it must deny CalAm's request in all respects.

BACKGROUND FACTS

The MGSA was validly formed in full compliance with SGMA. On March 20, 2018, the Marina City Council adopted a resolution forming the MGSA to "undertake sustainable groundwater management within the portion of the Salinas Valley Ground Water Basin 180/400

Foot Aquifer Subbasin within the City and outside of the Marina Coast Water District service area." On April 16, 2018, MGSA properly filed a notice of its GSA formation with DWR pursuant to Water Code Section 10723.8. DWR duly accepted and posted MGSA's notice of GSA formation on its SGMA Portal.

On July 31, 2019, pursuant to Water Code Section 10727.8(a), the City filed an initial notification of intent to prepare a GSP for its jurisdictional area. This notice provides a written statement describing the manner in which interested parties may participate in the development and implementation of the GSP and contains the other required elements for this initial notice. MGSA also provided the notice to all required persons. MGSA is proceeding forward rapidly with preparation of the GSP and, in its initial notice, specifically identified the MGSA meeting dates and other opportunities for the public to provide comments and other input on the GSP. MGSA's GSP is expected to be completed and submitted to DWR by January 31, 2020.

CALAM'S COMMENT LETTER LACKS ANY LEGAL, FACTUAL OR POLICY BASES TO SUPPORT ITS "REJECTION" REQUESTS.

CalAm's comment letter makes a series of unsupported legal contentions in which it attempts to question the validity of MGSA's formation and to argue that the Salinas Valley Basin Groundwater Sustainability Agency ("SVBGSA") must or should be the exclusive GSA for the entire Subbasin. However, not only do these arguments lack any factual and legal support, but they improperly attempt to undermine decisions already made by DWR and to thwart the ongoing collaborative local processes that are embedded in SGMA.

For the reasons explained below, CalAm's arguments should be disregarded in their entirety. Instead, the processes contemplated by SGMA should continue without the partisan interference reflected in CalAm's letter. We will address each CalAm argument in turn.

A. The MGSA Was Validly Formed In A Timely Manner And There Is No Factual Or Legal Basis For Attempting To "Reject" Its GSA Formation Notice.

CalAm contends that the MGSA should not be recognized as a valid GSA because it was not formed before June 30, 2017. However, CalAm has made several fundamental analytical errors that have led to this spurious contention.

First, SGMA does not contain a mandatory final deadline for the formation of all GSAs, even for medium and high priority basins. The only SGMA mention of the June 30, 2017 date in this context is in Water Code Section 10735.2 (a)(1), which relates to the circumstances under which the State Water Resources Control Board ("State Board") can designate a basin as a probationary basin and thereafter take steps to develop its own interim groundwater sustainability plan for that basin. *See* Water Code §§ 10735.4-10736.6. The June 30, 2017 date is only the trigger date for a potential probationary basin finding if one or more GSAs, or a local agency "alternative" plan, has not been noticed for an entire basin. Contrary to CalAm's contention, it is not a drop-dead date for all GSAs to have been formed and it is not true that no additional GSAs can form in a basin after that date.

Second, CalAm attempts to buttress its erroneous analysis with a quotation, taken out of context from DWR's website, that supposedly stands for the proposition that June 30, 2017 is the absolute deadline for forming a GSA. To the contrary, DWR characterizes the June 30, 2017 date on its website as only an "initial planning milestone" and recognizes that new GSAs can, will and have been formed thereafter as SGMA implementation continues. This portion of the DWR website states in full (emphasis added):

> SGMA required Groundwater Sustainability Agencies (GSAs) to form in the State's high- and medium- priority basins and subbasins by June 30, 2017. Over 260 GSAs in over 140 basins were formed by *SGMA's initial planning milestone*. However, *as SGMA continues to be implemented* and the priorities and boundaries of some basins change, *new GSAs will be formed*, and existing GSAs may want to reorganize, consolidate, or withdraw from managing in all of part of a basin. All GSA notifications are managed on DWR's SGMA Portal.[1]

Thus, the GSA formation process was expected to and has in fact continued after June 30, 2017 as SGMA continues to be implemented. Indeed, after June 30, 2017, at least ten other new GSA formation notices were posted, including those for the Fresno County Pleasant Valley GSA Area, City of Coalinga GSA, Vina GSA, Montecito Groundwater Basin GSA, Owens Valley Groundwater Authority GSA (for two different basin areas), Castaic Basin GSA, Triangle T Water District GSA, Santa Barbara County Water Agency GSA – Goleta Fringe Areas, and Corning Subbasin GSA. It appears that all but one of these post-June 30, 2017 GSA formations cover high or medium priority basins.

In sum, CalAm's assertion that MGSA's GSA formation notice should be rejected because it was filed after June 30, 2017 has no factual or SGMA legal basis. There was not an absolute June 30, 2017 deadline for forming GSAs because this process is intended to be fluid and not frozen in time. Rather, it was an initial planning milestone for determining what basins may qualify for probationary status. Indeed, this has consistently been DWR's position. Although CalAm would like to override both SGMA and DWR's judgment on this point for its own private financial purposes, it cannot do so here.

B. The SVBGSA Never Became The Exclusive GSA For The 180/400 Foot Subbasin.

CalAm makes a tortured and wholly frivolous argument that SVBGSA became the exclusive GSA for the 180/400 Foot Aquifer Subbasin on July 26, 2017, thereby supposedly preventing the City of Marina from forming a GSA or preparing a GSP for any portion of the Subbasin. However, once again, this argument defies the considered judgment of DWR and

[1] This website page is found at https://water.ca.gov/Programs/Groundwater-Management/SGMA-Groundwater-Management/Groundwater-Sustainable-Agencies.

lacks any factual or legal basis.

CalAm's line of reasoning is that, on April 27, 2017, DWR posted the notice of SVBGSA to become the GSA for the entire Subbasin and that, in its view, no other GSA filed a valid GSA notice for this Subbasin within 90 days, thereby essentially resulting in SVBGSA becoming the exclusive GSA for this Subbasin.[2]

In making this argument, CalAm relies on Water Code Section 10723.8, which provides that a local agency notice to become a GSA for a particular basin/subbasin "shall take effect" 90 days after posting if no other local agency has filed a notification of its intent to undertake groundwater management in all or a portion of the same area prior to expiration of this 90-day period. If another agency has such a notice posted before the expiration of this period, the GSA notice shall *not* take effect.

CalAm's first critical error in making this argument is that another local agency – Marina Coast Water District ("MCWD") – did file a GSA formation notice for a portion of the 180/400 Foot Aquifer Subbasin area that SVBGSA claimed in its GSA notice. It is undisputed that, on February 6, 2017, MCWD formed a GSA for the Fort Ord portion of this Subbasin and, on March 14, 2017, DWR posted the notice of this formation (even before SVBGSA filed its notice). Thus, since MCWD filed a GSA formation notice for a portion of the same Subbasin area that SVBGSA's later notice covered, SGMA Section 10723.8 prescribes that SVBGSA's notice did not take effect and SVBGSA never became the exclusive GSA for the Subbasin area it claimed.

CalAm attempts to explain away this complete roadblock to its Section 10723.8 contention by making a convoluted set of arguments that MCWD GSA's notice supposedly was not valid or effective and therefore should be completely ignored for SGMA purposes. It cites to a November 2, 2017 letter authored by a State Board attorney (attached as Exhibit G to its comment letter) that supposedly supports this argument. However, CalAm is mistaken and its citation is misleading.

At the outset, CalAm misrepresents the nature of the State Board letter by implying that it is somehow a dispositive determination by the State Board regarding the status of MCWD's GSA March 14, 2017 formation notice. To the contrary, the letter explicitly states that it is "merely advisory" and that "[t]hese opinions [in the letter] are not a declaratory decision and do not bind the State Water Board in any future determination." Moreover, CalAm also attempts to create the erroneous impression that the letter found that MCWD's GSA notice was void and must be disregarded by DWR. However, in so arguing, CalAm has entirely missed the central point of the letter. Rather than attempting to void MCWD's notice, the State Board letter was

[2] MCWD also formed a separate GSA for another portion of the 180/400 Foot Aquifer Subbasin (Marina Coast Water District GSA – Marina) at the same time and DWR posted notice of this GSA formation on February 24, 2017. This area was excluded from the area SVBGSA claimed in its own GSA formation notice.

explicitly intended to encourage SVBGSA and MCWD GSA to meet and work out their differences: "By way of this letter, I would like to encourage local resolution of the conflicts over groundwater management in Salinas Valley."

Indeed, that is exactly what occurred here. MCWD GSA and SVBGSA negotiated an agreement that resolved most of their various conflicting issues regarding the 180/400 Foot Aquifer Subbasin and Monterey Subbasin. In addition, in the advisory letter, the State Board attorney suggested that, if MCWD could expand its jurisdictional boundaries by annexation to include Fort Ord, it could become the "exclusive GSA" for the Fort Ord area. MCWD thereafter did annex this area with the final approval occurring in or about July 2019. Thus, rather than the MCWD GSA – Fort Ord notice being void (as CalAm contends), this notice eventually led to MCWD establishing its SGMA jurisdiction for the area covered by the GSA formation notice in the 180/400 Foot Aquifer Subbasin.

Notably, DWR does not agree with CalAm's argument regarding SVBGSA's alleged Subbasin exclusivity. To the contrary, DWR has consistently informed all parties that SVBGSA never achieved exclusive GSA status for the Subbasin under Section 10723.8 because of the timely filings of MCWD GSA for this Subbasin. Consistent with the local and collaborative policies contained in SGMA, DWR has encouraged the various GSAs in the Subbasin to work together to resolve any GSP conflicts. And, as prescribed by SGMA, DWR has clearly stated to all parties that no GSPs for Subbasin overlap areas will be accepted until such a resolution has occurred.

Thus, in light of this law and factual context, CalAm's demand that DWR "reject" MGSA's GSA formation and GSP preparation notices based on SVBGSA's alleged "exclusivity" is baseless. CalAm is not trying to further the purposes of SGMA or promote more effective groundwater management. Rather, it is only trying to promote is own narrow corporate agenda.

C. Contrary To CalAm's Innuendos, There Is Every Reason To Believe That MGSA's Sustainable Management of Groundwater In Its Subbasin Area Can And Will Be Effective.

CalAm attempts to create the erroneous impression that MGSA will not be successful in meeting the requirements of SGMA for its jurisdictional area. CalAm states that the covered area is "extremely small," that some of the technical information MGSA may rely on in forming its GSP is supposedly discredited, and that it is unlikely that MGSA will meet the January 31, 2020 deadline for completing the GSP. However, this is no more than the SGMA equivalent of throwing spaghetti against the wall to see if any will stick.

First, SGMA does not contain any minimum or maximum basin size for sustainable groundwater management. Rather, it implicitly recognizes that these sizes may vary substantially. Indeed, some of the GSA formation notices cover very small areas of larger basins. *See, e.g.,* Santa Barbara County Water Agency GSA -- Fringe Areas notice, posted on the SGMA Portal on September 22, 2017. Rather, one of the hallmarks of SGMA is its

recognition that local agencies will be in the best position to determine initially who should manage basins, to analyze local conditions, and to apply SGMA's sustainability criteria to these conditions. SGMA envisions local flexibility and has not mandated any artificial GSA jurisdictional area size requirements.

Second, CalAm complains (incorrectly) that some of the technical data and reports that MGSA may rely on in preparing its GSP "conflicts with the weight of the modeling and science supporting the MPWSP and has been repeatedly rejected by regulatory bodies and courts…." Although CalAm does not identify what reports it means, MGSA assumes that it refers to the Stanford University research studies regarding groundwater basin conditions that cover this exact area of the Subbasin. Unfortunately, CalAm misleads DWR regarding this technical information.

The Stanford University studies used well-accepted scientific methodologies (including state-of-the-art electrical resistance tomography ("ERT") and airborne electromagnetic ("AEM") techniques) to create two- and three-dimensional images of the actual hydrostratigraphic and groundwater quality conditions, and seawater intrusion characteristics, in portions of the 180/400 Foot Aquifer Subbasin, including the MGSA jurisdictional area. In brief, the studies found that there are significant areas of higher quality groundwater in areas of some seawater intrusion, identified an existing freshwater wedge that was retarding seawater intrusion, and identified gaps in the soil layers (aquitards) that are allowing vertical migration of saline water to the deeper aquifers. This is valuable data, gathered by one of our country's leading educational institutions, that should be utilized, along with all other available data, to prepare a GSP for this area.

It is significant that the northward extension of the same datasets are being used by other agencies for SGMA groundwater sustainability planning purposes. For example, in its recent draft GSP for the Santa Cruz Mid-County Subbasin, the Santa Cruz Mid-County Groundwater Agency (MGA) notes the following:

> In May 2017, the MGA successfully completed an offshore Airborne Electromagnetic (AEM) geophysical survey to assess groundwater salinity levels and map the approximate location of the saltwater/freshwater interface in the offshore groundwater aquifers. This important data will inform the assessment of the extent and progress of seawater intrusion into the Basin and the management responses. The MGA anticipates repeating the AEM survey on a five-year interval (2022) to identify movement of the interface and assess seawater intrusion.

This is only one example of the use of this state-of-the-art technology for sustainable groundwater management planning in California.

CalAm appears to be making a ridiculous argument that this Stanford data must be ignored in preparation of the GSP. However, a GSA is not a court of law. Rather, it is a groundwater management agency that has an obligation to gather and evaluate all water basin

data potentially relevant to SGMA's sustainability criteria. By trying to inject an issue regarding what data supposedly supports or contravenes "the weight of the modeling and science" for CalAm's particular project, CalAm is misperceiving the purpose and function of a GSA that is in the midst of preparing a GSP. Further, CalAm's has misled DWR by stating that this technical information "has been repeatedly rejected by . . . courts." In fact, no court has rejected this technical information. Indeed, the one regulatory agency that even considered a small early subset of this data – the California Public Utilities Commission – did not "reject" it.

Third, CalAm asserts that one "practical" ground for rejecting MGSA's GSP preparation notice is that MGSA supposedly will not be able to meet SGMA's January 31, 2020 deadline for submitting a GSP. To the contrary, MGSA has a schedule in place that meets all of SGMA's requirements for public notice and comment, MGSA consideration and decision on the GSP, and timely submittal of the GSP to DWR. Even so, CalAm's uninformed speculation about completion of the GSP is not, of course, a credible ground for rejecting a GSP preparation notice. SGMA does not prescribe any minimum time period for the actual preparation of a GSP. Indeed, given the focused nature of the GSP here, there is every reason to believe that it will be completed in a timely manner.

Finally, CalAm's letter displays a dismissive attitude toward the City of Marina[3] and questions the legitimacy of its interest in managing the groundwater in this Subbasin. In so doing, CalAm ignores the City's long-standing track record in protecting groundwater at the property (sometimes referred to as the "CEMEX" property) that is the subject of the MGSA notices. For example, in 1996, the City entered into an extensive Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands ("Annexation Agreement") with several other parties, including the CEMEX property owner. The expressed purpose of the Annexation Agreement is "to help reduce seawater intrusion and protect the groundwater resource and preserve the environment of the Salinas River Groundwater Basin through voluntary commitments by the Parties to limit, conserve and manage the use of groundwater from the Salinas River groundwater basin. . . ." The groundwater conditions on the CEMEX property were one main focus of the Annexation Agreement.

The City also worked closely with the California Coastal Commission and the State Lands Commission in a series of combined enforcement actions in 2016-17 to end the current sand mining operation on the CEMEX site by December 31, 2020. After decades of efforts to end this environmentally destructive use, this termination was achieved through a settlement approved by all three agencies. In addition to terminating this mining use at the end of next year and gaining full restoration of the site, the settlement requires CEMEX to transfer the entire site at a reduced purchase price to a non-profit organization or government entity approved by the Coastal Commission and the City. As part of this conveyance, a deed restriction will be put in

[3] The City of Marina has a working class, ethnically diverse population, many of whom do not speak English. Marina is a recognized "disadvantaged community" at state, federal and local government levels. The groundwater under the City is an important and valuable community resource because it is provides a clean, local and affordable groundwater source for City residents.

place to protect the CEMEX property and limit its potential uses to public access, conservation, low-impact passive recreation, and public education.

In sum, the City has a demonstrated interest and a 25-year track record in taking action to identify and protect this groundwater under MGSA's jurisdiction. MGSA expects to file a GSP with DWR by January 31, 2020 that fully complies with the groundwater sustainability requirements of SGMA and results in effective and sustainable groundwater management for many years.

D. CalAm's Articulated "Policy" Reasons For Rejecting MGSA's GSP Notice Are Contrived And Unpersuasive.

CalAm argues that rejection of MGSA's GSP notice is required to eliminate "uncertainty" about SVBGSA's GSA and GSP status and that MGSA's notice of GSP preparation supposedly could cause "significant damage" (unspecified) to the work that SVBGSA has undertaken. This is no more than empty rhetoric. The "uncertainty" that CalAm refers to is inherent in the structure of SGMA and has not been created by MGSA, SVBGSA or DWR. SGMA contemplates that there will be overlapping GSA jurisdictional claims and GSP notices and it contains built-in incentives and provisions for the involved parties to resolve these claims on the local level and, if these are unsuccessful, a resolution process at the State level. At this point, these processes are just beginning and they will be concluded in the manner SGMA contemplates.

Contrary to CalAm's rhetoric, MGSA's notices are not causing any damage, much less "significant damage," to SVBGSA's work. By all appearances, SVBGSA is moving forward in preparing and completing its GSP. Regardless of the outcome of the overlap in the jurisdictional area, SVBGSA's work will be valuable and important to completing its GSP. There is no indication that SVBGSA has violated or will violate the terms of the grants it has received, so CalAm's assertion that SVBGSA could potentially lose or need to return such funds is wholly unsupported and unrealistic.

In contrast, the action that CalAm seeks in its letter (DWR rejection of MGSA's GSA and GSP notices) would be catastrophic to MGSA. MGSA has properly formed, begun preparation of a GSP and committed all of the funds necessary to complete and file its GSP by January 31, 2020. CalAm's request is no more than an unlawful attempt to disenfranchise MGSA of its SGMA rights and would plainly thwart the goals of SGMA.

CALAM'S ATTEMPTED INTERVENTION INTO THE GSA/GSP PROCESS WOULD UNDERMINE SGMA'S LOCAL COLLABORATIVE GSP PROCESSES.

CalAm is a private party with its own narrow corporate interest in promoting a project that it would like to build in Monterey County. It is not a GSA and it is not preparing a GSP to sustainably manage groundwater in the 180/400 Foot Aquifer Subbasin. Rather, it is a member of the public that has been and will be provided with many opportunities under SGMA (which is

notable for its robust public participation provisions) to participate in the preparation of GSPs for the Subbasin and to participate in other ways as the SGMA process proceeds. Apparently not content with this role, CalAm is trying to interfere in and short-circuit the SGMA process. However, this interference is unauthorized and cannot be allowed.

One bedrock set of principles in SGMA is its structural recognition of local control and cooperative local management of groundwater. Its overall goal is to "enhance local management of groundwater." Water Code § 10720.1(b). SGMA also contemplates that state intervention only occur when absolutely necessary. SGMA articulates the Legislature's intent to "manage groundwater basins through the actions of local government agencies to the greatest extent feasible, *while minimizing* state *intervention to only when necessary to ensure that local agencies manage groundwater in a sustainable manner*." *Id*., § 10720.1(h)(emphasis added). Moreover, "[i]t is the intent of the Legislature to encourage local agencies to work cooperatively to manage groundwater resources within their jurisdiction." *Id*., § 10750(a).

These themes of local management, minimization of state intervention, and local agency cooperation run throughout SGMA. This is especially the case with regard to formation of GSAs and to basin management through GSPs. SGMA recognizes that multiple GSAs can be formed and multiple GSPs can be prepared to manage a single groundwater basin or subbasin. *See, e.g*., *id.,* § 10720.7(a)(1)(recognizing that subbasins can be managed by "coordinated groundwater sustainability plans"); *id*., § 10727(b)(recognizing that multiple GSP's can be used to manage a basin pursuant to a "single coordination agreement"). The SGMA mechanism for achieving this coordination is a coordination agreement, which means "a legal agreement adopted between two or more GSAs that provides the basis for coordinating multiple agencies or groundwater sustainability plans within a basin." *Id.* § 10721(d).

SGMA envisions that, when there are jurisdictional overlaps in a basin, the GSAs first negotiate in good faith with one another to resolve the overlap. If these overlaps are not resolved and both GSAs submit a GSP for the overlap area, the GSPs will not be accepted (as DWR has confirmed). MGSA staff has met with SVBGSA staff and is working in good faith to negotiate a coordination agreement and will continue to do so.

CalAm is attempting to precipitate premature state action to undermine the SGMA collaborative local GSP processes. This would violate the legislative directive to minimize State intervention "to only when necessary to ensure that local agencies manage groundwater in a sustainable manner." *Id*., § 10720.1(h). At this stage of the process, the MGSA and SVBGSA GSPs have not been prepared and submitted to DWR, and no determination can yet be made as to whether they ensure sustainable groundwater management. CalAm cannot be allowed to subvert these important, ongoing SGMA processes.

CONCLUSION

For all of the reasons set forth above, MGSA respectfully requests that DWR take no action in response to the CalAm August 12, 2019 comment letter. As DWR's regulations state, DWR "is not required to respond to comments, but shall consider comments as part of its

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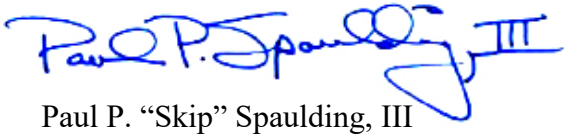
evaluation of a Plan." 23 C.C.R. § 353.8(f). However, if DWR believes that any response is necessary, it should deny in its entirety CalAm's request to "reject" MGSA's GSA formation notice and/or GSP preparation notice.

Very truly yours,



Paul P. "Skip" Spaulding, III

PPS:jla

cc: Karla Nemeth, DWR (via e-mail Karla.Nemeth@water.ca.gov)
Mark Nordberg, DWR (via e-mail Mark.Nordberg@water.ca.gov)
Eileen Sobeck, SWRCB (via e-mail Eileen.Sobeck@waterboards.ca.gov)
Eric Oppenheimer, SWRCB (via e-mail Eric.Oppenheimer@waterboards.ca.gov)
Gary Petersen, SVBGSA (via e-mail peterseng@svbgsa.org)
Charles McKee, Monterey County Counsel (via e-mail mckeecj@co.monterey.ca.us)
Layne Long, City of Marina (via e-mail llong@cityofmarina.org)
Brian McMinn, MGSA (via e-mail bmcminn@cityofmarina.org)
Robert Wellington, Marina City Attorney (via e-mail rob@wellingtonlaw.com)
Deborah Mall, Marina Assistant City Attorney (via e-mail deb@wellingtonlaw.com)

EXHIBIT 2

FARELLA
BRAUN + MARTEL LLP

PAUL P. SPAULDING, III
sspaulding@fbm.com
D 415.954.4918

October 21, 2019

Via E-mail and Mail

Taryn Ravazzini
Deputy Director of Statewide Groundwater Management
California Department of Water Resources
1416 9th Street
Sacramento, CA 95814
E-mail: taryn.ravazzini@water.ca.gov

Eileen Sobeck
Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814
E-mail: Eileen.Sobeck@waterboards.ca.gov

Re: Monterey County's October 9, 2019 SGMA Letter
Marina Sustainable Groundwater Agency Jurisdictional Area

Dear Ms. Ravazzini and Ms. Sobeck:

On behalf of the City of Marina Groundwater Sustainability Agency ("MGSA"), we are responding to Monterey County's October 9, 2019 letter informing the Department of Water Resources ("DWR") and the State Water Resources Control Board ("State Board") of its intent to consider becoming the Groundwater Sustainability Agency ("GSA") for a portion of the 180/400 Foot Aquifer Subbasin ("Subbasin").[1]

INTRODUCTION

In brief, Monterey County ("County") apparently plans to supplant MGSA and become the exclusive GSA for MGSA's jurisdictional area because MGSA and the Salinas Valley Basin GSA ("SVBGSA") have filed overlapping GSA notices for the approximate 400-acre portion of the Subbasin within the City of Marina. DWR and the State Board should firmly reject any County effort to usurp MGSA's GSA authority. The Sustainable Groundwater Management Act ("SGMA") provides for a local agency resolution process to resolve overlapping GSA notices and uncoordinated Groundwater Sustainability Plans ("GSPs"). MGSA and SVBGSA have until January 31, 2020 to negotiate and submit a coordination agreement. Then, if an overlap has not been resolved, SGMA specifies a resolution process implemented by the State Board, which includes a mandatory 180-day negotiation/mediation provision.

[1] In its letter, the County states in several places that it "will consider" taking actions to become the GSA for this property. However, at the end of the letter, the County requests that the agencies let them know if they "have concerns about **the County's plans** to become a GSA for the CEMEX property, as outlined above." (Emphasis added.)

