

California’s Sustainable Groundwater Management Act and the Half-Exemption of Owens Valley Groundwater Basin

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This Comment tells the story of how California’s 2014 Sustainable Groundwater Management Act (SGMA) has been applied in Owens Valley. Owens Valley, called Payahuunadü by the Native Paiute and Shoshone people, is the source of the Los Angeles Aqueduct system that exports both surface water and groundwater to Los Angeles. Los Angeles’s involvement in the region led to SGMA’s half-exemption of Owens Valley Groundwater Basin where all portions of the groundwater basin underlying Los Angeles-owned land is exempt from the Act. This Comment explores how this half-exemption was included in SGMA, describes what it means for local groundwater governance, and details California’s Department of Water Resources’ shifting approach to Owens Valley that most recently weakened SGMA’s protections for the region.

This Comment makes direct recommendations to state and local agencies with the goal of better leveraging SGMA to protect Owens Valley Groundwater Basin. SGMA’s explicit protections for the “entire basin” mandate a comprehensive approach to protecting not just Owens Valley, but also the other half-exempt California groundwater basins. This Comment specifically points to how state and local agencies can use SGMA to save the irreplaceable high desert wetlands at Fish Slough in Owens Valley from urgent ecological crisis. The Comment ends by advocating for a changed application of SGMA in Owens Valley to better uplift the Owens Valley Paiute and Shoshone Tribes’ participation in the Act’s implementation.

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INTRODUCTION

In the rain shadow of the Sierra Nevada mountains, and in the shadow of the Central Valley's water politics, lies the Owens Valley. Owens Valley has been known to the Native Paiute and Shoshone people since time immemorial as "the place where water flows," or Payahuunadü.¹ Its water was later made famous when Los Angeles Department of Water and Power (LADWP) captured and conveyed the Owens River 200 miles south to satiate its burgeoning city.² While accounts of Western water have told and retold countless versions of this story, they usually miss a detail: the story never ended. Water in Owens Valley today is far from settled.

Decades after the capture of Owens River, a dubious land exchange between Los Angeles and the U.S. federal government severed the Owens Valley Paiute and Shoshone peoples from exercising their water rights.³ Decades after that, Los Angeles sank a system of pumps into the land it owned above Owens Valley Groundwater Basin,⁴ filling a second aqueduct with extracted

1. Teri Red Owl, *4. Payahüünadü Water Story*, CLAREMONT COLL. LIBR. (Aug. 3, 2021), <https://pressbooks.claremont.edu/westernwatersymposium/chapter/payahuunadu-water-story> [https://perma.cc/8XNX-EDGY].

2. See *infra* notes 23–25 and accompanying text.

3. See *infra* notes 26–27 and accompanying text.

4. A groundwater basin refers to an underground accumulation of groundwater that accumulates mostly through snowmelt and rain seeping beneath the ground. Water in groundwater basins can be thousands of years old. WATER EDUC. FOUND., *THE 2014 SUSTAINABLE GROUNDWATER MANAGEMENT ACT: A HANDBOOK TO UNDERSTANDING AND*

groundwater while turning critical springs and wetlands to dust.⁵ Inyo County fought back in court, resulting in robust but unenforced legal agreements that provide little oversight of Los Angeles's activities in Owens Valley.⁶ California's Sustainable Groundwater Management Act (SGMA) entered this legal and ecological landscape in 2014.

SGMA offered hope for stronger ecological protections in Owens Valley. Instead, local and state government actors half-exempted Owens Valley from the Act by exempting all portions of the basin where Los Angeles city government is the overlying landowner.⁷

Next, California's Department of Water Resources (DWR) tailored its decision-making criteria to fit the Owens Valley half-exemption, further stifling SGMA's application in Owens Valley. DWR's series of changing basin priority rankings for Owens Valley Groundwater Basin most recently concluded with a "low-priority" ranking, indicating that the basin need not follow SGMA's requirements.⁸ This decision stripped Owens Valley Groundwater Authority (OVGA) of its influence in the basin and placed groundwater-dependent ecosystems back into their previous state of no SGMA protection.⁹ Despite the lack of authority it asserts in the basin, OVGA has submitted a Groundwater Sustainability Plan (GSP) to DWR.¹⁰

This Comment first uses historical accounts and secondary sources to describe the history of Owens Valley groundwater. It next describes the Governing Documents that currently manage this groundwater. It ends its history by relying on the content of OVGA meetings to tell the recent story of SGMA's implementation in Owens Valley.

This Comment uses statutory analysis to conclude that attention and action from DWR could change the story by leveraging SGMA to protect Owens Valley Groundwater Basin. First, DWR should not approve OVGA's GSP until it "covers the entire basin" as SGMA requires.¹¹ DWR should hold this GSP to be incomplete until DWR is sure it will be implemented across the entire basin, and until it includes adequate plans to coordinate on sustainability criteria with the entire basin, including SGMA-exempt areas. DWR should also re-classify Owens Valley Groundwater Basin as medium- or high-priority to reinstate SGMA's protections. This would likely reverse an urgent ecological crisis at the groundwater-dependent ecosystem of Fish Slough, where non-LADWP groundwater extraction is placing rare and endemic species at

IMPLEMENTING THE LAW 1 (2015), <https://groundwater.ucdavis.edu/files/208021.pdf> [<https://perma.cc/X6D5-EYYJ>].

5. See *infra* notes 28–33 and accompanying text.

6. See discussion *infra* Part II.

7. See discussion *infra* Part III.B.

8. See discussion *infra* Part III.C.3.

9. See discussion *infra* Part III.C.3 and note 111.

10. See discussion *infra* Part III.D.

11. Cal. Code Regs. tit. 23 § 355.4(a)(3) (2023); see discussion *infra* Part IV.A.

risk. An unpublished DWR memorandum reveals that if California Department of Fish and Wildlife (CDFW) were to send a letter quantifying impacts to unique features in springs at Fish Slough, this would likely place Owens Valley Groundwater Basin at medium-priority.

This Comment finally argues that SGMA may provide additional paths forward for Owens Valley to achieve strong local and Tribal groundwater management. First, OVGA should revise its GSP to remedy past harms in Owens Valley, as SGMA suggests. Next, OVGA should revise its GSP to complement the current legal structure by incorporating its robust but poorly enforced protections for vegetation and mitigation. Last, the Owens Valley Paiute and Shoshone Tribes may be legally entitled to a more prominent seat at the table in Owens Valley's current SGMA implementation.

I. HISTORY AND BACKGROUND

The Paiute and Shoshone people have cared for the water in what is now called Owens Valley since time immemorial. This section will describe the Paiute and Shoshone peoples' care for the ecosystem, the violence of settler-colonial encroachment in Owens Valley, and the eventual impact of Los Angeles's two aqueducts taking water from the region.

The Paiute and Shoshone people and their ancestors have resided near key water sources in Owens Valley and have continuously maintained a system of irrigation ditches to care for the ecosystem.¹² Although the Paiute and Shoshone people were the first in the region to put water to "beneficial use" through irrigation ditches, to date they have not been awarded appropriate water rights pursuant to California water law.¹³

Instead, the Paiute and Shoshone people were subjected to what is now recognized as genocide at the hands of vigilantes and the United States federal government. In 1862, the superintending Indian agent for Southern California and certain Paiute and Shoshone people negotiated a treaty setting aside 2,000 acres in Indian reservation lands in Owens Valley—a

12. See, e.g., *Owens Valley*, OWENS VALLEY INDIAN WATER COMM'N, <http://www.oviwc.org/owens-valley> (last visited Dec. 21, 2023) (describing Paiute traditional water caretaking across the valley and describing Owens Lake as a major trading center); see also, *Tribal History*, UTU UTU GWAITU PAIUTE TRIBE BENTON PAIUTE RSRV., <https://www.bentonpaiuteretreservation.org/tribal-history.htm> [<https://perma.cc/RBF3-ARKR>], last visited on Dec. 21, 2023 (describing the history of the Utu Tutu Gwaitu Paiute Tribe whose name translates to "Hot Water Place People" and who live near what is now called Benton Hot Springs).

13. Appropriate water rights in California have historically been awarded to those who were first to divert surface water for "beneficial use" like agriculture. *Appropriative Rights*, WATER EDUC. FOUND., <https://www.watereducation.org/aquapedia/appropriative-rights> [<https://perma.cc/8NTZ-8WYF>]. The Owens Valley Paiute and Shoshone peoples' practice of diverting stream water for irrigation long predates Western settlers' arrival. *Owens Valley*, OWENS VALLEY INDIAN WATER COMM'N, <http://www.oviwc.org/owens-valley> (last visited Dec. 21, 2023).

promise that went unfulfilled.¹⁴ Soon after, vigilantes and U.S. Army forces sought to destroy the Paiute and Shoshone people who had been told their lands were exempt from settlement.¹⁵ Their tactics included camping out at springs so the Native people would die of thirst.¹⁶ The U.S. Army force-marched survivors south to Fort Tejon and held them as prisoners with no food.¹⁷ But the removal was unsuccessful—many survivors remained in the area while others returned north to their homelands.¹⁸ Today, Paiute and Shoshone cultures persevere in Owens Valley, and the people have maintained and passed down their traditional ecological knowledge surrounding care for water.¹⁹ This story of survival and return is a testament to the Paiute and Shoshone peoples' strength and dedication to their homelands in "the place where water flows."

The ecosystem that the Paiute and Shoshone people cared for was a critical one, providing unique high desert wetlands for countless migratory birds and spring water sources for rare species from megafauna like bighorn sheep and mule deer to small pupfish and snails that exist nowhere else in the world.²⁰ This unique ecosystem was made possible by the valley's high groundwater table.²¹ One early written account from J.W. Davidson described Owens Valley as "some of the finest country I had ever seen" and "literally a vast meadow, watered every few miles with clear, cold mountain streams, and the grass (although in August) as green as in the first of spring."²²

The City of Los Angeles famously entered Owens Valley at the turn of the twentieth century. In the well-known story, Los Angeles Water Department superintendent William Mulholland collaborated with ex-Los Angeles Mayor Fred Eaton, who bought up land and water rights throughout the valley

14. BENJAMIN MADLEY, *AN AMERICAN GENOCIDE: THE UNITED STATES AND THE CALIFORNIA INDIAN CATASTROPHE* 309–316 (2016).

15. *Id.*

16. *Id.* at 315.

17. *Id.*

18. *Id.*; AnMarie Ramona Mendoza, *The Aqueduct Between Us: Inserting and Asserting an Indigenous California Indian Perspective about Los Angeles Water*, 2019 (M.A. Dissertation, UCLA), <https://escholarship.org/uc/item/9nn7v9z8> [<https://perma.cc/C6G4-VYHM>] (including an oral history of Lone Pine Paiute-Shoshone Tribe Tribal Historic Preservation Officer Kathy Bancroft talking about her great-grandmother's journey from Fort Tejon).

19. INYO CNTY. OF BD. OF SUPERVISORS., *MEETING MEDIA* (June 21, 2021), <https://inyococa.portal.civicclerk.com/event/3154/media> (describing at hour 1:50 the Big Pine Paiute Tribe's proposal to restore spring flow at Fish Springs and spread water according to traditional practices).

20. *See infra* note 151.

21. WESLEY R. DANSKIN, *EVALUATION OF THE HYDROLOGIC SYSTEM AND SELECTED WATER-MANAGEMENT ALTERNATIVES IN THE OWENS VALLEY, CALIFORNIA* 59 (1998), <https://pubs.usgs.gov/wsp/2370h/report.pdf> [<https://perma.cc/764L-A84J>].

22. *THE EXPEDITION OF CAPT. J.W. DAVIDSON FROM FORT TEJON TO THE OWENS VALLEY IN 1859*, 20 (Philip J. Wilke & Harry W. Lawton eds., Ballona Press 1974) (1859).

under the guise that he was retiring to the life of a rancher.²³ By the time Owens Valley locals caught on to the trend, it was too late.²⁴ In 1913, the first Los Angeles Aqueduct was complete.²⁵

The story did not end there. The City of Los Angeles entered a Land Exchange in 1939 with the U.S. Department of the Interior, marking a key step in consolidating the City's water rights. The exchange separated the Owens Valley Paiute and Shoshone people onto small, disconnected land bases, giving the Bishop Paiute Tribe, Big Pine Paiute Tribe, and Lone Pine Paiute-Shoshone Tribe reservations that lacked surface water rights.²⁶ Los Angeles agreed to address the reservations' implied federal reserved Indian water rights at a later time. These rights have not been addressed and remain outstanding today.²⁷

Los Angeles Department of Water and Power (LADWP) began pumping groundwater from Owens Valley two decades later.²⁸ In 1970, Los Angeles completed a second aqueduct that it filled primarily with this extracted groundwater.²⁹ The Owens Valley alkali meadow ecosystem depended on a shallow

23. WILLIAM L. KAHRL, *WATER AND POWER: THE CONFLICT OVER LOS ANGELES' WATER SUPPLY IN OWENS VALLEY* 47–49 (1982); MARK ARAX, *THE DREAMT LAND: CHASING WATER AND DUST ACROSS CALIFORNIA* 253 (2019). The two also found an ally in federal Bureau of Reclamation official Joseph B. Lippincott, whose job with the Bureau was to facilitate local agricultural infrastructure in Owens Valley. Lippincott decided to secretly support Los Angeles's projects instead, thereby insulating Los Angeles from federal interference at key stages. KAHRL at 63, 70; ARAX at 254.

