

February 14, 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 15, 2022, the district is scheduled to consider (and potentially approve) proposed SGMA rules and regulations. Since the inception of the draft proposed rules, growers have identified a number of substantive and procedural flaws with their content, yet many of those issues have not been genuinely considered in any formal public setting as required by SGMA.

The most recent changes to the proposed rules – many of which have been released to the board without being considered by the SGMA committees or standing board committees – exacerbate these problems by delegating substantial discretionary authority to an employee (i.e., the General Manager) without any specified parameters.¹ This delegation includes the employee's authority to approve, on a discretionary basis, (a) carryover groundwater credits, (b) groundwater credit transfers (including upon the sale of property), (c) the quantity of groundwater credits issued for recharge, (d) the determination of aquifer(s) receiving a recharge credit, (e) the extent of pumping allowed in subsidence prone areas, (f) the extent of any recharge 'leave behind' and (g) whether more time will be granted to install a meter.

This delegation of authority is unacceptable on several fronts: it is ill-advised from a policy perspective, contrary to WWD's approved GSP and may be inconsistent with applicable law. Specifically -

- The delegation of authority to an employee is expressly inconsistent with the district's GSP, including circumventing the Advisory Committee and Technical Advisory Committee, both of which have recommended the development of technical parameters for evaluating proposed recharge projects by technical experts.
- The delegation of broad authority to an employee without any parameters may be considered a breach of fiduciary duties.
- Discretion without any parameters runs the risk of the district acting arbitrarily and capriciously.
- The narrow, regimented right to appeal the employee's discretionary act is not an adequate right to due process for growers who are faced with making long-term investment decisions and/or time-sensitive water buying decisions.

The foregoing is applicable with regard to any employee, but particularly problematic when the employee currently serving in the position as General Manager has no formal hydrogeological education, experience or expertise.

The undersigned growers who endorse this letter urge the board to develop reliable, business-oriented and lawful SGMA rules and regulations (including private recharge) with genuine input from growers and the

¹ In certain instances within the proposed rules, authority is delegated to the 'District', which is understood to mean staff with technical capacity after having been given direction from the board. In the specified instances above, discretionary authority is delegated to the 'General Manager', which is understood to mean to the specific employee in that role.

SGMA committees in order to direct its employees on how to administer those rules. This will incentivize growers to pursue and invest in projects and activities with the intention of enhancing the long-term sustainability of groundwater conditions in WWD. Leaving this critical work to the discretion of an employee falls far short of that aspiration.

Endorsed by:

Farid Assemi
Beck Family Orchards
James Beecher
Vince Coelho
Tom Coleman
Jeff Fortune
Armondo Galvan
Brad Gleason
Stephani Graham
Jeremy Hughes
Rebecca Kaser
Steve Moore
Jennifer Reisz
Scott Rhodes
Seasholtz Companies
Keith Thomsen
Brandon Walker
Darrick Walker
Jim Walker
Mike Woolf
Stuart Woolf

Cc:

Westlands Board
Jon Rubin