Four independent reasons compel cessation of any Monterey County efforts to become the GSA for this overlap portion of the Subbasin:

- SGMA Section 10724 does not provide a platform for Monterey County to replace MGSA for this area;
- Since it is creating and/or contributing to the overlap, Monterey County cannot invoke Section 10724;
- If it tried to invoke Section 10724, Monterey County would be unlawfully circumventing the explicit local agency coordination requirements and GSP resolution provisions in SGMA; and
- Intervention by DWR or the State Board in support of Monterey County would be premature and inappropriate.

SGMA CONTEXT

Both MGSA and SVBGSA filed notices of their GSA formation and of their intent to prepare GSPs for the Subbasin. While SVBGSA's notice covers the entire Subbasin, MGSA's notice applies only to an approximate 400-acre portion of the Subbasin within the City of Marina's jurisdictional boundaries. Thus, MGSA and SVBGSA have overlapping claims to this portion of the Subbasin.

When competing GSA notices cause overlapping boundaries, SGMA prevents a GSA decision from "tak[ing] effect unless the other notification is withdrawn or modified to eliminate any overlap in the areas proposed to be managed." Cal. Water Code § 10723.8(c). SGMA instructs the local agencies to "seek to reach agreement to allow prompt designation of a groundwater sustainability agency." *Id.* SGMA further requires GSAs "intending to develop and implement multiple groundwater sustainability plans" to "coordinate with other agencies preparing a groundwater sustainability plan within the basin." *Id.* § 10727.6. The GSAs must "jointly submit" their GSPs with a coordination agreement "to ensure the coordinated implementation of the groundwater sustainability plans for the entire basin." *Id.* § 10733.4(b); *see also* Cal. Code Regs. tit. 23, § 357.

Accordingly, when GSAs file overlapping claims, SGMA envisions a process where those agencies negotiate in good faith to reach a compromise and enter into a coordination agreement which they submit with their GSPs. The GSPs and coordination agreement between MGSA and SVBGSA for the Subbasin must be filed by January 31, 2020.

MGSA is complying in all respects with SGMA. It properly formed its GSA, provided the requisite notice of its intent to prepare a GSP, issued a draft GSP on October 8, 2019 and is on schedule to file an approved GSP with DWR by the January 31, 2020 deadline. By

committing the necessary (and significant) financial resources and following the prescribed SGMA process, MGSA has being doing exactly what the law requires and it is entitled to complete this process.

I. SGMA Section 10724 Does Not Apply To This Situation Because Multiple GSAs Have Asserted SGMA Jurisdiction Over The Overlap Area.

The County relies primarily on Water Code Section 10724(a) for its potential plan to eliminate MGSA and take over its SGMA jurisdictional area. This provision states:

> In the event that there is an area within a high- or medium-priority basin **that is not within the management area of a groundwater sustainability agency**, the county within which that unmanaged area lies will be presumed to be the groundwater sustainability agency for that area.

Cal. Water Code § 10724(a) (emphasis added).

The County is mistaken in asserting that this provision is applicable here. As SGMA's legislative history reflects,[2] Section 10724 is intended to cover situations where no GSA asserts jurisdiction over an area within a basin, not where multiple GSAs assert jurisdiction and prepare GSPs for a particular area. When multiple GSAs adopt GSPs to manage such an area, the area is within the management area of several GSAs. Section 10724 comes into play when no local agency shows an interest in a particular basin area (thereby making it "unmanaged") and a county is thereafter given the option to become the GSA of that area. If the county declines, the area will instead be managed by the State Board. No DWR regulations or any judicial decisions interpret this section or alter its plain meaning.

The County argues that this provision should also be applied in a multiple GSA situation. The County attempts to conflate the provisions for establishing an exclusive GSA under SGMA Section 10723.8 with Section 10724 to reach a faulty conclusion that, because of the overlapping area in MGSA's and SVBGSA's GSA notices, the areas should be deemed to be "unmanaged." However, the County inaccurately reads Section 10724(a) as addressing disputes arising under the process for determining an exclusive GSA under Section 10723.8 and incorrectly presumes that where overlapping GSAs jurisdictional claims exist, there is no GSA to manage an area.

MGSA acknowledges that one guidance statement from the State Board opines that "[i]f two or more local agencies overlap, the combined area will be deemed unmanaged" and asserts that a county potentially could become a GSA in this situation. State Board, Frequently Asked

[2] The Legislature intended Section 10724 to apply "in the case of an area where no local agency has ***assumed*** management." S. Rules Comm., Floor Analysis on S.B. 11168 at 4 (Aug. 29, 2014) (emphasis added). In particular, the Legislature linked this provision to whether a local agency has acted to assume management over an area – not whether the local agency has become the exclusive GSA.

Questions on GSAs, at 3 (Nov. 22, 2017) ("SWRCB FAQs"). However, this interpretation is not consistent with the intent, legislative history, and text of Section 10724 and is unsupported by any official regulation or case law. Even so, the State Board attaches an important caveat to this interpretation: if a county is "creating or contributing to the overlap, the county does not become the presumptive GSA." As explained in the next section, this rule disqualifies Monterey County from taking such an action.

In sum, it is not a reasonable interpretation of SGMA to read Sections 10723.8 and 10724 together in this manner, nor does SGMA define its use of the term "unmanaged." Rather, these GSA and GSP provisions are best read as operating at the same time on parallel tracks. Consistent with this interpretation, Section 10724(a) does not require that a basin be within the management area of an exclusive GSA. Where multiple GSAs file to manage the same basin area, the clear text in Section 10724(a) does not support Monterey County's ability to claim the area is unmanaged. This is especially true when, as here, both of the GSAs are on track to submit their GSPs, and a coordination agreement is not due for any overlap areas until the January 31, 2020 GSP submittal deadline.

II. Since Monterey County Is Creating And/Or Contributing To This GSA Overlap, It Is Disqualified From Invoking Section 10724.

Guidance from the State Board and DWR places a very important limitation on Monterey County's authority to become a GSA for an unmanaged area under Section 10724: "If a county is creating or contributing to the overlap, the county does not become the presumptive GSA." SWRCB FAQs at 3; *see also* DWR, *GSA Frequently Asked Questions,* at 4 (May 10, 2019).

The County argues that it is a completely separate entity from SVBGSA and thus could not be creating or contributing to the overlap. However, the facts do not support this claim. Monterey County was a moving force behind SVBGSA's formation and even "pushed for the establishment of the Joint Powers Authority" ("JPA"). SVBGSA Minutes at 2 (Sept. 19, 2019). Monterey County is a member of SVBGSA and the County Administrative Officer position (who authored the County's October 9, 2019 letter) is designated as the official County representative to SVBGSA. (*See* Exhibit A to SVBGSA's JPA Agreement.) Section 10.4 of the JPA Agreement for SVBGSA reflects that the County has provided almost 60% of all initial funding for SVBGSA during the 2017–19 period, totaling $1.34 million. The Monterey County Counsel's office has served as the attorney for SVBGSA as it filed GSA and GSP notices and even prepared the GSP that the County now proposes to adopt after it eliminates MGSA. Indeed, the law reflects that a JPA agreement allows "two or more public agencies by agreement [to] jointly exercise any power common to the contracting parties." Cal. Gov't Code § 6502.

In short, it is wholly unpersuasive for the County to assert that it is a separate entity from SVBGSA and therefore is not creating or contributing to the overlap situation. In actuality, the County, as a member, majority funder and driving force in the SVBGSA, is indisputably creating and/or contributing to the overlap situation and cannot masquerade as a disinterested county

agency coming in under a ministerial application of Section 10724 to resolve a dispute among two local GSA agencies.

This is exactly the kind of conflict situation envisioned by the DWR/State Board guidance where a county is disqualified from attempting to invoke Section 10724. Monterey County's contemplated actions here vividly illustrate these dangers. The County is responding to a request by an affiliated entity (SVBGSA) of which it is the primary funder, to consider using its powers to prevent the City of Marina from exercising its GSA authority. Monterey County has announced its intention to adopt SVBGSA's GSP for the overlap area – the same GSP that the County helped design as a member of SVBGSA. Notably, Monterey County fails to present any groundwater management justification for asserting control over the overlap area. It is exactly to prevent such county conflicts that the "creating or contributing" limitation was adopted.

SVBGSA and the County are being encouraged by California-American Water Company ("CalAm") to take these actions to promote its Monterey Peninsula Water Supply Project ("Project"). In its October 9, 2019 letter to SVBGSA, copied to the Monterey County Administrative Officer, CalAm requests both entities to "defer any action on a coordination agreement" with MGSA and instead requests that the County become the GSA for the overlap area. CalAm takes the ridiculous position that MGSA is only preparing a GSP to stop its Project and attempts to enlist the County so it can build the Project. CalAm is not a GSA and, as a private corporation intent on profit, it has no interest in ensuring sustainable groundwater management in the Subbasin. Rather, it is a third party with no official role in this SGMA process attempting to pressure public agencies to achieve its corporate goals. By advocating to stop any coordination agreement discussions, it is also trying to artificially create an impasse in hopes of a County takeover or state intervention.

As a DWR representative has already informed SVBGSA, the County would need to withdraw from the SVBGSA if it intends to take any action under Section 10724. According to the minutes of the September 19, 2019 SVBGSA Advisory Committee meeting, a DWR representative (Tom Berg) stated to SVBGSA:

> Monterey County can remove itself from the SVBGSA and become the GSA for the unmanaged area and enter into a coordination agreement. The cleaner approach is if Monterey County decides there is an overlap and becomes the GSA for the entire 180/400 Subbasin. **They can become the GSA for only Marina if they do not create the GSA with the intent to take over Marina's portion.** You can resolve the overlap and trust Marina will timely submit their Plan. If the Plan is determined to be insufficient during the two-year review, the Water Board could determine the entire Subbasin to be insufficient. He expects legal fights if Monterey County takes over the Subbasin. **Mr. Berg referenced the determination that Kern County had created**

> **their overlap conflict, and they were prevented from becoming the GSA as a result.**
>
> * * *
>
> Tom Berg stated that during the telephone conversation with Mr. Nordberg, DWR, it was suggested that the cleaner approach is for Monterey County to become the GSA for the entire basin. **If the County becomes the GSA only for Marina, it is no longer ministerial in terms of taking out Marina instead of just trying to clear the overlap.**[3]

Id. at 3–4 (emphasis added).

There are explicit withdrawal provisions in Sections 11.6 and 11.8 of SVBGSA's JPA Agreement that the County could utilize to accomplish this withdrawal. Moreover, after withdrawal, the County would need to assert jurisdiction over all overlap areas in the Subbasin. This would, of course, cause needless and extensive organizational and financial harm to all GSAs with overlapping claims and would completely undercut SGMA's goals.

In actuality, "SGMA requires the agencies to resolve" boundary disputes. SWRCB FAQs at 3. The State Board only deems an area unmanaged until the GSAs resolve their conflict. *Id.* This limitation aligns with the intended purpose of Section 10724 to function as a safety valve, allowing a county to assume the role of a GSA in a ministerial manner as a last resort or as a temporary solution before a local agency can take control. Instead of serving that purpose, Monterey County would be using Section 10724 to target only the City of Marina and block it from exercising its GSA authority and implementing its GSP. This effort would contravene SGMA's emphasis on and processes for local agency cooperation and basin management.

III. Monterey County's Potential Action Would Fatally Undermine SGMA's GSA Collaboration Process.

SGMA specifies a specific process for GSAs who file overlapping notices to coordinate and submit a joint GSP or set of GSPs. *See* Cal. Water Code §§ 10727.6 and 10733.4(b). The Water Code likewise provides a process for resolving disputes, in the event that GSAs fail to coordinate and submit joint GSPs for a critically overdrafted basin by the January 31, 2020 deadline. In that situation, the State Board can designate that basin as probationary. *Id.* §§ 10735.2(a)(2) and 10735.2(a)(3) (providing that the State Board can also make a probationary designation after finding that a GSP is inadequate). The State Board must give the local agencies or GSAs "180 days to remedy the deficiency," and "[t]he board may appoint a mediator or other

[3] The minutes reflect that a representative of Monterey County (Charles McKee) attended this meeting.

facilitator . . . to assist in resolving disputes, and identifying and implementing actions that will remedy the deficiency." *Id.* § 10735.4(a). Disagreements over overlapping portions of the basin are covered by this provision.

If it tried to eliminate MGSA's authority over the overlapping area and intervene as the exclusive GSA, the County would be improperly using Section 10724 to implement the GSP of its affiliated GSA entity, violating State Board and DWR guidance directly on point, and undermining SGMA's dispute resolution processes. This action would set a dangerous precedent that could incentivize the misuse of Section 10724 by counties.

IV. DWR And State Board Intervention Is Premature And Legally Unauthorized.

MGSA and SVBGSA are entering a critical time for collaboration to meet the January 31, 2020 GSP submission deadline. Monterey County's potential plan to assert itself as the GSA for the MGSA jurisdictional area threatens to derail this process. Intervention by DWR or the State Board to support Monterey County would similarly quash any possibility of compromise between the two GSAs. Unfortunately, CalAm is urging a strategy to promote its own narrow agenda, likely because it does not want to comply with the GSP of MGSA or with MGSA oversight of its potential groundwater source. However, MGSA and SVBGSA must negotiate in good faith and be given the opportunity to complete the local agency coordination process prescribed by SGMA. The Water Code specifically provides for State Board intervention if MGSA and SVBGSA cannot meet the January 31, 2020 deadline. *See* Cal. Water Code § 10735.2(a)(2). Any actions that interfere with or undermine these SGMA processes are premature and inappropriate.

CONCLUSION

For the foregoing reasons, DWR and the State Board must immediately inform Monterey County that Section 10724 is not applicable in this situation. The County, as the moving force, member, primary funder and general legal advisor to SVBGSA, has created and or contributed to the overlap situation and is therefore disqualified from using this provision. Supporting CalAm's reluctance to be governed and monitored by the government entity with the overlying interest, does not support SGMA and the intention of the Legislature to sustainably manage groundwater. The City of Marina's formation of MGSA to prepare its own GSP to govern critical groundwater resources within its jurisdiction is consistent with the spirit and language of SGMA.

Thank you for giving MGSA the opportunity to provide comments on this important issue. We are certainly available to discuss these issues with you.

Very truly yours,

Paul P. "Skip" Spaulding, III

PPS:jla

cc: Mark Nordberg, Department of Water Resources
(via e-mail Mark.Nordberg@water.ca.gov)
Charles J. McKee, Monterey County Administrative Officer
(via e-mail mckeecj@co.monterey.ca.us)
Gary Petersen, Salinas Valley Basin GSA
(via e-mail peterseng@svbgsa.org)
Keith Van Der Maaten, Marina Coast Water District GSA
(via e-mail kvandermaaten@mcwd.org)
Layne Long, Marina City Manager
(via e-mail llong@cityofmarina.org)
Marina City Council (via e-mail)
Robert Wellington, Marina City Attorney
(via e-mail rob@wellingtonlaw.com)
Deborah Mall, Marina Assistant City Attorney
(via e-mail deb@wellingtonlaw.com)

ATTACHMENT 2

CITY OF MARINA
211 Hillcrest Avenue
Marina, CA 93933
831-884-1278; FAX 831-384-9148
www.cityofmarina.org

November 21, 2019

Gary Petersen
General Manager
Salinas Valley Basin Groundwater Sustainability Agency

Re: MGSA/SVBGSA Coordination Agreement Discussions

Gary,

I wanted to follow up on our previous discussions regarding a coordination agreement with SVBGSA and next steps to move this forward. I understand from our last telephone conversation that you have received direction that the Salinas Valley Basin Groundwater Sustainability Agency (SVBGSA) will only agree to meet with the Marina Groundwater Sustainability Agency if MGSA "agrees to give up its GSA." From MGSA's viewpoint, this is not a negotiation on a coordination agreement; rather, it is a request that MGSA go out of existence, which is of course not acceptable.

We continue to be ready to have a discussion on a coordination agreement that will comply with the Sustainable Groundwater Management Act. We strongly encourage SVBGSA to negotiate in good faith to achieve this goal.

Sincerely,

Layne Long
City Manager/Executive Director
City of Marina-Marina Groundwater Sustainability Agency

ALISAL WATER CORPORATION

A California Corporation
dba ALCO WATER SERVICE

Thomas R. Adcock
President
(831) 424 - 0441 Phone

249 Williams Road
Salinas, CA 93905
(831) 424 - 0611 Fax

November 25, 2019

SVBGSA
c/o Regional Government Services
P.O. Box 1350
Carmel Valley, CA 93924

SENT VIA EMAIL TO peterseng@svbgsa.org

RE: Comments of Alisal Water Corporation, dba Alco Water Service, on the Groundwater Sustainability Plan for the 180/400 Foot Subbasin

Dear SVBGSA Board of Directors,

Alisal Water Corporation, dba Alco Water Service ("Alco") is a water supplier located in the Salinas Valley in and around the Eastern portion of the City of Salinas and providing water for human consumption, domestic purposes, and fire protection and irrigation purposes.

Alco is regulated by both the California Public Utilities Commission ("CPUC") and State Water Resources Control Board ("SWRCB").

The CPUC is an administrative agency upon which the California Constitution and the Legislature has conferred broad authority, including broad legislative and judicial powers, to regulate utilities, including the power to fix rates, establish rules, determine the requirements for public utility practices, equipment facilities and service, and hold various types of hearings, and establish its own procedures for the execution of such authorities. CPUC defines Alco as a public utility water corporation that owns and operates a water system.[1]

SWRCB is an administrative agency upon which the Legislature has conferred the authority to regulate the water quality and the health and safety of public drinking water systems' water provided and their water system facilities. SWRCB defines Alco as a public water system and an urban water supplier.

[1] Alco, California Water Service Company and California American Water and Little Bear Water Company are all water utilities that are regulated directly by the CPUC.

Both agencies, the CPUC and SWRCB, have the responsibility to ensure that the water systems that they regulate have sufficient water supply to adequately serve the public and meet its health and safety requirements. These agencies are also obligated to ensure that the water systems meet the requirements of California Water Code § 106.3 (a) and (b)[2].

For purposes of the proposed Sustainability Plan drafted by SVBGSA for the 180/400 Foot Aquifer Subbasin, Alco is included in the group defined as municipal water provider.

As such, the following comments of Alco on the SVBGSA's draft Groundwater Sustainability Plan for 180/400 Foot Aquifer Subbasin ("Plan") reflect Alco's obligations under its CPUC, SWRCB and Legislative requirements as described above and Alco wants to ensure that the Plan, as well as future Plans, do not conflict with these obligations.

ALCO'S COMMENTS:
Page 9-4:
9.2.2 Pumping Allowances

Sustainable allowances for municipal and industrial groundwater pumpers will be addressed when sustainable pumping allowances are being developed for agricultural pumpers. Because these allowances are not water rights, municipal and industrial water users will be able to pump groundwater even without a quantified sustainable allowance. However, if municipal and industrial groundwater pumpers are not provided a sustainable allowance, any groundwater pumping by these entities will be subject to the Tier 2 Transitional Pumping Charge and Tier 3 Supplemental Pumping Charge.

Because the California Legislature has already declared, in California Water Code § 106[3], that the highest use of water is for that of domestic purposes, which is the type of water that Alco and all other municipal water providers provide, Alco believes that municipal water providers must be allowed a Tier 1 sustainable allowance, which should be based on historical groundwater pumped by municipal water providers. Courts, including the California Supreme Court and Federal Courts, have upheld California Water Code § 106's declaration that the highest use of water is domestic use and that this is binding upon all California agencies. Please refer to the cited cases, below:

Provision of this section declaring that use of water for domestic purposes is the highest use to which water can be devoted is binding on every California agency, ... City of Beaumont v. Beaumont Irrigation District (1965) 46 Cal.Rptr. 465, 63 Cal.2d 291, 405 P.2d 377.

---

[2] *(a) It is hereby declared to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.*
(b) All relevant state agencies, including the department, the state board, and the State Department of Public Health, shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and criteria are pertinent to the uses of water described in this section.
[3] *It is hereby declared to be the established policy of this State that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation.*

And,

Provisions of this section declaring general state policy that use of water for domestic purposes is the highest and best use and in §106.5 that rights of municipalities are to be protected to extent necessary for existing and future uses, do not merely regulate administrative action which state engineer might take on applications to appropriate surplus water, but they constitute part of substantive law of California delineating rights of users of water. *Rank v. Krug, S.D.Cal.1956, 142 F.Supp. 1.*

Therefore, Alco believes that the SVBGSA's Plan should establish Tier 1 sustainable pumping allowances for all municipal water providers and not subject their usage entirely to Tier 2 and Tier 3 charges.

ALCO'S COMMENTS:
Pages 9-8 to 9-9:
9.2.7 Details to be Developed

The sections above present an initial structure for the water charges framework; however, stakeholders must agree to a number of details before the SVBGSA initiates the water charges framework. An initial list of details that must be negotiated are presented below to provide SVBGSA members and stakeholders an understanding of the range of specifics that are open for negotiation.

- *Are de-minimis pumpers that pump less than two AF/yr. for domestic purposes exempt from the water charge framework and other management actions?*
- *Are any class of pumpers other than de-minimis pumpers exempt from the water charge framework and other management actions?*
- *How are sustainable pumping allowances set?*
- *How are transitional allowances phased out in the Subbasin? Over what time frame are pumping allowances ramped down?*
- *What is the Tier 1 Sustainable Pumping Charge?*
- *What is the Tier 2 Transitional Pumping Charge?*
- *What is the Tier 3 Supplemental Pumping Charge?*
- *What is an equitable balance between the Tier 1 Sustainable Pumping Charge collected in the 180/400-Foot Aquifer Subbasin and the Tier 1 Sustainable Pumping Charge collected in other subbasins?*
- *What is an equitable balance between the Tier 2 Transitional Pumping Charge collected in the 180/400-Foot Aquifer Subbasin and the Tier 2 Transitional Pumping Charge collected in other subbasins?*
- *What is an equitable balance between the Tier 3 Supplemental Pumping Charge collected in the 180/400-Foot Aquifer Subbasin and the Tier 3 Supplemental Pumping Charge collected in other subbasins?*
- *How is currently non-irrigated (e.g., fallowed) land addressed?*

- *How are municipalities addressed?*
- *What are the limits and parameters of the carryover and recharge options?*
- *What in involved in approving relocation or transfer of pumping credits?*

As Alco has previously stated, when the SVBGSA is establishing water allowances and water charges framework for municipal water providers, it must take into consideration the obligations of California Water Code § 106.3, the requirements of the CPUC (in the case of water utilities like Alco that are regulated by that agency) and SWRCB on municipal water providers. Alco believes that the Tier 1 sustainable water allowance for municipal water providers should be based on the providers' historical pumping information. Also, the municipal water providers should be able to carry over any excess pumping allowances into future years. Municipal water providers should be able to obtain all pumping credits and/or Tier 1 and Tier 2 pumping allowances for irrigated and fallow lands to which the municipal water provider provides water service in excess of the amounts that are pumped on these lands, if any.

ALCO'S COMMENTS:
Page 9-7:
9.2.4 Relocation and Transfer of Pumping Allowances

Relocation and Transfer of Pumping Allowances Pumping allowances may be moved between properties temporarily or permanently. Such relocation of pumping allowances is subject to review by the SVBGSA to ensure that such relocation or transfer does not prevent the sustainability goal from being met. The SVBGSA will model the effects of the relocation to assess any significant and unreasonable impacts from the proposed relocation. Relocating pumping allowances provides pumpers with flexibility to manage their land, water resources, and finances as they desire. Pumping allowances could also be permanently or temporarily transferred between different owners, and could be used for another pumping purpose.

Alco believes that there should be a mechanism for the transfer of pumping credits and/or Tier 1 and Tier 2 pumping allowances for 1) lands or any portion thereof that are converted from agricultural use (or fallow lands) to development to which the municipal water provider provides service and 2) agricultural lands (or fallow lands) to which the municipal water provider provides water service in excess amounts of the amounts that are pumped on these lands, if any.

ALCO'S COMMENTS:
9.4 PROJECTS

Alco believes that SVBGSA's Plan should clearly state that any party, be it a municipal water provider or agricultural users, who directly funds a project independent of the fee and charges framework developed by the Plan, and such project will supplement the 180/400 Foot Aquifer Subbasin's groundwater supplies or limit seawater intrusion (over and above the amounts of water already accounted for in this Plan), should be allowed to use such recharged water without paying any pumping fees for the amount of added water, on an annual basis. As an example, if Alco were to directly fund a project that recharged an additional 100 acre-feet per

year that would not have otherwise been available, Alco should have the legal authority to pump that much water annually without charges being assessed. The benefit of allowing parties to directly fund such projects is that the SVBGSA will not have to expend the time, monies and efforts to implement a tax and/or go through the Proposition 218 process. Additionally, the tax burden and/or fees to landowners and residents of the Salinas Valley Basin will subsequently be reduced.

Thank you for the opportunity to provide Alco's comments on the SVBGSA's draft Groundwater Sustainability Plan for 180/400 Foot Aquifer Subbasin. If you have any questions, you may contact me at (831) 424-0441.

Sincerely,

Adnen Chaabane
Operations Engineer

AC/ams

December 25, 2019

Gary Petersen, General Manager
Members of the Board
Salinas Valley Basin Groundwater Sustainability Agency

We, the signers of this letter, are farmers and landowners in the 180/400, commonly referred to as the Pressure. The 20-year Groundwater Sustainability Plan for the Pressure that your agency is about to submit to the State Department of Water Resources will have a substantial effect on the operations and economics of our companies.