24. In one of the story's most dramatic scenes, Inyo Bank owner Wilfred Watterson realized that a Los Angeles City official had just retrieved a deed of land from Fred Eaton's safe deposit box at the bank. Watterson chased down the man, brought him back to the bank, got out a gun, and searched the man's pockets. But the man had already mailed the deed to Los Angeles. Realizing the pattern of Eaton's investment, Watterson said, "You've paid high prices not because you're dumb but because you're smart. You're masquerading as investors and all you're going to invest in is our ruin." MARC REISNER, *CADILLAC DESERT: THE AMERICAN WEST AND ITS DISAPPEARING WATER* 65 (1986). The massive aqueduct project was still being kept a secret at this time, including from Los Angeles taxpayers who were funding Eaton's land speculation. *Id.* at 70.

25. KAHRL, *supra* note 23, at 201–02; *A History of Water Rights and Land Struggles*, OWENS VALLEY INDIAN WATER COMM'N, <http://www.oviw.org/water-crusade> (last visited Apr. 15, 2023).

26. DEED, *THE CITY OF LOS ANGELES (A MUNICIPAL CORPORATION) AND THE DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES GRANTORS TO THE UNITED STATES OF AMERICA, GRANTEE* (June 26, 1939) (unpublished land exchange agreement, on file with author). In the 1939 Land Exchange, Los Angeles received 2,913 acres that had been held in trust for the Owens Valley Paiute and exchanged 1,391 acres of its own lands. This separated the Paiute people into different tribes and land bases.

27. *A History of Water Rights and Land Struggles*, OWENS VALLEY INDIAN WATER COMM'N, <http://www.oviw.org/water-crusade>; *Winters v. United States*, 207 U.S. 564 (1908) (reserving water sufficient to fulfill the purpose of the reservation in cases of Congressional creation of Indian reservations).

28. KAHRL, *supra* note 23, at 410.

29. *Id.* at 413.

groundwater table,³⁰ so the impacts of groundwater pumping were immediate and extreme. Ancient springs dried up,³¹ meadows died off,³² and dust storms became increasingly common.³³

II. LEGAL AND ECOLOGICAL LANDSCAPE AT SGMA'S PASSAGE

The environmental harms of the second Los Angeles Aqueduct provoked a series of lawsuits between Inyo County and Los Angeles.³⁴ This section will describe the current groundwater governance structure that resulted from these lawsuits, and how that governance has been balanced between Los Angeles and Inyo County.

After almost two decades of back-and-forth litigation, both Los Angeles and Inyo County agreed to settle their lawsuits with the formation of the 1991 Inyo/LA Long Term Water Agreement (“Long Term Water Agreement”) and 1991 Environmental Impact Report (“1991 EIR”) (together, the “Governing Documents”). These documents were accepted and made binding by the 1997 Memorandum of Understanding (“MOU”).³⁵ The Long Term Water Agree-

30. Charles H. Lee, *An Intensive Study of the Water Resources of a Part of Owens Valley, California*, DEPARTMENT OF THE INTERIOR UNITED STATES GEOLOGICAL SURVEY WATER-SUPPLY PAPER 294 Plate XXIX, <https://pubs.usgs.gov/wsp/0294/report.pdf>. [<https://perma.cc/YAT5-86EG>].

31. CITY L.A. DEP'T WATER & POWER & CNTY. INYO, VOLUME I DRAFT ENVIRONMENTAL IMPACT REPORT, WATER FROM THE OWENS VALLEY TO SUPPLY THE SECOND LOS ANGELES AQUEDUCT, 1970 TO 1990, 1990 ONWARD, PURSUANT TO A LONG TERM GROUNDWATER MANAGEMENT PLAN 10-32, 10-33 (1990), (<https://www.inyowater.org/documents/governing-documents>) [<https://perma.cc/HSR4-QMSN>] [hereinafter 1990 Volume 1 Draft EIR]; Mary DeDecker, *Death of a Spring*, in 4 HIST. WATER: E. SIERRA NEV., OWENS VALLEY, WHITE-INYO MOUNTAINS, WHITE MOUNTAIN RSCH. STATION SYMP. VOLUME 82 (1992) (describing Little Black Rock Spring drying up after LADWP began pumping nearby groundwater); *Big Pine Tribe Provides Insight on Groundwater Pumping Impacts*, INYO REGISTER (June 22, 2022), (https://www.inyoregister.com/news/big-pine-tribe-provides-insight-on-groundwater-pumping-impacts/article_97f2bb10-f264-11ec-8f2f-d7a0def46333.html) [<https://perma.cc/76SQ-HGH4>] (describing Fish Springs drying up after LADWP began pumping nearby groundwater).

32. Sara J. Manning, *The Effects of Water Table Decline on Groundwater-Dependent Great Basin Plant Communities in the Owens Valley, California*, USDA FOREST SERVICE PROCEEDINGS RMRS-P-11 234 (1999).

33. 1990 Volume I Draft EIR, *supra* note 31, at 10-58 (promising that vegetation die-off would be mitigated by revegetation projects to, at a minimum, avoid blowing dust).

34. *County of Inyo v. Yorty*, 32 Cal.App.3d 795, 816 (1973) (holding that Los Angeles must prepare an EIR pursuant to CEQA for its groundwater pumping project); *County of Inyo v. City of Los Angeles*, 71 Cal.App.3d 185, 188 (1977) (holding Los Angeles's 1976 EIR to be inadequate); *County of Inyo v. City of L.A.*, 124 Cal.App.3d 1, 3 (1981) (holding Los Angeles's 1979 EIR to be inadequate); *Groundwater Ordinance*, INYO CNTY. WATER DEP'T, <https://www.inyowater.org/documents/governing-documents/groundwater-ordinance> [<https://perma.cc/LH67-SYJS>] (last visited Nov. 19, 2023) (describing Inyo County's 1980 groundwater ordinance that Los Angeles successfully challenged in Inyo County Superior Court).

35. MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER, THE COUNTY OF INYO, THE CALIFORNIA DEPARTMENT OF FISH AND

ment became the primary of these Governing Documents that manage Los Angeles groundwater pumping in Owens Valley today.

When the California Legislature passed SGMA two decades later, the drafters included an exemption for all portions of Owens Valley Groundwater Basin governed by the Long Term Water Agreement.³⁶ As a result, SGMA applies to Owens Valley only in a ring surrounding exempt Los Angeles-owned lands.

A closer look at the Governing Documents, the power imbalance between Los Angeles and Inyo County, and the current ecological realities reveals gaps in the Governing Documents that SGMA could have helped fill.

A. *The Governing Documents*

The Long Term Water Agreement is guided by strong overall goals. The overall goal of the Long Term Water Agreement is “to avoid certain described decreases and changes in vegetation and to cause no significant effect on the environment which cannot be acceptably mitigated while providing a reliable supply of water for export to Los Angeles and for use in Inyo County.”³⁷ The Long Term Water Agreement also lists a secondary goal to avoid long-term groundwater mining from Owens Valley.³⁸ The Agreement defines long-term groundwater mining as total pumping from any wellfield in excess of the total recharge to the same wellfield over a twenty year period.³⁹

“Certain described decreases and changes in vegetation” refers to the 1991 EIR’s attempts to establish a baseline for the purpose of measuring impacts of LADWP groundwater pumping that could be considered significant. However, the 1991 EIR describes a lack of data for pre-1970 baseline vegetation. Instead of extrapolating from available 1912 data to set a baseline,⁴⁰ it uses post-groundwater-pumping mapping from 1984–87 to approximate baseline vegetation.⁴¹ This use of post-groundwater-pumping data in the 1991 EIR marks the start of a pattern in Owens Valley groundwater governance in which

GAME, THE CALIFORNIA STATE LANDS COMMISSION, THE SIERRA CLUB, THE OWENS VALLEY COMMITTEE, AND CARLA SCHEIDLINGER (June 2, 1997) (available at <https://perma.cc/9ALP-MMKF>) [hereinafter 1997 MOU].

36. Cal. Water Code § 10720.8(c) (2023).

37. AGREEMENT BETWEEN THE COUNTY OF INYO AND THE CITY OF LOS ANGELES AND ITS DEPARTMENT OF WATER AND POWER ON A LONG TERM GROUNDWATER MANAGEMENT PLAN FOR OWENS VALLEY AND INYO COUNTY 10 (Oct. 18, 1991) (available for download at <https://www.inyowater.org/documents/governing-documents/water-agreement/#History%20and%20Preliminary%20Statement> [<https://perma.cc/G5AB-APMG>]) [hereinafter Long Term Water Agreement].

38. *Id.*

39. *Id.*

40. Lee, *supra* note 30 (used periodically in the 1991 EIR, such as at page 10–32, to describe historical conditions, but not used to set official baseline conditions).

41. 1990 Volume I Draft EIR, *supra* note 31, at S-6.

new legal agreements accept degraded conditions as a baseline, entrenching past harms.

The next part of the overall goal, “to cause no significant impact on the environment which cannot be acceptably mitigated,” refers to the sixty-four mitigation projects that LADWP committed to through the Governing Documents.⁴² These include revegetation projects, where LADWP committed to planting and maintaining vegetation at sites where the groundwater pumping had fully depleted existing vegetation. This portion of the overall goal also provides a general promise of no new significant impacts from future pumping without acceptable mitigation. This begs the question— who decides what is acceptable? More generally, how do we know and who decides if the governing documents’ goals are being met?

B. *The Power Imbalance Between Los Angeles and Inyo County*

The Governing Documents empower Los Angeles to make these decisions. The Long Term Water Agreement’s language envisions joint management of LADWP groundwater pumping by the City of Los Angeles and Inyo County, but the reality of the documents’ provisions does not match the vision. Instead, the documents’ decision-making and dispute resolution processes create a power imbalance favoring Los Angeles.

First, the document provides no barrier to LADWP making unilateral decisions. LADWP is the lead agency on the groundwater pumping project,⁴³ and it owns and operates its water gathering infrastructure on its own property. Inyo County does not have veto power over LADWP decisions.

Second, the reality of the dispute resolution process favors the status quo, which favors LADWP. Inyo County’s only avenue for challenging Los Angeles’s activities is through the Long Term Water Agreement’s dispute resolution process. However, if a dispute is opened between Inyo County and LADWP pursuant to this process, there is no provision for the disputed activity to be stayed while the dispute is pending.⁴⁴ LADWP activities continue throughout the lengthy and expensive dispute resolution process. For example, in 2003, Inyo County disputed LADWP’s plan for annual groundwater pumping only to find that the dispute resolution would take over a year, at which point the dispute would be moot.⁴⁵

42. Inyo Cnty. Water Dep’t, *2021–2022 Status of Mitigation Projects* 31 (2023), <https://www.inyowater.org/wp-content/uploads/2023/02/2021–22-Mitigation-Projects-and-Status-FD20220927-Reduced.pdf> [<https://perma.cc/P5L4-3PLX>] (showing LADWP Mitigation Project Commitment statuses in Table 5).

43. *Id.* at S-3.

44. Long Term Water Agreement, *supra* note 37, at 54–58.

45. Darcy Ellis, *Water Negotiations Sought*, INYO REG. A1 (June 10, 2003) (available at <https://owensvalley.org/wp-content/uploads/2015/10/DRP-termination.pdf> [<https://perma.cc/3GSR-ACBM>]).

The dispute resolution process's imbalance is exacerbated by the fact that Inyo County's budget is much smaller than Los Angeles's.⁴⁶ A full dispute resolution process involves hiring mediators, placing a heavier financial burden on Inyo County than Los Angeles. In the end, the Governing Documents create a power imbalance that favors LADWP and prevents Inyo County from exercising the joint management that the Long Term Water Agreement seemed to promise. LADWP instead faces little to no oversight.

