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KINGS COUNTY FARM BUREAU, HELEN
8 SULLIVAN, JULIE MARTELLA

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF KINGS**

13 KINGS COUNTY FARM BUREAU, HELEN
SULLIVAN, and JULIE MARTELLA,

14 Petitioners/Plaintiffs,

15 v.

16 CALIFORNIA STATE WATER RESOURCES
17 CONTROL BOARD and DOES 1-10, inclusive,

18 Respondents/Defendants.

Case No.:

**KINGS COUNTY FARM BUREAU,
HELEN SULLIVAN, AND JULIE
MARTELLA'S PETITION FOR
WRIT OF MANDATE AND VERIFIED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

1 8. After timely submitting an initial GSP in 2020 (2020 GSP), the Department of Water
2 Resources (DWR) determined the 2020 GSP was incomplete. The Tulare Lake GSAs revised the
3 GSP pursuant to DWR’s direction and resubmitted a revised GSP in 2022 (2022 GSP).

4 9. DWR determined the 2022 GSP was inadequate, at which point the State Water
5 Board had the discretion to notice a probationary hearing to consider whether to designate the
6 Tulare Lake Subbasin, or a portion thereof, as probationary.

7 10. Instead of issuing the probationary notice, or declining to do so, the State Water
8 Board undertook a series of processes which were outside its authority, including, but not limited to
9 reviewing DWR’s decision, drafting a staff report, identifying purported GSP deficiencies not
10 identified by DWR, meeting with certain stakeholder groups, electing not to meet with other
11 stakeholder groups, investigating subbasin conditions, unilaterally compiling data based on
12 incomplete sources, developing staff recommendations, and creating a series of rules, procedures,
13 and other standards of general application that implemented, interpreted, and/or made specific the
14 SGMA statutes it purported to enforce and administer, without public notice or proper adoption.

15 11. This process culminated in a probationary hearing, in which local groundwater
16 managers were provided with one hour to present several years’ worth of local data, management
17 efforts, coordination, planning, and implementation measures. The State Water Board did not
18 respond to the information provided from local managers and adopted the Probationary Designation
19 in the form of a Resolution which had been drafted by State Water Board staff more than a week
20 before the hearing.

21 12. The Probationary Designation is a significant action; it is the first determination of
22 probation the State Water Board has taken under its SGMA authorities and Tulare Lake is the first
23 subbasin to be designated as probationary pursuant to Water Code section 10735.2, subdivision
24 (a)(3).

25 13. The Probationary Designation is an act of State overreach that exceeds the Board’s
26 authority under SGMA and will devastate the Tulare Lake Subbasin and the Kings County economy
27 through, among other things, the imposition of a \$20 per acre-foot extraction fee for groundwater
28 pumped in the basin.

1 14. Prior to, and as part of its adoption of the Probationary Designation, the State Water
2 Board created multiple rules, procedures and other standards of general application without
3 following the processes required by law to do so, and thereby enacted underground regulations,
4 eliminated transparency and violated the most fundamental precepts of fairness governing agency
5 action. In short, the Probationary Designation is based on rules that the State Water Board has
6 refused to disclose to the regulated community and are subject to change when they no longer suit
7 the Board's interests.

8 15. The Probationary Designation reveals that the State Water Board lacks sufficient and
9 basic information about the Tulare Lake Subbasin and does not have a plan to manage groundwater
10 within the subbasin. Instead, the Probationary Designation effectively disposes of all local
11 management efforts to date and begins a state-mandated management process from scratch, which
12 will be expensive, duplicative and punitive. Landowners will pay for multiple management
13 structures, the State Water Board will collect data from landowners that the GSAs already
14 understand, and the Board will bankrupt the local economy by developing a state-run management
15 system.

16 16. The State Water Board's takeover of the Tulare Lake Subbasin is not just the next
17 phase of groundwater management, but rather a foundational and devastating shift from local
18 groundwater management to state control over every well owner in the subbasin.

19 17. The State Water Board is proposing to extract tens of millions of dollars directly
20 from landowners in the Tulare Lake Subbasin to carry out this expansion of authority and the state-
21 run plan.

22 18. Landowners in the Tulare Lake Subbasin did not receive notice that the State Water
23 Board adopted the Probationary Designation and have not been provided with information related to
24 reporting obligations or payment of fees to the State Water Board. Landowners have not received
25 any information related to enforcement penalties, fees or other information that will guide the new
26 relationship with the State Water Board.