We believe there is an easily correctable problem in the plan.

Project 1, found in section 9.4.3.2, is Invasive Species Eradication (arundo and tamarisk). According to the plan, this project "will reduce evapotranspiration from these invasive plants, leaving more water in the Salinas River and increasing aquifer recharge or reducing the amount of water required to be release from Nacimiento and San Antonio Reservoirs." All vegetative overgrowth in the river, not just invasives, contributes to these problems. Project 1 should be changed so that all vegetative overgrowth is managed, not just invasives, in order to reduce evapotranspiration and leave more water in the river.

Your plan will force us to pay millions of dollars for projects. It will also potentially subject us to management actions such as reduced pumping. These costs and actions are not acceptable if the SVBGSA leaves cheap water on the table from river evapotranspiration.

We ask that you amend Project 1 for the following reasons:

1. Evapotranspiration reduction. Brown & Caldwell's 2015 report states that up to 50,000 acre/feet of water are lost every year due to evapotranspiration from river vegetation overgrowth.
2. Increase conveyance of water in the river. This will benefit other GSP projects, such as water diversion for the Eastside Canal and operation of the SRDF.
3. Increase water available for percolation in the river.
4. Operation and re-operation of the reservoirs (9.3.4, #2 "Allow summer flows to better reach the SRDF") directly contribute to vegetation overgrowth in the river. The SVBGS needs to mitigate the negative side-effects of its projects and actions.
7. River vegetation management would be cheap in comparison to the plan's other projects. Chapter 9 estimates water cost from Invasive Species Eradication at $160 AF/year, which is theoretically higher than non-invasive vegetation management, as invasives require pesticides. Other projects' water costs are even higher: CSIP Optimization is $270 AF/year, CSIP Expansion is $630 AF/year, SRDF

Maximization is $220 AF/year, Extraction Barrier is $590 AF/year and the Chualar Diversion is $750 AF/year. In context with these expensive water sources, leaving cheaper water on the table is poor fiscal stewardship.

8. The total capital costs of projects 1-9 in the 20-year-plan, according to your draft, total $385,000,000.00 with an additional $24,000,000.00 in annual O&M costs. Why should we pay for high cost projects when a relatively inexpensive project like river vegetation maintenance is being ignored?

We ask that you amend Project 1 to include vegetation management before you submit the plan to the State Department of Water Resources.

Pressure Letter to SVBGSA Board 12/25/2019

signature

Carlos Ramirez

printed name

San Berry Growers

company

Pressure Letter to SVBGSA Board 12/25/2019

signature

TOM DE NUNES

printed name

THE NUNES COMPANY, INC.

company

Pressure Letter to SVBGSA Board 12/25/2019

Stephen de Lorimier

signature

Stephen de Lorimier

printed name

D'Arrigo California

company

Pressure Letter to SVBGSA Board 12/25/2019

signature

DALE D. IDUSS

printed name

OCEAN MIST FARMS

company

SEA MIST FARMS

Pressure Letter to SVBGSA Board 12/25/2019

signature

MICHAEL SCATTINI

printed name

LUIS SCATTINI & SONS

company

Pressure Letter to SVBGSA Board 12/25/2019

Dirk Giannini

signature

Dirk Giannini

printed name

Christensen + Giannini, LLC

company

Pressure Letter to SVBGSA Board 12/25/2019

Wayne Gularte

signature

Wayne Gularte

printed name

Rincon Farms INC

company PO Box 616
Gonzales, CA 93926

Pressure Letter to SVBGSA Board 12/25/2019

signature

SHARI HIGASHI

printed name

HIGASHI FARMS

company

Pressure Letter to SVBGSA Board 12/25/2019

signature

CHRIS BURN

printed name

Crown Park Co Inc.
General Farm Investment Co

company

Pressure Letter to SVBGSA Board 12/25/2019

signature

Victor Ramirez

printed name

Bay View Farms

company

Pressure Letter to SVBGSA Board 12/25/2019

signature

George Fontes

printed name

Fontes Farms

company

Pressure Letter to SVBGSA Board 12/25/2019

Bardin Bengard

signature

Bardin Bengard

printed name

Bengard Ranch

company

Pressure Letter to SVBGSA Board 12/25/2019

David Costa

signature

David Costa

printed name

Costa Farms Inc.
Costa Family Farms
Anthony Costa & Sons

company

Pressure Letter to SVBGSA Board 12/25/2019

John R. Marihart

signature

JOHN R. MARIHART

printed name

MARIHART FAMILY LLC

company

Pressure Letter to SVBGSA Board 12/25/2019

signature

KEN HIGASHI

printed name

HIGASHI FARMS INC

company

Pressure Letter to SVBGSA Board 12/25/2019

signature

Allan Clark

printed name

Merrill Farms

company

Pressure Letter to SVBGSA Board 12/25/2019

signature

KENT K. HIBINO

printed name

HENRY HIBINO FARMS, LLC

company

Pressure Letter to SVBGSA Board 12/25/2019

signature

Josh Ruiz

printed name

Church Brothers Farms

company

Pressure Letter to SVBGSA Board 12/25/2019

signature

EDWARD S. MORIMOTO

printed name

YUKI FARMS

company

Pressure Letter to SVBGSA Board 12/25/2019

Gary Tanimura

signature

GARY TANIMURA

printed name

TANIMURA & ANTLE

company

Pressure Letter to SVBGSA Board 12/25/2019

signature

Nick Huntington

printed name

Huntington Farms

company

Pressure Letter to SVBGSA Board 12/25/2019

signature

ROBERT RODOVI

printed name

SUNSET FARMS INC

company

Pressure Letter to SVBGSA Board 12/25/2019

Dennis Lebow

signature

Dennis Lebow

printed name

Reiter Affiliated Co.

company

REITER
AFFILIATED COMPANIES

11 QUAIL RUN CIRCLE, SUITE 203, SALINAS, CA 93907
(T) 831-754-4628 (C) 831-254-7005 (F) 831-754-4678
(E) DENNIS.LEBOW@BERRY.NET

DENNIS LEBOW
DIRECTOR OF LAND AND WATER RESOURCES

25 November 2019

Mr. Gary Peterson
General Manager
Salinas Valley Basin Groundwater Sustainability Agency
1441 Shilling Place
Salinas, CA 93901

Dear Mr. Peterson,

This letter provides California Water Service Company's (Cal Water's) comments on the Salinas Valley Basin Groundwater Sustainability Agency (SVBGSA) 180/400 Foot Aquifer Subbasin Groundwater Sustainability Plan (GSP) Public Review Draft, dated 21 October 2019. Our comments focus on the GSP's Section 9.2 – Water Charges Framework.

We understand that SVBGSA plans to implement a "Water Charges Framework", which includes assigning pumping allowances to groundwater users and collecting fees based on their use relative to the assigned allowances. Section 9.2 of the GSP describes the Water Charges Framework as a tiered rate structure where Tier 2 and Tier 3 charges (i.e., charges on pumping above a user's sustainable pumping allowance) will fund projects or purchases of additional water. As stated in Section 9.2 (Page 9-3) of the GSP:

> *"These allowances … are pumping amounts that form the basis of a financial fee structure to both implement the regulatory functions of the SVBGSA and fund new water supply projects… Tier 2 and Tier 3 funds are used to build projects and pay annual costs of purchasing and treating water that have a defined benefit to individuals or groups."*

It is unclear from the GSP's description who will be the beneficiaries for each proposed project and how the tiered rates structure reasonably collects funding from project beneficiaries. *"All of the integrated projects and management actions for the Salinas Valley are included in this GSP, although the benefit may be limited in this Subbasin* (Section 9.1)", therefore, it appears that fees collected in other Salinas Valley subbasins may also be used to fund the 180/400 Subbasin GSP's proposed projects or vice versa. It is also unclear how the Water Charges Framework could incorporate additional funding sources for projects, including direct investments in projects or water management efforts by an individual agency. The mechanisms of the planned Water Charges Framework are highly uncertain at this stage and could have significant impacts on groundwater users (including Cal Water and our customers) both in the near- and long-term.

We understand that SVBGSA plans to develop the Water Charges Framework during the first three years of GSP implementation with Salinas Valley Basin stakeholders. As stated in Section 9.2 (Page 9-2) of the GSP,

> *"The stakeholders of the Salinas Valley Basin will develop the water charges framework during the first three years of GSP implementation as an agreement approved by the SVBGSA."*

Cal Water srongly supports the SVBGSA's stated intention to vigorously engage stakeholders during development of the Water Charges Framework. We recommend the following to be considered and defined in the Water Charges Framework:

1. Recognition of a groundwater user's share of a basin's native safe yield and the benefits and/or effects of previous efforts undertaken by the user to augment basin supplies (e.g., investment in water supplies and conservation);
2. The ability to incorporate and preserve the projects and water management efforts that are implemented by individual agencies that result in additional supplies to the basin;
3. A mechanism by which a projects' yield can be reasonably allocated to those who have contributed to the project, either via the tiered rate structure or through direct investment;
4. Flexibility for groundwater users that are located in multiple Salinas Valley subbasins and are willing to invest in projects. Specifically, given the integrated nature of the Salinas Valley subbasins, **groundwater users should receive credit for projects and water management efforts across subbasins where there are demonstrable benefits (i.e. each subbasin's issues do not need to be entirely addressed through projects in that subbasin)**.

We appreciate the opportunity to comment and look forward to participating in GSP implementation.

Sincerely,

Michael Hurley
Water Resources Manager, California Water Service Company

State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Central Region
1234 East Shaw Avenue
Fresno, California 93710
(559) 243-4005
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

November 21, 2019

Sent Via Mail and Electronic Mail

Gary Petersen, General Manager
Salinas Valley Basin Groundwater Sustainability Agency
Post Office Box 1350
Carmel Valley, California 93924
peterseng@svbgsa.org

Subject: Comments on the Salinas Valley Basin Groundwater Sustainability Plan

Dear Mr. Petersen:

The California Department of Fish and Wildlife (Department) Central Region is providing comments on the Salinas Valley Basin 180/400 Foot Aquifer Draft Groundwater Sustainability Plan (GSP) prepared by Salinas Valley Basin Groundwater Sustainability Agency pursuant to the Sustainable Groundwater Management Act (SGMA) for the 180/400-Foot Aquifer Subbasin (Subbasin). As trustee agency for the State's fish and wildlife resources, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of such species (Fish & Game Code §§ 711.7 and 1802).

Development and implementation of Groundwater Sustainability Plans under SGMA represents a new era of California groundwater management. The Department has an interest in the sustainable management of groundwater, as many sensitive ecosystems and species depend on groundwater and interconnected surface waters, including ecosystems on Department-owned and -managed lands within SGMA-regulated basins. SGMA and its implementing regulations afford ecosystems and species specific statutory and regulatory consideration, including the following as pertinent to Groundwater Sustainability Plans:

- Groundwater Sustainability Plans must identify and consider impacts to groundwater dependent ecosystems (GDEs), pursuant to 23 California Code of Regulations (CCR) § 354.16(g) and Water Code § 10727.4(l); and

- Groundwater Sustainability Agencies must consider all beneficial uses and users of groundwater, including environmental users of groundwater [Water Code § 10723.2 (e)]; and Groundwater Sustainability Plans must identify and consider potential effects on all beneficial uses and users of groundwater [23 CCR §§ 354.10(a), 354.26(b)(3), 354.28(b)(4), 354.34(b)(2), and 354.34(f)(3)]; and

- Groundwater Sustainability Plans must establish sustainable management criteria that avoid undesirable results within 20 years of the applicable statutory deadline, including depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the surface water [23 CCR § 354.22 *et seq*. and Water Code §§ 10721(x)(6) and 10727.2(b)] and describe monitoring networks that can identify adverse impacts to beneficial uses of interconnected surface waters [23 CCR § 354.34(c)(6)(D)]; and

- Groundwater Sustainability Plans must account for groundwater extraction for all Water Use Sectors including managed wetlands, managed recharge, and native vegetation [23 CCR §§ 351(al) and 354.18(b)(3)].

Furthermore, the Public Trust Doctrine imposes a related but distinct obligation to consider how groundwater management affects public trust resources, including navigable surface waters and fisheries. Groundwater hydrologically connected to navigable surface waters and surface waters tributary to navigable surface waters are also subject to the Public Trust Doctrine to the extent that groundwater extractions or diversions affect or may affect public trust uses (*Environmental Law Foundation v. State Water Resources Control Board* (2018), 26 Cal. App. 5th 844). Accordingly, groundwater plans should consider potential impacts to and appropriate protections for navigable interconnected surface waters and their tributaries, and interconnected surface waters that support fisheries, including the level of groundwater contribution to those waters.

In the context of SGMA statutes and regulations, and Public Trust Doctrine considerations, the Department values groundwater planning that carefully considers and protects groundwater dependent ecosystems, fish and wildlife beneficial uses, and users of groundwater and interconnected surface waters.

COMMENT OVERVIEW

The Department is writing to support ecosystem preservation and enhancement in compliance with SGMA and its implementing regulations based on Department expertise and best available information and science. The Department recommends the GSP provide additional information and analysis on identification and consideration of groundwater dependent ecosystems and interconnected surface waters. The Department is providing additional comments and recommendations below.

GSP COMMENTS AND RECOMMENDATIONS

1. **Comment #1 Plan Area.** Chapter 3 Description of Plan Area, Subchapter 3.3 Jurisdictional Areas and Subchapter 3.4 Land Use (starting page 3-13).

a. *Issue:* Figure 3-3 on page 3-14 incorrectly labels the Department's Moro Cojo Ecological Reserve and does not include privately conserved lands within the GSP boundary. The narrative for paragraph 3.3 Jurisdictional Areas does not list privately conserved lands within the GSP boundary, such as Elkhorn Slough Foundation lands.

b. *Recommendation:* The Department recommends changing the map on page 3-14 to include privately conserved lands to Moro Cojo Ecological Reserve. The Department also recommends the GSP include a section within 3.3 Jurisdictional Areas that defines the privately conserved lands within its boundary, including Elkhorn Slough Foundation lands.

2. **Comment #2 Interconnected Surface Water.** Chapter 4 Hydrogeologic Conceptual Model, Subchapter 4.4.4 Natural Discharge Areas (starting page 4-23); Chapter 5 Groundwater Conditions, Subchapter 5.6 Interconnected Surface Water (starting page 5-54).

   Analysis of interconnected surface waters (ISW) in the GSP deprioritizes shallow groundwater-bearing sediments.

   a. *Issues:*

      i. The GSP explains that the U.S. Geological Survey Salinas Valley Integrated Hydrologic Model (USGS SVIHM) model will help identify surface water-groundwater connectivity and locate potential areas of discharge to streams (pages 4-23, 5-56). Absent model results, the GSP cannot provide specific estimations of the quantity and timing of streamflow depletions as specified in 23 CCR § 354.16(f), though the GSP does identify likely areas of interconnectivity (Figure 5-35, page 5-58).

      ii. Importantly, the GSP abdicates oversight of shallow groundwater above the Salinas Valley Aquitard, excluding shallow groundwater from principal aquifers in the Subbasin and therefore excluding shallow groundwater from ISW analyses. The GSP cites limited hydraulic communication between the shallow groundwater (above the 180-Foot Aquifer) and the basin's primary principal aquifers, 180-Foot and 400-Foot Aquifers, as the reason for excluding shallow groundwater (pages 4-17, 5-56). Therefore, the GSP focuses primarily on interconnectivity between the 180-Foot and 400-Foot Aquifers and surface water, excluding the entirety of shallow groundwater in surface water-groundwater interactions. Groundwater Sustainability Plans are also required to identify principal aquifers, referring to aquifers or

aquifer systems that store, transmit, and yield significant or economic quantities of groundwater to wells, springs, or surface water systems [23 CCR § 351(aa)]. For these principal aquifers, Groundwater Sustainability Plans must include formation names, physical and structural properties, water quality, primary use, data gaps, and groundwater conditions (e.g., groundwater elevation and hydrographs, and other information relevant to SGMA's six sustainability criteria) [23 CCR §§ 354.14(b)(4), 354.16]; as well as monitoring networks sufficient to demonstrate short-term, seasonal, and long-term trends in groundwater and related surface conditions and sustainability indicators [23 CCR § 354.34]. There is no specific reason why a shallow aquifer cannot comprise a 'principal aquifer,' particularly where shallow aquifers are overlain by GDEs supporting interconnected surface waters and special status species. Where a shallow groundwater system stores and yields quantities of water that are 'significant' to surface water beneficial users, including domestic users and environmental beneficial users such as GDE beneficial users, this shallow aquifer may be considered a 'principal' aquifer per the definition provided in the Groundwater Sustainability Plan regulations [23 CCR § 351(aa)]. Shallow groundwater systems are arguably the *most* significant aquifers for environmental beneficial uses and users of groundwater, because they are the aquifers directly accessible to and supportive of the terrestrial and aquatic habitat. Accordingly, Groundwater Sustainability Agencies should consider including shallow groundwater systems as 'principal aquifers' in their Groundwater Sustainability Plans where shallow groundwater and GDEs are concurrently present, in order to thoroughly characterize a groundwater basin and best identify potential effects on environmental users of groundwater as SGMA statue and Groundwater Sustainability Plan regulations require [Water Code § 10723.2(e), 23 CCR §§ 354.10(a), 354.26(b)(3), 354.28(b)(4), 354.34(b)(2), and 354.34(f)(3)].

iii. The GSP also says, "If the groundwater level is below the stream bottom, the stream and groundwater are disconnected. SGMA does not require that disconnected stream reaches be analyzed or managed" (page 5-54). This explanation of ISW is inaccurate and contradicts the definition of ISW per Groundwater Sustainability Plan regulations, which the GSP itself cites on page 8-2 as "surface water that is hydraulically connected at any point by a continuous saturated zone to the underlying aquifer and the overlying surface water is not completely depleted" [23 CCR § 351 (o)]. This means that even if groundwater elevation is lower than streambed elevation and the river reach is 'losing,' there may still be hydraulic communication between

the aquifer and streamflow if there is a saturated layer connecting the two, and pumping from the aquifer may yet cause streamflow depletion (Barlow and Leake 2012). The definition proffered by the GSP excludes streams as interconnected when groundwater levels fall below streambed elevations; however, these stream reaches may still be interconnected if there is a continuous saturated zone connecting the groundwater table and the stream.

iv. The GSP Water Budget attributes significant quantities of groundwater inflow to streamflow percolation and deep percolation of precipitation and excess irrigation (pages 6-13 to 6-14, 6-29; Figure 6-5). The GSP also claims that shallow water-bearing sediments are poorly connected to the underlying 180-Foot and 400-Foot aquifers due to the Salinas Valley Aquitard (page 4-17); therefore, it is unlikely that significant surficial recharge reaches the 180-Foot and 400-Foot Aquifers (page 4-21). This conclusion creates confusion as to how percolation contributes such large quantities of recharge to the basin, presumably to the principal aquifers that were accounted for in the water budget (180-Foot and 400-Foot), if there is limited hydraulic communication between shallow sediments and these two principal aquifers. This conclusion also lends more importance to management of the shallow groundwater above the Salinas Valley Aquifer (see above comments), especially if the basin undergoes further water resource development in the shallow water-bearing formations.

v. Continued study of surface water-groundwater interaction is not included in Subchapter 4.7 Data Gaps, but it is mentioned on pages 5-56 and 8-68, where the GSP acknowledges that additional data and shallow groundwater monitoring wells may be necessary to reduce uncertainty of ISW.

b. *Recommendations:*

i. The Department recommends that the GSP model results that identify the estimated quantity and timing of streamflow depletions in the Subbasin. The Department also recommends that the GSP include clear documentation on model development, as numerical modeling is an apt but complex tool for identifying surface water-groundwater connectivity.

ii. The Department recommends including the shallow water-bearing sediments above the Salinas Valley Aquifer as a principal aquifer in the GSP to encourage diligent monitoring and management of a resource

of great significance to environmental beneficial uses and users in the Subbasin.

iii. The Department recommends correcting the definition of ISW on page 5-54 by incorporating the Groundwater Sustainability Plan regulation definition.

iv. The Department requests clarification on how surficial recharge can be both severely restricted by the Salinas Valley Aquitard and comprise such a significant portion of the Water Budget inflow when shallow groundwater above the aquitard is not included in the GSP's Water Budget analysis.

v. The Department requests including expanded ISW studies and monitoring in the Subchapter 4.7 Data Gaps.

3. **Comment #3 Groundwater Dependent Ecosystems.** Chapter 4 Hydrogeologic Conceptual Model, Subchapter 4.4.4 Natural Discharge Areas (page 4-23 to 4-24).

The GSP proposal to refine Groundwater Dependent Ecosystem (GDE) identification, pursuant to 23 CCR § 354.16 (g), lacks actionable specifics.

a. *Issue:* The GSP relies on the Natural Communities Commonly Associated with Groundwater (NCCAG) dataset for identification of potential GDEs (Figure 4-10, pages 4-23 to 4-24). This dataset provides a valuable foundation for GDE identification but benefits from additional validation. The GSP acknowledges that field reconnaissance is necessary to verify potential GDEs (page 4-23), but it does not specify how or when this verification will occur, nor does it acknowledge that additional GDE identification may be required beyond the NCCAG dataset to thoroughly locate GDEs.

b. *Recommendations:*

i. The Department recommends developing a specific plan and timeline for GDE identification that includes methods used to vet the current set of potential GDEs shown in Figure 4-10. If the GSP will include a depth-to-groundwater analysis for GDE verification, in addition to field reconnaissance, the Department advises development of a hydrologically robust baseline that relies on multiple, climatically representative years of groundwater elevation and that accounts for the inter-seasonal and inter-annual variability of GDE water demand.

The Department also suggests careful consideration of potential GDEs near interconnected surface water bodies, as they may depend on sustained groundwater elevations that stabilize the gradient or rate of loss of surface water, rather than directly on the water table itself.

ii. The Department recognizes that NCCAG (Klausmeyer et al. 2018) provided by California Department of Water Resources (CDWR) is a good starting reference for GDEs; however, the Department recommends that the GSP consider additional resources for evaluating GDE locations, including but not limited to the California Department of Fish and Wildlife (CDFW) Vegetation Classification and Mapping Program (VegCAMP) (CDFW 2019A); the CDFW California Natural Diversity Database (CNDDB) (2019B); the California Native Plant Society (CNPS) Manual of California Vegetation (CNPS 2019A); the CNPS California Protected Areas Database (CNPS 2019B); the U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory (2018); the USFWS online mapping tool for listed species critical habitat (2019); the U.S. Forest Service CALVEG ecological grouping classification and assessment system (2019); and other publications by Klausmeyer et al. (2019), Rohde et al. (2018), The Nature Conservancy (TNC) (2014), and Witham et al. (2014).

4. **Comment #4 Water Quality.** Chapter 5 Groundwater Conditions, Subchapter 5.5.3 Distribution and Concentrations of Diffused or Natural Groundwater Constituents.

   Starting on page 5-49, the GSP provides a summary of the water quality analysis performed on naturally occurring groundwater constituents and their distribution within the Subbasin. From this analysis, the GSP states, "Of these constituents, most were detected at concentrations above regulatory limits in a small percentage of the sampled wells (<10%). Since constituents with low detection frequency do not represent groundwater quality issues throughout the entire Subbasin, these constituents will not be considered further in this report" (page 5-53). The small percentage of wells that have exceedances above regulatory requirements do not necessarily represent the basin as a whole with regard to water quality or potential water quality related issues, nor does the provided data represent the most current water quality data set.

   a. *Issue*: The GSP indicates that only a small percentage of sampled wells (<10%) reported exceedances greater than the State Water Resource Control Board – Division of Drinking Water regulatory requirements for drinking water and as such, indicates that these constituents will not be considered further in this report. When evaluating water quality

constituents, it is always beneficial to track trends in water quality concentrations, as increasingly elevated levels of a constituent generally indicate a problem. In the context of drinking water and deliveries from a public water system, the State has prepared regulations and guidance for monitoring and compliance. As specified by State code [22 CCR § 64432], quarterly samples shall be collected and analyzed for any chemical if analyses of such sample indicate a continuous or persistent trend toward higher levels of that chemical, based on an evaluation of previous data. While this requirement may not be applicable for all wells (e.g., agricultural wells) within the Subbasin, the State regulation illustrates the necessity for identifying and tracking water quality trends to avoid undesirable results. It is reasonable to assume that the GSP has the data set for the water quality parameters listed in Subchapter 5.5.3 and the ability to assess potential increasing trends for all water quality constituents identified, as shown for nitrates concentrations in Figures 5.32 and 5.33.

b. *Recommendation:* The Department recommends that the GSP provide a more robust representation of water quality data for the constituents identified within the plan and provide data (i.e. graphical or tabular) illustrating trends over time. Additionally, the Department recommends that the GSP provide the most current available water quality information for the constituent presented within the plan to further substantiate sustainability for this indicator.

5. **Comment #5 Sustainable Management Criteria.** Chapter 8 Sustainable Management Criteria, Subchapter 8.11 Depletion of Interconnected Surface Water (starting page 8-61).