C. *Ecological Conditions Under the Governing Documents*

The ecological impacts of this lack of oversight are nuanced but stark. Los Angeles and Inyo County have generally met the Governing Documents' secondary goal of avoiding groundwater table depletion over a twenty-year period.⁴⁷ But this twenty-year average can be maintained while the overall goals are not met.

The Governing Documents commit to avoiding "certain described decreases and changes."⁴⁸ The 1991 EIR listed specific significant impacts and sorted existing vegetation types into categories based on the water-dependence of the vegetation.⁴⁹ Any change from a more groundwater-dependent vegetation type to a less groundwater-dependent vegetation type is considered by the 1991 EIR to be an impermissible significant impact.⁵⁰

Such changes have not been avoided. Even if groundwater tables remain stable on average over a twenty-year period, a couple of years of overpumping groundwater kills the existing vegetation, which struggles to recover.⁵¹ At LADWP groundwater pump locations like Laws, Five Bridges, and Little Blackrock Springs for example, overpumping of groundwater

46. Bristlecone Chapter California Native Plant Society, *Desertification as Usual: Groundwater Management Under the Inyo-LA Long Term Water Agreement*, http://bristleconecnps.org/conservation/issues/water_agreement/desertification.php [<https://perma.cc/35JU-W3NE>] (reporting that LADWP Commissioner Dominic Rubalcava has pointed out that LADWP's litigation budget alone exceeds Inyo County's entire annual budget).

47. See, e.g., *Big Pine Wellfield Hydrographs*, INYO CNTY. WATER DEP'T, <https://www.inyowater.org/wp-content/uploads/legacy/Monitoring/wellfields/BigPine.pdf> [<https://perma.cc/V34W-WJTH>] (last visited Nov. 19, 2023); *Bishop Wellfield Hydrographs*, INYO CNTY. WATER DEP'T, <https://www.inyowater.org/wp-content/uploads/legacy/Monitoring/wellfields/Bishop.pdf> [<https://perma.cc/G6VA-N6VU>] (last visited Nov. 19, 2023).

48. Long Term Water Agreement, *supra* note 37, at 10.

49. 1990 Volume I Draft EIR, *supra* note 31, at 10–25, 10–26.

50. *Id.* at 10–59 (stating that "the goals of the Agreement are to manage Owens Valley groundwater and surface water resources to avoid significant decreases in the live cover of groundwater-dependent vegetation (management Types B, C, and D), and to avoid a change of a significant amount of such vegetation from one management type to vegetation in another management type which precedes it alphabetically").

51. Comments from Shannon D. Romero, Tribal Chairwoman of the Big Pine Paiute Tribe of the Owens Valley to California Department of Water Resources 3–4 (Apr. 28, 2016), <https://sgma.water.ca.gov/basinmod/docs/download/2271>.

killed vegetation, and hasty subsequent artificial flooding and watering by LADWP only perpetuated harmful ecological results like weed growth that outcompetes rare native vegetation, or blowouts where sediment is removed by wind, creating permanent ditches so that water drains from the site rather than being held in place.⁵² Short periods of overpumping also lead meadow vegetation varieties to transition to shrub, and no amount of water can reverse the change.

The Governing Documents also commit to the aforementioned sixty-four mitigation projects. The goal of these projects is to make specified significant impacts from LADWP groundwater pumping such as dried-up spring habitat acceptable through specific promises to mitigate those impacts.⁵³ But Inyo County Water Department publicizes that many of these mitigation projects are out of compliance with project goals as set by the Governing Documents.⁵⁴ The revegetation projects in particular are consistently out of compliance.⁵⁵ This leads to loss of species, loss of habitat, and increase in dust that harms human health.

While the twenty-year average stability of wellfields avoids long term groundwater mining, it is too long a time frame to ensure the overall goals of the Governing Documents. Furthermore, the Governing Documents had already accepted dried-up springs and wetlands, shrunken meadows, and a depleted groundwater table by using post-groundwater-pumping 1984–87 data as baseline and by accepting significant impacts with mitigation. The mitigation projects often are out of compliance, and progress towards compliance is elusive because LADWP does not publish mitigation plans.⁵⁶ While the 2022–

52. INYO CNTY., *LADWP/ICWD Mitigation Project Interactive Map*, <https://experience.arcgis.com/experience/44b652a16c4b443b9b4a2e7dc3fcbb91/page/Page-1> [<https://perma.cc/PJG3-D6R5>] (search “revegetation” using search bar) (last visited Nov. 19, 2023); *see also* Handout from Sally Manning, Ph.D., Big Pine Paiute Tribe Env’t Dir. (Aug. 2022) at 3 (on file with author) (describing blowouts creating permanent ditches so precipitation drains from Five Bridges without benefitting the ecology).

53. *See* 1990 Volume I Draft EIR, *supra* note 31.

54. INYO CNTY. WATER DEP’T, *supra* note 42, at 6.

55. *Id.* at 20.

56. LADWP committed throughout the governing documents to create Mitigation Monitoring and Reporting Plans pursuant to the California Environmental Quality Act as codified in California Public Resources Code § 21081.6. Such plans for the mitigation projects are not identified in any publicly available location. *See* RESPONSE TO COMMENTS ON SEPTEMBER 1990 DRAFT ENVIRONMENTAL IMPACT REPORT VOLUME I, WATER FROM THE OWENS VALLEY TO SUPPLY THE SECOND LOS ANGELES AQUEDUCT, 1970 TO 1990, 1990 ONWARD, PURSUANT TO A LONG-TERM GROUNDWATER MANAGEMENT PLAN 3–18, 3–19 (Aug. 1991), <https://www.inyowater.org/wp-content/uploads/2017/08/91-EIR-ResponseToCommentsVol-I.pdf> [<https://perma.cc/29Y7-P722>], [hereinafter 1991 Volume 1 Final EIR Response to Comments]; GREEN BOOK FOR THE LONG-TERM GROUNDWATER MANAGEMENT PLAN FOR THE OWENS VALLEY AND INYO COUNTY 12 (June 1990), <https://inyo-monowater.org/wp-content/uploads/2011/09/Green-Book-2000.pdf> [<https://perma.cc/ZKD3-PYZ6>]; 1997 MOU, *supra* note 35, at 28; ECOSYSTEM SCIENCES, LOWER OWENS RIVER PROJECT ECOSYSTEM MANAGEMENT PLAN 7, 11–12 (Aug. 2002), <https://www.inyowater.org/wp-content/uploads/legacy/LORP/>

2023 winter was the wettest winter on record, LADWP still plans to pump 40,130–51,470 acre-feet of groundwater in late 2023 and early 2024, leading to further unnecessary ecological damage.⁵⁷

III. SGMA AND OWENS VALLEY

The Sustainable Groundwater Management Act's (SGMA) focus on local, sustainable management offered hope for a paradigm shift. This section tells the story of SGMA's erratic application in Owens Valley. Subsection A begins by exploring the approach to Owens Valley at California Department of Water Resources (DWR). State documents indicate a lack of focus on Owens Valley, risking a lack of common understanding about the area. Subsection A also explains SGMA's requirement that DWR rank all groundwater basins in California according to priority level, and describes the meaning of different basin priority levels.

Subsection B next tells the story of how Los Angeles and Inyo County agreed to SGMA's half-exemption for Owens Valley. This happened quickly, and without significant public input. Subsection C continues the story with DWR's changing prioritizations of Owens Valley Groundwater Basin, which ended in a low-priority ranking that exempts Owens Valley Groundwater Basin from many SGMA requirements. This subsection explores evidence from public letters and DWR documents to show that DWR adapted its prioritization process specifically to achieve this outcome, in direct response to requests by Los Angeles and Owens Valley agencies. Subsection D ends by describing Owens Valley's Groundwater Sustainability Plan (GSP) that was submitted to DWR for review, along with the ways this GSP has been directly weakened by DWR's low-priority ranking. Subsequent sections of this Comment will argue that these weaknesses make the GSP legally inadequate.

A. *SGMA, its Priorities, and Owens Valley*

SGMA was introduced in the California Legislature as three bills in February 2014.⁵⁸ SGMA aims to provide for sustainable management of groundwater basins throughout California, which the State relies on heavily for both agricultural and domestic use.⁵⁹ DWR identifies these basins and updates their boundaries every five years pursuant to the California Water Code,⁶⁰ publishing

DOCUMENTS/EcosystemManagementPlans.pdf. [<https://perma.cc/4G8Z-YKTL>].

57. LADWP, DRAFT 2023 ANNUAL OWENS VALLEY REPORT 1–7 (Apr. 2023), <https://www.inyowater.org/wp-content/uploads/2023/04/DRAFT-2023-OWENS-VALLEY-REPORT.pdf> [<https://perma.cc/9J6E-7G3H>].

58. A.B. 1739, 2013–2014 Reg. Sess. (Cal. 2014); S.B. 1168, 2013–2014 Reg. Sess. (Cal. 2014); S.B. 1319, 2013–2014 Reg. Sess. (Cal. 2014).

59. Cal. Water Code § 10720.1 (2023).

60. Cal. Water Code § 12924 (2023).

updates in a document called Bulletin 118.⁶¹ SGMA emphasizes the importance of local control in achieving groundwater sustainability.⁶²

SGMA includes a list of adjudicated groundwater basins that are exempt from the Act, and Owens Valley's half-exemption appears just after this list.⁶³ Notably, Owens Valley's story is different from these other groundwater adjudications where all groundwater users settled their water rights in court. No comprehensive court adjudication has attempted to settle outstanding Owens Valley water rights, including the tribal water rights that have been outstanding since the 1939 Land Exchange. Portions of Owens Valley Groundwater Basin underlying Los Angeles lands are instead "treated as adjudicated" by SGMA. This means they are exempt from SGMA requirements and are instead managed only by the Governing Documents.

DWR ranks each groundwater basin in Bulletin 118 by priority level. Basins ranked as "very low" or "low" priority would not be subject to SGMA's requirements, while basins ranked as "medium" or "high" priority would.⁶⁴ DWR's current system of basin prioritization focuses on the risk to the basin from groundwater pumping. Factors include the number of residents overlying the basin, projected population growth, number of groundwater wells overlying the basin, and some environmental criteria like groundwater overdraft.⁶⁵ Basins in California's agricultural hubs like San Joaquin Valley often host many high-capacity groundwater wells and are in states of critical overdraft.⁶⁶

Compared to the drama of California's groundwater-dependent agricultural regions, Owens Valley has not always been a focus for DWR and the State Water Resources Control Board ("the Water Board"). The Water Board sponsored a thorough evaluation of all adjudicated basins in 2016 that left out Owens Valley Groundwater Basin even while it included other half-adjudicated basins.⁶⁷ The study's main author explained that the Water Board

61. CAL. DEP'T WATER RES., CALIFORNIA'S GROUNDWATER (BULLETIN 118) (2020), <https://water.ca.gov/Programs/Groundwater-Management/Bulletin-118> [<https://perma.cc/9JL4-B6JB>].

62. *Id.*

63. Cal. Water Code § 10720.8(c) (2023).

64. CAL. WATER CODE § 10720.7 (2023).

65. CAL. DEP'T WATER RES., SUSTAINABLE GROUNDWATER MANAGEMENT ACT 2019 BASIN PRIORITIZATION PROCESS AND RESULTS 3, A-10 (Apr. 2019), https://www.emwd.org/sites/default/files/file-attachments/sgma_basin_prioritization_2019_results.pdf?1559164669 [<https://perma.cc/7YKR-GPCW>] [hereinafter 2019 Basin Reprioritization Process and Results].

66. Cal. Dep't Water Res., *SGMA Basin Prioritization Dashboard*, <https://gis.water.ca.gov/app/bp-dashboard/final> [<https://perma.cc/4HFK-B2ML>] [hereinafter SGMA Basin Prioritization Dashboard] (click on "Critically Overdrafted Basins" reference layer in the left side toolbar).

67. RUTH LANGRIDGE, ABIGAIL BROWN, KIRSTEN RUDESTAM, & ESTHER CONRAD, AN EVALUATION OF CALIFORNIA'S ADJUDICATED GROUNDWATER BASINS (2016), <https://cawaterlibrary.net/document/an-evaluation-of-californias-adjudicated-groundwater-basins> (including half-adjudicated basins such as Scott River Valley Groundwater Basin and San

had provided a list of basins to evaluate and Owens Valley Groundwater Basin was simply not on that list.⁶⁸ She further explained that there was uncertainty in 2016 about whether the Long Term Water Agreement was an adjudication, implying that Owens Valley was perhaps rightfully omitted.⁶⁹ This underscores the difference between Owens Valley's exemption and other adjudications, and the confusion that difference creates.

