

April 29, 2022

VIA ELECTRONIC MAIL AND U.S. MAIL

Ms. Karla Nemeth
Deputy Director
Department of Water Resources
Post Office Box 942836
Sacramento, CA 94236-0001

Re: San Joaquin Valley – Kings Subbasin Incomplete Determination

Dear Deputy Director Nemeth:

This letter is sent on behalf of the San Joaquin Valley - Kings Subbasin (Bulletin 118 # 5-022.08) (“Kings Subbasin”) Groundwater Sustainability Agencies (“GSAs”) listed below. The Kings Subbasin GSAs timely submitted to the California Department of Water Resources (“DWR”) their seven coordinated groundwater sustainability plans (“GSPs”) in January 2020. We understand that DWR has determined all of the GSPs in the Kings Subbasin to be “Incomplete” pursuant to the Sustainable Groundwater Management Act (“SGMA”) by letter dated January 28, 2022 (“Determination Letter”). The GSAs in the Kings Subbasin are working hard to address DWR’s noted deficiencies and suggested corrective actions in the Kings Subbasin GSPs.

However, having reviewed the Determination Letter, we would like to address one issue: specifically, in Deficiency 1 related to sustainable management criteria for the chronic lowering of groundwater levels, DWR staff state the GSAs should consider the “current beneficial uses and users of groundwater and the potential effects of the proposed management...”¹ The Determination Letter goes on to suggest that,

For example, if the GSAs anticipate groundwater level declines to impact a community’s drinking water supply and the community does not have the economic means to drill a deeper well, then the GSPs should, at a minimum, disclose that fact and, ideally, should adjust their management criteria to avoid that condition or describe projects or management actions the GSAs would take to

¹ Determination Letter, 3.1.2, p. 10.

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address the lack of funding or other ways to avoid the impact to the community's drinking water supply.²

Although SGMA provides the GSAs the opportunity to further define "significant and unreasonable," DWR has verbally implied that any single well going dry is significant and unreasonable. Local control allows GSAs to define what is significant and unreasonable for all beneficial uses and users of groundwater. The GSAs are not opposed to quantifying the number of wells that will go dry based on where they have set their measurable objectives ("MO's") and minimum thresholds ("MTs"), but it is significant and unreasonable to the agricultural industry as a whole to be responsible for raising the groundwater levels enough for every domestic well (no matter how shallowly drilled) and it is significant and unreasonable for the GSAs and their landowners to pay for any and every shallow well that goes dry. The local control is being stripped if the GSAs are being told something new is now required in order for the GSP to be approved.

We are unaware of any requirement in SGMA, or DWR's SGMA guidelines/Best Management Practices, requiring GSAs to be responsible for ensuring that no rural residential well goes dry. However, we understand that DWR has indicated it is not likely to approve the Kings Subbasin GSPs unless they also adopt a domestic well mitigation program. To be sure, SGMA requires GSAs to provide for local, sustainable groundwater management by addressing and mitigating impacts from the seven undesirable results.³ Undesirable results must address "[p]otential effects on the beneficial uses and users of groundwater"⁴ (which the Kings Subbasin GSPs do). However, each GSA cannot be responsible for ensuring that no residential well goes dry. Such effect, while intended to be mitigated, would be the result of a myriad of factors outside of a GSA's control, such as drought, climate change, illegal pumping, and other issues.

We know DWR received comment letters wanting DWR to require GSAs to ensure no wells go dry and for those same GSAs to be financially responsible if a well goes dry. The GSAs were courtesy copied on this correspondence to DWR. Such a demand is unfounded and not required by SGMA. If you are of a different understanding regarding a GSA's purported responsibility over rural residential wells, we request you identify in SGMA the statutory requirement for such responsibility. You may contact the Central Kings GSA's legal counsel, Lauren D. Layne, with Baker Manock & Jensen, PC at (559) 432-5400 or llayne@bakermanock.com. Thank you for your time.

² Determination Letter, 3.1.2, p. 10.

³ Wat. Code §§ 10720.1(a), (c), (i) [Legislature's intent to provide for sustainable management of groundwater basins, through local governmental agency actions, and establish minimum standards for sustainable groundwater management].

⁴ 23 C.C.R. § 354.26(b)(3).

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Very truly yours,

cc via email: Lauren D. Layne – llyne@bakermanock.com