

February 22, 2022

VIA EMAIL

Ryan Ferguson
President
Westlands Water District
3130 N. Fresno Street
Fresno, CA 93703-6056

Re: Proposed SGMA Rules and Regulations

Dear President Ferguson:

On February 22, 2022, the district's SGMA advisory and technical advisory committees ("AC/TAC") are scheduled to consider (and potentially recommend) proposed SGMA rules to the WWD board.

Failure to Follow Board and Committee Direction

On February 3, 2022, the AC/TAC committees gave staff direction to develop parameters with respect to certain aspects of the SGMA rules.

On February 15, 2022, the board directed staff to develop parameters in the SGMA rules to eliminate the excessive staff discretion therein. This direction was provided, in part, after the board considered the merits of a landowner objection letter specifically on this subject.

Notwithstanding the prior policymakers' direction, the proposed SGMA rules continue to delegate broad discretionary authority to an employee without the parameters required by the board and AC/TAC. In fact, few changes were made following the February 15 board meeting. Such delegation is inconsistent with the GSP and may be inconsistent with applicable law.¹ This begs the question of whether certain district employees should be held accountable for their latest disregard for board direction and compliance with SGMA-required stakeholder input.

Issues Raised by the Draft SGMA Rules

Based on the committee packs released on Saturday, February 19, 2022², it is expected that the proposed SGMA rules will yet again be provided to the AC/TAC without identifying the hard questions that need to be addressed for the district's implementation of reliable, business-oriented, financeable and lawful SGMA rules. Accordingly, this letter asks some key questions to the AC/TAC and, ultimately, to the board. These questions are attached to this letter as Exhibit A.

The undersigned landowners who endorse this letter urge the board (and by extension the AC/TAC) to carefully consider the questions raised by landowners in developing the SGMA rules.

¹ The new language in Section 1.1 indicating that the SGMA rules are consistent with applicable law and the GSP does not make it so, nor does such language cleanse the proposed SGMA rules of its numerous shortcomings.

² This was released with less than one business day notice prior to the ACT/TAC meetings. Query whether this is adequate legal notice and, just as critical, adequate practical/business notice for the AC/TAC members to review the proposed SGMA rules in depth and to meet their duties as committee members.

Endorsed by:³

Faris Assemi
Clay Beck
Jim Beecher
Mitch Coit
Tom Coleman
Stephani Graham
Jeremy Hughes
Rebecca Kaser
Scott Rhodes
Keith Thomsen
Brandon Walker
Darrick Walker
Jim Walker
Stuart Woolf

Cc:

Westlands Board
AC/TAC Committee Members
Jose Gutierrez
Kiti Campbell
Jon Rubin

³ Additional endorsements would have been included but for the timing of the release of the proposed SGMA rules over the holiday weekend.

EXHIBIT A

Key Questions

[generally, in order as they appear in the proposed SGMA rules]

Definitions:

- **General Manager:** Should the GM be mandated to delegate discretion to a ‘designee’ with technical knowledge when technical matters arise? If not, how should a non-technical GM make technical decisions when exercising discretionary authority?
- **Qualifying Surface Water:** Should WWD limit landowners from bringing different water types they control into the subbasin for use and/or recharge?

Applications for Groundwater:

- **Annual Applications, Section 1.3A:**
 - Should a landowner have to make an annual application for a groundwater credit if there is no change in the status of the ownership of the land?
 - Should landowners make one application for surface water and groundwater allocations rather than add another layer of forms?
- **Late Applications, Section 1.5A:** Should a district employee have the discretionary authority to accept or reject a late application? If so, what are the parameters for making that determination?
- **Beneficial Use, Section 1.5.A.3:** How will the district determine if acreage is ‘unsuitable for beneficial use’ of groundwater? What are the parameters for making that determination?

Groundwater Allocation:

- **Allocations, Section 1.7.A.3:** Should a district employee have the discretion to ‘decide how to allocate groundwater’? If so, what are the parameters for making that determination?
- **Allocation Timing, Section 1.8.A:** Should the district make groundwater allocations earlier than March 1 each year? With surface water, landowners object to late notice from USBR, so should WWD continue that late pattern even though the district controls the groundwater allocations?