Along the same lines, DWR's overview of SGMA's exempt basins⁷⁰ and graphs of California water use⁷¹ do not accurately represent Owens Valley's unique situation. DWR and the Water Board may find it challenging to summarize or visually represent this situation, where water extracted locally is not used locally, as evidenced by Owens Valley's omission from these summaries. This omission risks creating a self-perpetuating lack of common understanding about the area, which could lead to missed opportunities for protecting what is left of Owens Valley's critical ecosystems.

B. *The Story of Owens Valley's Half-Exemption*

Bulletin 118 lists Owens Valley Groundwater Basin as a single hydrological unit of connected groundwater beneath Owens Valley, stretching as far north as Tri-Valley and the town of Benton, and as far south as Owens Lake.⁷² It is a closed hydrological system with its terminus at Owens Lake, which has been dry since Los Angeles built its first aqueduct.⁷³

LADWP has been the biggest groundwater pumper in Owens Valley Groundwater Basin.⁷⁴ In 2016, only two years after SGMA's passage, LADWP pumped 78,000 acre-feet of groundwater from Owens Valley (about 13 percent of Los Angeles's average annual water demand⁷⁵) while

Jacinto Groundwater Basin but not including Owens Valley Groundwater Basin).

68. E-mail from Ruth Langridge to author (Apr. 19, 2023) (on file with author).

69. *Id.* (“[I]t was uncertain if Inyo's Long Term Water Agreement (LTWA) with Los Angeles was considered an adjudication at the time we did the report and I cannot find any indication that an adjudication was finalized.”).

70. Cal. Dep't Water Res., *Adjudicated Areas*, <https://water.ca.gov/Programs/Groundwater-Management/SGMA-Groundwater-Management/Adjudicated-Areas> [<https://perma.cc/9X2L-8V5S>].

71. WATER EDUC. FOUND., *THE 2014 SUSTAINABLE GROUNDWATER MANAGEMENT ACT: A HANDBOOK TO UNDERSTANDING AND IMPLEMENTING THE LAW 6* (2015), <https://groundwater.ucdavis.edu/files/208021.pdf> [<https://perma.cc/X6D5-EYYJ>].

72. Cal. Dep't Water Res., *Groundwater Basin Boundary Assessment Tool* <https://gis.water.ca.gov/app/bbat> [<https://perma.cc/3W5C-ZKE4>].

73. S. Lahontan Hydrologic Region, *Owens Valley Groundwater Basin*, CAL. DEP'T WATER RES., 1 (2004), https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Bulletin-118/Files/2003-Basin-Descriptions/6_012_OwensValley.pdf [<https://perma.cc/GQW8-UEYF>].

74. OWENS VALLEY GROUNDWATER AUTH., *OWENS VALLEY GROUNDWATER BASIN FINAL GROUNDWATER SUSTAINABILITY PLAN 230* (2021), <https://ovga.us/gsa-plan> [<https://perma.cc/KH43-QCKR>] [hereinafter Owens Valley Groundwater Basin GSP].

75. *LADWP Water Supply in Acre Feet*, <https://data.lacity.org/City-Infrastructure-Service-Requests/LADWP-Water-Supply-in-Acre-Feet/qyvz-diiw/data> [<https://perma.cc/>

local groundwater users pumped 26,200–29,600 acre-feet, most of which was pumped from the Tri-Valley area north of Owens Valley.⁷⁶ Most of LADWP's pumped groundwater is transferred to Los Angeles, while some is ironically used as mitigation for LADWP's own groundwater pumping, as agreed to by the Governing Documents.⁷⁷ Despite LADWP's position as the biggest groundwater pumper in the basin, it was exempted from the new state groundwater management bill.

Legislative history shows that the list of adjudicated basins exempt from SGMA were added to the bill in early August 2014, at which point the list did not yet include Owens Valley.⁷⁸ The Long Term Water Agreement provides that neither Los Angeles nor Inyo County may take a position on any groundwater legislation without the agreement of the other.⁷⁹ The delay in including the Owens Valley exemption may have been related to this extra requirement that these parties must coordinate on support for legislation. Soon, though, Los Angeles and Inyo County seemed to come to an agreement, and the language creating Owens Valley Groundwater Basin's half-exemption appeared on August 19, 2014.⁸⁰

The half-exemption was included in the bill on the same day as an Inyo County Board of Supervisors meeting where the exemption was discussed publicly for the only time. On August 18, 2014, the bill did not include the Owens Valley half-exemption.⁸¹ The Inyo County Board of Supervisors' meeting agenda the next day, August 19, listed an agenda item for "possible County position regarding support for the State Groundwater Legislation."⁸² It did not

F2VH-39EN] (showing ~600,000 acre-feet per year as median annual Los Angeles City demand from 1970–2018).

76. Owens Valley Groundwater Basin GSP, *supra* note 74, at 230.

77. L.A. DEP'T WATER & POWER, LOS ANGELES DEPARTMENT OF WATER AND POWER 2022 ANNUAL OWENS VALLEY REPORT 1–4 (April 2022) (describing groundwater production for in-valley uses including agricultural mitigation projects and "Enhancement/Mitigation" projects); Long Term Water Agreement, *supra* note 37, at 27–29.

78. Cal. Legis. Info., *SB 1168 Groundwater management* (2014) https://leginfo.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201320140SB1168&cversion=20130SB116895AMD [<https://perma.cc/P7DQ-6N46>] (click the "Compare Versions" tab, select "08/04/14 – Amended Assembly" from the drop down menu, and then click the "Compare Versions" button).

79. Long Term Water Agreement, *supra* note 37, at 48.

80. Cal. Legis. Info., *SB 1168 Groundwater management* (2014), https://leginfo.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201320140SB1168&cversion=20130SB116893AMD [<https://perma.cc/T727-E7HV>] (click the "Compare Versions" tab, select "08/19/14 – Amended Assembly" from the drop down menu, and then click the "Compare Versions" button).

81. Cal. Legis. Info., *AB 1739 Groundwater management* (2014), https://leginfo.ca.gov/faces/billVersionsCompareClient.xhtml?bill_id=201320140AB1739&cversion=20130AB173994AMD [<https://perma.cc/AFX3-YNRC>] (click the "Compare Versions" tab, select "08/18/14 – Amended Senate" from the drop down menu, and then click the "Compare Versions" button).

82. CNTY. OF INYO BD. OF SUPERVISORS., AGENDA 3 (Aug. 19, 2014), <https://bos-archive>.

mention that portions of the basin may be treated as exempt from the new legislation, although presumably that detail was known at the time. No discussion of the provision took place in Los Angeles City Council meetings in July or August 2014.⁸³ As a result, only a very small subset of people in California who were paying close attention to both Inyo County Board of Supervisors meeting agendas and State legislation could have understood the meaning of this agenda item.⁸⁴ The Inyo County Board of Supervisors decided at that meeting to support treating as exempt from SGMA all portions of Owens Valley Groundwater Basin underlying LADWP-owned land.⁸⁵ That same day, August 19, the Owens Valley half-exemption appeared in the bill and Inyo County and the Los Angeles Mayor became bill supporters.⁸⁶

The meeting minutes do not clarify why the Inyo County Board of Supervisors endorsed the exemption. While the minutes record that “the Board discussed the amended legislation... at length and in detail,” they include little reasoning from Supervisors themselves. An author of the Long Term Water Agreement in part gave the presentation to the Board that day, advocating that the exemption would “recognize the importance of the Long Term Water Agreement” because the exemption would recognize the Governing Documents as equivalent to an adjudication.⁸⁷ The discussion notably mentioned that “should [the Long Term Water Agreement] be set aside for whatever reason, the County would fall back to having regulatory authority under the proposed groundwater legislation.”⁸⁸ Because of the statute’s exempting language, it is true that SGMA would apply to the entire basin if the Long Term Water Agreement were voided.

What is clear is that the Owens Valley half-exemption solidified quickly and mostly away from public view. Public input was not actively solicited.

inyocounty.us/Agenda/2014-08-19.pdf [<https://perma.cc/KVJ5-4R7D>].

83. CITY COUNCIL MEETINGS, <https://lacity.gov/government/calendar/city-council-meetings> [<https://perma.cc/VAT6-N3TP>].

84. Comments from L’eaux Stewart, Tribal Chairwoman of the Big Pine Paiute Tribe of the Owens Valley to California Department of Water Resources 1–2 (Apr. 22, 2022), <https://sgma.water.ca.gov/portal/service/gspdocument/download/8399> (explaining that while the Big Pine Paiute Tribe was alerted to the meaning of this agenda item, the Tribe believed that its level of understanding and participation in the August 19, 2014, meeting was rare and that more locals would have offered input if asked).

85. CNTY. OF INYO BD. OF SUPERVISORS., MINUTES 3 (Aug. 19, 2014), <https://bos-archive.inyocounty.us/Minutes/2014-08-19.pdf>.

86. Cal. Legis. Info., *supra* note 80; Cal. Legis. Info., *AB 1739 Groundwater management* (2014), https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201320140AB1739 (click the “Bill Analysis” tab then click “08/19/14- Senate Floor Analysis” link, at page 7,8). Senator Dickinson’s files at the California State Archives contains a handwritten note on the 8/18/14 list of bill supporters that reads “8/19/14 Add Mayor of Los Angeles, City of Los Angeles, Inyo County.” A photograph of this note is on file with the author.

87. CNTY. OF INYO BD. OF SUPERVISORS., *supra* note 85, at 3–4.

88. *Id.*

While a separate bill in support of tribal environmental consultation was pending in the California legislature at this time,⁸⁹ the Owens Valley Paiute and Shoshone Tribes were not consulted.⁹⁰

C. *The Story of Owens Valley's Priority Ranking*

1. At First, A Medium-Priority Ranking

SGMA passed in the California Legislature in September 2014. One of SGMA's first mandates was that DWR must rank the priority level of all groundwater basins in California.⁹¹ DWR initially ranked Owens Valley Groundwater Basin medium-priority.⁹²

Owens Valley Groundwater Basin was thus subject to SGMA's requirements, and its first required step was to form a Groundwater Sustainability Agency (GSA).⁹³ Inyo County began to form the Owens Valley Groundwater Authority (OVGA) through a Joint Powers Agreement.⁹⁴ The Joint Powers Agreement was written by Inyo County and, similar to the County's approach to the half-exemption, the County did not solicit public input or consult the Owens Valley Tribes before it circulated the draft Joint Powers Agreement to other prospective members.⁹⁵ The lack of tribal inclusion from the beginning

89. A.B. 52, 2013–2014 Reg. Sess. (Cal. 2014) (requiring that, upon request from a tribe affiliated with the geographic area, projects under the California Environmental Quality Act engage in a specified process of consultation with that tribe). This bill was successfully enacted.

90. Comments from L'eaux Stewart, Tribal Chairwoman of the Big Pine Paiute Tribe of the Owens Valley to California Department of Water Resources 1–2 (Apr. 22, 2022) <https://sgma.water.ca.gov/portal/service/gspdocument/download/8399>.

91. CAL. WATER CODE § 10933 (2023).

92. CNTY. OF INYO BD. OF SUPERVISORS., *Formation of a Groundwater Sustainability Agency in the Owens Valley Groundwater Basin 3* (Oct. 4, 2016), https://www.inyowater.org/wp-content/uploads/2015/12/OV_SGMA.pdf [<https://perma.cc/9KU2-7D2E>] (displaying Owens Valley Groundwater Basin in 2015 as yellow, indicating medium-priority status according to the map legend); OWENS VALLEY GROUNDWATER AUTH., MINUTES 3 (July 12, 2018), <https://www.inyowater.org/wp-content/uploads/2018/09/2018Jul12-final-minutes.pdf>.

93. CAL. WATER CODE §§ 10723, 10723.6 (2023).

94. THE INYO CNTY. WATER DEP'T, JOINT EXERCISE OF POWERS AGREEMENT BETWEEN THE BIG PINE COMMUNITY SERVICE DISTRICT, CITY OF BISHOP, COUNTY OF INYO, COUNTY OF MONO, EASTERN SIERRA COMMUNITY SERVICE DISTRICT, INDIAN CREEK-WESTRIDGE COMMUNITY SERVICE DISTRICT, KEELER COMMUNITY SERVICE DISTRICT, SIERRA HIGHLANDS COMMUNITY SERVICE DISTRICT, STARLITE COMMUNITY SERVICE DISTRICT, TRI-VALLEY WATER MANAGEMENT DISTRICT, AND THE WHEELER CREST COMMUNITY SERVICE DISTRICT, CREATING THE OWENS VALLEY GROUNDWATER AUTHORITY, https://www.inyowater.org/wp-content/uploads/2018/10/SGMA.JPA_.pdf [<https://perma.cc/95U7-JSM2>] (hereinafter Joint Powers Agreement).