   The 5-year average metric established for depletions of ISW Sustainable Management Criteria lacks triggers to avoid significant and unreasonable adverse impacts (i.e., undesirable results).

   a. *Issue:* The GSP proposes a volumetric minimum threshold for streamflow depletions based on the future water budget that is designed to prevent against increases in streamflow depletions attributable to pumping. This volumetric minimum threshold is proposed for average hydrologic conditions and as a long-term average over all hydrogeologic conditions (page 8-69). The GSP specifies that the minimum threshold volume will be updated upon completion of the SVIHM model and that volumetric surface water depletions for the previous five years will be estimated (page 8-68). The GSP acknowledges that localized pumping and long periods of dryness (among other causes) could lead to undesirable results including increased streamflow depletions that impact beneficial users of ISW

(pages 8-69 to 8-70). The challenge with a streamflow depletion metric that is contingent on long-term hydrologic average conditions and 'normal' water years is that there are no concrete triggers for adaptive management. The GSP does not specify how streamflow depletion minimum threshold exceedances will be identified on a time-scale shorter than five years. Importantly, increased pumping during consecutive dry years that is proximate to ISW could significantly increase surface water depletion and negatively impact instream species as well as riparian habitat (Barlow and Leake 2012, Naumburg 2005). The GSP lacks an actionable path for identifying and addressing streamflow depletion undesirable results in real-time to avoid adverse impacts to aquatic GDEs. Instead, the GSP relies on long-term averages to measure compliance with minimum thresholds, meaning that action may come too late to address undesirable results.

b. *Recommendation:* The Department recommends that the GSP specify management actions to mitigate potential undesirable results to ISW and GDEs during dry years when groundwater pumping increases. Suggestions include pumping restrictions for areas that may impact surface water flow when streamflow depletion minimum thresholds are reached in dry and critical water years.

OTHER COMMENTS: Implementation of Project Actions Related to SGMA

The Department is also commenting on its subsequent role as Trustee and Responsible Agency when individual project actions related to SGMA are implemented.

SGMA exempts the preparation and adoption of Groundwater Sustainability Plans from the California Environmental Quality Act (CEQA) (WC § 10728.6); however, SGMA specifically states that implementation of project actions taken pursuant to SGMA are not exempt from CEQA (WC § 10728.6). The Department is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). The Department, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, the Department is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

The Department is also a Responsible Agency under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381), and the Department expects that it may need to exercise regulatory authority as provided by the Fish and Game Code for implementation of projects related to the GSP that are also subject to CEQA. These projects may be subject to the Department's lake and streambed alteration regulatory authority (i.e., Fish & G. Code, § 1600 *et seq.*). Notification pursuant to Fish and Game Code § 1602 is warranted if a project will (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); and/or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. Likewise, to the extent that implementation of any project may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*), related authorization as provided by the Fish and Game Code will be required. The Department is required to comply with CEQA in its issuance of a Lake or Streambed Alteration Agreement or an Incidental Take Permit.

The implementation of SGMA does not alter or determine surface or groundwater rights (WC § 10720.5). It is the intent of SGMA to respect overlying and other proprietary rights to groundwater, consistent with section 1200 of the Water Code (Section 1(b)(4) of AB 1739). The capture of unallocated stream flows to artificially recharge groundwater aquifers are subject to appropriation and approval by the State Water Resources Control Board (SWRCB) pursuant to Water Code § 1200 *et seq.* The Department, as Trustee Agency, is consulted by SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Certain fish and wildlife are reliant upon aquatic and riparian ecosystems, which in turn are reliant upon adequate flows of water. The Department therefore has a material interest in assuring that adequate water flows within streams for the protection, maintenance and proper stewardship of those resources. The Department provides, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities.

CONCLUSION

In conclusion, the Department requests the Salinas Valley Basin 180/400 Foot Aquifer Draft GSP add specificity to analyses of groundwater dependent ecosystems and interconnected surface waters to: 1) better account for shallow groundwater systems and the many environmental beneficial uses and users that rely on shallow groundwater and interconnected surface waters; and 2) address all SGMA statutes and regulations. The Department recommends that the Salinas Valley Basin Groundwater Sustainability Agency consider the above comments before the GSP is submitted to CDWR. The Department appreciates the opportunity to provide comments on the GSP.

If you have any questions regarding this letter, please contact Dr. Andrew Gordus, Staff Toxicologist, at Andy.Gordus@wildlife.ca.gov or (559) 243-4014 extension 239.

Sincerely,

Julie A. Vance
Regional Manager, Central Region

Enclosures (Literature Cited, Attachment A)

ec: **California Department of Fish and Wildlife**

Joshua Grover, Branch Chief
Water Branch
Joshua.Grover@wildlife.ca.gov

Robert Holmes, Environmental Program Manager
Statewide Water Planning Program
Robert.Holmes@wildlife.ca.gov

Briana Seapy, Statewide SGMA Coordinator
Groundwater Program
Briana.Seapy@wildlife.ca.gov

Annee Ferranti, Environmental Program Manager
Central Region
Annee.Ferranti@wildlife.ca.gov

Andy Gordus, Staff Toxicologist
Central Region
Andy.Gordus@wildlife.ca.gov

Annette Tenneboe, Senior Environmental Scientist Specialist
Central Region
Annette.Tenneboe@wildlife.ca.gov

Bob Stafford, Environmental Program Manager
Central Region
Bob.Stafford@wildlife.ca.gov

California Department of Water Resources

Craig Altare, Supervising Engineering Geologist
Sustainable Groundwater Management Program
Craig.Altare@water.ca.gov

Benjamin Gooding, 180/400 Foot Aquifer SGMA Point of Contact
South Central Region Office
Benjamin.Gooding@water.ca.gov

State Water Resources Control Board

Natalie Stork, Chief
Groundwater Management Program
Natalie.Stork@waterboards.ca.gov

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FARM BUREAU
MONTEREY

1140 Abbott Street, Suite C, Salinas, CA 93901 • PO BOX 1449, Salinas, CA 93902
office (831) 751-3100 • www.montereycfb.com

November 25 , 2019

Mr. Gary Petersen
General Manager,
Salinas Valley Basin Groundwater Sustainability Agency
P.O. Box 1385
Carmel Valley, CA 93924

VIA: E-mail to peterseng@svbgsa.org

RE: Comments on Draft Groundwater Sustainability Plan for 180/400 Sub-Basin of the Salinas Valley Groundwater Basin

Dear Mr. Petersen:

Monterey County Farm Bureau represents family farmers and ranchers in the interest of protecting and promoting agriculture throughout our County. Since 1917, Farm Bureau strives to improve the ability of those engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of our local resources.

Our organization, along with our leadership, has been actively involved in the implementation of the Sustainable Groundwater Management Act (SGMA) since 2015, participating in the formation of the agency and the development of the draft groundwater sustainability plan (GSP).

We very much appreciate the open, transparent and inclusionary process utilized to develop the draft GSP into a solid document that can be a model for the other five GSPs yet to be developed in the coming two years.

In this letter we offer specific comments on Chapters 9 and 10 of the draft GSP; overall, our Directors desire that the consultants continue to do their job, clearly state goals, provide a robust analysis, correct obvious errors, re-think some Management Actions, and keep the budget manageable.

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Chapter 9.4.3.2: Preferred Project 1: Invasive Species Eradication

We fully support the intent of Preferred Project #1 and desire this to be the highest priority project for the 180/400 sub-basin (as well as the Forebay and Upper Valley sub-basins). Eradicating the exotic *Arundo donax* vegetation from the Salinas River Channel has multiple benefits for both landowners, the environment, and the groundwater basin.

There are permits already in place for Salinas River Channel vegetative maintenance with the Army Corps of Engineers, California Fish & Wildlife, and the Central Coast Regional Water Quality Control Board. While those permits do expire in 2020, we expect that their renewal will be in the best interest of the agencies involved as both the Resource Conservation District of Monterey County and the Salinas River Channel River Management Unit Stream Maintenance Program have demonstrated success in removal and management of excess vegetation, improvements to secondary channel flows, and sediment redistribution. The overall outcome is improvement of water flow for both fish passage and flood control.

We see this program as essential to achieving better infiltration of surface waters to the groundwater basin. Vegetation overgrowth in the 95 miles of the Salinas River Channel is estimated to consume from 30,000 to even 50,000 acre-feet of water each year.[1] These numbers exceed the entire number of acre feet needed to balance the basin.[2]

In the Chapter 9 description for Preferred Project #1 the limitation is stated as just *Arundo donax* removal. There are many more vegetative species demonstrating overgrowth in the river channel that should be included; indeed, historical photos from the 1930s show a river channel mostly of sandy bottom lands (which is prior to any stream modifications or dam construction).[3] This lack of vegetation appears to be the native character of the river channel and probably contributed greatly to infiltration of water into the aquifer.

There is widespread unanimity of opinion that the Salinas River Channel has too much vegetation in most reaches after more than a decade of near-total neglect. The maintenance program has touched only a small portion of the river channel to date, and needs to be greatly expanded to include incentives for all landowners to participate. Unfortunately, the costs involved in the permitting and mapping process have discouraged many landowners from participating in the program.

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[1] Brown & Caldwell Report, 2015.
[2] Ibid.
[3] University of California, Santa Barbara - Map & Imagery Laboratory: https://www.library.ucsb.edu/mil

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Dollar for dollar, the channel maintenance program is the most cost effective of the Preferred Projects listed in Chapter 9 and provides the biggest bang for the buck, in the shortest time frame. Everyone agrees that channel maintenance is needed for a healthy ecosystem, including the permitting agencies.

Reducing *all* vegetation in the river channel would improve water conveyance and lead to increased water flows for recharge as well other possible projects, such as the diversion points for the Permit #11043 that could supply water to the Eastside trough. The Salinas River Diversion Facility (also known as the rubber dam) could also see more flow conveyance for the expansion of the Castroville Seawater Intrusion Project (CSIP).

Municipalities are participating in the river channel maintenance program, bringing together both urban and agricultural interests for improvements in the river channel environment. Currently, Cities of Salinas, Soledad, and King are participating materially in the maintenance program, mainly to protect their assets adjacent to the river.

Table 9-5 lists 6,000 acre-feet of savings due to *Arundo donax* removal, but there is a reference of 20,000 acre-feet also; is that amount of the entire water savings for the full basin for just the *Arundo donax* vegetation type?

While we fully respect and support the program that the Resource Conservation District of Monterey County and the success achieved in removing *Arundo donax*, there is more to be done than just replicating this as Preferred Project #1. We urge that the draft be modified to include other vegetative species that are in overgrowth mode.

Chapter 9.4.3.6: Preferred Project 5: Maximize Existing SRDF Diversion

The estimated yield for this project is 11,600 acre-feet per year; yet "the yield for this project is the same yield that is identified in Priority Project #2 and a portion of the yield identified in Priority Project #3."[4] Is this statement intending that the same water can be saved twice, or is this just a simple double reference to water that can be saved? Clarification is needed to determine the exact savings for this project and the related three projects listed for the Castroville Seawater Intrusion Project upgrades and expansion.

[4] 180-400 Sub-Basin GSP draft document, page 9-50.

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Chapter 9.4.3.7: Preferred Project 6: Seawater Intrusion Pumping Barrier

Much more needs to be known about this particular project before it can be considered more fully. Although seawater intrusion extraction wells may very well yield 30,000 acre-feet per year, this water is essentially useless until it can be desalinated. That seems to indicate that extracted water would need to be dispose of, possibly into the ocean? After determining if this project is environmentally (and politically) feasible, the cost-benefit analysis may not be justified. If the project yield is 30,000 acre-feet, why is there a statement in the notes below Table 9-5 that shows only 22,000 acre-feet? Shouldn't the projected cost benefits of this project then be based on the 11,000 acre-feet of net yield?

Chapter 9.4.3.10: Preferred Project 9: SRDF Winter Flow Injection

We question if winter flow injection makes sense in the context of possible land fallowed and available for dedicated recharge basins. The costs of removing the ground from active production could be offset by passive recharge that has little in ongoing operational and maintenance costs, and very little (comparatively) of capital investment costs. This may be an alternative opportunity for land use should there be voluntary fallowing of land in the sub-basin area.

Chapter 9.2: Water Charges Framework

As described, the water charges framework is a proposal and will still need approval from the SVBGSA Board of Directors (requiring 3 of 4 agricultural directors supporting the program). We question that if this type of funding program is to incentivize the reduction of groundwater pumping, the program will eventually defund itself due to declining water use revenue. This has happened to other utilities and is a distinct possibility in the Salinas Valley also as future farming practices may find more efficient means of delivering and using groundwater.

We also note that significant analysis will be required to determine the correct rate levels of the proposed framework; fluctuations in crops and land values, availability of any new project water, and intensive cropping patterns may make the process of determining the rate structure nearly impossible. Will the water charges framework be adopted in all sub-basins? What happens to the budget if one or more sub-basins is not needing to adopt this method of funding?

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Chapter 9.2.1 Well Registration

We point out that the draft language indicates that well registration does not obviously equate to metering, but only that some wells may have meters. There is needed clarity on what well registration and metering requirements intend, how they transect, and how this will be enforced.

Chapter 9.2.4 Relocation and Transfer of Pumping Allowances

While this entire draft document is iterative in nature, we find that this section may need some enhancements with more details. This is effectively a water trading market mechanism and critical to how pumping allowances will be managed ultimately. If SVBGSA intends to manage this on a case-by-case basis, there will need to be guidelines for how this will be managed and who will make any determinations for transfers; the mechanics of this can get quite complicated and should be fully understood before any transfers are considered. What will be the platform for managing these transfers? Will farmers need to manage these trades amongst themselves? What distance will be allowed as a maximum for a transfer (only within each sub-basin)? In past community discussions there was little support for this type of program; is that why there are no details or the consultants have not recommended a platform or program?

We suggest that the fallowing of land needs to be a fully-defined Management Action or Preferred Project. Will SVBGSA purchase water and retire land for a single year or more? There is no direct statement on what will happen if growers decide to change to different crops that may require higher water use, such as vineyard to vegetables. Just as followed land can be recycled into production, can irrigated land that was formerly producing low water use crops convert to a higher water use crop? Will there then be a penalty applied to that farm or land? This could then cross a line into managing land use and dictating which crops can be produced, or even restrict the ability of a farm to change when market conditions alter the economics of any given crop.

Chapter 9.3.2 Agricultural Land and Pumping Allowance Retirement

We support the right of landowners to do as they please with their lands in terms of wanting to continue farming, temporarily fallow or permanently retire agricultural lands under SGMA *on a voluntary basis*. However, we find this section lacking in detail and therefore may not garner the attention from landowners that may be interested. The assumption is that a combination of reduced pumping *and* Preferred Projects are likely needed; however, there is no statement on how this goal

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will be achieved with reduced extractions alone. The cost analysis is also incorrect and needs revision.

In a basin that has seawater intrusion and facing a long list of expensive projects, we believe this warrants a more proactive and thoughtful approach. SVBGSA and its consultants should conduct a geospatial analysis to assess the best areas to potentially retire land through careful study of the economic value of the land *and* water, and then proactively contact the specific landowners to gauge interest in *voluntarily* participating.

There is no mention that funding could be sourced from grant programs for water quality, habitat, and conservation easements for a voluntary land retirement program. All sources of financial support should be fully explored and exhausted prior to SVBGSA expending funds on land fallowing or retirement.

Chapter 9.6: Mitigation of Overdraft

We find there is a lack of transparency in understanding the overall goal; the total acre-feet of savings through projects needed to bring the sub-basin into balance should be clearly stated here. What is the current demand? What is the sustainable yield? What is the overdraft amount? What is the target goal that includes a buffer for seawater intrusion mitigation?

There is also a lack of understanding of what the cumulative impact of multiple projects would be, if more than one or all are put into place; would there be enough water to manage multiple projects? For example, the three projects listed for the Castroville Seawater Intrusion Project (CSIP) have overlapping water savings, yet these three projects are listed independent of each other.

Budget Concerns: Costs of Management Actions (Chapter 9.3)

Our members are sensitive to total costs of implementing SGMA over the next 20 years. Between the First and Second drafts of Chapter 9 (between July 18 and August 8, 2019), two new Management Actions (MAs) have been added and the cost for existing MAs have expanded in number of years and cost per year, and total cost. We calculate that annual costs for these Management Actions have increased total costs by $1,000,000 or more. On the "Public Comment" document, there is no apparent public comment on these MA changes; most of the comments were around the Water Charges Framework and Projects. A table listing the MAs with anticipated costs would be a good addition to this chapter of the document. We request more specific information on the following:

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- Why did MA #1 change from a 4% 30-year amortization to a 6% 25-year amortization?
- How many years is MA #2 expected to take? There is only a notation of "on going."
- Why has the cost per year increased for MA #4?
- SVBGSA will provide oversight for many of the MAs; will these be overseen by SVBGSA staff or the consultants?
- Why are there missing MAs on the Table 10-1?
- Should 180/400 operational costs specific to MAs be in table 10-1?

Tables 10-1 & 10-2

There appear to be some mathematical errors on these two tables. Table 10-1 lists planning level costs that total to $1,399,000 yet the table reflects a total of $1,784,000, a difference of $385,000. Table 10-2 lists planning level cots of $2,922,000 yet the table reflects a total of $9,423,000, a difference of $6,501,000. If either of these tables reflects planning level costs that are for multiple years, it is not clearly noted; thus, there is a distortion of the projected planning level costs for the first five years of implementation.

Conclusion

While we are generally supportive of the draft GSP as presented, we express some concerns over the details, as provided in the comments within this letter. We ask that the consultants review these items and consider further modifications to the GSP during the first two years of implementation, realizing it is difficult to address these concerns prior to full approval by the SVBGSA Board of Directors and submission to meet the January 31, 2020 deadline.

Again, we express our appreciation for the open and transparent process that brought us all to this point.

Sincerely,

Norman C. Groot
Executive Director

November 13, 2019

Ron Stefani, Chairperson
Members of the Board of Directors
Salinas Valley Basin Groundwater Sustainability Agency
P.O. Box 1350
Carmel Valley, CA 93924
Via email peterseng@svbgsa.org, camela@svbgsa.org

Subject: Comments on 180/400-foot Aquifer Subbasin Groundwater Sustainability Plan

Dear Chair Stefani and Members of the Board of Directors:

LandWatch appreciates the opportunity to comment on the 180/400-Foot Subbasin Groundwater Sustainability Plan. Our comments are organized into three sections:

- Summary of comments
- Section 1 documents why the GSP does not meet the legal requirements of the Sustainable Groundwater Management Act ("SGMA")
- Section 2 recommends policy-based changes to the GSP

Summary of comments

The 180/400-Foot Aquifer Subbasin Groundwater Sustainability Plan ("GSP" or "Plan") fails to address the biggest threat to the groundwater resource – continued seawater intrusion. The Plan appears to have been designed to avoid the one measure that is most certain to address this threat: immediate mandatory reductions in groundwater extractions.

Each of the legal shortcomings in the Plan document can ultimately be traced to an unwillingness of the SVGBGSA to face the uncomfortable reality that mandatory pumping reductions are needed, and are needed now. As set out in detail in Section I, the Plan does not comply with SGMA for the following reasons:

- The GSP fails to adopt a conservative estimate of sustainable yield until resolution of data gaps and calibration of the groundwater model.
    - The groundwater model is not calibrated.
    - The minimum threshold for reduction in storage is improperly based on uncalibrated model projection of 2070 sustainable yield and improperly uses the least conservative estimate of sustainable yield.

- The minimum thresholds for groundwater levels and storage reduction are inconsistent with SGMA regulations because they fail to avoid the undesirable results for the seawater intrusion sustainability indicator.
    - The minimum threshold for groundwater levels, set at one foot above lowest historical groundwater levels, will not support the minimum threshold for seawater intrusion, set at existing line of seawater intrusion advance, because those groundwater levels will not halt seawater intrusion.
    - The minimum threshold for reduction in storage, set at the future long-term sustainable yield, will not support the minimum threshold for seawater intrusion, because halting seawater intrusion requires *replacement of depleted groundwater storage* by temporarily reducing extractions to below the sustainable yield.

- The GSP proposes inconsistent programs and management actions to attain the minimum threshold for seawater intrusion, and these remedies would not be timely.

- The Plan fails to include immediate pumping reductions, which are required in order to attain the identified minimum threshold for seawater intrusion.

- The Plan fails to mitigate overdraft: the water charges framework cannot reliably mitigate overdraft because pumping reductions remain voluntary and because price sensitivity and demand elasticity are unknown.
    - SGMA requires that a GSP identify projects or management actions, including demand reduction or other methods, that would be sufficient to mitigate overdraft.
    - Contrary to the Plan's claim, the water charges framework would not reduce demand or increase supply sufficiently to mitigate overdraft because it relies on voluntary pumping reductions and permits pumping in excess of sustainable pumping allocations.
    - Mitigation of overdraft requires mandated pumping restrictions that limit total pumping to current sustainable yield plus newly produced water.
    - The Plan fails to provide the mandatory quantification of the mitigation of overdraft: it fails to quantify the benefits of management actions, it assigns all of the Basin-wide Project benefits to the 180/400- Foot Aquifer Subbasin, it double counts some benefits, and it contains an arithmetic error.

- The implementation plan improperly delays substantive action for two years in order to accommodate the implementation schedule for the GSP for the rest of the Basin, which is not *critically* overdrafted.

- The Plan fails to identify project startup dates.

- The Plan fails to impose pumping restrictions pending startup of new water projects. Interim pumping restrictions are needed in order to restore and maintain the protective groundwater elevations to attain the minimum threshold for seawater intrusion.

- The GSP's multiple, inconsistent, incomplete, and deferred approaches to meeting the seawater intrusion minimum threshold – eventual temporary pumping reductions, a long-delayed $100+ million pumping barrier, or some eventual "agreed approach" from the Working Group – renders the GSP uncertain and inadequate as a plan.

In addition to these comments, LandWatch makes suggestions to revise and improve the Plan in Section II, below. LandWatch's detailed comments follow.

Section I: The GSP does not meet SGMA's requirements.

Set forth below in this section A through H are deficiencies in the Plan that preclude it from meeting SGMA's requirements. LandWatch has previously made many of these comments in letters submitted to the SVGBGSA Board as draft chapters have been released. However, the deficiencies remain.

A. The GSP fails to adopt a conservative estimate of sustainable yield until resolution of data gaps and calibration of the groundwater model.

1. The groundwater model is not calibrated.

Chapter 6 of the GSP presents three different and currently unreconciled sustainable yield calculations, one based on the historic water budget (95,700 AFY), one based on the projected 2030 water budget (107,200 AFY in 2030), and one based on the projected 2070 water budget (112,000 AFY in 2070).[1] (GSP, section 6.10.5, Table 6-31.) Chapter 6 admits that the historical and future water budgets "are developed using different approaches, and are therefore not directly comparable with each other" and are not "based on a consistent approach." (GSP, p. 6-1.) A fundamental problem is that the USGS model has not yet been calibrated with reference to the historic data and thus the projection of the future water balance is not based on a calibrated model. (GSP, p. 6-1.) SGMA requires that the model be calibrated. (23 CCR § 358.18(c)(2), (3).)

2. The minimum threshold for reduction in storage is improperly based on uncalibrated model projection of 2070 sustainable yield and improperly uses the least conservative estimate of sustainable yield.

Citing the section §354.28(c)(2) definition of the minimum threshold for reduction of groundwater storage as "a total volume of groundwater that can be withdrawn from the subbasin without causing conditions that may lead to undesirable results," the GSP sets the minimum threshold for the reduction in groundwater storage as the "the future long-term sustainable yield of the Subbasin under reasonable climate change assumptions," which Chapter 6 identifies as 112,000 AFY. (GSP, p. 8-27.)

Use of the conservative estimate of Sustainable Yield is mandated by the level of uncertainty. SGMA provides that "sustainable management criteria and projects and

[1] Unaccountably, the historical sustainable yield is stated at 95,700 AFY in Table 6-31, but as 97,200 AFY in Table 6-21.

management actions shall be commensurate with the level of understanding of the basin setting, based on the level of uncertainty and data gaps." (23 CCR § 350.4(d).) The minimum thresholds for sustainability indicators must be "qualified by uncertainty in the understanding of the basin setting." (23 CCR § 354.28(b)(1).) Measurable objectives must also "be commensurate with levels of uncertainty." (23 CCR § 354.30(c).) The SVGBGSA must "take into account the level of uncertainty associated with the basin setting when developing projects or management actions." (23 CCR § 354.44(d).) And in deciding whether to approve the Plan, DWR must consider "whether sustainable management criteria and projects and management actions are commensurate with the level of understanding of the basin setting, based on the level of uncertainty, as reflected in the Plan." (23 CCR § 354.4(b)(3).)

Despite the mandate for conservative assumptions to reflect uncertainty, the Plan relies on the *least* conservative estimate of sustainable yield, the highest, uncalibrated, black-box model output for the 2070 Sustainable Yield of 112,000 AFY – a figure produced from a model not made available to the public. The Plan should instead rely on the lower Historical Sustainable Yield of 95,700 AFY, a figure that is based on past historic data and the analysis in publicly available reports. The only rationale the GSP offers for its choice of the least conservative figure for Sustainable Yield is the stakeholder "preference" not to reduce their pumping:

> Public and stakeholder input on the significant and unreasonable conditions for groundwater storage suggested a preference for increasing groundwater storage, but not a preference for restricting average year pumping. Therefore, the minimum threshold is set at the long-term future sustainable yield of 112,000 AFY.