Use and Transfer of Groundwater:

- **Priority of Use, Section 1.9.B:** Should a district employee have the discretion to grant a change in the priority of groundwater use based ‘upon finding that the alternative priority would not cause undesirable results in the Subbasin’? If so, what are the parameters for making that determination?
- **Transfers, Section 1.9.D:**
 - Should a district employee have the discretionary authority to approve or reject ‘[a]ll requests to transfer a Groundwater Allocation, including Carryover and Groundwater Credits? If so, what are the parameters for making that determination?’
 - Should a district employee have the discretionary authority to assess whether a ‘transfer of groundwater will not cause undesirable results in the Subbasin?’ If so, what are the parameters for making that determination?⁴
 - Should a district employee have the discretionary authority to ‘impose reasonable conditions on a transfer to ensure that if necessary to support the finding [that

⁴ Neither the ‘Westlands Water District Groundwater Sustainability Agency Guidance for Processing Groundwater Transfer’ is not presented with the materials. Further the draft SGMA rules indicate that the guidance document can be updated at any time ‘updated from time to time without amendment to these Rules and Regulation’. Does this mean changes can be made without public notice? Without public opportunity to comment? Updated by the board? District employees? None of this is defined and no criteria is specified for decision making.

a]...transfer of groundwater will not cause undesirable results in the Subbasin'? If so, what are the parameters for making that determination?

- Dispute Management, Section 1.9.I: Should a district employee have the discretionary authority to 'restrict or prohibit the use or transfer of Groundwater Allocation to any land if a dispute exists regarding the allocation or use of any other groundwater that is the subject of a dispute' If so, what are the parameters for making that determination?
- Permissible Transferees, Section 1.9:
 - Can landowners transfer their Allocation, Carryover and Credits to unaffiliated landowners?
 - Can landowners transfer their Transition Allocation generated from one parcel to another parcel owned by itself or affiliated landowners (i.e., from one parcel under common control to another)?

Groundwater Recharge Projects:

- Recharge Credits, Section 1.10.D: Should a district employee have the discretionary authority to 'reasonably calculate' the extent of recharge credits. If so, what are the parameters for making that determination?
- Aquifer Designation, Section 1.10.E: Should a district employee have the discretionary authority to decide 'the extent [recharged water] would recharge the Upper and Lower Aquifer'? If so, what are the parameters for making that determination?
- Credit Timing, Section 1.10.I:
 - Should landowners have to wait until the end of the water year to receive their credits as opposed to be calculated in real-time (or within 30-45 days)?
 - Should landowners be able to manage their own water supplies and, if they so choose, recharge and pump in the same year? This could be especially important when one water year that is dry or wet and is followed by a water year with the opposite hydrologic characteristics but the weather occurs technically within the same year.
- Pilot Projects, Section 1.10, generally: Should projects previously approved during the pilot program have to reapply for credits?

Subsidence Prone Areas

- SPA Curtailments, Section 1.11.B: Should a district employee have the discretionary authority to 'curtail landowner groundwater use within the Subsidence Prone Area to avoid "undesirable results"' . ? If so, what are the parameters for making that determination?
- In Lieu Water, Section 1.11.B: Should landowners in the Subsidence Prone Area be required to take in-lieu water procured by the district? Should all growers be required to take surface water in years like 2017?
- Substitute Water – Supply, Section 1.11.B:
 - Where will the district source in-lieu water from?
 - What if landowners outside of the SPA elect to purchase the same water the district wishes to allocate to the SPA such that less is available for the SPA? Should the district be authorized to allocate water to some but not all landowners?
- Substitute Water – Costs, Section 1.11.B.2.d: What if the cost of the water sourced for the SPA exceeds the cost of pumping in the SPA? Should the district cover the cost differential?

Carryover

- Leave Behind, Section 1.12.D: Should Carryover have a time limit or subject to an additional Leave Behind? Should landowners be penalized for not pumping or transferring?
- Carryover Transfers, Section 1.9D: See above

Penalties: Should penalties be higher than as proposed to properly enforce the SGMA rules?⁵

Variance Procedures

- **Technical Matters, Section 1.19.C and Section 1.20.B:** Should a district employee have the discretionary authority to determine if a ‘request for variance [does or] does not raise a Technical Issue’...and whether the issue should be considered by the Technical Advisory Committee? If so, what are the parameters for making that determination?

Appeal

- **Timing, Section 1.20.A:** Would 20 days be sufficient to gather all the information necessary to appeal the decision made by a district employee?
- **Delays Caused by Process, Section 1.20.C and D:** Water decisions often have to be made quickly. Should a landowner have to wait for an employee decision and then await an opportunity to appeal to the board within 90 days? A water opportunity could be lost in that situation.
- **Reconsideration, Section 1.20.E:** Should a district employee have the discretionary authority to reconsider a prior decision based upon such employees determination that it is necessary to ‘avoid a significant and undesirable result’? If so, what are the parameters for making that determination?

⁵ Other similarly situated water districts in the SJV are implementing much more significant penalties to ensure enforcement. For example, some penalties are economically sized to reflect the cost to retire land and related allocation, not tied to pumping costs. [Article re Penalties](#)