95. Letter from Genevieve A. Jones, Tribal Chairwoman, Big Pine Paiute Indian Reservation, to Owens Valley Groundwater Authority, Inyo County Water Department (Feb. 28, 2019), in OWENS VALLEY GROUNDWATER AUTH.: ATTACHMENTS, 111, 112 (Mar. 14, 2019), <https://www.inyowater.org/wp-content/uploads/2019/03/Attachments.pdf> [<https://perma.cc/B3K6-GABT>].

may have constituted a violation of SGMA, as discussed near the end of this Comment.

SGMA next required OVGA to create a Groundwater Sustainability Plan (GSP).⁹⁶ OVGA received a grant from DWR,⁹⁷ searched for consultants to help draft a GSP,⁹⁸ and created a plan for the GSP's contents.⁹⁹ This process continued despite the groundwater basin's changing priority levels.

2. Then, A High-Priority Proposal

In the summer of 2018, DWR proposed to rank Owens Valley Groundwater Basin as high-priority.¹⁰⁰ DWR was newly taking into account out-of-basin groundwater transfers,¹⁰¹ and the out-of-basin groundwater transfer from Owens Valley to Los Angeles is the largest in the state by far.¹⁰² LADWP immediately opposed the proposed high-priority ranking, arguing that the ranking did not respect the basin's half-exemption.¹⁰³ OVGA also opposed the ranking, drafting a letter to DWR reasoning that subjecting the basin to SGMA with a medium- or high-priority ranking was overly burdensome given OVGA's lack of control over LADWP's large out-of-basin transfer. OVGA communicated this reasoning in strong language:

96. CAL. WATER CODE § 10727 (2023).

97. OWENS VALLEY GROUNDWATER AUTH., MINUTES 3 (May 10, 2018), <https://www.inyowater.org/wp-content/uploads/2018/09/2018May10-final-minutes.pdf> [<https://perma.cc/BWS4-UU9N>].

98. *Id.* at 2.

99. County of Inyo, *Request for Statement of Qualifications, in OWENS VALLEY GROUNDWATER AUTH.: ATTACHMENTS 38, 40–46* (2018), <https://www.inyowater.org/wp-content/uploads/2018/09/Attachments-2.pdf> [<https://perma.cc/82R3-H5GP>].

100. OWENS VALLEY GROUNDWATER AUTH., MINUTES 2 (Aug. 15, 2018), <https://www.inyowater.org/wp-content/uploads/2018/09/2018Aug15-minutes-Final.pdf> [<https://perma.cc/J6EB-6RCE>].

101. STATE CAL., NATURAL RES. AGENCY, DEP'T WATER RES., SUSTAINABLE GROUNDWATER MGMT. PROGRAM, DRAFT: 2018 SGMA BASIN PRIORITIZATION PROCESS AND RESULTS 30 https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Basin-Prioritization/Files/2018-SGMA-Basin-Prioritization-Process-and-Results-Document_ay_19.pdf%20page%2030 [<https://perma.cc/8A5U-ZW3A>].

102. Owens Valley's largest out of basin groundwater transfer since 2009 was 68,000 acre feet, in 2014, the next largest being Sacramento Valley (one of only 3 other basins that this chart records as having out of basin groundwater transfers). When you add up the largest yearly transfers from all the Sacramento Valley groundwater basin's subbasins, from a collection of different years since 2009, they equal 66,764 acre feet per year. This is less than Owens Valley's singular largest transfer year since 2009 of 68,000 acre feet. STATE CAL., NATURAL RES. AGENCY, DEP'T WATER RES, SGMA BASIN PRIORITIZATION STATEWIDE SUMMARY TABLE (2022), <https://lab.data.ca.gov/dataset/sustainable-groundwater-management-act-sigma-basin-prioritization> [<https://perma.cc/J9E7-HGPB>].

103. Letter from James G. Yannotta, Aqueduct Manager, Los Angeles Dep't of Water & Power, to Anita Regmi, PG Engineering Geologist, Cal. Dep't of Water Resources (June 25, 2018), *in* OWENS VALLEY GROUNDWATER AUTH.: ATTACHMENTS 2-3 (July 12, 2018), <https://www.inyowater.org/wp-content/uploads/2018/09/Attachments-3.pdf> [<https://perma.cc/ZAZ3-UWS5>].

In the first instance, the Draft Prioritization burdens the low-population, low-resource, low-tax base, low-water use, severely disadvantaged and disadvantaged communities of the Basin with SGMA compliance because of the activities of a wealthy, distant, out-of-basin municipality over which SGMA provides them no control. Also, the Draft Prioritization creates a regulatory scheme that makes the Authority, its local agency members, and their constituents responsible for conserving groundwater for the City's benefit without requiring LADWP to contribute or participate in any way to the efforts required to comply with SGMA's sustainability mandates. These results are simply unacceptable to the Authority and its member agencies. Therefore, the Authority requests that the Draft Prioritization be revised in a way that categorizes the basin to avoid such inequitable results.¹⁰⁴

Only one month earlier, OVGA had argued in a letter to LADWP that its GSA did indeed control LADWP lands to some extent. OVGA reasoned that its boundaries should encompass all of the exempt lands based on SGMA's mandate that GSPs cover "the entire basin."¹⁰⁵ According to OVGA, this language meant that the future GSP must work in coordination with LADWP and the Long Term Water Agreement.

These simultaneous letters together encapsulate OVGA's difficult position. OVGA knew as well as anyone that SGMA offered hope for sustainable groundwater management in Owens Valley through strengthened local control, and so, despite the exemption, OVGA worked to coordinate with LADWP to achieve entire basin management. At the end of the day though, OVGA did not want to be held responsible for the health of LADWP's resource colony—Owens Valley and its groundwater basin. OVGA communicated this latter message to DWR in no uncertain terms, implying a desire to be ranked as low-priority.

3. Finally, and Still Today, A Low-Priority Ranking

DWR's approach to priority rankings changed in direct response to these messages from LADWP and OVGA. First, DWR decided in its final 2019 reprioritization to evaluate basins with adjudicated areas based on the extent to which the non-adjudicated portions are "independently significant."¹⁰⁶ DWR did not explain what exactly "independently significant" means regarding a

104. Letter from Fred Stump, Chair, Owens Valley Groundwater Authority, to Trevor Joseph, Supervising Engineering Geologist, Dep't of Water Resources, and to Timothy Ross, Senior Engineering Geologist, Cal. Dep't of Water Resources (Aug. 15, 2018), in OWENS VALLEY GROUNDWATER AUTH.: ATTACHMENTS 14 (Aug. 15, 2018), <https://www.inyowater.org/wp-content/uploads/2018/09/Attachments-4.pdf> [<https://perma.cc/DHU9-WGXZ>].

105. Letter from Robert Harrington, Executive Director, Owens Valley Groundwater Authority, to Anselmo G. Collins, Director of Water Operations, Los Angeles Dep't of Water & Power (July 12, 2018), in OWENS VALLEY GROUNDWATER AUTH., ATTACHMENTS, *supra* note 103, at 9 <https://www.inyowater.org/wp-content/uploads/2018/09/Attachments-3.pdf> [<https://perma.cc/ZAZ3-UWS5>].

106. 2019 Basin Reprioritization Process and Results, *supra* note 65, at 27.

portion of groundwater basin that is hydrologically inseparable from the rest of the basin. Second, DWR decided to “only consider groundwater transfers that are or would be under the decision-making authority of a GSA,” and clarified that “transfers pursuant to a groundwater adjudication were not considered.”¹⁰⁷ This resulted in Owens Valley Groundwater Basin receiving far fewer prioritization “points,” resulting in a lower priority ranking.

DWR's final 2019 reprioritization document mentions only one water transfer pursuant to a groundwater adjudication—Ventura River Valley/Upper Ventura River.¹⁰⁸ While Owens Valley Groundwater Basin is omitted here without explanation, it fully qualifies as being subject to this new reasoning. Although Upper Ventura River may have had a stake in DWR's decision not to consider transfers pursuant to groundwater adjudications, Upper Ventura River's GSA did not discuss these issues during board meetings from 2018 or 2019.¹⁰⁹ Thus, these changes in DWR's approach to priority rankings from 2018 to 2019 were likely due to influence from LADWP and OVGA.

Using its new approach, DWR ranked Owens Valley Groundwater Basin as low-priority in its final December 2019 reprioritization.¹¹⁰ The immediate result of this was that local member agencies of OVGA decided SGMA no longer applied to the basin. Many revoked their OVGA membership, leaving threatened ecosystems unregulated by SGMA once again.¹¹¹ OVGA proceeded with creating a GSP anyway to avoid the risk of having to pay back grant money.¹¹²

D. *Owens Valley's Groundwater Sustainability Plan*

OVGA eventually finished a Groundwater Sustainability Plan for its half-exempt, low-priority groundwater basin, which it submitted to DWR for review on January 26, 2022.¹¹³ The GSP describes its own implementation

107. *Id.* at 29.

108. *Id.* at A-24. The chart displayed on this page represents all groundwater transfers including “Type B” groundwater transfers pursuant to a groundwater adjudication. While Ventura River Valley/Upper Ventura River is included, Owens Valley Groundwater Basin is omitted without explanation. LADWP's groundwater transfer from Owens Valley, if included, would stand out in this list as the largest transfer.

109. Upper Ventura River Groundwater Agency, *Public Meetings*, <https://uvrgroundwater.org/public-meetings>.

110. SGMA Basin Prioritization Dashboard, *supra* note 66.

111. OWENS VALLEY GROUNDWATER AUTH., MINUTES 2 (Feb. 13, 2020), <https://www.inyowater.org/wp-content/uploads/2020/03/2020Feb13-Final-Minutes.pdf> [<https://perma.cc/49YC-KGXH>]; OWENS VALLEY GROUNDWATER AUTH., MINUTES 2 (July 9, 2020), <https://www.inyowater.org/wp-content/uploads/2020/09/2020Jul09-Final-Minutes.pdf> [<https://perma.cc/3YXY-BAJB>] (reporting Eastern Sierra Community District's request to be removed as a member of OVGA); Tri-Valley Groundwater Management District leaving OVGA placed Fish Slough at high risk. See discussion *infra* Part IV.A.2.

112. OWENS VALLEY GROUNDWATER AUTH., MINUTES 2 (Dec. 10, 2020), <https://ovga.us/wp-content/uploads/2021/01/2020Dec10-Final-Minutes.pdf> [<https://perma.cc/7Y7X-U66H>].

113. OWENS VALLEY GROUNDWATER AUTH., MINUTES 1–2 (Feb. 10, 2022), <https://ovga.us/>

as optional¹¹⁴ and discretionary¹¹⁵ given the basin's low-priority status. This posture directly impacts the GSP's contents by purposely designing less ambitious projects and management actions.¹¹⁶

The GSP describes LADWP as the largest landowner in the basin with the most water rights.¹¹⁷ It describes how LADWP pumping hydrologically impacts the basin,¹¹⁸ endangering basin sustainability.¹¹⁹ However, its approach to LADWP is not clear. The GSP describes in some parts that LADWP's SGMA-exempt portions of the basin are outside the GSP's scope.¹²⁰ Other parts describe a faint plan for coordination with LADWP.¹²¹

The GSP is pending approval from DWR.¹²² DWR has two years to either approve, deem incomplete, or reject the GSP.¹²³ In the meantime, OVGA is operating quietly in Owens Valley Groundwater Basin where it asserts little authority. It plans to hold public meetings once per year according to its March 2023 meeting for which it has not yet published minutes.

IV. SGMA'S SOLUTIONS FOR OWENS VALLEY

This Comment argues that the result of Owens Valley Groundwater Basin's half-exemption and low-priority ranking was a fracturing of management in a hydrologically unified and threatened ecosystem. Specifically, OVGA's attempts at coordinating with LADWP have fallen flat,¹²⁴ and the exodus of its members means that today, OVGA lacks the authority to implement its GSP over important parts of the basin. This section describes remedies for the situation.