(GSP, section 8.7.2, p. 8-27.)

SMGA requires that the analysis, management actions, and projects in a GSP incorporate "best management practices" (BMPs) and that they be supported by "best available information" and "best available science." (See, e.g., 23 CCR, §§ 351(h),(i); 354.16; 354.18(e) 354.44(c); 355.4(b)(1), Stakeholder preferences may not preempt these considerations.

The GSP states that the sustainable yield "values in Table 6-31 are estimates only" and that the "sustainable yield value will be modified and updated as more data are collected and more analyses are performed." (GSP, section 6.10.5, p. xi.) Regardless whether the values are changed after further analysis, the GSP must observe SGMA's mandate to use conservative estimates in the face of uncertainty.

B. The minimum thresholds for groundwater levels and storage reduction are inconsistent with SGMA regulations because they fail to avoid the undesirable results for the seawater intrusion sustainability indicator.

SGMA requires that each minimum threshold must avoid *each* undesirable result because it requires that "basin conditions at each minimum threshold will avoid undesirable results for *each of* the sustainability indicators." (23 CCR § 354.28(b)(2), emphasis added.) For example, the groundwater level minimum threshold must be "supported by" the "[p]otential effects on *other* sustainability indicators." (23 CCR 354.28(c)(1)(B), emphasis added.) This means that each minimum threshold, especially

the groundwater level minimum threshold, must be coordinated to ensure that *all* undesirable results are avoided.

1. **The minimum threshold for groundwater levels, set at one foot above lowest historical groundwater levels, will not support the minimum threshold for seawater intrusion, set at existing line of seawater intrusion advance, because those groundwater levels will not halt seawater intrusion.**

Chapter 8 adopts the 2017 line of advance of seawater intrusion as the minimum threshold for seawater intrusion:

> The 2017 extent of the 500 mg/L chloride concentration isocontour as mapped by MCWRA is adopted as the seawater intrusion minimum threshold for both the 180- and 400-Foot aquifers.

(Section 8.8.2, p. 8-33.)

Because each minimum threshold must avoid each undesirable result, the groundwater level minimum thresholds should be set at the levels that have been determined to be sufficient to prevent seawater intrusion. These levels should be determined based on the most current modeling or groundwater levels that are sufficient to prevent seawater intrusion. If currently modeling is not available, then the 2013 modeling prepared by Geoscience for MCWRA should be used. Regardless, the groundwater levels must clearly be higher than sea level.

Section 8.6.2 sets a minimum threshold for groundwater elevations at one foot above the 2015 groundwater levels. (GSP, section 8.6.2.1, p. 8-9.) This proposed level is equal to the 1991-1992 groundwater level, which was the lowest historical level that occurred in the 1967-1998 climatic cycle. (Ibid; see also Chapter 8, Figure 8-1.) Figures 8-2 and 8-3 show that the proposed minimum groundwater levels *would be well below sea levels in the northern end of the Salinas Valley*. This is consistent with the MCWRA groundwater contour maps for 2015, which show that 2015 elevations were in fact well below sea level in the northern Salinas Valley.[2] Seawater intrusion accelerated in 2015.[3]

Section 8.6.3 sets a measurable objective for chronic lowering of groundwater levels that "represent groundwater elevations that are higher than the minimum thresholds" in order to "provide operational flexibility to ensure that the Subbasin can be managed sustainably." This level was set at the 2003 groundwater levels, representing "an average groundwater level from the relatively recent past." Figures 8-4 and 8-5 show that the proposed measurable objective for groundwater levels would be *well below sea levels in the northern end of the Salinas Valley*. Again, this is consistent with the MCWRA groundwater contour maps for 2003, which show that 2003 elevations were

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[2] Maps available at https://www.co.monterey.ca.us/home/showdocument?id=31284 and https://www.co.monterey.ca.us/home/showdocument?id=31286.

[3] MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Special Reports Series 17-01, October 2017, pp. 4-5, available at https://www.co.monterey.ca.us/home/showdocument?id=57394.

well below sea level in the northern Salinas Valley.[4] Seawater intrusion continued in 2003.[5]

Seawater intrusion occurred throughout the 1967-1998 climatic cycle and has continued to date. It is caused by groundwater levels that are too low to hold back seawater. In its 2013 study for MCWRA, Geoscience reported the historic rate of seawater intrusion in various time intervals.[6] Intrusion accelerated over the period 1965 to 1999.[7] It has recently accelerated again.[8] Indeed, seawater has continued to steadily advance in both the 180 and 400 foot aquifers through 2017 -- the most recent year that Monterey County released seawater data – and now persists within half a mile or closer of the Salinas city boundary.

Geoscience explained that "historical pumping has lowered ground water levels in both the 180-Foot and 400-Foot aquifer systems such that there is a landward hydraulic gradient which has caused extensive sea water intrusion."[9] The report explains that control of sea water intrusion requires achieving and maintaining "protective elevations," which are defined as "those groundwater elevations which will keep the fresh/salt water interface from migrating inland. *In the northern portion of the Salinas Valley these elevations need to be above sea level and the flow of ground water toward the coast*."[10] The report explains that Geoscience quantified the protective elevations necessary to halt seawater intrusion using the SVIGSM model.

Geoscience's report sets out these necessary protective elevations in Figures 9 and 10 for the 180-Foot and 400-Foot Aquifers. These protective elevations necessary to prevent seawater intrusion are from *10 to 30 feet above sea level in the northern Salinas Valley*.[11]

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[4] Maps available at https://www.co.monterey.ca.us/home/showdocument?id=19538 and https://www.co.monterey.ca.us/home/showdocument?id=19554.

[5] MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Special Reports Series 17-01, October 2017, pp. 4-5.

[6] Geoscience, Protective Elevations to Control Seawater Intrusion in the Salinas Valley, 2013, available at https://www.co.monterey.ca.us/home/showdocument?id=19642.

[7] Id., p. 5, Table 2.

[8] MCWRA, Recommendations to Address the Expansion of Seawater Intrusion in the Salinas Valley Groundwater Basin, Special Reports Series 17-01, October 2017, pp. 4-5.

[9] Id., p. 4.

[10] Id., p. 6, emphasis added.

[11] Geoscience determined that in order to achieve these protective elevations, additional recharge or “in lieu recharge,” i.e., coastal pumping reductions made possible by moving surface water from the south to the north, would be required:

> The amount, location and timing of groundwater recharge (direct and in lieu), needed to maintain protective elevations and a seaward hydraulic gradient was determined using the SVIGSM. Based on model results, and assuming 2030 land use conditions, 12,000 acre-ft/year will be required from the SVWP Phase I facilities and 48,000 acre-ft/year will

The fact that existing groundwater levels are far from the levels required to prevent further seawater intrusion is readily apparent from the technical study on which the GSP relies for the historic water budget in Chapter 6.[12] That study establishes that as of 2013 there was a cumulative storage deficit in the Pressure Subbasin, an MCWRA management area that includes the 180/400 Foot Aquifer Subbasin and the Monterey Subbasin, amounting to 110,000 acre-feet.[13] That study concludes that this cumulative storage deficit would increase by 10,000 to 20,000 AFY under continued dry conditions. Since the drought did not end until 2019, the cumulative deficit has grown. The relation between cumulative deficit, insufficiently protective groundwater levels, and seawater intrusion is also evident from the rapid advances of seawater intrusion through 2017.

As Chapter 8 admits in section 8.6.2.3, "the GSP must describe the relationship between the selected minimum threshold and minimum thresholds for other sustainability indicators (e.g., describe how a water level minimum threshold would not trigger an undesirable result for land subsidence)." (GSP, p. 8-17.) Chapter 8 discusses the relationship of seawater intrusion and the minimum threshold for groundwater levels as follows:

> Seawater intrusion. A significant and unreasonable condition for seawater intrusion is seawater intrusion in excess of the extent delineated by MCWRA in 2017. Lower groundwater elevations, particularly in the 180-and 400-Foot Aquifers, could cause seawater to advance inland. The groundwater elevation minimum thresholds are set at or above existing groundwater elevations. Therefore, the groundwater elevation minimum thresholds will not exacerbate, and may help control, seawater intrusion.

(GSP, section 8.6.2.3, p. 8-17.) The discussion is not accurate. The proposed groundwater minimum thresholds would cause seawater to advance, would exacerbate existing conditions, and would not help control seawater intrusion. The fact that the minimum thresholds are proposed to be one foot higher than the lowest historical groundwater elevations or that the measurable objectives are based on average conditions is insufficient.[14] Because historic groundwater levels have caused seawater

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> be required from the SVWP Phase II facilities. Given the hydrologic variability in the Salinas Valley area, in order to supply a total of 60,000 acre-ft/year (on average), to the SVWP, it will be necessary to have the right to divert up to 135,00 acre-ft/year from the Salinas River.

Id., p. 11.

[12] Brown and Caldwell, *State of the Salinas River Groundwater Basin*, January 2015, available at https://www.co.monterey.ca.us/home/showdocument?id=19586.

[13] Id., p. ES-11.

[14] The Chapter 8 discussion in sections 8.6.2.2 appears to justify the minimum thresholds and measurable objectives based on the percentage of wells that would still have 25 feet of water. However, setting minimum thresholds and measurable objectives for groundwater levels at this level would permit continued seawater intrusion because that level is demonstrably insufficient to prevent seawater intrusion.

intrusion, the minimum thresholds and measurable objectives cannot simply be based on historic minimums or averages.

Chapter 8 also discusses the relation of groundwater elevation minimum thresholds with changes in groundwater storage. That discussion concludes that because the proposed minimum thresholds are set above existing groundwater levels, they "will not result in long term significant or unreasonable change in groundwater storage." (GSP, section 8.6.2.3, p. 8-17.) This discussion is also not accurate. The GSP concludes that there has been an average loss of storage of 2,100 AFY during the historical period. (GSP, section 6.10.5, Table 6-31, page xii.) This conclusion is consistent with the calculated 2,000 average loss of storage in the Pressure Subarea during the period from 1944 to 2013.[15] If the *average* historic groundwater elevations are correlated with the continuous depletion of the aquifer, setting the minimum groundwater elevations at the *lowest* historic level cannot support maintenance of aquifer storage.

2. **The minimum threshold for reduction in storage, set at the future long-term sustainable yield, will not support the minimum threshold for seawater intrusion, because halting seawater intrusion requires *replacement of depleted groundwater storage* by temporarily reducing extractions to below the sustainable yield.**

As discussed above, the GSP sets the minimum threshold for storage reduction at 112,000 AFY, representing the "future long-term sustainable yield of the Subbasin under reasonable climate change assumption." (GSP, section 8.7.2, p. 8-27.) Also as discussed above, until SVGBGSA has a calibrated groundwater model that reconciles historic and modeled future conditions, it should adopt the most conservative estimate of the long-term sustainable yield for this minimum threshold, i.e., the 95,700 AFY estimated using the historic model. (GSP Table 6-31, p. xii.)

But even a conservative estimate of *long-term* sustainable yield is not an adequate basis to set the minimum threshold for storage depletion because the GSP proposes to use that minimum threshold as a target for sustainable pumping. *Until seawater intrusion is in fact halted, the GSP must adopt an even lower minimum threshold for annual storage reductions in order to replace the cumulative storage deficits and to restore the protective groundwater elevations that will halt seawater intrusion*. As noted in the previous section, there is an accumulated storage deficit in excess of 100,000 AF in the Pressure Subarea, which contains the 180/400-Foot Aquifer Subbasin.

In sum, adopting a conservative estimate of sustainable yield might be sufficient to maintain protective groundwater elevations *once those elevations are attained*, but the continued pumping of the long-term the sustainable yield will not *restore* protective groundwater elevations. The cumulative storage deficit from prior years of overdraft conditions must first be addressed through a program of temporary but substantial reductions in pumping to a level *below* long-term sustainable yield in order to reestablish protective groundwater elevations.

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[15] Brown and Caldwell, *State of the Salinas River Groundwater Basin,* 2016, p. Table ES-3, available at https://www.co.monterey.ca.us/home/showdocument?id=19586.

C. The GSP proposes inconsistent programs and management actions to attain the minimum threshold for seawater intrusion, and these remedies would not be timely.

The GSP admits that continued pumping of the long-term sustainable yield is inconsistent with replacing depleted groundwater storage to attain protective elevations. However, the GSP improperly defers the needed pumping reductions to some indefinite time in the future *after* the SVGBGSA has determined the efficacy of proposed projects and management actions:

> While the sustainable yield calculated in chapter 6 assumes zero seawater intrusion, *it does not account for temporary pumping reductions that may be necessary to achieve the higher groundwater levels that help stop seawater intrusion*. Because the minimum thresholds represent long-term management criteria, any temporary pumping reductions needed to raise groundwater elevations are not explicitly incorporated into the thresholds. However, the SVBGSA recognizes that, dependent on the success of various proposed projects and management actions, there may be a number of years when pumping must be held below the minimum threshold to achieve necessary rises in groundwater elevation. *The actual amount of allowable pumping from the Subbasin will be adjusted in the future based on the success of projects designed to halt seawater intrusion*.

(GSP, section 8.7.2, pp. 8-27 to 8-28, emphasis added.) In short, the Plan defers the "temporary pumping reductions" to reestablish protective groundwater elevations even while admitting that these pumping reductions are essential.

The deferral would be for an indeterminate number of years. As discussed in section I.F below, the GSP's implementation chapter postpones even the *commitment* to projects and management actions for the critically overdrafted 180/400-Foot Aquifer Subbasin for two years to coordinate them with the GSP for the rest of the Basin. Chapter 9 indicates that the time required to implement projects and management actions *after* that commitment would run from 2 to 9+ years, although the GSP fails to specify the actual project startup dates. the proposal in Section 8.7.2 to postpone temporary pumping reductions until the GSA first determines whether the long-delayed projects and management actions are effective would result in many more years of seawater intrusion.

Permitting the advancement of the seawater intrusion front for an indeterminate period would be inconsistent with the proposed minimum threshold for seawater intrusion, which requires halting it at the 2017 line of advancement. The fact that SGMA allows SVGBGSA 20 years to attain overall sustainability cannot cure the failure to take immediate action to address seawater intrusion because *the Plan provides no evidence that seawater intrusion can be reversed* once it has occurred. Indeed, the Plan does not provide any discussion of the issue. If reversal of seawater intrusion beyond the 2017 line of advancement were possible at all, it may require heroic measures that are not discussed in the Plan and that would not have been necessary if the intrusion were halted at the 2017 line. In the absence of any discussion of this question, there is no evidence that the Plan can in fact meet the seawater intrusion minimum threshold.

Even though Chapter 8 states that temporary pumping reductions are needed to meet the seawater intrusion minimum threshold, Chapter 9 proposes an entirely inconsistent approach. In Appendix 11E, comment 8-78 asks why the groundwater elevation measurable objectives were not set to stop seawater intrusion. The "DW Response" is that "intrusion could be stopped by pumping water out as well as by raising water levels." The response in effect argues that the Plan is *not* committed to the temporary reductions in pumping to restore protective elevations that are mentioned in section 8.7.2, but is instead committed to the "Seawater Intrusion Pumping Barrier" identified as "Preferred Project 6." (GSP, section 9.4.3.7, pp. 9-50 to 9-52.)

This $100 million+ capital project calls for 18 barrier wells continuously pumping 30,000 AFY along an 8.5 mile stretch of the coast. There is no indication that the project has been determined to be feasible, either technically, environmentally, or financially. For example, it is not clear that the Proposition 218 beneficiaries of the project would be willing or able to shoulder its cost. And, the Plan provides no evidence that there is a beneficial use for 30,000 AF of brackish water removed from the basin annually or, if not, that the water could be disposed of somewhere without unacceptable environmental impacts.

Furthermore, unless immediate pumping reductions were implemented to restore protective groundwater elevations, seawater intrusion would continue until the Seawater Intrusion Pumping Barrier is implemented, a period of time that section 9.4.3.7.5 identifies as at least 5 years from project commitment, without allowing any time for the required Proposition 218 process. During that time seawater intrusion would continue to advance past the 2017 line of advancement, which is identified as the minimum threshold. That 2017 line of advancement is already more than six miles inland.[16] The Plan provides no evidence that the proposed Seawater Intrusion Pumping Barrier along the coast could reverse seawater intrusion that has occurred more than six miles inland.

Furthermore, the inclusion of the Seawater Intrusion Pumping Barrier in the list of preferred projects begs the question to be addressed by the "Seawater Intrusion Working Group," which is supposed to be convened as "Priority Management Action 6." (GSP, section 9.3.7, pp. 9-20 to 9-21.) This Working Group is supposed to determine "an agreed approach for managing seawater intrusion." (Id., p. 9-21.) The implication is that there *is in fact no agreed approach* and that the Seawater Intrusion Pumping Barrier is at best an uncertain remedy.

Finally, Priority Management Action 6, the Seawater Intrusion Working Group, is in essence a proposal to *postpone* the development of management actions and projects to halt seawater intrusion. This violates SGMA's requirement that the *Plan itself* identify the management actions and projects that will mitigate overdraft and provide specified information about these management actions and projects. (23 CCR § 354.44.) For example, SGMA requires that the Plan identify the permits and regulatory process, the status and timetable, and the expected benefits of each project and management action and explain how it will be accomplished. (23 CCR § 354.44(b).) A plan that defers this information does not comply with SGMA because it is incomplete. DWR certainly cannot

[16] MCWRA, Presentation to Special Joint Meeting, 2017 Salinas Valley Groundwater Level Contours & Seawater intrusion Maps, April 24, 2018, available at https://www.co.monterey.ca.us/home/showdocument?id=63777.

find that a plan that defers the identification of management actions and projects by delegating this task to a working group is “sufficiently detailed,” or that it will in fact attain sustainability, or that it meets SGMA’s plan evaluation criteria,. (23 CCR § 350.4(b), (f); § 355.4.) Nor does the delegation of the approach to mitigation of seawater intrusion to a working group meet SGMA’s public participation requirements. (23 CCR § 354.10.)

The GSP’s multiple, inconsistent, incomplete, and deferred approaches to meeting the seawater intrusion minimum threshold – eventual temporary pumping reductions, a long-delayed $100+ million pumping barrier, or some eventual “agreed approach” from the Working Group – renders the GSP uncertain and inadequate as a plan.

D. The Plan fails to include immediate pumping reductions, which are required in order to attain the identified minimum threshold for seawater intrusion.

In its October, 2019 meeting to consider policy choices, the SVGBGSA Board discussed the possibility of establishing a buffer to permit further advance of seawater intrusion. However, SVGBGSA does not have the option to allow seawater intrusion to move further inland unless it is prepared to permit the further loss of the land overlying newly seawater-intruded portions of the aquifer for groundwater-based activity, e.g., agriculture. As noted, the Plan does not present any evidence that seawater intrusion can feasibly be reversed; and if it cannot be feasibly reversed, this loss of productive land may be permanent.

If the SVGBGSA were to adopt a minimum threshold for seawater intrusion that permits any further advancement, it would also have to adopt interim milestones in increments of five years, as required by 23 CCR § 354.30. Thus, SVGBGSA would have to decide how much longer it going to let seawater intrusion advance (if it adopts a time-based "buffer") and/or whose land it would allow to be subjected to seawater intrusion (if it adopts a spatial "buffer"). Because the Board has not made this choice, it must adopt a plan that will in fact halt seawater intrusion at the 2017 line of advancement.

The only apparently feasible option to halt seawater intrusion at the 2017 line is immediate pumping reductions. The Plan does not identify pumping reductions that would adequately mitigate overdraft as a management action, even though the regulations require this:

> If overdraft conditions are identified through the analysis required by Section 354.18, *the Plan shall describe* projects or management actions, including a quantification of demand reduction or other methods, for the mitigation of overdraft.

(23 CCR § 354.44(b)(2).) Proposed priority management action number 4 calls for an *eventual* pumping ban in the CSIP area, but only after such time as replacement water projects are implemented. Furthermore, the Plan fails to include the required quantification of the demand reduction this management action would attain. (GSP, section 9.3.9, pp. 9-16 to 9-18.) Proposed priority management actions number 1 and 2 *might* result in pumping reductions through voluntary land retirements or BMPs, but these reductions are neither assured nor quantified. (GSP, section 9.3.2, 9.3.3, pp. 9-10 to 9-14.)

More problematically, the Plan does not quantify the demand reduction that is *needed* to halt seawater intrusion at the 2017 line of advancement. As discussed, there is available modeling that has determined that a pumping reduction of 60,000 AFY in coastal pumping would be required in order to reestablish protective elevations.[17] This modeling should be updated as necessary in order to specify a management action that would mandate the needed immediate coastal pumping reductions to halt seawater intrusion.

E. The Plan fails to mitigate overdraft: the water charges framework cannot reliably mitigate overdraft because pumping reductions remain voluntary.

1. SGMA requires that a GSP identify projects or management actions, including demand reduction or other methods, that would be sufficient to mitigate overdraft.

Mitigation of overdraft conditions is central to meeting the minimum thresholds for groundwater levels, storage reduction, and seawater intrusion. SGMA requires quantification of the "demand reduction or other methods" needed to mitigate overdraft. (23 CCR § 354.44(b)(2).) *Simply put, the SVGBGSA must either reduce pumping or take management actions and implement projects that would generate new water.*

The Plan includes projects, management actions, and an overarching "water charges framework" that are supposed to mitigate overdraft conditions and attain sustainability. (GSP, Chapter 9; see section 9.6, p. 9-85.) However, the Plan does not propose the one obvious and effective management action to ensure that pumping does not exceed sustainable yield: mandatory limits on pumping through water allocations.

As discussed in section I.D above, immediate pumping reductions are needed to attain the minimum threshold for seawater intrusion. But even if pumping reductions were not needed immediately, the Plan is not designed to ensure that pumping remains within the long-term sustainable yield of the 180/400-Foot Aquifer Subbasin. As discussed below, the Plan fails to implement an enforceable or quantifiable demand reduction and fails to show that the management actions and projects will effectively reduce demand or augment supply to avoid overdraft conditions.

2. Contrary to the Plan's claim, the water charges framework would not reduce demand or increase supply sufficiently to mitigate overdraft

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[17] Geoscience determined that in order to achieve these protective elevations, additional recharge or "in lieu recharge," i.e., coastal pumping reductions made possible by moving water from the south to the north, would be required:

> The amount, location and timing of groundwater recharge (direct and in lieu), needed to maintain protective elevations and a seaward hydraulic gradient was determined using the SVIGSM. Based on model results, and assuming 2030 land use conditions, 12,000 acre-ft/year will be required from the SVWP Phase I facilities and 48,000 acre-ft/year will be required from the SVWP Phase II facilities. Given the hydrologic variability in the Salinas Valley area, in order to supply a total of 60,000 acre-ft/year (on average), to the SVWP, it will be necessary to have the right to divert up to 135,00 acre-ft/year from the Salinas River.

Geoscience, Protective Elevations to Control Seawater Intrusion in the Salinas Valley, 2013, p. 11.

because it relies on voluntary pumping reductions and permits pumping in excess of sustainable pumping allocations.

The Plan proposes an overarching water charges framework *that it claims will mitigate overdraft*:

> The water charges framework is specifically designed to promote pumping reductions. Should adequate pumping reductions not be achieved to mitigate all overdraft, funds collected through the water charges framework will support recharge of imported water, either through direct recharge or in-lieu means. Therefore, the water charges framework in association with the projects and management actions listed in this chapter will mitigate overdraft through a combination of pumping reduction and enhanced recharge.

(GSP, section 9.6, p. 9-85.)

The water charges framework is based on based on different fees for pumping at three different levels. It distinguishes three levels of fees:

- A "regulatory" fee for pumping a user's "sustainable pumping allowance,"
- A "surcharge" for a user's "transitional pumping allowance," where the transitional pumping allowance is based initially on current pumping and then declines to zero over a period of time, and
- A "supplementary fee" for "supplemental pumping," i.e., pumping in excess of the sustainable and transitional allowance.

This water charge framework is "designed to achieve" two objectives: "to promote voluntary pumping reductions" and "to fund water supply projects." (Chapter 9, § 9.2, p. 9-2.)

However, there is no evidence that the fees can or will be set at a level that attains sustainability as long as pumping reductions remain voluntary. A purely voluntary scheme can only work to attain sustainability if (1) the fees are set at a level that pays for water projects that make additional water available in excess of sustainable yield ("new water") and (2) that fee level is just high enough to incent users to limit their cumulative pumping to an amount equal to current sustainable yield plus that new water. Setting this Goldilocks fee would require SVGBGSA to know the incremental cost of new water from a suite of potential projects and management actions, to know the elasticity of demand, and to know the point at which the marginal cost of new water equals its marginal benefit to users.

In short, reliance on voluntary reductions in response to price signals would not work unless the SVGBGSA has a lot more information to set water prices than it can possibly generate before this Plan must be implemented.