27 19. The Probationary Designation does not explicitly incorporate the Tulare Lake
28 Subbasin Probationary Hearing Final Staff Report (Staff Report).

1 20. However, the final whereas clause of the Probationary Designation states “Based on
2 its review and consideration the State Water Board agrees that the Tulare Lake Subbasin should be
3 designated at this time as probationary and agrees with other staff recommendations as resolved
4 herein.” (Probationary Designation, at 4.) Neither the Probationary Designation (i.e., the
5 resolution), nor the Staff Report, clearly identified what the State Water Board “reviewed or
6 considered” or with whom the State Water Board “agrees.” To the extent the State Water Board
7 agreed with the Staff Report, it erred for the reasons set forth herein.

8 21. By this pleading, the Petitioners challenge, among other things, the State Water
9 Board’s Probationary Designation and the adoption by reference of the Staff Report.

10 22. The Probationary Designation is unlawful for multiple reasons, including, but not
11 limited to, the following:

12 (a) The Probationary Designation exceeds the State Water Board’s jurisdiction
13 under SGMA;

14 (b) The State Water Board’s Probationary Designation was arbitrary, capricious,
15 and not supported by evidence;

16 (c) The State Water Board’s Probationary Designation process was premised on
17 a series of unlawful underground regulations;

18 (d) The State Water Board failed to properly provide notice to landowners of the
19 probationary hearing.

20 23. In addition, the Probationary Designation requires well owners to report extractions
21 and pay fees to the State Water Board. The fees triggered by the Probationary Designation were
22 unlawfully crafted and invalid because they violate the California Constitution, Article XIII A,
23 Section 3 and Water Code Section 1529.5.

24 24. Unless invalidated and/or set aside, the Probationary Designation will unlawfully
25 injure the water rights of Petitioners and KCFB members, and unlawfully subject the Petitioners and
26 KCFB members to unlawful regulation and fee structures triggered by the Probationary
27 Designation.

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1 Division 1 (Sections 74, et seq.) of the Water Code and consists of five members appointed by the
2 Governor of the State of California.

3 33. Petitioners are not aware of the true names and capacities of the respondents sued as
4 Does 1 through 10, inclusive, and therefore sue these respondents by such fictitious names. Each of
5 these fictitiously named respondents is responsible in some manner for the activities alleged in this
6 Petition. Petitioners will amend this pleading to add the true names of the fictitiously named
7 respondents/defendants once they are discovered.

8 **III. JURISDICTION AND VENUE**

9 34. This Court has jurisdiction over the matters alleged in this Petition/Complaint
10 pursuant to Code of Civil Procedure sections 1085, and 1060, and Government Code section 11350.

11 35. Venue properly lies in Kings County under Code of Civil Procedure sections 392 and
12 395, as the real property that is the subject of the action is situated in Kings County, and as the
13 injuries from the State Water Board's actions are occurring in Kings County.

14 **IV. STANDING**

15 36. Petitioners have standing because they are directly and adversely impacted by the
16 Probationary Designation.

17 37. The KCFB has the authority to represent and sue on behalf of its member
18 landowners.

19 38. The KCFB regularly challenges actions by regulatory agencies, including the State
20 Water Board on behalf of its members that affect water right holders throughout its service area.

21 39. The mission of the KCFB is to protect and promote agricultural interests in Kings
22 County and throughout California to ensure the future of family farms.

23 40. KCFB has associational standing to sue on behalf of its members because at least
24 one of its members would have standing to sue in its own right as landowners and groundwater right
25 holders, the interests KCFB seeks to protect are germane to KCFB's purpose to protect and provide
26 for farms in Kings County, and neither the claim asserted nor the relief requested requires the
27 participation of individual members in the lawsuit. (*Hunt v. Washington Apple Advertising Comm'n*

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1 (1997) 432 U.S. 333, 343; *California Rest. Ass’n v. City of Berkeley* (2024) 89 F.4th 1094, 1099-
2 1100.)

3 41. The KCFB also has public interest standing as an entity whose members are
4 interested in ensuring the State Water Board acts within its jurisdiction and does not adopt
5 regulations which are outside its authority. (*Citizens for Amending Proposition L v. City of Pomona*
6 (2018) 28 Cal.App.5th 1159.)