Subsection A describes how DWR could protect Owens Valley by clarifying that even low-priority, half-exempt basins are subject to SGMA's clear criteria for evaluating GSPs, if a GSP is voluntarily submitted. These criteria require that a GSP must be timely, complete, and that it must "cover the entire basin." DWR should mandate that OVGA's GSP cover the entire basin by coordinating management over portions of the basin that it does not control itself.

Specifically, DWR should mandate that OVGA's GSP form a clear plan for coordination with LADWP. DWR should mandate that the GSP at least

wp-content/uploads/2022/05/2022Feb10-Final-Minutes.pdf [https://perma.cc/LF4G-EA29].

114. Owens Valley Groundwater Basin GSP, *supra* note 74, at 1; *see also* e-mail from Aaron Steinwand to author May 8, 2023, on file with author.

115. OWENS VALLEY GROUNDWATER BASIN GSP, *supra* note 74, at 4, 37, 42, 53, 283.

116. *Id.* at 283.

117. *Id.* at 5, 10, 81.

118. *Id.* at 13, 21.

119. *Id.* at 91.

120. *Id.* at 1.

121. *Id.* at 7, 24, 64, 76, 87.

122. Cal. Dep't Water Res., *GSP Status Summary* <https://sgma.water.ca.gov/portal/gsp/status> (search "Owens Valley" in right side search bar).

123. CAL. WATER CODE § 10733.4(d) (2023).

124. OWENS VALLEY GROUNDWATER AUTH., *infra* note 137.

form a system for addressing instances where exempt portions of the basin affect the rest of the basin. Owens Valley is not the only groundwater basin whose long-term sustainability and ecological health depends on this decision by DWR. CDFW has argued in the context of other half-exempt groundwater basins that coordination across exempt and non-exempt portions of a groundwater basin is required by SGMA's mandate that the GSP "cover the entire basin."

DWR should also mandate that OVGA's GSP cover the non-exempt portions of the basin. This includes the non-exempt Tri-Valley portion of Owens Valley, where groundwater pumping is drying a critical spring at Fish Slough. DWR should clarify that the GSP must be implemented in Tri-Valley.

Subsection B explores in more detail why DWR should reprioritize Owens Valley Groundwater Basin as medium-priority. DWR should place more weight on the urgent threats to endemic species and rare ecosystems at Fish Slough. An unpublished memorandum from DWR shows that a letter from CDFW quantifying these threats is an important first step, which would likely result in a medium-priority ranking that could protect these springs.

Subsection C describes how OVGA could revise its approach to past harms in Owens Valley. The GSP currently uses 2012–2016 drought conditions as the baseline for setting minimum sustainability thresholds, following in the 1991 EIR's footsteps by entrenching past ecological harms.¹²⁵ The GSP should instead address undesirable conditions that occurred before its drafting and set goals to improve these conditions. SGMA states that GSPs may do this.¹²⁶

Subsection D explores how while SGMA could apply fully to the entire basin without a statutory amendment, this would require voiding the Long Term Water Agreement. This would only benefit Owens Valley if the GSP's protections and enforcement were significantly strengthened. For this reason, OVGA should incorporate the Long Term Water Agreement's protections for vegetation and mitigation into the GSP along with enforcement mechanisms.

Finally, Subsection E describes that the Owens Valley Paiute and Shoshone Tribes may have viable legal claims pursuant to SGMA. Pursuant to the statute, SGMA's implementation in Owens Valley needs to enable full participation by these Tribes at every step of the process.

A. *OVGA's GSP Is Incomplete Until It Covers the Entire Basin*

DWR has passed regulations creating criteria for evaluating GSPs. DWR's regulations state that a GSP must satisfy each of three conditions: timeliness, completion, and coverage of the entire basin.¹²⁷ While a full evaluation

125. OWENS VALLEY GROUNDWATER AUTH., ATTACHMENTS 14–16, 62 (Nov. 18, 2021), <https://ovga.us/wp-content/uploads/2021/11/attachments-1.pdf> [<https://perma.cc/TPA7-TECL>] (including comments on the GSP from the Big Pine Paiute Tribe and from the Sierra Club local chapter).

126. CAL. WATER CODE § 10727.2(b)(4) (2023).

127. CAL. CODE REGS. tit. 23 § 355.4(a)(1) (2023); CAL. CODE REGS. tit. 23 § 355.4(a)(2)

of OVGA's GSP is beyond the scope of this Comment, conditions two and three are facially problematic for OVGA's GSP that lacks coordination from agencies managing other parts of the basin.

The first condition, that the plan be submitted within the statutory deadline, has been met by OVGA.¹²⁸ Although OVGA's GSP is voluntary as a low-priority basin, its submittal date met the statutory deadline set even for high- and medium-priority basins.¹²⁹

Second, the plan must be "complete" and include "the information required by the Act and this Subchapter, including a coordination agreement, if required."¹³⁰ SGMA and DWR regulations require information like a sustainability goal for the basin that culminates in the absence of undesirable results within twenty years,¹³¹ descriptions of the cause of groundwater conditions in the basin that would lead to or has led to unsustainable results,¹³² and minimum thresholds set by numeric values that, if exceeded, may cause undesirable results.¹³³ OVGA's current assertion of little authority over the basin means that these requirements, even if adequately addressed by the GSP, cannot be implemented without coordination from the entire hydrologically connected basin, including the portions governed by the Long Term Water Agreement.¹³⁴ This condition is not satisfied until the GSP provides for a clear system of adequate coordination across the entire basin.

Third, "the Plan, either on its own, or in coordination with other Plans" must "cover the entire basin."¹³⁵ Similarly, this condition is not satisfied because OVGA does not anticipate implementing the GSP either in formal coordination with LADWP and the Long Term Water Agreement, or even in some non-exempt portions of the basin.

(2023); CAL. CODE REGS. tit. 23 § 355.4(a)(3) (2023).

128. CAL. CODE REGS. tit. 23 § 355.4(a)(1) (2023).

129. CAL. WATER CODE § 10735.2(a)(5)(A) (2023) (setting a deadline for high- and medium-priority basins that are not critically overdrafted to submit GSPs by January 31, 2022). OVGA submitted its GSP to DWR on January 26, 2022. See OWENS VALLEY GROUNDWATER AUTH., *supra* note 113.

130. CAL. CODE REGS. tit. 23 § 355.4(a)(2) (2023).

131. CAL. CODE REGS. tit. 23 § 355.4 (2023).

132. CAL. CODE REGS. tit. 23 § 354.26 (2023).

133. CAL. CODE REGS. tit. 23 § 354.28 (2023).

134. This echoes arguments made by other Owens Valley stakeholders. See OWENS VALLEY GROUNDWATER AUTH., ATTACHMENTS (Nov. 18, 2021), <https://ovga.us/wp-content/uploads/2021/11/attachments-1.pdf> [<https://perma.cc/558U-WWE3>] (describing OVGA's need for entire basin coordination from the Big Pine Paiute Tribe at 14, the California Native Plant Society at 30, Mono County at 52, an individual member of the public at 53, and the local Sierra Club chapter at 62–63).

135. CAL. CODE REGS. tit. 23 § 355.4(a)(3) (2023).

1. The GSP Must Cover the Entire Hydrologically Connected Basin

SGMA provides for coordination agreements where basins are governed by more than one groundwater agency.¹³⁶ This is unhelpful in Owens Valley where portions of the basin underlying Los Angeles-owned lands are treated as adjudicated and thereby exempt, because it is unlikely that LADWP could be considered a groundwater agency that would need to sign a coordination agreement with OVGA.

Los Angeles has decided it does not need to coordinate in any way with OVGA.¹³⁷ It even resists sharing key information with OVGA.¹³⁸ However, the GSP is still required to “cover the entire basin.” While Owens Valley Groundwater Basin is half-exempt, it is a unified basin. “Covering the entire basin” could not reasonably be interpreted as excluding portions of the basin where Los Angeles is the overlying landowner.

Owens Valley is not the only groundwater basin that is half-exempt from SGMA. Many groundwater basins in fact contain both adjudicated areas and non-adjudicated areas.¹³⁹ While the majority of these include only a very small portion of the basin that is non-adjudicated, a sizable number also are closer to half-adjudicated. DWR rated all of these basins with both adjudicated areas and non-adjudicated areas as “very low” priority in 2019 except Owens Valley rated as low-priority, Scott River Valley rated as medium-priority, and San Jacinto rated as high-priority. Like Owens Valley, Scott River Valley and San Jacinto have submitted GSPs because of their higher priority ratings.

A closer look at the public comments on these uniquely situated GSPs reveals that the tension between entire-basin management and the exempt areas is not unique to Owens Valley. CDFW has commented on both Scott River Valley Groundwater Basin and San Jacinto Groundwater Basin’s GSPs, arguing that an exempt area within basin boundaries needs to be carefully addressed and planned for in the GSP, despite the exemption.¹⁴⁰ In both com-

136. CAL. WATER CODE § 10727(b)(3) (2023).

137. Letter from Anselmo G. Collins, Director of Water Operations, Los Angeles Department of Water and Power, to Aaron Steinwand, Inyo County Water Director, Owens Valley Water Authority (Feb. 28, 2019), in OWENS VALLEY GROUNDWATER AUTH., ATTACHMENTS 108 (Mar. 14, 2019), <https://www.inyowater.org/wp-content/uploads/2019/03/Attachments.pdf> [<https://perma.cc/7T47-CVXM>].

138. Owens Valley Groundwater Basin GSP, *supra* note 74, at 77, 229 (describing LADWP resisting sharing groundwater models or the information they contain with OVGA); *but see id.* at 273 (describing other information LADWP shares with OVGA).

139. 2019 Basin Reprioritization Process and Results, *supra* note 65, at A-23.

140. Comments from Tina Bartlett, California Department of Fish and Wildlife Northern Region Regional Manager to California Department of Water Resources 18–21 (Apr. 28, 2022), <https://sgma.water.ca.gov/portal/service/gspdocument/download/8463> [<https://perma.cc/E48W-3KRA>] (commenting on Scott River Valley Basin’s GSP given a thorough analysis of SGMA requirements); Comments from Heidi Calvert, California Department of Fish and Wildlife Inland Deserts Region Acting Regional Manager to California Department of Water Resources 14–15 (Feb. 18, 2022), <https://sgma.water.ca.gov/portal/service/gspdocument/>

ment letters, CDFW argued that even in these basins, the GSP needs to “cover the entire basin.” It wrote:

However, Water Code section 10720.8(a) merely states that adjudicated basins identified in the subdivision (including the Adjudicated Areas) are not required to form a GSA and develop a GSP. SGMA’s exemption of adjudicated basins from the requirement to create a GSP does not override other SGMA provisions indicating that where a GSP is required, it must account for the entire basin, including impacts to adjudicated areas. (Water Code § 10727).¹⁴¹

The argument that the GSP should address the exempt area and cross-boundary impacts is not unfamiliar to OVGA. While this Comment and CDFW frame the argument in terms of statutory requirements, other versions of this argument have appeared in repeated public comments in OVGA meetings,¹⁴² and in many of the public comments on OVGA’s GSP.¹⁴³

While SGMA may not require LADWP to implement OVGA’s GSP on its lands, or to create a formal coordination agreement with OVGA, other tools

download/8123 [<https://perma.cc/B3LY-Y9WU>] (commenting on San Jacinto Basin’s GSP in light of SGMA requirements).

141. Comments from Heidi Calvert, California Department of Fish and Wildlife Inland Deserts Region Acting Regional Manager to California Department of Water Resources 14–15 (Feb. 18, 2022), <https://sgma.water.ca.gov/portal/service/gspdocument/download/8123> [<https://perma.cc/B3LY-Y9WU>] (commenting on San Jacinto Basin’s GSP in light of SGMA requirements, matching similar language in CDFW’s comments on Scott River Valley Basin’s GSP).