Furthermore, the Plan admits that most of the details of the water charges framework must be deferred due to lack of information. (GSP, section 9.2.7, "Details to be Developed.") For example, there is no estimate of costs and benefits per acre/foot of new water for some of the management actions. There is no allocation of the estimated Basin-wide benefits of the proposed management actions and projects to users of the 180/400- Foot Aquifer Subbasin. There is no information as to the elasticity of demand

that would enable the SVGBGSA to determine what feasible projects and management actions, priced to users at an equitably determined cost per acre/foot, should be implemented in order to satisfy demand. However, if pumping reductions remain voluntary, establishing the supplementary charges for new water that would limit pumping to sustainable levels would require this cost/benefit information and a determination as to when the supplementary water charges will become so high that users will not be willing to buy more water.

Development of the water charge framework will also require critical compromises about technical matters and benefit allocation among affected parties, with vastly different interests by subbasin and by the type of user. This information will not be available by 2020 or perhaps for many years thereafter.

In sum, there is no prospect to get to an agreement, especially any time soon, on the amount of a supplementary water charge that would pay for needed projects and induce users to keep total pumping within the level of sustainable yield plus new water. Even if the SVGBGSA can determine the precise cost per acre/foot of new water, it is unlikely to know the point at which the benefits and costs of that next acre-foot of new water are equal. As long as pumping reductions remain voluntary, there is a significant probability that pumping will exceed sustainable yield.

Accordingly, as a practical matter, the Plan cannot rely on voluntary pumping reductions to ensure that pumping does not exceed sustainable yield. There is insufficient information to develop price signals as an effective incentive for voluntary pumping reductions, and the water charges framework is too uncertain to meet SGMA's requirements. (23 CCR § 354.44(c), (d) ["projects and management actions shall be supported by best available information and best available science;" and "agency shall take into account the level of uncertainty with the basin setting when developing projects and management actions"].)

3. Mitigation of overdraft requires mandatory pumping restrictions that limit total pumping to current sustainable yield plus newly produced water.

In light of the fact that the SVGBGSA cannot determine prices that would attain the needed voluntary pumping reductions, the obvious and essential way to mitigate overdraft is through mandatory reductions. The SVGBGSA must determine each user's share of the sustainable yield, and then mandate that pumping may not exceed this level. There are many methods to allocate shares of sustainable yield.[18]

Furthermore, as LandWatch has proposed in previous comments on a draft of Chapter 9, the SVGBGSA must restrict pumping in excess of the user's allowance of sustainable yield unless and until there is an actual committed, funded management action or project that will deliver new water. When new water is produced, the SVGBGSA should continue to restrict total pumping to the total of current sustainable yield plus that new water. To

[18] Environmental Defense Fund and New Current Water and Land, LLC, Groundwater Pumping Allocations under California's Sustainable Groundwater Management Act, July 2018, available at https://www.edf.org/sites/default/files/documents/edf_california_sgma_allocations.pdf.

ensure this, when a management action or project is committed and funded, the SVGBGSA could distribute the new water by selling specific allowances of the new water to users.[19]

If demand for new water exceeds supply, the SVGBGSA could allocate the new water allowances through several means. For example, it could sell the new water by auction, e.g., a French auction in which the supply is sold at the lowest bid price above the cost of production that would clear the market. Alternatively, the right to purchase new water at the cost of production could be assigned to users according to some pre-determined formula, e.g. pro-rata, based on their initial allowances of the current sustainable yield.[20] There are other equitable ways to allocate new water. Regardless, the objective of the allocation system should be to recover at least its production cost, to dispose of all of the new water, and to prevent pumping in excess of the sustainable yield plus the amount of new water.

4. **The Plan fails to provide the mandated quantification of the mitigation of overdraft: it fails to quantify the benefits of management actions, it assigns all of the Basin-wide project benefits to the 180/400- Foot Aquifer Subbasin, it double counts some benefits, and it contains an arithmetic error.**

SGMA requires that if overdraft conditions are identified in the Water Budget, the Plan must "describe projects and management actions, including a quantification of demand reduction or other methods, for the mitigation of overdraft." (23 CCR § 354.44(b)(2).) Section 9.6 purports to provide this quantification. However, the quantification has four flaws that must be corrected.

First, Section 9.6 fails to quantify the benefits of management actions. SGMA mandates quantification of the benefits of projects *and management actions*. (23 CCR § 354.44(b)(2).) The discussion in Section 9.6 and Table 9-5 address only the benefits of proposed projects, based on the estimated quantification of benefits of each proposed project in the discussion of projects in Section 9.4. There are no such quantified estimates of the benefits of the proposed management actions in Section 9.3. It is likely that the benefits of some of the proposed management actions could in fact be estimated. For example, the benefit of a pumping ban in the CSIP area would presumably be equal to current pumping in that area, which should be ascertainable.

Unless the SVGBGSA is prepared to supply at least an estimate of the benefits of proposed management actions, it is not clear that there is adequate evidence that they would have any meaningful or reliable benefits or that there is any way to evaluate those benefits, as required by 23 CCR § 354.44(b)(5). For example, the benefits of reservoir

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[19] A management action or project should not be deemed funded and committed until it has been approved by the implementing agency and until all needed funding is in place, including fee ordinances and Proposition 218 votes as needed.

[20] Users with an allowance of the existing sustainable water supply or an allowance of new water could be permitted to sell an allowance to other users. This secondary market in water allowances would ensure the water goes to the most valued use and would establish price signals that would inform SVGBGSA of users' willingness to pay for future new water supply projects.

reoperations may be too speculative to include at this point in light of the federal agency revocation of the Biological Opinion controlling environmental flows and the unfunded obligation for dam safety repairs, estimated to cost $145 million.[21] (GSP, section 9.3.4, pp. 9-14 to 9-16, Priority Management Action 3: Reservoir Reoperation.").

Second, Chapter 9 states that the proposed management actions and projects "constitute an integrated management program for the entire Valley," not just the 180/400 Aquifer Subbasin. (Chapter 9, sections 9.3.1, 9.4.2.) Despite this, Section 9.6 only discloses the overdraft for the 180/400 Aquifer Subbasin and then concludes that the *benefits of projects intended to mitigate the entire Basin's overdraft* is sufficient because it is greater than the overdraft in the 180/400 Foot Aquifer Subbasin. It is erroneous to allocate the entire benefit of Basin-wide mitigation to a single subbasin.

Third, Table 5 double counts the benefits of the proposed projects #2, 3, 4, and 5, all of which are intended to "work together to improve and expand the performance of the CSIP system" and are identified as "part of an integrated CSIP strategy." (Chapter 9, page 31, "CSIP Projects."). For example, the discussion of the benefits of Project # 5, Maximize Existing SRDF Diversion, states that the "estimated project yield is 11,600 AF/year. *The yield for this project is the same yield that is identified in Project #2 and a portion of the yield identified in Priority Project #3.*" (GSP, section 9.4.3.6.2, p. 9-49, emphasis added.) Despite this, Table 9-5 lists 11,600 AF/year as *additional* potential yield for Project #5, over and above the yield for Projects # 2 and #3. (GSP, Section 9.6, Table 9-5, p. 9-86.)

Fourth, Table 9-5 is not added correctly. The "total" for Table 9-5 is stated as "-58,201." However, the sum of the elements listed in the table is 40,800 acre-feet per year of potential water available for mitigating overdraft. Eliminating the double counted 11,600 acre-feet per year for Project # 5, the total would be 29,200 AF/year.

F. The implementation plan improperly delays substantive action for two years in order to accommodate the implementation schedule for the GSP for the rest of the Basin, which is not *critically* overdrafted.

SGMA requires more urgent action for *critically* overdrafted basins than for other overdrafted basins: plans for critically overdrafted basins are due two years sooner than plans for other overdrafted basins. The Chapter 10 GSP Implementation proposal fails to recognize this urgency because it defers substantive action for the critically overdrafted 180/400 Foot Aquifer Subbasin until the SVGBGSA is prepared to implement the GSP for the rest of the Salinas Valley Groundwater Basin (SVGB). Because the remainder of the Basin is merely overdrafted rather than critically overdrafted, its GSP is not due until 2022.

In particular, section 10.7 postpones implementation of projects and management actions in order to coordinate with the timetable for the rest of the Basin:

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[21] Monterey Herald, "Reservoirs bond measure gets water agency support," Oct. 23, 2019, available at https://www.montereyherald.com/2019/10/23/reservoirs-bond-measure-gets-water-agency-support/.

> The projects and management actions identified in Chapter 9 are sufficient for attaining sustainability in the 180/400-Foot Aquifer Subbasin as well as the other five subbasins in the Salinas Valley. The projects and actions will be implemented in a coordinated fashion across the entire Salinas Valley to ensure Valley-wide sustainability. Because five of the subbasins in the Valley will not complete GSPs until January 31, 2022, many of the projects and actions will be implemented only after this time.

(GSP, section 10.7, p. 10-10.) Indeed, the only activities proposed for projects and management actions prior to completion of the GSP for the rest of the SVGB in 2023 are some water rights applications, cost refinement, preliminary design ("if projects adequately defined"), and some initiation of environmental permitting. (GSP section 10.7, p. 10-10.)

Figure 10-1, "General Schedule of 5-year Startup Plan," represents that the SVGBGSA will "Implement Prioritized Projects" between 2023 and 2025. (GSP, section 10-9, p. 10-15.) However, the implication that the nine "Preferred" projects identified in Chapter 9 will actually start up in 2026 is inconsistent with the detailed project timelines in Chapter 9, which call for 2 to 9+ years to implement projects *after the SVGBGSA has committed itself to them*.

Furthermore, there is no reason to suppose that the SVGBGSA can or will commit itself to the basin-wide projects in 2023, the moment the SVGBGSA submits the GSP for the rest of the SVGB. First, DWR may not approve the Basin-wide GSP for several years, and the SVGBGSA may not be able to commit to a Basin-wide project without an approved Basin-wide GSP.

Second, many of the projects will require complex Proposition 218 compliance, undertaken only *after* SVGBGSA decides to pursue the projects, in order to determine whether fees can be assessed to actually build them.[22] (Water Code, § 10730.2(c)). The Proposition 218 compliance process, requiring engineering studies and benefit allocations based on a completed design and hydrological assessment, followed by balloting and protest procedures, may add years to each major project. The SVGBGSA cannot actually commit itself to commence a project until it has confirmed that it may make assessments to finance the project through a completed Proposition 218 process. The implementation schedule does not include any time for this critical process.

Finally, section 10.2 defers the implementation of a financing method for projects and management actions to coordinate with the timetable for financing for the rest of the Basin:

> Details of the GSP implementing finance framework for all six subbasins will be developed during the first three years of this GSP's implementation through a

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[22] The GSP identifies a proposed "Groundwater Sustainability Fee" (also termed a "regulatory fee" and a "Tier 1 – Sustainable Pumping Charge") for pumping a "Sustainable allowance" and an "interim base fee" pending completion of the "GSP financing framework." (GSP, sections 9.2 and 10.2, pp. 9-1 to 9-3, 10-4 to 10-5.) However, before Proposition 218 compliance, those fees could not be used for projects but only for the activities related to developing and managing the GSP. (Compare Water Code, §§ 10730 and 10730.2.)

> facilitated, Valley-wide process. This process will be similar to the successful facilitated process that resulted in the SVBGSA serving as the GSA for some or all parts of all six subbasins. The result of this facilitated process will be an agreement on the financing method approved by the SVBGSA. The facilitation will be complete by January 31, 2023, and the financing method will be implemented in all six subbasins immediately following.

(GSP section 10.2, pp. 10-4 to 10-5.) Here, the Plan is apparently describing the adoption of a financing "framework" or "method," *not an actual financing plan or capital budget*. As noted, the actual budget and financing plan will require the completion of Proposition 218 processes for the projects.

In effect, the proposed GSP Implementation improperly treats the actual management of the critically overdrafted 180/400 Foot Aquifer Subbasin as if it were on the same timetable as the rest of the SVGB. This does not meet the mandate of SGMA, which requires more than a plan by 2020. SGMA requires that critically overdrafted basins "shall be *managed* under a groundwater sustainability plan" by January 31, 2020. (Water Code, § 10720.7(a)(1), emphasis added.)

If the development and financing of projects must await completion of the GSP for the remainder of the SVGB, and because substantial delay will inevitably be required to negotiate financing and develop projects, the SVGBGSA should implement all feasible interim measures to manage the 180/400 Foot Aquifer Subbasin pending the implementation of basin-wide projects and financing. As discussed in section I.D above and in section I.H below, that must include immediate pumping reductions.

G. The Plan fails to identify project startup dates.

The Plan identifies various timelines for the nine identified priority water projects in Chapter 9 that include necessary actions in a necessary sequence, such as studies and preliminary engineering, obtaining agreements and right of way, CEQA, permitting, design, bid and construction, and startup. Some projects might be implemented in 2 years from commitment; but most are projected to take from 5 to 9 years from commitment to startup. As noted above, Chapters 9 and 10 do not include estimates of the additional time required for Proposition 218 compliance.

Chapter 9 does not disclose when the timelines for each project would commence running, so it is impossible to determine when these projects would actually deliver results. The Chapter 10 implementation schedule proposes that no projects commence "implementation" before the adoption of the GSP for the remainder of the SVGB in 2023 so that the projects can be coordinated on a basin-wide basis. However, Chapter 10 does not even purport to identify project start up dates. This violates SGMA. (23 CCR, § 354.44(b)(2).) As discussed above, contrary to Figure 10-1 it is not reasonable to assume that the SVGBGSA will be able to "implement" all nine projects between 2023 and 2025. (GSP, p. 10-15.)

Chapter 10 should be revised to reflect realistic timelines for each project and management action that provide a best current estimate of startup that considers all necessary activity before startup, including the Proposition 218 process.

H. The Plan fails to impose pumping restrictions pending startup of new water projects. Interim pumping restrictions are needed in order to restore and maintain the protective groundwater elevations to attain the minimum threshold for seawater intrusion.

The development, permitting, and financing of water projects to replace reliance on current levels of groundwater pumping will take years. It is unlikely that any actual or substantial results toward halting seawater intrusion can be expected from the proposed projects and management actions by 2025, when Figure 10-1 indicates that the projects will be implemented. Projects may not deliver any substantial results before 2030. Interim management measures are required pending completion of projects. Interim measures must either provide additional water supplies or require mandatory pumping restrictions that will (1) actually ensure that pumping remains within the sustainable yield and (2) replace the cumulative storage deficit in order to restore groundwater levels to protective elevations.

Immediate pumping restrictions are feasible and would not require extensive data acquisition.

Pumping restrictions are legally feasible because they could be imposed based on the regulatory authority of GSAs to "control groundwater extractions by regulating, limiting, or suspending extractions from individual groundwater wells or extractions from groundwater wells in the aggregate, construction of new groundwater wells, enlargement of existing groundwater wells, or reactivation of abandoned groundwater wells, or otherwise establishing groundwater extraction allocations." (Water Code, § 10726.4(a)(2).)

SVGBGSA could adopt pumping restrictions much more quickly than it could actually complete a project. In particular, SVGBGSA would not need to complete the proposed three-year negotiation of a water charge framework and would not need to conduct a potentially multi-year Proposition 218 process. And it is likely that pumping restrictions would be exempt from CEQA as a measure to protect natural resources and the environment. (14 CCR §§ 15307, 15308.) And if the SVGBGSA could not or would not adopt needed pumping restrictions through such a CEQA exemption, then the SWRCB could do so under a statutory exemption. (Water Code, § 10736.2.)

Pumping restrictions could be imposed on the basis of readily available information. For example, the Brown and Caldwell report has already been used to in Chapter 6 to identify the historic sustainable yield of 95,700 AFY. (GSP, Table 6-31, p. xii.) The Brown and Caldwell Report also provides an estimate of the cumulative storage deficit, which should be retired through pumping reductions. In its 2013 study for MCWRA, Protective Elevations to Control Seawater Intrusion in the Salinas Valley, Geoscience quantified the needed reductions in groundwater pumping (via in lieu recharge) to control seawater intrusion in the northern Salinas Valley.[23]

Although more precise data may eventually be available to closely calibrate the needed pumping reductions, there is no reason not to estimate and implement needed

[23] Geoscience, Protective Elevations to Control Seawater Intrusion in the Salinas Valley, 2013, p. 11.

reductions in pumping immediately. *There is simply no question that some pumping reductions are essential to halt seawater intrusion.*

Again, the only rationale advanced in the GSP for avoiding a pumping restriction is that stakeholders did not express a "preference for restricting average year pumping." (GSP, section 8.7.2, p. 8-27.) SGMA neither requires nor permits the SVGBGSA to honor a mere preference when that precludes meeting the mandates to meet the minimum thresholds, including the minimum threshold for seawater intrusion.

The GSP already proposes some pumping restrictions in the form of an immediate moratorium on new wells in the Deep Aquifer and an eventual restriction of pumping in the CSIP areas. (GSP, sections 9.3.5 and 9.3.6, pp. 9-16 to 9-20.) There is no reason that the GSP should not also address the need for immediate measures to address seawater intrusion.

Section II: The GSP should be revised.

Set forth in this section II are suggestions to improve the Plan.

A. Requested revisions to Chapter 6

1. Assumptions regarding efficacy of future projects and management actions to address seawater intrusion in the projected future sustainable yield should be spelled out.

We concur with Thomas Virsik's concerns about the projected future sustainable yield. (June 4, 2019 letter from Thomas Virsik to the Planning Committee.) In particular, Chapter 6 does not explain its assumption that seawater intrusion will be reduced from 10,500 AFY to 3,500 AFY by 2030, despite an increase in pumping and an increase in the change in storage. If this assumption is based on the assumed efficacy of existing or future management actions and projects, then Chapter 6 should identify them and the basis for their assumed efficacy.

Future operations of existing projects may in fact be subject to substantial changes. For example, Chapter 6 states that the modeling of the projected future water budget assumes "the current approach to reservoir management taken by MCWRA." (GSP, section 6.10.1.2, p. iv.) However, it is not clear that this assumption is warranted in light of the withdrawal of NOAA's Biological Opinion for the Salinas Valley Water Project on February 20, 2019. Or for example, it is not clear whether and how the projected future water budget reflects the recent actions by the County to restrict pumping in the Area of Impact within the 180/400 Subbasin.[24] The fact that the model projects that net pumping in 2030 and 2070 will be substantially *greater* than historical pumping suggests that the

[24] Monterey County, Urgency Ordinance # 5302, available at https://www.co.monterey.ca.us/government/departments-a-h/health/environmental-health/wells/interim-urgency-ordinance-5302.

model assumes that the County's recent well moratorium in portions of the 180/400 Subbasin will not have any lasting effect on pumping amounts.

The purpose of the water budget is to inform decisions about what projects and management actions the SVGBGSA should implement to control undesirable effects, including seawater intrusion. Assuming a partial solution in the projected future water budget is unjustified unless the projects or management actions responsible for that partial solution are (1) outside the control of the SVGBGSA and (2) certain to be implemented by other parties. If projects or management actions responsible for that partial solution are within the control of the SVGBGSA, then they should be weighed against SVGBGSA's *other* options rather than being hard-wired into the water budget. If projects or management actions responsible for that partial solution are uncertain, then their uncertainty should be disclosed.

2. **Double counting of water withdrawals should be resolved**.

A number of previous comments have objected that the water budget overstates historic pumping, and therefore overstates future sustainable yield, because the historic data double counts groundwater pumping as surface water diversions. The Plan admits this problem. (GSP, section 8.11.2.1, p. 8-64.) In a June 18, 2019 letter, Thomas Virsik proposed a relatively straightforward method to identify or at least estimate this double counting by identifying identical extraction numbers in the eWRIMS data and the MCWRA groundwater pumping submissions. Resolution of double counting may materially affect the sustainable yield calculation in the historic water budget, and can only tend to reduce it. Conservative management under uncertainty requires that, before the GSA relies on the historic sustainable yield calculation, it should at least estimate this potential error and reduce the historic sustainable yield calculation by that estimate.

Chapter 6 states that the modeling of the *future* water budget does not double count extractions. (Section 6.9, p. 6-35.) This means that only the historical water budget's determination of sustainable yield has been overstated by double counting. This is not reassuring because it follows that the actual variance between the projected future sustainable yield determined by the USGS model (107,200 AFY in 2020 per Table 6-31) and the sustainable yield determined historically (95,700 AFY per Table 6-20) is even greater than disclosed by Chapter 6.

3. **Sustainable yield determinations should incorporate climate change-caused variability in precipitation**.

Chapter 6 notes that "projections are based on the available climate change data provided by DWR (2018)." (Section 6.10, p. iii.) The Chapter does not explain whether and how DWR's projections are reconciled with those in California's Fourth Climate Change Assessment Central Coast Region Report.

The Fourth Assessment notes:

- Average precipitation is expected to increase by a relatively small amount, but the annual variability increases substantially by the end of the century.
- Projected future droughts are likely to be a serious challenge to the region's already stressed water supplies.

- Water supply shortages, already common during drought, will be exacerbated. Higher temperatures may result in increases in water demand for agriculture and landscaping. Reduced surface water will lead to increases in groundwater extractions that may result in increased saltwater intrusion. Lower surface flows will lead to higher pollutant concentrations and will impact aquatic species.
- Climate change projections of future extreme and prolonged droughts will exacerbate the region's water supply challenges. [25]

Chapter 6 should discuss how variability and uncertainties in future precipitation patterns will impact groundwater budgets. It is not clear that climate variability effects have been modeled. Increased peak precipitation years may not proportionately benefit the groundwater basin as much as increased drought years harm the basin. Peak precipitation may occur in large storm events discharged down the river and out to sea without resulting in proportionately higher basin recharge. However, it is clear that drought years do result in falling groundwater levels.

B. Chapter 7 should require that pumping be monitored by flowmeters.

Chapter 7 does not provide for an adequate system of monitoring annual groundwater extractions. LandWatch strongly recommends that the Salinas Valley Groundwater Basin Groundwater Sustainability Agency adopt an ordinance that requires

1) Independently calibrated and monitored flowmeters on agricultural pumps throughout the Salinas Valley Groundwater Basin; and
2) Annual pumping reports that are independently validated for accuracy.

The ordinance should also include strict enforcement provisions that help assure full compliance. The proposed use of the existing monitoring program to monitor annual groundwater pumping is not adequate because it will generate inaccurate results and potentially lead to unfair cost allocations.

As LandWatch's previous comments on Chapter 7 explain, Monterey County Water Resource Agency does not enforce Monterey County Ordinance No. 3717 which requires installation of flowmeters meeting MCWRA specifications for all groundwater extraction facilities with a discharge pipe of 3 inches or greater. Many wells report extraction based on electricity consumption instead of the mandated reporting based on flowmeters. However, electricity consumption is a demonstrably inaccurate basis to estimate groundwater pumped.[26] Many wells do not report at all.

The Plan does not require enforcement of the MCWRA flowmeter ordinance, but instead would permit continued reliance on the same methods used in the past. (GSP, section 7.3, p. 7-16.) The Plan does not even require annual reporting by all agricultural users, instead providing for estimates of such pumping using crop data and crop duty

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[25] Langridge, Ruth. (University of California, Santa Cruz), California's Fourth Climate Change Assessment Central Coast Region Report, 2018, pp. 17, 6, 7, 21, available at https://www.energy.ca.gov/sites/default/files/2019-07/Reg%20Report-%20SUM-CCCA4-2018-006%20CentralCoast.pdf.

[26] Irrigation Training and Research Center, California Polytechnic State University, ITRC Paper No. P 17-001, May 2017 available at http://www.itre.org/papers/wellrecords.htm.

estimates. The Plan should be revised to mandate use of flowmeters for all wells with discharge pipes of 3 inches or greater, with annual verification in accordance with Ordinance No. 3717. A monitoring plan that fails to require accurate measurement of groundwater extractions fails to meet SGMA's mandate to rely on best management practices and best available science to obtain the best available information.

Thank you for the opportunity to comment.

Sincerely,

Michael DeLapa
Executive Director

To: SVBGSA Board

From: Robin Lee, SVBGSA Advisory Committee

Re: Comments on GSP draft

Date: 11/14/2019

It is my opinion that the ground water level of sustainable yield has been set at an unsustainable level. The level for sustainable yield should be set at the average depth of domestic wells. This would assure a majority of residential water users would be assured of access to ground water. Ground water depths set near the end of the worst drought in California will not give ground water access to the majority of residential systems. Also, the lower level would put tremendous strains on ground water connected ecosystems.

For projects, a scalping plant should be used for the east side of Salinas. This plant would be closer to connecting the much disrupted hydrologic cycle on the east side, making the scalping plant both an economical and efficient project.

Looking at and correcting the ordinances that prevent the recommendations stated in the GSP from being implemented, should be listed as an administrative project in GSP.

Thank you.