7 42. Helen Sullivan and Julie Martella have standing because they are landowners and
8 well owners in the Tulare Lake Subbasin who are subject to the State Water Board’s overreach,
9 expansion of authority, fees, reporting requirements, and were not properly notified of these actions.

10 43. Neither KCFB, nor its members, nor Helen Sullivan, nor Julie Martella have a plain,
11 speedy or adequate remedy in the ordinary course of law.

12 **V. EXHAUSTION OF ADMINISTRATIVE REMEDIES**

13 44. Petitioners have exhausted all administrative remedies.

14 45. The Probationary Designation was a final action of the State Water Board. A final
15 action of the State Water Board is immediately reviewable by this Court. (Water Code, § 1126(b).)

16 **VI. LEGAL STANDARD**

17 46. When reviewing an administrative action that is legislative in nature, a court “must
18 proceed in ordinary mandamus” under Code of Civil Procedure Section 1085. (*Patterson v. Central*
19 *Coast Regional Com.* (1976) 58 Cal.App.3d 833, 840.) A trial court “reviews an administrative
20 action pursuant to Code of Civil Procedure section 1085 to determine whether the agency’s action
21 was [1] arbitrary, capricious, or entirely lacking in evidentiary support, [2] contrary to established
22 public policy, [3] unlawful, [4] procedurally unfair, or [5] whether the agency failed to follow the
23 procedure and give the notices the law requires.” (*Vallejo Police Officers Assn. v. City of Vallejo*
24 (2017) 15 Cal.App.5th 601, 611; *See California Water Impact Network v. Newhall County Water*
25 *Dist.* (2008) 161 Cal.App.4th 1464, 1483; *Am. Canyon Fire Prot. Dist. v. County of Napa* (1983)
26 141 Cal.App.3d 100, 106; *Lewin v. St. Joseph Hospital* (1978) 82 Cal.App.3d 368, 386.) A court
27 “exercises independent judgment in determining whether the agency action was consistent with

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1 applicable law.” (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007)
2 157 Cal.App.4th 997, 1004 [internal quotations and citations omitted].)

3 47. When adopting regulations, State agencies are required to follow the procedures set
4 forth in the California Administrative Procedures Act (APA).

5 48. Water Code section 10736(d)(2) requires the State Water Board to comply with
6 Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 2 of Title 2 of the Government
7 Code (a provision of the APA), when setting procedures for adopting a probationary determination
8 pursuant to Water Code section 10735.2 or adopting an interim plan for a probationary basin
9 pursuant to Water Code section 10735.8.

10 49. Government Code section 11342.600 defines a “regulation” as “every rule,
11 regulation, order, or standard of general application or the amendment, supplement, or revision of
12 any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make
13 specific the law enforced or administered by it, or to govern its procedure.”

14 50. An “underground regulation” is defined as “any guideline, criterion, bulletin,
15 manual, instruction, order, standard of general application, or other rule, including a rule governing
16 a state agency procedure, that is a regulation as defined in Section 11342.600 of the Government
17 Code, but has not been adopted as a regulation and filed with the Secretary of State pursuant to the
18 APA and is not subject to an express statutory exemption from adoption pursuant to the APA.”
19 (Cal. Code Regs., tit. 1, § 250.)

20 51. Pursuant to Government Code section 11350, any person may obtain a judicial
21 declaration as to the validity of any regulation by bringing an action for declaratory relief, and such
22 regulation may be declared to be invalid for a substantial failure to comply with the APA, or in the
23 case of an emergency regulation, upon the ground that the facts recited in the finding of emergency
24 prepared pursuant to subdivision (b) of Section 11346.1 of the Government Code do not constitute
25 an emergency.

26 52. The California Constitution Article I, section 7(a) provides that a “person may not be
27 ... denied equal protection of the laws.” An agency violates this constitutional right when it
28 intentionally treats that person differently from other similarly situated persons without any rational

1 basis for the difference in treatment. (*Genesis Environmental Services v. San Joaquin Valley*
2 *Unified Air Pollution Control Dist.* (2003) 113 Cal.App.4th 597, 605.)

3 53. An agency's selective enforcement or unequal treatment when implementing a
4 statute violates this equal protection right. (*Id.* at pp. 601-602, 607 [finding that the plaintiff had
5 sufficiently alleged an equal protection claim where an air pollution control district's new policy
6 irrationally resulted in certain non-complying contractors being laid off while other non-compliant
7 contractors were allowed to continue working].)