142. OWENS VALLEY GROUNDWATER AUTH., MINUTES (Jan. 10, 2019), <https://www.inyowater.org/wp-content/uploads/2019/03/2019Jan10-Final-Minutes.pdf> [<https://perma.cc/R9AX-NL2L>] (discussing desires of members of the public that OVGA coordinate with LADWP appropriately on transparency of data and groundwater management generally); OWENS VALLEY GROUNDWATER AUTH., ATTACHMENTS (Mar. 14, 2019), <https://www.inyowater.org/wp-content/uploads/2019/03/Attachments.pdf> [<https://perma.cc/7T47-CVXM>] (proposing but not adopting new language to apply the GSP to LADWP’s exempt lands); OWENS VALLEY GROUNDWATER AUTH., MINUTES (July 9, 2020), <https://www.inyowater.org/wp-content/uploads/2020/09/2020Jul09-Final-Minutes.pdf> [<https://perma.cc/G435-LZYP>] (discussing worries from members of the public that the future GSP may not adequately address impacts due to the exempt lands); OWENS VALLEY GROUNDWATER AUTH., MINUTES (Feb. 11, 2021), <https://ovga.us/wp-content/uploads/2021/03/2021Feb11-Final-Minutes.pdf> [<https://perma.cc/3MF5-A2XP>] (discussing desires of members of the public that LADWP and OVGA coordinate across the entire basin); OWENS VALLEY GROUNDWATER AUTH., ATTACHMENTS (Apr. 8, 2021), <https://ovga.us/wp-content/uploads/2021/04/Attachments-2.pdf> [<https://perma.cc/R3MA-VGMR>] (including in a presentation about Owens Lake management that the GSP will be evaluated based on whether or not it “addresses the entire basin” including LADWP lands).

143. OWENS VALLEY GROUNDWATER AUTH., ATTACHMENTS (Nov. 18, 2021), <https://ovga.us/wp-content/uploads/2021/11/attachments-1.pdf> [<https://perma.cc/558U-WWE3>] (describing OVGA’s need to coordinate with LADWP in comment letters from: the Big Pine Paiute Tribe at 14, from TVGMD at 19, from the owner of housing complex Pine Creek Village at 21, from the California Native Plant Society at 30, from Mono County at 52, from an individual member of the public at 53, and from the local Sierra Club chapter at 61-63).

can be used so the GSP meets its requirement to cover the entire basin. At the very least, OVGA's GSP should predict where and how harms to the exempt portions of the basin will affect non-exempt portions of the basin and should create a clear plan to address these instances. OVGA's current approach is to coordinate regarding LADWP-caused adverse impacts "on a case by case basis."¹⁴⁴ This approach does not reflect a clear, transparent plan for effective management of cross-boundary impacts. At most, SGMA's "entire basin" approach should require an exempt landowner like LADWP to coordinate its management with a groundwater basin's GSP, as OVGA suggested in its 2018 letter to LADWP.¹⁴⁵ This could mean requiring LADWP to manage groundwater pumping in a way that does not violate the GSP's minimum thresholds and in a way that avoids undesirable results. Such requirements would further SGMA's goal of groundwater sustainability achieved through strengthened local management. These requirements would also further the Long Term Water Agreement's goals by filling gaps in its implementation.

2. The GSP Must Cover the Non-Exempt Portions of the Basin

OVGA's GSP does not currently cover even the key area of Tri-Valley, where most non-LADWP groundwater pumping in Owens Valley Groundwater Basin occurs.¹⁴⁶ Tri-Valley demonstrates how SGMA's entire basin approach is critical for ecosystem health in a unified groundwater basin.

Tri-Valley Groundwater Management District (TVGMD) was one of the OVGA members that split off after the low-priority ranking was finalized.¹⁴⁷ TVGMD submitted its own GSA formation notice in August 2022,¹⁴⁸ which automatically took effect 90 days later.¹⁴⁹ TVGMD is now the exclusive GSA in the Tri-Valley area, located on the Mono side of the Inyo-Mono County line northeast of Owens Valley. However, Tri-Valley's groundwater tables are

144. OWENS VALLEY GROUNDWATER AUTH., OWENS VALLEY GROUNDWATER SUSTAINABILITY PLAN: RESPONSE TO COMMENTS ON PUBLIC REVIEW DRAFT 4 (Dec. 9, 2021), <https://ovga.us/wp-content/uploads/2021/12/Appendix-6-Public-comments-and-response-OVGA-Final-GSP.pdf> [<https://perma.cc/BHA7-WCR>].

145. OWENS VALLEY GROUNDWATER AUTH., *supra* note 105, at 9.

146. *See* Owens Valley Groundwater Basin GSP, *supra* note 74.

147. OWENS VALLEY GROUNDWATER AUTH., MINUTES 2 (Feb. 13, 2020), <https://www.inyowater.org/wp-content/uploads/2020/03/2020Feb13-Final-Minutes.pdf> [<https://perma.cc/49YC-KGXH>] (recording TVGMD's request to leave OVGA once the low-priority ranking was final alongside Sierra Highlands Community Service District); OWENS VALLEY GROUNDWATER AUTH., MINUTES 2 (July 9, 2020), <https://www.inyowater.org/wp-content/uploads/2020/09/2020Jul09-Final-Minutes.pdf> [<https://perma.cc/3YXY-BAJB>] (recording Eastern Sierra Community District's request to be removed as a member of OVGA); OWENS VALLEY GROUNDWATER AUTH., ATTACHMENTS 13 (Apr. 14, 2022), <https://ovga.us/wp-content/uploads/2022/04/Attachments.pdf> [<https://perma.cc/Q4XB-DRUL>] (resolving that OVGA will modify its boundaries so TVGMD is its own exclusive GSA in the Tri-Valley area).

148. Cal. Dep't Water Res., *All Posted GSA Notices*, SGMA PORTAL <https://sgma.water.ca.gov/portal/gsa/all>.

149. CAL. WATER CODE § 10723.8 (2023).

steadily dropping,¹⁵⁰ and this phenomenon is almost certainly drying up a critical complex of springs and wetlands nearby.

Just southwest of Tri-Valley, this complex of springs and wetlands called Fish Slough hosts endangered and sensitive species, including some that exist nowhere else in the world.¹⁵¹ It is also a culturally significant spring site for the Paiute and Shoshone people.¹⁵² But Fish Slough's discharge levels have been dropping for decades,¹⁵³ until finally a key spring called Northeast spring in summer 2022 saw no discharge at all.¹⁵⁴

Tri-Valley's dropping groundwater levels are almost certainly causing the Fish Slough crisis. According to a recent study, the chemical signature of Tri-Valley groundwater matches that of the Northeast Spring of Fish Slough, and partially matches the rest of the springs at Fish Slough.¹⁵⁵ Despite this, TVGMD's only action regarding Fish Slough has been to apply for a grant to study the hydrological connection further.¹⁵⁶

TVGMD has further disputed that OVGA would have authority to implement its GSP in the Tri-Valley area due to its low-priority ranking.¹⁵⁷ It

150. Owens Valley Groundwater Basin GSP, *supra* note 74, at 185 (recording southern Tri-Valley groundwater levels as declining by 0.5 feet per year since the late 1980s, and records northern Tri-Valley groundwater levels as declining by about 1.8 feet per year in the same time).

151. U.S. DEP'T INTERIOR, BUREAU LAND MGMT. *Fish Slough Area of Critical Environmental Concern* <https://perma.cc/548H-MLCW> (describing the endemic Fish Slough milk-vetch and the alkali Mariposa lily); Sabrina Imbler, *Saved by a Bucket, but Can the Owens Pupfish Survive?*, N. Y. TIMES (Aug. 16, 2021), <https://www.nytimes.com/2021/08/16/science/owens-pupfish-pister.html> [<https://perma.cc/T9VS-DJLG>] (describing the famous Owens pupfish that was previously saved from extinction by biologist Phil Pister in two buckets).

152. Letter from Allen Summers Sr., Tribal Chairman, Bishop Paiute Tribe to Craig Altare, Supervising Engineering Geologist, Cal. Dep't of Water Res. (Sept. 18, 2019) (opposing DWR's 2019 change of Owens Valley Groundwater Basin from high- priority to low-priority) (on file with author).

153. Dennis C. Odion, *Vegetation of Fish Slough, an Owens Valley Wetland Ecosystem*, in 4 HIST. WATER: E. SIERRA NEV., OWENS VALLEY, WHITE-INYO MOUNTAINS, WHITE MOUNTAIN RSCH. STATION SYMP. VOLUME 171 (1992) (citing Nicholas Pinter & Edward A. Keller, *Geomorphological Analysis of Neotectonic Deformation, Northern Owens Valley, California*, 84 GEOLOGISCHE RUNDSCHAU 200-212 (1995)).

154. Rachel McConnell, CAL. DEP'T FISH WILDLIFE, *Changes in Wetland Extent of Fish Slough (2011-2022)* 8 (Feb. 27, 2023) (on file with author).

155. Andy Zdon et al., *Identification of Source Water Mixing in the Fish Slough Spring Complex, Mono County, California, USA*, 6 HYDROLOGY (Mar. 20, 2019), <https://perma.cc/PU2N-DA6R> (finding that Northeast Spring's distinct chemical signature matches Tri-Valley groundwater, and that the rest of Fish Slough's springs indicate mixed water from Tri-Valley and the nearby BLM-managed Tablelands).

156. MONO CNTY. TRI-VALLEY GROUNDWATER MGMT. DIST., MINUTES (July 13, 2022), https://www.monocounty.ca.gov/sites/default/files/fileattachments/tri-valley_groundwater_management_district/meeting/32517/2022_tvghmd_minutes_7-13-2022.pdf [<https://perma.cc/GM84>].

157. Letter from Emily Fox, TVGMD Board of Directors, to Aaron Steinwand, Owens

explained that the basin “has not yet been re-rated by the Department of Water Resources to require management actions.”¹⁵⁸ Although the GSP needed to address the entire basin including Tri-Valley, TVGMD argued, that would not give OVGA authority to actually implement its GSP in the area where TVGMD is the exclusive GSA, so long as the basin is low-priority. As a result, provisions of the GSP that plan to regulate groundwater pumping in Tri-Valley and protect Fish Slough could no longer be implemented.

TVGMD interprets SGMA as promising no state oversight for low-priority basins.¹⁵⁹ However, SGMA’s requirement that GSPs cover the entire basin creates no exception for low-priority basins. Rather, California Water Code § 10727(b) defines groundwater sustainability plans as any of the following:

- (1) A single plan covering the entire basin developed and implemented by one groundwater sustainability agency.
- (2) A single plan covering the entire basin developed and implemented by multiple groundwater agencies.
- (3) . . . multiple plans implemented by multiple groundwater sustainability agencies and coordinated pursuant to a single coordination agreement that covers the entire basin.¹⁶⁰

If OVGA’s GSP seems to cover the entire basin but cannot actually be implemented in the entire basin, it no longer matches any of these definitions. Rather, OVGA and TVGMD must either coordinate on implementation of this GSP, or TVGMD must create a new GSP and a coordination plan with OVGA. Until then, OVGA’s GSP does not fit the statutory language.

In summary, until there is coordination across the entire non-exempt basin, DWR should deem OVGA’s GSP incomplete. An incomplete determination gives very low- or low-priority basins like Owens Valley unlimited time to address deficiencies, and gives medium- or high-priority basins up to 180 days to address deficiencies.¹⁶¹ This result is required because SGMA’s definition of GSP does not include an exception for GSPs submitted by low-priority basins.

Valley Groundwater Authority (Aug. 27, 2021), in OWENS VALLEY GROUNDWATER AUTH., ATTACHMENTS 11 (Sept. 9, 2021), <https://ovga.us/wp-content/uploads/2021/09/Attachments.pdf> [<https://perma.cc/9V4U-QHSB>].

158. *Id.*

159. OWENS VALLEY GROUNDWATER AUTH., ATTACHMENTS 11 (Sept. 9, 2021), <https://ovga.us/wp-content/uploads/2021/09/Attachments.pdf> (recording TVGMD explaining explains that Owens Valley Groundwater Basin “has not yet been re-rated by the Department of Water Resources to require management actions,” implying that SGMA does not apply to low-priority basins); MONO CNTY. TRI-VALLEY GROUNDWATER MGMT. DIST., MINUTES 2 (Oct. 28, 2020) (on file with author) (recording TVGMD members stating that “we are not obligated to comply with any OVGA timeline or comments on their plan as we have been rated a low-priority basin and withdrawn from OVGA”).