Robin Lee, Environmental Caucus seat, Advisory Committee

FARELLA
BRAUN + MARTEL LLP

PAUL P. SPAULDING, III
sspaulding@fbm.com
D 415.954.4918

December 12, 2019

By Hand Delivery

Board of Directors
Salinas Valley Basin Groundwater
Sustainability Agency
1411 Schilling Place
Salinas, California 93901

Re: Finalizing Groundwater Sustainability Plan and Adopting Cooperation Agreement with the County of Monterey–SVBGSA Board of Directors December 12, 2019 Meeting, Agenda Items # 7.a and # 7.b

Dear Salinas Valley Basin Groundwater Sustainability Agency Board of Directors:

On behalf of the City of Marina ("City" or "Marina") and the Marina Groundwater Sustainability Agency ("MGSA"), we submit these comments opposing the adoption of two proposed resolutions on the Salinas Valley Basin Groundwater Sustainability Agency ("SVBGSA") Board of Directors' December 12, 2019 Agenda: (1) the resolution adopting SVBGSA's final groundwater sustainability plan ("GSP") for the 180/400 Foot Aquifer Subbasin ("Subbasin"); and (2) the resolution adopting a cooperation agreement between SVBGSA and the County of Monterey ("County") for management of an approximately 400-acre parcel within the Subbasin.

INTRODUCTION

The City and MGSA oppose both resolutions before the SVBGSA Board of Directors' for different reasons. First, the City recognizes the hard work that has gone into the preparation of SVBGSA's GSP. As required by the Sustainable Groundwater Management Act ("SGMA"), SVBGSA circulated its Draft GSP for a 45-day public comment period, and we understand that SVBGSA received a considerable volume of comments. However, according to the Staff Report, SVBGSA has no intention to respond to the timely comments it received after mid-November or to make any changes to its Draft GSP based on those comments. Rather, SVBGSA's proposed resolution seeks to approve its Final GSP without taking these comments into account.

SVBGSA's approach violates SGMA and essentially nullifies the important public comment process. The City and MGSA submitted comments on November 25, 2019 (within the public comment period), but SVBGSA is disregarding these comments and making no changes

to its GSP based on them. This procedural misstep by SVBGSA fundamentally impairs the due process rights of all commenters who filed comments after mid-November. It also undermines the integrity and validity of SVBGSA's Final GSP because it does not address the crucial factual, technical, and scientific issues that MGSA and the City raised in their comments. Accordingly, SVBGSA's Board cannot legally approve the Final GSP without first completing the comment review, response, and GSP revision processes. The Final GSP is thus deficient in its current form.

Second, the City and MGSA oppose the resolution approving a cooperation agreement between SVBGSA and the County of Monterey. SVBGSA failed to negotiate in good faith with MGSA over the terms of a coordination agreement for four months and instead requested that the County take over MGSA's jurisdictional area. This is no less than a "hostile takeover" of MGSA's entire groundwater area. Pursuant to this plan, on December 11, 2019, the County adopted a resolution to utilize Water Code Section 10724 to pursue becoming the groundwater sustainability agency ("GSA") for the approximately 400-acre parcel within the Subbasin where MGSA and SVBGSA have filed overlapping GSA notifications.

However, the County cannot lawfully invoke Section 10724, in part because as a member, majority funder, and architect of SVBGSA and its GSP, the County "is creating or contributing to the [GSA] overlap" it allegedly seeks to solve by becoming a GSA. State Water Resources Control Board, *Frequently Asked Questions on GSAs*, at 3 (Nov. 22, 2017). The County thus has no legal basis for disregarding MGSA, a properly-formed GSA with jurisdiction over the MGSA area. Furthermore, the County's efforts to install SVBGSA's GSP and to delegate management of the overlapping area expose the County's real motive. Together, SVBGSA and the County seek to contravene SGMA's GSA coordination requirements and effectively designate SVBGSA as the exclusive GSA for the Subbasin through a prohibited "backdoor" maneuver. These actions violate SGMA and attempt to unlawfully block the City of Marina and MGSA from exercising their rights under SGMA.[1]

Both of these resolutions would undermine the efforts of the City and MGSA to contribute to the sustainable management of the Subbasin and protect the critical coastal areas in the City's jurisdiction. Accordingly, the City strongly urges SVBGSA not to adopt either proposed resolution and instead begin coordinating with MGSA to develop a GSP or set of GSPs to sustainably manage the Subbasin.

I. SVBGSA's Proposed Resolution To Finalize Its GSP Unlawfully Disregards Timely Filed Public Comments And Has Resulted In A Deficient Final GSP.

The City and MGSA oppose SVBGSA's proposed resolution to adopt its Final GSP after only considering and addressing a portion of the public comments on it. The deadline to submit

[1] The City and MGSA provided a detailed description of these issues in their December 10, 2019 joint opposition letter to the County's GSA Resolution, which is enclosed herewith as Attachment 1 and incorporated herein by reference.

public comments on SVBGSA's GSP was November 25, 2019.[2] Now, after that deadline has passed, SVBGSA seeks to impose an earlier comment deadline by failing to consider and address public comments received "[b]etween mid-November and prior to the closing comment date of November 25, 2019." SVBGSA Board Agenda, *Staff Report on Agenda Item 7a* at 63.

SVBGSA openly admits that "not all" public comments "will be initially addressed individually in the comment matrix." *Id.* SVBGSA plans instead to wait until after it approves and submits its Final GSP before addressing all of the comments. It tries to justify this deferral by stating that it can take the comments into account "as the GSP is implemented and refined." *Id.* Because of SVBGSA's newly announced mid-November comment cutoff, the unaddressed comments include the City and MGSA's November 25, 2019 comment letter and matrix.[3]

SVBGSA's failure to consider the City and MGSA's comments violates SGMA, which mandates that a GSA "shall review and consider comments from any city or county" within its GSP's area. Cal. Water Code § 10728.4; *see also* Cal. Code Regs. tit. 23, § 354.10(c) (requiring a GSP to include the public comments on the GSP "and a summary of any responses by the [GSA]"). SVBGSA's failure to consider and address these comments undermines the purpose of the public comment process and potentially deprives local governments, beneficial users, and interested parties of the opportunity to provide input on the GSP. *See* Cal. Water Code § 10727.8. Accordingly, SVBGSA's efforts to adopt its GSP without considering or addressing the City and MGSA's comments present a clear violation of SGMA.

Failing to consider the City and MGSA's comments also leaves critical gaps in SVBGSA's GSP unaddressed. These gaps include the GSP's failure to (1) utilize the newest and best available science; (2) designate, protect, and manage the Dune Sand Aquifer as a principal aquifer; (3) provide sufficient protections against ongoing or worsening seawater intrusion; (4) meaningfully recognize, address, monitor, and manage groundwater-dependent ecosystems as a beneficial groundwater use; (5) consider state and federal protections for habitats and species in and near the MGSA area; and (6) include an adequate monitoring network in the coastal portion of the Subbasin. These and the other deficiencies delineated in the City and MGSA's comments only heighten the harm from SVBGSA's refusal to consider them. Adopting SVBGSA's GSP without addressing these issues will fail to protect the Subbasin's coastal areas as well as local beneficial uses and users of groundwater.

When taken together, SVBGSA's instigation of the County's new effort to become a GSA and failure to consider the City's public comments would deny the City of its right to contribute to the management of the MGSA area as either a DWR-recognized GSA or a local government entity. In correspondence with MGSA, SVBGSA has confirmed that it will only

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[2] *See* SVBGSA, *Public Notice Release of Groundwater Sustainability Plan 180-400 Foot Aquifer Subbasin*, available at https://svbgsa.org/groundwater-sustainability-plan/180-400-ft-aquifer/.

[3] City of Marina and MGSA, *Comments on SVBGSA Draft Groundwater Sustainability Plan* (Nov. 25, 2019).

agree to meet with MGSA to coordinate on a GSP if MGSA "agrees to give up its GSA."[4] Relinquishing its GSA status would leave the City with only the public comment process to influence groundwater management in its jurisdiction. However, SVBGSA has thus far failed to consider MGSA's public comments before finalizing its GSP. These efforts collectively would deprive the City and MGSA of their ability to ensure sustainable management of the Subbasin and protect the City's coastal areas.

II. The County And SVBGSA's Proposed Cooperation Agreement Confirms SVBGSA's Role As The County's Affiliate In The County's GSA Takeover.

SVBGSA's proposed resolution adopting a cooperation agreement with the County to install SVBGSA's GSP and manage the overlap area demonstrates SVGBSA's role in the County's proposed unlawful GSA takeover. Indeed, both SVBGSA's proposed resolution and the cooperation agreement provide further proof of the unlawful nature of the County's efforts and SVBGSA's status as the County's affiliate. The City and MGSA oppose the adoption of this proposed cooperation agreement because it formalizes the County and SVBGSA's joint effort to exclude MGSA from the management of the MGSA area.

First, the cooperation agreement evidences the County's and SVBGSA's shared intent to deny MGSA the opportunity to collaborate on groundwater management issues in the Subbasin and circumvent SGMA's coordination requirements. SVBGSA's Staff Report demonstrates that SVBGSA had no intention of coordinating with MGSA and instead has sought ways to work with the County to implement its GSP. Only two days after MGSA released its Draft GSP on October 8, 2019, the SVBGSA Board voted to "request[] that Monterey County take all necessary steps to become the GSA for either the entire 180/400 Foot Aquifer Subbasin or the CEMEX site." SVBGSA Board Agenda, *Staff Report on Agenda Item 7b* at 502. This motion included a request that the County also adopt SVBGSA's GSP. *Id.* Thus, before MGSA and SVBGSA even submitted comments on each other's GSPs, SVBGSA already solicited the unlawful intervention of its member and majority funder to override MGSA and implement its GSP.

Second, SVBGSA and the County's proposed cooperation agreement also confirms their plan to have the County become a GSA, not to manage the overlap area, but instead to effectively install SVBGSA as the exclusive GSA for the MGSA area. In particular, Section 5.2 assigns SVBGSA the responsibility of "comply[ing] with SGMA at the CEMEX Site, including taking actions to review, adopt and implement the GSP." SVBGSA and Monterey County Cooperation Agreement at 4. Section 5.3 then provides that the "County GSA authorizes SVBGSA to exercise any and all legal authorities in compliance with applicable law for the CEMEX Site." *Id.* These provisions demonstrate that the County has no interest in acting as the GSA for the overlap area. The County instead only seeks to use Section 10724 to remove MGSA, so its affiliate, SVBGSA, can manage the site. In other words, the County's resolution

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[4] *See* Letter from Layne Long to Gary Petersen (Nov. 21, 2019) (stating SVBGSA's position) (enclosed as Attachment 2).

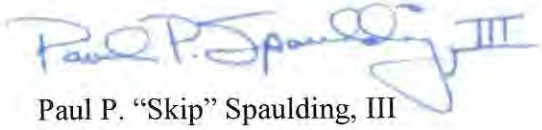
and the cooperation agreement aim to use Section 10724 to do what SVBGSA cannot on its own—adopt SVBGSA's GSP for the MGSA area without coordinating with MGSA and its GSP.

Third, as explained in the City and MGSA's letter opposing the County's GSA resolution, the County is indisputably creating and contributing to the overlap situation, as a member, majority funder, and driving force in the SVBGSA. The proposed cooperation agreement further links the County and SVBGSA through provisions like Section 14.13's joint defense provision. It provides that SVBGSA and the County may "further coordinate and cooperate by undertaking joint defense, including utilizing a common interest/joint defense agreement" to defend against "any challenge to the Subbasin GSP as it relates to the CEMEX Site." *Id.* at 10. The County created and contributed to the overlap with MGSA through SVBGSA. Now, the two affiliates seek to jointly defend their bad faith takeover of the MGSA area against a potential legal challenge from the City and MGSA. This confirms the County and SVBGSA's affiliation as joint actors and further cements the County's status as a creator and contributor to the overlap area.

CONCLUSION

For the reasons outlined above, the City and MGSA oppose SVBGSA's proposed resolutions. Together, SVBGSA's resolutions threaten to silence MGSA both as a local agency participating in the public comment process and as a DWR-recognized GSA. Accordingly, the City and MGSA strongly urge SVBGSA not to adopt either resolution and instead begin working with MGSA to coordinate on a GSP or set of GSPs to sustainably manage the Subbasin.

Sincerely,



Paul P. "Skip" Spaulding, III

PPS:jla
Enclosures

cc: Layne Long, Marina City Manager
(via e-mail llong@cityofmarina.org)
Marina City Council (via e-mail)
Robert Wellington, Marina City Attorney
(via e-mail rob@wellingtonlaw.com)
Deborah Mall, Marina Assistant City Attorney
(via e-mail deb@wellingtonlaw.com)
Keith Van Der Maaten, Marina Coast Water District GSA
(via e-mail kvandermaaten@mcwd.org)

ATTACHMENT 1

FARELLA
BRAUN + MARTEL LLP

PAUL P. SPAULDING, III
sspaulding@fbm.com
D 415.954.4918

December 10, 2019

Via Hand Delivery

Monterey County Board of Supervisors
168 West Alisal Street, First Floor
Salinas, California 93901

Re: Formation of Groundwater Sustainability Agency and Related Actions
County Board of Supervisors December 11, 2019 Meeting, Agenda Item #4

Dear Chair Phillips and Honorable Monterey County Supervisors:

On behalf of the City of Marina ("City" or "Marina") and the Marina Groundwater Sustainability Agency ("MGSA"), we submit these comments opposing the adoption of a resolution by Monterey County ("County") to become the Groundwater Sustainability Agency ("GSA") for a portion of the 180/400 Foot Aquifer Subbasin ("Subbasin") and to take related actions.

INTRODUCTION

The City of Marina and MGSA strongly object to Monterey County's unlawful effort to subvert the intent and explicit text of the Sustainable Groundwater Management Act ("SGMA"). The County proposes to undertake a "hostile takeover" of MGSA's entire groundwater area and then turn over the management of this groundwater to its affiliate, the Salinas Valley Basin Groundwater Sustainability Agency ("SVBGSA").

The County is hopelessly conflicted and therefore disqualified from taking these actions. It was the moving force in founding SVBGSA, has provided 60% of its funding so far and, until only two months ago, provided all legal services for SVBGSA's SGMA activities and management, including the preparation of SVBGSA's draft groundwater sustainability plan ("GSP"). The County is masquerading as a "neutral" agency coming in to resolve a local agency "overlap" in jurisdiction, but in fact, its sole motivation is to eliminate MGSA and supplant MGSA's GSP in favor of the SVBGSA GSP that it supervised and approved as the most prominent SVBGSA member.

Notably, the County's proposed resolution fails to consider MGSA's GSP, recognize the need for sustainable groundwater management in and near the MGA Area, or make any findings on the merits of SVBGSA's GSP to address these needs. Instead, the proposed resolution demonstrates that the County's true motivation is not collaborative management of the Subbasin,

but rather is to strip the City of Marina of any voice in the management of groundwater within its own jurisdiction.

MGSA is a validly formed SGMA GSA. It took all required SGMA steps and filed all appropriate notices with the Department of Water Resources ("DWR") for MGSA's formation and GSP preparation, and DWR accepted these notices and posted them on its website.[1] MGSA authorized a $275,000 contract for preparation of the GSP and continues to expend these funds as its GSP preparation proceeds. MGSA issued a draft GSP on October 8, 2019, and accepted comments on it until November 25, 2019. Responses to comments and any necessary revisions to the GSP will be completed in the next few weeks, and the GSP is scheduled for MGSA consideration in January 2020. Thus, it is "on track" to be submitted to DWR by the January 31, 2020 deadline prescribed in SGMA.

These actions by the County have been orchestrated by California-American Water Company ("CalAm"), which has encouraged the SVBGSA Board and Committees to eliminate the City of Marina and the MGSA by requesting that the County attempt to "take over" MGSA's groundwater area. CalAm, of course, has no interest in sustainable groundwater management – rather, its sole goal is to eliminate any potential impediments to its foundering Monterey Peninsula Water Supply Project ("MPWSP" or "Project").[2] CalAm does not want the City of Marina to have any groundwater management role in this area, primarily because they prefer the "hands off" approach of SVBGSA. Once SVBGSA made this request to the County, the County immediately notified DWR of its "takeover" plans in a letter and has now published the proposed resolution.

This proposed County action has no precedent under SGMA. The statutory sections which the County relies on are intended to apply only to areas that are "unmanaged" because *no* GSA has filed to manage the groundwater in that area (rather than the situation here where two agencies have filed for the same area). In the only other case where a County has stepped in to

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[1] The County and SVBGSA have tried to create the incorrect impression that MGSA is not a valid GSA because it supposedly did not file to be a GSA by a deadline in SGMA. However, this contention has been completely debunked and has never been supported by DWR. We enclose as Exhibit "1" hereto and incorporate herein a copy of a letter dated August 28, 2019 sent to DWR on behalf of MGSA that explains why this contention lacks any merit.

[2] CalAm has suffered severe, and potentially fatal, setbacks in its efforts to obtain agency permits and authorizations for the MPWSP. After the City of Marina (the certified local coastal agency) denied the primary Coastal Development Permit ("CDP") for the Project, California Coastal Commission Staff recommended that both the appealed CDP application and the CDP application within its original jurisdiction be denied. The Coastal Commission will not consider these permits until March 2020 or later. In the meantime, as the result of a lawsuit brought by Marina Coast Water District, a Monterey County Superior Court Judge has entered an Order enjoining any construction of the Project's desalination plant until at least March 2020. CalAm has also failed to apply for or pursue other key federal and state permits necessary for the Project. If the Project is ever fully approved and constructed, it will be many years behind schedule.

resolve an overlap in jurisdiction, the local agencies *supported* the county action. According to DWR: *"No county has yet sought to use Section 10724 [the SGMA section relied on by the County] to form a GSA against the wishes of agencies within their jurisdiction."*

Monterey County appears to be adopting the simplistic position that DWR has supposedly blessed this action through a letter dated November 5, 2019 ("DWR Letter"). However, the County is making a serious mistake. DWR actually said that the County might be able to do so if certain conditions are satisfied. Ultimately, a court will determine whether SGMA allows the County to take this action in the current context. And under California administrative law, courts give no deference to inconsistent agency statutory interpretations. *See, e.g., Yamaha Corp. of Am. v. State Bd. of Equalization*, 19 Cal. 4th 1, 13 (1998)("*Yamaha*"). DWR has taken inconsistent positions over time on this issue, and the County's current position directly contradicts its position only two months ago. Indeed, on the crucial "creating or contributing" test discussed below, the County's action would violate the published guidance of the State Water Resources Control Board ("State Board") on this issue. Moreover, the latest DWR advice runs directly counter to SGMA's text and purpose. Given the lack of case precedent and the shifting DWR positions, it would be extremely risky for the County to adopt this resolution.

This dispute must be viewed against the larger backdrop of the MGSA and SVBGSA GSPs. The SVBGSA GSP is a regional approach to the management of the Subbasin which is primarily oriented to protecting the interests of the agricultural producers north of the Salinas River and inland from the coastal region. The GSP ignores or disregards the recent site-specific studies by a Stanford University research team and others, based on state-of-the-art airborne electromagnetic ("AEM") techniques, that have resulted in three-dimensional maps and cross-sections of the Subbasin groundwater, which forms the best scientific information on Subbasin groundwater conditions.

The SVBGSA GSP contains a wholly deficient monitoring network south of the Salinas River. No meaningful monitoring of any kind is proposed within several miles of the coast, leaving the area effectively unmanaged under SGMA. The SVBGSA GSP also fails to consider and manage groundwater resources in the Dune Sand Aquifer that are designated by the State Board to be protected, and fails to acknowledge or protect the interconnected surface water features such as the vernal pools and wetlands in and near the City of Marina. Thus, the County's proposed takeover of the MGSA as an "unmanaged area" will have exactly the opposite effect – it will perpetuate a lack of management of groundwater resources in this area by failing to protect local beneficial uses and users of groundwater in favor of the policy preferences of a select group of inland beneficial users.

In contrast, MGSA has prepared a locally-focused GSP that uses the best available science and information to ensure sustainable groundwater management in the MGSA Area, to protect local beneficial users and property, and to support regional efforts to address seawater intrusion and other undesirable results. Unlike the SVBGSA GSP, the MGSA GSP characterizes, monitors and manages the Subbasin groundwater resources south of the Salinas

River in the coastal region and recognizes the important municipal, domestic, groundwater dependent ecosystem, and other beneficial uses and users in this area, including the urban and other users who depend on this drinking water source in the Subbasin and the adjacent Monterey Subbasin.

Five independent reasons, discussed below, prevent Monterey County from invoking Section 10724 in attempt to become the new GSA for the overlap portion of the Subbasin:[3]

- Because Monterey County is creating and/or contributing to the overlap, it cannot invoke Section 10724;
- Section 10724 does not authorize a county to file a GSA notice for areas covered by multiple GSA notices;
- Monterey County's decision to invoke Section 10724 is premature and would unlawfully circumvent SGMA's explicit local agency coordination requirements and GSP resolution provisions;
- Monterey County's resolution to become the GSA for the overlapping area cannot nullify MGSA's GSA notice or solve the underlying coordination problem; and
- Monterey County cannot become the GSA for the overlap portion in time to submit a GSP before SGMA's January 31, 2020 deadline.

The County should be clear that the City of Marina and MGSA view this proposed action and resolution as a direct and unlawful attempt to eliminate the City's SGMA rights and responsibilities and that the City and MGSA will take all necessary steps to protect their SGMA jurisdiction. The City strongly advises Monterey County not to undertake this misguided action.

SGMA CONTEXT

Both MGSA and SVBGSA filed notices of their GSA formation and of their intent to prepare GSPs for the Subbasin. While SVBGSA's notice covers the entire Subbasin, MGSA's notice applies only to an approximately 400-acre portion of the Subbasin within the City of Marina's jurisdictional boundaries that is not under the jurisdiction of a local water agency. Thus, MGSA and SVBGSA have overlapping claims to this portion of the Subbasin.

When competing GSA notices cause overlapping boundaries, SGMA prevents a GSA decision from "tak[ing] effect unless the other notification is withdrawn or modified to eliminate any overlap in the areas proposed to be managed." Cal. Water Code § 10723.8(c). Here, DWR has not recognized an exclusive GSA for the Subbasin. *See* DWR SGMA Portal, *All Posted GSA*

[3] We enclose as Exhibit "2" hereto and incorporate herein a copy of a October 21, 2019 letter on behalf of MGSA to DWR explaining these factual and legal issues.

Notices.[4] SGMA instructs the local agencies to "seek to reach agreement to allow prompt designation of a groundwater sustainability agency." Cal. Water Code § 10723.8(c). SGMA further requires GSAs "intending to develop and implement multiple groundwater sustainability plans" to "coordinate with other agencies preparing a groundwater sustainability plan within the basin." *Id.* § 10727.6. The GSAs must "jointly submit" their GSPs with a coordination agreement "to ensure the coordinated implementation of the groundwater sustainability plans for the entire basin." *Id.* § 10733.4(b); *see also* Cal. Code Regs. tit. 23, § 357. 2.

Accordingly, when GSAs file overlapping claims, SGMA envisions a process where those agencies negotiate in good faith to reach a compromise and enter into a coordination agreement which they submit with their GSPs. MGSA and SVBGSA must file their GSPs and coordination agreement for the Subbasin by January 31, 2020.

LEGAL AND FACTUAL ANALYSIS

I. Monterey County Cannot Invoke Section 10724 Because It Is A Creator And Contributor To This GSA Overlap.

A county cannot invoke Section 10724 if it "is creating or contributing to the [GSA] overlap." State Board, *Frequently Asked Questions on GSAs*, at 3 (Nov. 22, 2017) ("SWRCB FAQs"). The State Board's limitation on Section 10724 prevents counties that contribute to overlapping areas from circumventing SGMA's GSA collaboration requirements.

Here, the County is indisputably creating and contributing to the GSA overlap as a member, majority funder, and architect of SVBGSA and its GSP. As a result, the State Board's limitation precludes the County's proposed resolution, which weaponizes Section 10724 in an attempt to install its affiliate's GSP and disregard a properly-formed GSA with jurisdiction over the MGSA Subbasin area. The necessary implications of SGMA's GSA coordination requirements mandate that the County cannot override MGSA's GSP and deny MGSA the opportunity to collaborate with SVBGSA on the management of groundwater within Marina's jurisdiction.

A. Based On Its Close Affiliation with SVBGSA, The County Is Creating Or Contributing To The Overlap Area.

As discussed in Section II, the Legislature intended counties to use Section 10724 as a backstop to protect groundwater users from facing Water Code Section 5202(a)(2)'s reporting requirements. The County's proposed resolution would attempt to improperly exploit this backstop to install a GSP commissioned by the County as a member of SVBGSA.

The County was the moving force behind SVBGSA's formation and even "pushed for the establishment of the Joint Powers Authority" ("JPA"). SVBGSA Minutes at 2 (Sept. 19, 2019). Section 10.4 of the JPA Agreement for SVBGSA shows that the County has provided almost

[4] Available at https://sgma.water.ca.gov/portal/gsa/all.

60% of all initial funding for SVBGSA during the 2017–19 period, totaling $1.34 million. Monterey County remains a member of SVBGSA, and the County Administrative Officer position (who authored the County's October 9, 2019 letter to DWR) is designated as the official County representative to SVBGSA. *See* Exhibit A to SVBGSA's JPA Agreement. Further, the County played an integral role in the development of SVBGSA's GSP. The Monterey County Counsel's office has served as the attorney for SVBGSA as it filed GSA and GSP notices and prepared the GSP that the County's resolution seeks to adopt after it overrides MGSA.