8 **VII. FACTUAL AND LEGAL ALLEGATIONS**

9 **A. JURISDICTION OF THE STATE WATER BOARD**

10 54. The State Water Board's authority over groundwater is very narrow and is limited to
11 the statutorily created duties provided to the State Water Board under SGMA. (Water Code,
12 § 10735-10736.6.)

13 55. As a state agency, the State Water Board's deliberations and determinations are
14 subject to the requirements of the Bagley-Keene Act (Gov. Code, § 11120) and Water Code section
15 183.

16 56. The State Water Board is subject to the rules, restrictions and requirements in the
17 APA.

18 **B. TULARE LAKE GROUNDWATER MANAGEMENT UNDER** 19 **THE SUSTAINABLE GROUNDWATER MANAGEMENT ACT**

20 57. In order to provide the groundwater coverage and management required by SGMA,
21 five GSAs were formed in the Tulare Lake Subbasin: (a) South Fork Kings Groundwater
22 Sustainability Agency, (b) Mid-Kings River Groundwater Sustainability Agency, (c) El Rico
23 Groundwater Sustainability Agency, (d) Tri-County Water Authority Groundwater Sustainability
24 Agency, and (e) Southwest Kings Groundwater Sustainability Agency (Tulare Lake GSAs). Each
25 of the Tulare Lake GSAs were recognized by the Department of Water Resources.

26 58. Together, the Tulare Lake GSAs developed a single GSP for the Tulare Lake
27 Subbasin.

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1 59. On January 29, 2020, the Tulare Lake Subbasin GSAs submitted the Tulare Lake
2 Subbasin 2020 GSP to DWR for review.

3 **C. DEPARTMENT OF WATER RESOURCES**
4 **REVIEW OF THE TULARE LAKE GSP**

5 60. On January 28, 2022, DWR issued a determination that the Tulare Lake Subbasin
6 2020 GSP was incomplete and provided the Tulare Lake Subbasin GSAs with 180 days to address
7 the deficiencies identified in the incomplete determination.

8 61. The Tulare Lake Subbasin GSAs submitted the Tulare Lake Subbasin 2022 GSP to
9 DWR for review on July 27, 2022.

10 62. On March 2, 2023, the Department of Water Resources issued a determination that
11 the Tulare Lake Subbasin 2022 GSP was inadequate.

12 **D. STATE WATER BOARD INTERVENTION IN TULARE LAKE SUBBASIN**

13 63. The State Water Board reviewed the Tulare Lake Subbasin 2022 GSP and the
14 Department of Water Resources' determination of inadequacy, and Board staff prepared a draft staff
15 report that describes the GSP's purported deficiencies and recommends potential actions that GSAs
16 could take to remedy the deficiencies, and which purports to support designating the Tulare Lake
17 Subbasin as a probationary basin under SGMA.

18 64. On October 12, 2023, the State Water Board made the draft staff report available to
19 the public and issued a notice of public staff workshops, opportunities to comment on the draft staff
20 report, and the date of the public Board hearing for the proposed designation of the Tulare Lake
21 Subbasin as a probationary basin.

22 65. The State Water Board posted the notice on its website and alleges it sent the notice
23 by electronic mail to its SGMA email listserv, to the Department of Water Resources, to each city
24 and county within which any part of the Tulare Lake Subbasin is situated, and to the points of
25 contact for each of the Tulare Lake Subbasin GSAs.

26 66. On October 13, 2023, the State Water Board purported to mail the notice to all
27 persons known to the Board who extract or who propose to extract water from the basin.

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1 67. The public comment period for the probationary hearing notice and draft staff report
2 ran from October 12, 2023, to December 11, 2023.

3 68. State Water Board staff held informational workshops on November 3, 2023, and
4 November 8, 2023, to explain the draft staff report, share more about how to participate in the State
5 Water Board's state intervention process, and accept verbal public comments regarding the draft
6 staff report.

7 **G. STATE WATER BOARD ACTION AFTER DESIGNATION OF PROBATION**

8 69. After the State Water Board adopted the Probationary Designation, it did not
9 provide notice to landowners in the Tulare Lake Subbasin that the Probationary Designation was
10 adopted.

11 70. The State Water Board did not provide notice that landowners would need to report
12 and pay fees to the State Water Board.

