



October 7, 2019

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Members of the Board of Directors  
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Subject: Comments on Groundwater Sustainability Plan (GSP) 180/400-foot Chapter 10, Implementation, and on need for interim pumping restrictions

Dear Chair Stefani and Members of the Board of Directors:

LandWatch appreciates the opportunity to comment on the 180/400-Foot Subbasin Groundwater Sustainability Plan, Chapter 10, Implementation.

### **Summary of comments**

LandWatch's detailed comments follow.

**1. The proposed implementation fails to recognize the urgency required for action to address the critically overdrafted 180/400 Foot Aquifer Subbasin.**

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

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

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

Indeed, the only action proposed for projects and management actions prior to completion of the GSP for the rest of the SVGB in 2023 is some water rights studies, cost refinement, preliminary design (“if projects adequately defined”), and some initiation of environmental permitting (CEQA?). (GSP section 10.7.)

GSP Figure 10-1, “General Schedule of 5-year Start-Up Plan,” represents that the SVGBGSA will “Implement Prioritized Projects” between 2023 and 2025. However, any implication that the nine priority projects identified in Chapter 9 will actually start up in 2026 is inconsistent with the detailed project timelines in Chapter 9, which call for 3 to 9+ years to implement projects once the SVGBGSA has committed itself to them.

Furthermore, there is no reason to suppose that the SVGBGSA can or will actually commit itself to the basin-wide projects in 2023 as soon as the SVGBGSA submits the GSP for the rest of the SVGB. First, DWR may not approve the Basin-wide GSP for several years. Second, many of the projects will require complex Proposition 218 compliance after SVGBGSA decides to pursue them in order to determine whether fees can be assessed to actually build them.<sup>1</sup> (Water Code, § 10730.2(c)). The Proposition 218 processes, typically requiring engineering studies and benefit allocations based on a completed design and hydrological assessment, may add years to each major project. The SVGBGSA cannot actually commit itself to commence a project until it has completed the Proposition 218 process.

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

Details of the GSP implementing finance framework for all six subbasins will be developed during the first three years of this GSP’s implementation through a facilitated, Valley-wide process. This process will be similar to the successful facilitated process that resulted in the SVBGSA serving as the GSA for some or all parts of all six subbasins. The result of this facilitated process will be an agreement on the financing method approved by the SVBGSA. The facilitation will be complete by January 31, 2023, and the financing method will be implemented in all six subbasins immediately following.

The GSP is apparently describing the adoption of a financing “method,” not an actual financing plan or capital budget. As noted, the actual budget and financing plan will require the completion of Proposition 218 processes for the projects.

In effect, the proposed GSP Implementation improperly treats the actual management of the critically overdrafted 180/400 Foot Aquifer Subbasin as if it were on the same timetable as the rest of the SVGB. This does not meet the mandate of SGMA, which requires more than a plan by 2020. SGMA requires that critically overdrafted

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<sup>1</sup> The GSP identifies a proposed “regulatory fee” for pumping a “Sustainable allowance” and an “interim base fee” pending completion of the “GSP financing framework.” (GSP, sections 9.2 and 10.2.) However, before Proposition 218 compliance, those fees could not be used for projects but only for the activities related to developing and managing the GSP. (Compare (Water Code, §§ 10730 and 10730.2.)

basins “shall be *managed* under a groundwater sustainability plan” by January 31, 2020. (Water Code, § 10720.7(a)(1), emphasis added.)

If the development and financing of projects must await completion of the GSP for the remainder of the SVGB, or if delay is required to negotiate financing and develop projects, then the SVGBGSA should consider all feasible interim measures to manage the 180/400 Foot Aquifer Subbasin pending the implementation of basin-wide projects and financing.

LandWatch proposes that this interim management should include pumping restrictions for the reasons set out below.

**2. The SVGBGSA should impose pumping restrictions pending start-up of new water projects in order to restore and maintain the protective groundwater elevations needed to attain the adopted minimum threshold for seawater intrusion.**

In previous comments LandWatch has explained that seawater intrusion must be addressed by taking steps to increase and then maintain groundwater levels at protective elevations.

THE PROPOSED GROUNDWATER LEVEL MINIMUM THRESHOLDS DO NOT COMPLY WITH SGMA BECAUSE THEY DO NOT PREVENT SEAWATER INTRUSION: In comments on Chapter 8, LandWatch explained that the section 8.6.2 minimum threshold for groundwater levels must be set at a level that is sufficient to prevent further seawater intrusion. The section 8.8.2 minimum threshold for seawater intrusion is the “2017 extent of the 500 mg/L chloride concentration isocontour as mapped by MCWRA,” i.e., the existing line of seawater intrusion advancement. SGMA mandates that the “basin conditions at each minimum threshold will avoid undesirable results for *each* of the sustainability indicators.” (23 CCR § 354.28(b)(2), emphasis added.) Thus, it would not comply with SGMA to set the minimum threshold for groundwater levels at a level that does not actually halt seawater intrusion.

As LandWatch’s Chapter 8 comments and the technical studies referenced in those comments explain, existing groundwater levels are currently far from the levels required to prevent further seawater intrusion. This is readily apparent from the technical study on which the GSP relies for the historic water budget in Chapter 6.<sup>2</sup> That study establishes that as of 2013 there was a *cumulative* storage deficit in the Pressure Subbasin (aka, 180/400 Foot Aquifer Subbasin) of 110,000 acre-feet.<sup>3</sup> That study concludes that this cumulative storage deficit would increase by 10,000 to 20,000 afy under continued dry conditions. Since the drought did not end until 2019, the cumulative deficit has grown. The relation between cumulative deficit, insufficiently protective groundwater levels, and seawater intrusion is also evident from the rapid advances of seawater intrusion through 2017.

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<sup>2</sup> Brown and Caldwell, *State of the Salinas River Groundwater Basin*, January 2015, available at <https://www.co.monterey.ca.us/home/showdocument?id=19586>.

<sup>3</sup> *Id.*, p. ES-11.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**6. Comment responses are required.**

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

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

Sincerely,



Michael DeLapa  
Executive Director

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<sup>5</sup> Available at <https://www.co.monterey.ca.us/home/showdocument?id=19642>.)