In short, contrary to the resolution's purported findings, the County, as a member, majority funder, and driving force in the SVBGSA, is indisputably creating and contributing to the overlap situation. The County therefore cannot credibly pose as a disinterested county coming in under a ministerial application of Section 10724 to resolve a dispute among two local GSA agencies. This is precisely the kind of conflict situation that disqualifies a county from attempting to invoke Section 10724 under the "creating or contributing" limitation.

B. The County's Proposed Resolution Would Represent A Bad Faith Attempt To Circumvent SGMA's Coordination Requirements And Implement The GSP Of Its Close Affiliate.

Monterey County's proposed resolution vividly illustrates the dangers of a county misusing Section 10724 to override a local agency instead of cooperating with it. The County's proposed resolution responds to a request by an affiliated entity (SVBGSA) to prevent the City of Marina from exercising its GSA authority. Monterey County then seeks to adopt the same GSP that the County helped design as a member of SVBGSA. Notably, Monterey County fails to even consider adopting any part of MGSA's GSP, addressing SGMA management gaps identified by MGSA, or providing any justification for adopting SVBGSA's GSP. The County likewise fails to present any groundwater management justification for asserting control over the overlap area.

It is striking that the County actually has no intention of managing the overlap area, which is exactly what it would be required to do under Section 10724. Rather, the County blatantly announces its intention to instead delegate management authority to SVBGSA, whose GSP provides no framework for sustainable groundwater management in or near the MGSA Area, and does not consider the needs and rights of coastal beneficial groundwater users and uses. These County actions lead to only one conclusion. The County's resolution seeks to use Section 10724 to do what the County's affiliate SVBGSA cannot: adopt only the SVBGSA GSP for the MGSA jurisdictional area without coordinating with MGSA and its GSP. Indeed, the intent appears to be retain the area as essentially unmanaged under SGMA, leaving CalAm to implement the MPWSP unhindered by any requirements for sustainable groundwater management for the benefit of beneficial users in inland portions of the Subbasin. The State Board's guidance aims to quash these exact types of bad-faith maneuvers.

While the County's proposed resolution blames the overlap on Marina's GSA notice, the County and SVBGSA continue to contribute to the overlap by refusing to collaborate with MGSA. The County and SVBGSA are engaging in this waiting game at the behest of CalAm,

which has encouraged these actions to promote its Project. In its October 9, 2019 letter to SVBGSA, copied to the Monterey County Administrative Officer, CalAm requests both entities to "defer any action on a coordination agreement" with MGSA and instead advocates that the County should become the GSA for the overlap area. CalAm takes the ridiculous position that MGSA is only preparing a GSP to stop its Project and attempts to enlist the County's help so that it can build the Project. CalAm is not a GSA, and, as a private corporation intent on profit, it has no interest in ensuring sustainable groundwater management in the Subbasin. Rather, it is a third party with no official role in this SGMA process, attempting to pressure public agencies to achieve its corporate goals. By advocating to stop any coordination agreement discussions, CalAm wanted to artificially create an impasse in hopes of a County takeover. And by acquiescing to CalAm's demands, the County and SVBGSA have needlessly created this situation.

We note that the MGSA has been working in good faith to negotiate a Coordination Agreement with SVBGSA and, in August 2019, prepared, approved and transmitted to SVBGSA a draft agreement based on a template provided by SVBGSA. Since that time, SVBGSA staff has not negotiated in good faith with MGSA to reach agreement. In contrast, in the last month, SVBGSA has developed a Coordination Agreement with the County, which is being considering for adoption at the SVBGSA Board meeting on December 12, 2019. This backroom Coordination Agreement effort with the County vividly illustrates that SVBGSA knows how to negotiate such an Agreement when it really wants to.

SGMA, in contrast, "requires the agencies to resolve" boundary disputes. SWRCB FAQs at 3. The State Board only deems an area unmanaged until the GSAs resolve their conflict. *Id.* This limitation aligns with the intended purpose of Section 10724 to function as a backstop, allowing a county to assume the role of a GSA in a ministerial manner as a last resort or as a temporary solution before a local agency can take control. Instead of serving that purpose, Monterey County's proposed resolution uses Section 10724 to target only the City of Marina and block it from exercising its GSA authority and implementing its GSP. This bad-faith effort contravenes SGMA's emphasis on and processes for local agency cooperation and basin management.

C. DWR's Latest Inconsistent Interpretation Of Section 10724 Does Not Apply.

DWR has articulated inconsistent standards for when a county is disqualified from invoking Section 10724. First, DWR guidance authored in May 2019 prohibits a county who "is responsible for creating the overlap" from becoming a GSA under Section 10724. DWR, *GSA Frequently Asked Questions,* at 4 (May 10, 2019) ("DWR FAQs"). A DWR representative (Tom Berg) expanded on DWR's position at the September 19, 2019 SVBGSA Advisory Committee meeting, stating to SVBGSA that:

> **Monterey County can remove itself from the SVBGSA and become the GSA for the unmanaged area and enter into a coordination agreement.** The cleaner approach is if Monterey County decides there is an overlap and becomes the GSA for the

> entire 180/400 Subbasin. **They can become the GSA for only Marina if they do not create the GSA with the intent to take over Marina's portion.** You can resolve the overlap and trust Marina will timely submit their Plan. If the Plan is determined to be insufficient during the two-year review, the Water Board could determine the entire Subbasin to be insufficient. He expects legal fights if Monterey County takes over the Subbasin. **Mr. Berg referenced the determination that Kern County had created their overlap conflict, and they were prevented from becoming the GSA as a result.**
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> * * *
>
> Tom Berg stated that during the telephone conversation with Mr. Nordberg, DWR, it was suggested that the cleaner approach is for Monterey County to become the GSA for the entire basin. **If the County becomes the GSA only for Marina, it is no longer ministerial in terms of taking out Marina instead of just trying to clear the overlap.**[5]

Id. at 3–4 (emphasis added).

As you can see, the requirements for County use of Section 10724 articulated by DWR at this meeting contains several important elements. First, the County would need to remove itself as a member of the SVBGSA before undertaking any action under Section 10724 to eliminate the conflict of interest and associated County contribution to the overlap. Second, the County is barred from creating the GSA "with the intent to take over Marina's portion." Third, if the County does not take over management of the entire Subbasin, it would contravene SGMA because it is clearly only trying to take out Marina. The County's resolution fails to address and follow these DWR requirements. It plans to remain a member of the SVBGSA, its transparent intent is to take over Marina's portion, and it is not installing itself as the GSA for the entire Subbasin.

Despite recently articulating these positions, DWR's November 5, 2019 letter attempts to constrict the standard for precluding a county from invoking Section 10724. The DWR Letter states, "that it would be inappropriate to accept a Section 10724 notice from a county that had deliberately created the overlap that led to the existence of an unmanaged area with the purpose of doing so, and simply waited out other actual or potentially overlapping agencies."[6] DWR

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[5] The minutes reflect that a representative of Monterey County (Charles McKee) attended this meeting.

[6] Even under its narrower test, DWR also appears to share concerns about Monterey County's contribution to the overlap. In particular, the DWR Letter requests further "information related to the decision-making role of the County as part of the SBVGSA, and the intent of the SBVGSA in filing the notice that resulted in overlap" if the County decides to submit a GSA notification. DWR Letter at 2.

Letter at 2. This standard purports to narrow and change the exception that DWR previously recognized in its own guidance and articulated to SVBGSA. And unlike the State Board's "creating or contributing" standard (SWRCB FAQs at 3), DWR's new standard potentially only guards against situations where a county files a GSA notice after another GSA. However, as the County's current actions demonstrate, a county can act in bad faith even if it or its affiliate filed its GSA notice first by refusing to coordinate with the other GSP and invoking Section 10724 to install its affiliate's GSP.

DWR's failure to consistently articulate its standard for precluding bad-faith actions under Section 10724 undermines the weight a reviewing court will grant it. Although California courts consider an agency's interpretation of a statute, "the binding power of an agency's interpretation of a statute or regulation is contextual . . . and depend[s] on the presence or absence of factors that support the merit of the interpretation." *Yamaha*, 19 Cal. 4th at 7. When applying this standard, courts further recognize that an agency's "vacillating position . . . is entitled to no deference." *United Artists Theatre Circuit, Inc. v. Reg'l Water Quality Control Bd.*, No. A152988, 2019 WL 6337763, at *18 (Cal. Ct. App. Nov. 27, 2019) (quoting *Yamaha*, 19 Cal. 4th at 13) (internal quotation marks omitted).

Here, the DWR Letter attempts to change its previous standard and limit its Section 10724 exception to situations where a county or its affiliate files its GSP notice after another GSA. This limitation contradicts DWR's previously issued guidance and statements to SVBGSA. Further, the DWR's Letter fails to explain or even acknowledge this switch. DWR likewise offers no justification for the fact that its new standard potentially only covers one of many scenarios in which a county could use Section 10724 in bad faith to override an overlapping GSA and circumvent SGMA's coordination requirements. DWR's interpretation warrants even less deference given the unprecedented nature of the County's actions. DWR Letter at 2 (noting that "[n]o county has yet sought to use Section 10724 to form a GSA against the wishes of agencies within their jurisdiction"). Accordingly, a Court will likely disregard DWR's latest articulated standard, and that standard cannot serve as the basis for the County's proposed resolution.

D. The County's Bad Faith Intentions Also Preclude It From Invoking Section 10724.

As described in Section I(A), the County's failure to (1) offer a groundwater management justification for invoking Section 10724, (2) consider adopting any part of MGSA's GSP, or (3) support its decision to adopt SVBGSA's GSP, demonstrate that the County's intention in adopting the proposed resolution is only to adopt its affiliate's GSP without coordinating with MGSA. The County's plan to delegate management of the overlap area to SVBGSA provides further evidence of its bad faith intentions. Indeed, the County's plan to adopt the SVBGSA GSP will leave the coastal area south of the Salinas River without a monitoring and management framework for sustainable groundwater management in violation of SGMA and its own General Plan policies. These intentions contravene SGMA's purpose of promoting collaborative groundwater basin management, and as result, they cannot be permitted.

As DWR's representative stated to SVBGSA, the County "can become the GSA for only Marina if they do not create the GSA with the intent to take over Marina's portion." SVBGSA Minutes at 3 (Sept. 19, 2019). For example, a determination that Kern County created its overlap conflict prevented it from becoming the GSA. *Id.* Only one county has successfully relied on Section 10724 to become a GSA for an area with overlapping GSAs. DWR Letter at 2. And unlike the current situation, the overlapping GSAs there *supported* the county's decision. *Id.* Indeed, no county has ever attempted to form a GSA using Section 10724 "against the wishes of agencies within their jurisdiction." DWR Letter at 2. Therefore, Monterey County is the first county to invoke Section 10724 as part of a strategy to veto the GSP of a valid GSA within its jurisdiction. Moreover, the proposed resolution creates a dangerous precedent, not intended by SGMA, that enables counties to ignore and override the actions of GSAs within their county area.

II. SGMA Section 10724 Does Not Apply To This Situation Because Multiple GSAs Have Asserted SGMA Jurisdiction Over The Overlap Area.

The County relies primarily on Water Code Section 10724(a) for its potential plan to eliminate MGSA and take over its SGMA jurisdictional area. This provision states:

> In the event that there is an area within a high- or medium-priority basin **that is not within the management area of a groundwater sustainability agency**, the county within which that unmanaged area lies will be presumed to be the groundwater sustainability agency for that area.

Cal. Water Code § 10724(a) (emphasis added).

The County is mistaken in asserting that this provision applies here. As SGMA's legislative history reflects,[7] the Legislature intended Section 10724 to cover situations where *no* GSA asserts jurisdiction over an area within a basin, not where multiple GSAs assert jurisdiction and prepare GSPs for a particular area. Indeed, the DWR Letter characterizes Section 10724 as a "backstop" to prevent Section 5202(a)(2)'s reporting requirements from applying. DWR Letter at 2. Section § 5202(a)(2) requires persons who extract groundwater within a high- or medium-priority basin on or after July 1, 2017, to file a report of groundwater extraction if (1) the area "is not within the management area of a groundwater sustainability agency" and (2) "the county does not assume responsibility to be the groundwater sustainability agency" for that area. This implicitly provides that the overlapping GSA notices did not render the area unmanaged under

[7] The Legislature intended Section 10724 to apply "in the case of an area where no local agency has ***assumed*** management." S. Rules Comm., Floor Analysis on S.B. 11168 at 4 (Aug. 29, 2014) (emphasis added). In particular, the Legislature linked this provision to whether a local agency has acted to assume management over an area—not whether the local agency has become the exclusive GSA.

Section 5202(a)(2).[8] The overlapping GSA notices likewise do not render the Subbasin unmanaged under Section 10724. Indeed, because no reporting requirements currently apply to the Subbasin, no need exists for the County to intervene to prevent the triggering of Section 5202(a)(2)'s reporting requirements.

The County's interpretation of Section 10724 inaccurately conflates the provisions for establishing an exclusive GSA under SGMA Section 10723.8 with Section 10724 to reach a faulty conclusion that, because of the overlapping area in MGSA's and SVBGSA's GSA notices, SGMA deems the areas "unmanaged." Section 10724(a) does not address disputes arising under the process for determining an exclusive GSA under Section 10723.8, and the purpose of Section 10724 weighs against reading Sections 10723.8 and 10724 together in this manner. Rather, these GSA and GSP provisions are best understood as operating at the same time on parallel tracks. Consistent with this interpretation, the plain language of Section 10724(a) does not require that a basin be within the management area of an exclusive GSA. Therefore, where multiple GSAs file to manage the same basin area, Section 10724(a)'s text cuts against the County's ability to claim the area is unmanaged. This is especially true when, as here, both of the GSAs are on track to submit their GSPs, and a coordination agreement is not due for any overlapping areas until the January 31, 2020 GSP submittal deadline.

Accordingly, when multiple GSAs adopt GSPs to manage a basin, that area falls within the management area of several GSAs, and Section 10724 does not apply. No DWR regulations or any judicial decisions interpret this section or alter its plain meaning.[9]

III. Monterey County's Resolution Is Premature And Would Fatally Undermine SGMA's Required GSA Collaboration Process.

SGMA establishes a specific process for GSAs who file overlapping notices to coordinate and submit a joint GSP or set of GSPs. *See* Cal. Water Code §§ 10727.6 and 10733.4(b). The Water Code likewise provides a process for resolving disputes if GSAs fail to coordinate and submit joint GSPs for a critically overdrafted basin by the January 31, 2020 deadline. In that situation, the State Board can designate that basin as probationary. *Id.* §§ 10735.2(a)(2) and 10735.2(a)(3) (providing that the State Board can also make a probationary designation after finding that a GSP is inadequate). The State Board must give the local agencies or GSAs "180 days to remedy the deficiency," and "[t]he board may appoint a mediator or other facilitator . . . to assist in resolving disputes, and identifying and implementing actions that will remedy the

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[8] Although State Board guidance suggests that overlapping GSA notices would trigger Section 5202(a)(2)'s reporting requirements, this has not been the case in practice. State Board, Frequently Asked Questions on GSAs, at 5 (Nov. 22, 2017) ("SWRCB FAQs").

[9] MGSA acknowledges that one guidance document from the State Board opines that "[i]f two or more local agencies overlap, the combined area will be deemed unmanaged" and asserts that a county potentially could become a GSA in this situation. SWRCB FAQs at 3. However, this interpretation is not consistent with the intent, legislative history, and text of Section 10724 and is unsupported by any official regulation or case law.

deficiency." *Id.* § 10735.4(a). This provision covers disagreements over overlapping portions of the basin.

The County's resolution seeks to strip MGSA of its authority over the overlap area and to intervene as the exclusive GSA. In doing so, the County is misusing Section 10724 to implement the GSP of its affiliated GSA entity, violating State Board and DWR guidance directly on point, and undermining SGMA's dispute resolution processes. This action would set a dangerous precedent that could incentivize the misuse of Section 10724 by counties.

IV. Monterey County Cannot Use Section 10724 To Nullify MGSA's GSA Notice Or The Need For MGSA And SVBGSA To Resolve The Overlap.

The County appears to assume that by invoking Section 10724 and becoming the GSA for the overlap area, the County will nullify MGSA's GSA notice. However, nothing in SGMA or its regulations provides that a county or other local agency can nullify the GSA notice of another. Indeed, SGMA specifically provides that to resolve an overlapping area, a GSA "notification [must be] withdrawn or modified to eliminate any overlap in the areas proposed to be managed"—not overridden by another local agency. Cal. Water Code § 10723.8(c). Similarly, Section 10724 does not change this fundamental premise or grant a county the power to nullify a GSA notification. Accordingly, even if the County attempts to become the GSA for the overlap area, MGSA's GSA notification will remain valid.

Section 10724 also does not give the County the power to designate another local agency as an exclusive GSA. Instead, DWR has responsibility for posting GSA notifications. *See* § 10723.8(b). On the SGMA portal, DWR currently does not list either MGSA or SVBGSA as the exclusive GSA for any portion of the Subbasin. See DWR SGMA Portal, All Posted GSA Notices; DWR SGMA Portal, Salinas Valley Basin GSA - 180/400 Foot Aquifer Map.[10] DWR instead identifies the GSA notices of both MGSA and SVBGSA as overlapping. *Id.* DWR will not recognize MGSA's and SVBGSA's notices until they resolve their conflict,[11] and the County's intervention under Section 10724 for the overlapping portion will not change this. Both MGSA's and SVBGSA's notices will remain valid, but non-exclusive, GSA notifications. Accordingly, the only way for SVBGSA to become the exclusive GSA for any part of the Subbasin is for MGSA and SVBGSA to reach a coordination agreement.

The fact that SVBGSA and MGSA will remain nonexclusive GSAs even if the County invokes Section 10624 raises additional logistical issues. Under SGMA, a GSP or set of GSPs must "cover[] the entire basin." Cal. Water Code § 10727(b); *see also* Cal. Code Regs. tit. 23,

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[10] This map is available at https://sgma.water.ca.gov/portal/gsa/print/461.P

[11] Indeed, State Board guidance provides that "[i]f two local agencies file notices with DWR to be a GSA for the basin, and all or a portion of their proposed management areas overlap as of June 30, 2017, neither of the local agencies will become a GSA. As a result, the proposed management areas of both local agencies will be unmanaged." SWRCB FAQs at 4; *see also* DWR FAQs at 4 ("If overlap exists, the decision to become a GSA will not take effect unless the overlap is eliminated.").

§ 355.4(a)(3); Cal. Water Code § 10733.4(b)) ("If groundwater sustainability agencies develop multiple groundwater sustainability plans for a basin, the submission" of a GSP "shall not occur until the entire basin is covered by groundwater sustainability plans"). Thus, if the County maintains that only GSAs who DWR has designated as exclusive GSAs may file a GSP, then SVBGSA and MGSA will not be able to file GSPs. The County likewise will not be able to file a GSP for the overlapping area because the GSP would not cover the entire basin. As a result, the County would instead have to become the GSA and submit a GSP for SVBGSA's entire jurisdiction in the Subbasin. The County would then have to manage the entire Subbasin until MGSA and SVBGSA resolve the overlap. This would cause needless and extensive organizational and financial harm to all the parties involved and would completely undercut SGMA's goals. Therefore, the County's attempt to become the GSA for only the overlap area will not result in efficient or effective management of the Subbasin or relieve SVBGSA of the need to coordinate with MGSA to resolve the overlap.

V. The County Must Wait 90 Days For Its GSA Notice To Take Effect, So It Cannot Meet SGMA's January 31, 2020 Deadline.

Although the DWR Letter asserts that the County would immediately become the exclusive GSA when DWR posts the County's GSA notice, DWR fails to cite any legal authority for instantly granting a county exclusive GSA status.[12] DWR Letter at 3. Instead, DWR states that its "practice has been to immediately declare the GSA exclusive." DWR Letter at 3. However, this statement contradicts DWR's statement earlier in the letter that no other county has attempted to use Section 10724 despite opposition from a GSA within its jurisdiction – so, in fact, DWR has *never* immediately posted a county notice letter in this situation. *Id.* at 2.

The DWR Letter also states that it "adopted that practice on the assumption that counties would be taking responsibility for areas in which no other agency had any interest," and that "same logic applies for notices filed in areas that are unmanaged as a result of the overlapping GSA notices of other entities." *Id.* at 3. However, the same logic does not apply because SGMA provides a specific process for GSAs who file overlapping notices to coordinate and submit a joint GSP or set of GSPs. *See* Cal. Water Code §§ 10727.6 and 10733.4(b).

Further, in an overlap situation, multiple GSA's have an "interest" in an area and applying the 90-day notice period allows the overlapping GSAs to engage in the coordination process before the county's GSA notice takes effect. This interpretation promotes SGMA's collaboration process. It also recognizes the fact that given the opportunity, GSAs may resolve an overlap situation without the need for county intervention, which aligns with Section 10724's purpose of serving as a backstop for when SGMA's other processes fail. As a result, the County must wait 90 days before becoming a GSA for the overlapping area to allow SVBGSA and MGSA to resolve the overlap and collaborate on a GSP or set of GSPs. The County therefore could not submit a GSP before the January 31, 2020 deadline.

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[12] MGSA acknowledges that State Board guidance also states that "[t]here is no 90-day waiting period for the county's intent to become the GSA to take effect" in this scenario. SWRCB FAQs at 4.

CONCLUSION

For the foregoing reasons, the County cannot lawfully invoke Section 10724 to become the GSA for the overlap portion of the Subbasin. Bending to the will of CalAm and its reluctance to be governed and monitored by the government entity with the overlying interest (or to be subject to negotiation under sustainable management criteria at all), is fatally inconsistent with SGMA and the intention of the Legislature to sustainably manage groundwater. The City of Marina formed MGSA to prepare its own GSP to govern critical groundwater resources within its jurisdiction in this Subbasin and is completely consistent with the spirit and language of SGMA.

MGSA is complying in all respects with SGMA and MGSA is prepared to take the necessary steps to protect its jurisdiction over the CEMEX site. In the first instance, this means continuing its efforts to finalize and submit its GSP for the overlapping area by the January 31, 2020 deadline. By committing significant financial resources and following the prescribed SGMA process, MGSA has been doing exactly what the law requires and is entitled to complete the process.

The proposed resolution by which the County would attempt to take over MGSA's jurisdictional area and to install its affiliate SVBGSA as the manager of this area using SVBGSA's GSP is a bad faith attempt to misuse SGMA to eliminate MGSA and achieve a hostile takeover of its area. This action, which was conceived and encouraged by CalAm and SVBGSA, would violate SGMA and deprive the City of Marina and MGSA of their SGMA rights, leaving the area effectively unmanaged under SGMA. The City and MGSA strongly oppose this resolution and encourage the County not to pursue this misguided course of action.

Sincerely,

Paul P. "Skip" Spaulding, III

PPS:jla

cc: Layne Long, Marina City Manager
(via e-mail llong@cityofmarina.org)
Marina City Council (via e-mail)
Robert Wellington, Marina City Attorney
(via e-mail rob@wellingtonlaw.com)
Deborah Mall, Marina Assistant City Attorney
(via e-mail deb@wellingtonlaw.com)
Keith Van Der Maaten, Marina Coast Water District GSA
(via e-mail kvandermaaten@mcwd.org)

EXHIBIT 1

FARELLA
BRAUN + MARTEL LLP

PAUL P. SPAULDING, III
sspaulding@fbm.com
D 415.954.4918

August 28, 2019

Via SGMA Portal and E-Mail

Ms. Taryn Ravazzini (*taryn.ravazzini@water.ca.gov*)
Deputy Director of Statewide Groundwater Management
Department of Water Resources
P.O. Box 942836
Sacramento, California 94236-0001

Re: City of Marina GSA Groundwater Sustainability Plan
Response to California-American Water Company Comment Letter

Dear Ms. Ravazzini:

We submit this letter on behalf of the City of Marina Groundwater Sustainability Agency ("MGSA"), which recently filed an initial notification of its intent to prepare a Groundwater Sustainability Plan ("GSP") for a portion of the 180/400 Foot Aquifer Subbasin ("Subbasin") as authorized by the Sustainable Groundwater Management Act ("SGMA"). This letter responds to the August 12, 2019 comment letter submitted by the Ellison Schneider law firm on behalf of California-American Water Company ("CalAm").

In this "comment letter," CalAm requests that the Department of Water Resources ("DWR") "reject" MGSA's Groundwater Sustainability Agency ("GSA") formation notice and its GSP initial notification. However, CalAm has no legal standing under SGMA to make the request and lacks any legal authority or precedent to obtain the relief it seeks. In fact, CalAm's letter is no more than a misguided attempt by a third party to short-circuit the processes prescribed by SGMA for resolution of local groundwater management issues. Moreover, CalAm has mischaracterized the underlying facts and invented non-existent policy reasons to support its unprecedented request. DWR is not required to respond to or to take any action in response to this letter. *See* 23 C.C.R. § 353.8(f). However, if DWR does respond, it must deny CalAm's request in all respects.

BACKGROUND FACTS

The MGSA was validly formed in full compliance with SGMA. On March 20, 2018, the Marina City Council adopted a resolution forming the MGSA to "undertake sustainable groundwater management within the portion of the Salinas Valley Ground Water Basin 180/400