13 71. Rather, the State Water Board published information related to reporting and fees on
14 its website and directed landowners to register their wells with the Groundwater Extraction Annual
15 Reporting System (GEARS) program.

16 **VIII. CLAIMS FOR RELIEF**

17 **FIRST CAUSE OF ACTION**

18 **Writ of Mandate – Probationary Designation Is Arbitrary, Capricious, and Lacking in
19 Evidentiary Support
(Code of Civil Procedure § 1085)**

20 **The Deficiencies in the Probationary Designation Are Not Supported by Findings of Fact and
21 Otherwise Lack Evidentiary Support**

22 72. Petitioners hereby reallege and incorporate herein by reference the allegations
23 contained in the above paragraphs as though fully set forth herein.

24 73. The Probationary Designation notes 31 purported deficiencies in the 2022 GSP.

25 74. In addition to the purported deficiencies identified by DWR, the State Water Board
26 identified additional purported deficiencies of its own. Several of these State Water Board
27 deficiency determinations are unsupported and/or contradicted by the information provided in the
28 2022 GSP.

1 **A. GROUNDWATER LEVEL DEFICIENCY 2**

2 75. The State Water Board found that the 2022 GSP was deficient because “[t]he GSAs
3 did not consider all beneficial uses and users in setting [Sustainable Management Criteria] SMC for
4 groundwater levels in the 2022 GSP or adequately describe the impacts of criteria on beneficial uses
5 and users. [Minimum Threshold] MTs in the A-zone would allow for significant and unreasonable
6 water level declines.” (Staff Report, Appendix A, at A-2.)

7 76. The State Water Board made this determination based on the finding that, “Board
8 staff analysis determined that nearly a third (31%, or 650 wells) of the 2,080 domestic wells with
9 adequate information for analysis would be dry at MTs, and nearly a quarter (23%, or 12 wells) of
10 the 53 public supply wells with adequate information for analysis would be dry at MTs. Virtually all
11 wells in the A-zone would go dry at the proposed MTs. In the B-zone, a significant number of
12 older, shallower wells or wells not reflected in the [Online System of Well Completion Reports]
13 OSWCR dataset, all of which are excluded from the analysis, may still be in use and could be at risk
14 of dewatering if groundwater levels declined to the MTs.” (Staff Report, Appendix A, at A-2.)

15 77. These findings are not explained and do not otherwise have evidentiary support.

16 78. Rather, these findings are contradicted by information in the 2022 GSP. The 2022
17 GSP includes significant analysis of beneficial uses and includes this analysis when setting
18 groundwater levels. (2022 GSP, at Table 2-2, Table 2-4; sections 2.5.3, 3.1.1.3, 3.1.7.2, 3.1.11, 4.2,
19 4.2.2.)

20 79. In section 2.1 of the 2022 Addendum, the 2022 GSP describes, in detail, the setting
21 of groundwater levels based on beneficial uses and users.

22 80. Additionally, the State Water Board’s findings in the Staff Report are not supported.
23 The Board explained only that its estimates were based on comparing minimum thresholds “against
24 wells in the OSWCR database with known well depths and locations.” (Staff Report, at 72.) The
25 State Water Board acknowledged that the OSWCR data is “incomplete.” (Staff Report, at 72.) The
26 Board failed to disclose which data it used, and how it calculated its estimates; no calculations are
27 provided in the Staff Report. Therefore, the State Water Board used incomplete data in an unknown
28 manner to provide estimates that cannot be checked. This finding is not supported by any evidence.

1 81. For these reasons, the Staff Report’s determination regarding groundwater level
2 deficiency 2 is arbitrary, capricious, and lacking in evidentiary support.

3 **B. GROUNDWATER LEVEL DEFICIENCY 3**

4 82. The State Water Board finds that the 2022 GSP is deficient because the “monitoring
5 network does not provide sufficient coverage to monitor for impacts to beneficial uses and users in
6 the three aquifers in the subbasin (due to data gaps in A-zone coverage and inconsistent sampling).”
7 (Staff Report, Appendix A, at A-3.)