160. CAL. WATER CODE § 10727(b) (2023).

161. Cal. Code Regs. tit. 23 § 355.2(e)(2)(B) (2023).

B. *DWR Should Reprioritize Owens Valley Groundwater Basin*

SGMA provides that prioritization rankings be reassessed at least every five years,¹⁶² and gives DWR discretion in ranking groundwater basins. The statute provides DWR with a list of seven considerations in ranking the priority levels of groundwater basins, then adds that DWR should consider “any other information determined to be relevant by the department, including adverse impacts on local habitat and local streamflows.”¹⁶³ Under DWR’s current system, a basin with more than 14 priority points is a medium- or high-priority basin, while a basin with less than 14 priority points is a low or very low-priority basin.¹⁶⁴

DWR gave Owens Valley Groundwater Basin 12.5 priority points in its 2019 final reprioritization, just barely resulting in a low-priority ranking.¹⁶⁵ DWR assigned 7.5 of those priority points due to declining groundwater levels in Tri-Valley.¹⁶⁶ It assigned only two points due to adverse impacts on habitat and streamflow.¹⁶⁷ The low number of points attributed to other habitat information shows that DWR missed the ecological crisis that Tri-Valley’s dropping groundwater levels is creating, as explained above.¹⁶⁸

An unpublished DWR memorandum shows that it is aware of the threat to Fish Slough and the hydrological link to Tri-Valley.¹⁶⁹ DWR explains that while a CDFW technical report adequately described impacts to habitat and streamflow in Fish Slough, it did not adequately describe impacts to award any of three potential points for “groundwater-related actual or potential impacts to unique features or actual or potential challenges for groundwater management within the basin.”¹⁷⁰ DWR concludes that if the report had more adequately quantified the impacts to unique features, especially those that result in unrecoverable loss, then three more points could have been awarded to Owens Valley Groundwater Basin.¹⁷¹ Even just half of these three potential points would have given the basin medium-priority status.

162. Cal. Water Code § 10722.4(c) (2023) (providing that prioritizations be reassessed anytime DWR updates Bulletin 118); Cal. Water Code § 12924(c) (2023) (providing that DWR update Bulletin 118 every five years).

163. Cal. Water Code § 10933(b)(8) (2023).

164. SGMA Basin Prioritization Dashboard, *supra* note 66.

165. *Id.*

166. *Id.*

167. *Id.*

168. *Id.*

169. Memorandum from DWR Sustainable Groundwater Management Office to Karla A. Nemeth, Director of Statewide Groundwater Management RE: Approval of the SGMA 2019 Basin Prioritization Results – Modified Groundwater Basins (Phase 2) 71 (Dec. 3, 2019) (on file with author). The author received this unpublished memorandum from DWR via California Public Records Act request.

170. *Id.* at 74–5.

171. *Id.* at 75.

It is urgent that CDFW and DWR reconsider the threats to Fish Slough's unique features. The result of this would be to award the basin a medium-priority ranking, subjecting Owens Valley Groundwater Basin to all of SGMA's requirements including those for coordination agreements. This would leverage SGMA to best protect Fish Slough and other vulnerable ecosystems.

C. *The GSP Should Address Past Harms*

While SGMA does not require it, the GSP should address past harms in light of the unique history of extensive groundwater mining and export from Owens Valley. The GSP currently follows the pattern of accepting degraded conditions as a baseline, entrenching past harms to Owens Valley ecosystems.

The GSP does this by using current-day mapping to identify groundwater-dependent ecosystems rather than looking to historical conditions.¹⁷² More dramatically, it uses minimum groundwater elevations during the 2012–2016 drought as a basis for the GSP's minimum thresholds for groundwater level declines, groundwater storage reductions, and surface water depletions.¹⁷³ This means it uses the moment of lowest groundwater elevation during intense drought as a minimum baseline. These minimum thresholds would not protect but would rather suffocate today's ecosystems.¹⁷⁴ As a result of accepting past degraded conditions, the GSP concludes that no undesirable results such as loss of streams or ecosystems are occurring in the basin.¹⁷⁵ It explains that the GSP's goal is to prevent undesirable results from occurring in the future.¹⁷⁶

This approach does not protect Owens Valley. OVGA should revise the GSP, following SGMA's suggestion that GSPs also address past harms.¹⁷⁷ In Owens Valley, past harms range from the drying of Owens Lake to the drying of ancient springs and dependent ecosystems.¹⁷⁸ OVGA's GSP should take a strong approach to remedying as much degradation as possible through coordination plans with LADWP and protective minimum thresholds.

172. Owens Valley Groundwater Basin GSP, *supra* note 74, at 16.

173. *Id.* at 253.

174. OWENS VALLEY GROUNDWATER AUTH., ATTACHMENTS 14–16 (Nov. 18, 2021), <https://ovga.us/wp-content/uploads/2021/11/attachments-1.pdf> [<https://perma.cc/5NLQ-KQ3X>] (including comments on the GSP from the Big Pine Paiute Tribe describing specific examples of where these minimum thresholds put the water table elevation far below levels needed by vegetation).

175. Owens Valley Groundwater Basin GSP, *supra* note 74, at 244.

176. *Id.* at 248.

177. CAL. WATER CODE § 107272(b)(4) (2023) (stating that GSPs are not required to but may address undesirable results that occurred before, and have not been corrected by, January 1, 2015).

178. *See supra* notes 31–33 and accompanying text.

D. *If the Long Term Water Agreement Were Voided, SGMA Would Apply*

SGMA's language is unambiguous: Owens Valley Groundwater Basin is only exempt as long as the Long Term Water Agreement is in place.¹⁷⁹ One of the authors of the Long Term Water Agreement advocated for Inyo County to support the basin's half-exemption because "should [the Long Term Water Agreement] be set aside for whatever reason, the County would fall back to having regulatory authority under the proposed groundwater legislation."¹⁸⁰ The language of the exemption was chosen specifically to provide for SGMA to govern Owens Valley Groundwater Basin if the Long Term Water Agreement were voided.

SGMA's scheme of local management over groundwater sustainability could benefit Owens Valley if it applied in full to the basin. However, abrogating the Long Term Water Agreement may be impossible or unwise. It may be impossible without a separate court order, because the Long Term Water Agreement is a stipulated settlement, entered as a court judgment.¹⁸¹ This makes it a binding agreement. It may be unwise because the Long Term Water Agreement contains strong protections for Owens Valley vegetation and mitigation.¹⁸² If these protections were well-enforced, they would be strong.

OVGA should incorporate the Long Term Water Agreement's protections into the Owens Valley GSP and consider how to include meaningful enforcement protocols. In addition to offering another layer of protection today, this would protect Owens Valley ecosystems against any future possibility of the Long Term Water Agreement becoming void. Owens Valley advocates should continue strategizing about how the GSP's protections, and SGMA's provisions for state oversight, could fill in the gaps of the Long Term Water Agreement, providing stronger protection for Owens Valley.

E. *SGMA and Full Tribal Participation*

Finally, SGMA's initial application in Owens Valley failed to achieve equity and compliance with the statute regarding the Owens Valley Paiute and Shoshone Tribes. Specifically, the Joint Powers Agreement may give rise to ongoing viable legal claims under SGMA by the Owens Valley Tribes, which the Big Pine Paiute Tribe recognized when it declined to join OVGA.¹⁸³ The Tribe cited Inyo County's failure to include tribes from the beginning of drafting the Joint Powers Agreement, and further cited provisions of the Agreement

179. CAL. WATER CODE § 10720.8(c) (2023).

180. CNTY. OF INYO Bd. OF SUPERVISORS., *supra* note 85, at 3.

181. CAL. CIV. PROC. § 664.6 (2023).

182. *See supra* note 50 and accompanying text.

183. OWENS VALLEY GROUNDWATER AUTH., ATTACHMENTS 111–4 (Mar. 14, 2019), <https://www.inyowater.org/wp-content/uploads/2019/03/Attachments.pdf> [<https://perma.cc/Z2Y4-2WG6>].

that improperly limit tribal votes in OVGA and bind tribes to GSP implementation on tribal land.¹⁸⁴

Owens Valley Tribes' right to groundwater is a federally reserved water right.¹⁸⁵ SGMA respects established principles of federal Indian law, that sovereign tribal nations operate mostly apart from state law and are bound by tribal law and federal Indian law, by encoding the supremacy of tribes' federal rights in the statute.¹⁸⁶ In the same way, SGMA expressly provides that tribes can "voluntarily" and "fully" participate in all SGMA processes, while still not being ultimately bound by state law.¹⁸⁷

The Joint Powers Agreement may unlawfully infringe on the Owens Valley Paiute and Shoshone Tribes' full participation on an ongoing basis, first by not having solicited tribal participation from the very start of its formation, and second by restricting these Tribes' votes to only two votes while other entities remained eligible for several more votes.¹⁸⁸ The Agreement may also unlawfully bind tribal participants to implementing the terms of a final GSP. Rather, SGMA states that tribes' rights to groundwater are supreme federal water rights, and in case of any conflict, the federal rights prevail regardless of the tribes' participation in the GSA or GSP.¹⁸⁹

CONCLUSION

SGMA should not protect California groundwater only for agricultural sustainability. It can and must protect critical ecosystems like Owens Valley's rare high desert wetlands and springs. Owens Valley is a scenic, ecological, and cultural treasure of California, and its continued vitality is inextricably linked to its groundwater.¹⁹⁰ This Comment has focused on the historic and present-day management of this groundwater, with a focus on California's Sustainable Groundwater Management Act. But the story of SGMA in Owens Valley has not ended.

DWR, CDFW, LADWP, and OVGA must act to better implement SGMA in Owens Valley. DWR's first role is to hold OVGA's GSP to be incomplete until it "covers the entire basin" as SGMA requires.¹⁹¹ This first means requiring the GSP to present a clear plan for addressing LADWP-caused impacts, because SGMA's requirement for covering the entire basin makes no exception

184. *Id.*

185. *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District*, 849 F.3d 1262 (9th Cir. 2017).

186. CAL. WATER CODE § 10720.3 (2023).

187. *Id.* at (c)–(d).

188. Joint Powers Agreement, *supra* note 94, at 17; *see* OWENS VALLEY GROUNDWATER AUTH., ATTACHMENTS *supra* note 183.

189. CAL. WATER CODE § 10720.3(d) (2023).

190. *See supra* notes 21–22, 30 and accompanying text.

191. *See supra* note 135 and accompanying text.

for half-exempt groundwater basins.¹⁹² It also means requiring GSP implementation today in Tri-Valley and other non-exempt areas, because SGMA's requirement for covering the entire basin makes no exception for low-priority basins.¹⁹³ DWR's second role is to re-rank Owens Valley Groundwater Basin as medium-priority by reconsidering threats to Fish Slough's rare habitat and endemic species.¹⁹⁴ This medium-priority status would likely reverse the urgent ecological crisis facing Fish Slough.

CDFW's role is to more thoroughly quantify impacts to the unique features at Fish Slough, focusing on those features whose loss would be unrecoverable. DWR has stated that this would award three more points to Owens Valley Groundwater Basin, leading to medium-priority status.¹⁹⁵

While LADWP's role has been historically destructive in Owens Valley, it does not need to remain so. LADWP should first transparently share all groundwater data with OVGA.¹⁹⁶ It should also cooperate with OVGA to address impacts to the non-exempt portions of Owens Valley Groundwater Basin.¹⁹⁷ It should finally coordinate with Inyo County to amend SGMA so LADWP lands are managed both by SGMA and the Governing Documents. These actions would enhance ecological protection and embrace state oversight. However, the health of Owens Valley will ultimately require that LADWP cease extracting groundwater.¹⁹⁸

Finally, OVGA's role is to amend its GSP to achieve entire basin management, including both exempt and non-exempt portions of Owens Valley Groundwater Basin.¹⁹⁹ It should also amend the GSP to remedy past harms, and to not accept degraded drought conditions as baseline.²⁰⁰ Its GSP amendments should further incorporate and enforce the Governing Documents' strong protections to the greatest extent possible.²⁰¹ A strong GSP in Owens Valley can harness SGMA's power of state involvement to enhance the Governing Documents' protections, while also serving as a backstop for any future possibility of the Governing Documents becoming void. OVGA should finally amend the Joint Powers Agreement alongside the Owens Valley Paiute and Shoshone Tribes to support full tribal participation, so that the Agreement can

192. See discussion *supra* Part IV.A.1.

193. See discussion *supra* Part IV.A.2.

194. See discussion *supra* Part IV.B.

195. *Id.*

196. See *supra* note 138 and accompanying text (describing groundwater models that LADWP resists sharing with OVGA).

197. See *supra* note 137 and accompanying text (describing LADWP's position that it does not need to coordinate with OVGA).

198. See *supra* notes 30–33 and accompanying text.

199. See discussion *supra* Part IV.A.

200. See discussion *supra* Part IV.C.

201. *Id.*

most forcefully support groundwater management decisions led by Owens Valley's original caretakers.²⁰²

SGMA's promise of groundwater protection in Owens Valley is yet to be fulfilled. DWR, CDFW, LADWP, and OVGA must take an active approach to protecting the entire Owens Valley Groundwater Basin. SGMA mandates as much.

202. See discussion *supra* Part IV.E.