8 83. The State Water Board made this determination based on the finding that, “the RMS
9 wells for which the GSAs report data have changed from year-to-year, and the GSAs’ inconsistent
10 use of RMS locations may mask whether undesirable results in particular areas are occurring. The
11 GSAs identified 70 RMS wells in the 2020 GSP and 56 in the 2022 GSP, and then reported
12 groundwater levels for 49, 50, and 53 RMS wells in the WY20, WY21, and WY22 Annual Reports,
13 respectively. Some sites are monitored only once a year and very few sites are monitored more than
14 twice a year.” (Id.)

15 84. These findings are not explained and do not otherwise have evidentiary support.
16 Further, the findings are not related to the threshold requirements of a monitoring network.

17 85. SGMA requires that “Each Plan shall include a description of the monitoring
18 network objectives for the basin, including an explanation of how the network will be developed
19 and implemented to monitor groundwater and related surface conditions, and the interconnection of
20 surface water and groundwater, with sufficient temporal frequency and spatial density to evaluate
21 the effects and effectiveness of Plan implementation.” (Cal. Code Regs, tit. 23, § 354.34(b).)

22 86. The 2022 GSP includes a description of the monitoring network. (2022 GSP, Ch. 5,
23 5-1 to 5-28.)

24 87. The 2022 GSP explains how the network will be developed and implemented to
25 monitor groundwater conditions. (2022 GSP, Ch. 5, 5-1 to 5-28.)

26 88. The 2022 GSP further explains that there is sufficient temporal frequency and spatial
27 density to evaluate the GSP. (2022 GSP, Ch. 5, 5-1 to 5-28.)

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1 89. The State Water Board improperly determined the 2022 GSP did not satisfy the
2 SGMA requirements, because, as noted above, the 2022 GSP affirmatively does satisfy the
3 requirements.

4 90. Thus, even if the State Water Board’s factual findings were supported, which they
5 are not, they do not support the conclusion that the 2022 GSP is deficient. In other words, even if
6 RMS wells change during the management years, such change does not support the conclusion there
7 is not sufficient coverage.

8 91. Further, the State Water Board’s speculative assertions regarding changing RMS
9 locations are not supported by any evidence. The State Water Board alleges that “inconsistent use
10 of RMS locations may mask whether undesirable results in particular areas are occurring.” (Staff
11 Report, at 74.) However, the State Water Board does not explain why different locations “may”
12 mask whether undesirable results are occurring, nor does the State Water Board demonstrate that
13 different locations would mask whether undesirable results are occurring. If the RMS locations are
14 representative of an area, as they are here, the changing of locations will not mask whether
15 undesirable results are occurring. This speculative and unsupported concern that something may
16 happen is not a finding, it is not explained, it is not supported, and it cannot be the basis of the
17 Probationary Designation.

18 92. For these reasons, the Staff Report’s determination regarding groundwater level
19 deficiency 3 is arbitrary, capricious, and lacking in evidentiary support.

20 **C. GROUNDWATER LEVEL DEFICIENCY 5**

21 93. The State Water Board finds that the 2022 GSP is deficient because the “2022 GSP
22 does not describe a feasible path for halting chronic lowering of groundwater levels.” (Staff Report,
23 Appendix A, at A-4.)

24 94. The State Water Board made this determination based on the finding that, “2022
25 GSP does not demonstrate that projects and management actions are feasible or sufficient to prevent
26 undesirable results. The 2022 GSP relies substantially on new surface water supplies to mitigate
27 overdraft, but the GSP does not assess the feasibility of new supply projects based on water
28 availability and climate change impacts to surface supplies.” (Id.)

1 95. The State Water Board further finds, “the 2022 GSP does not contain a groundwater
2 allocations plan, though it indicates that groundwater assessment and allocation plans will be
3 developed in 2023 and implemented in 2025 (2022 Tulare Lake Subbasin GSP Addendum, Table
4 6–5). Otherwise, demand management actions in the 2022 GSP appear voluntary and therefore
5 unlikely to provide sufficient contingency in case GSAs fail to secure new supplies or overdraft is
6 greater than estimated.” (Id.)

7 96. These findings are not explained and do not otherwise have evidentiary support.

8 97. Rather, these findings are contradicted by information in the 2022 GSP.

9 98. The 2022 GSP sets out a specific schedule for developing new supply, in five-year
10 increments. (2022 GSP, at 7-2 to 7-3.)

11 99. In addition, the 2022 GSP provides an exhaustive description of each GSA, the
12 implementation plans for each GSA in developing supply, the relationships the GSAs have related
13 to surface water access, the number of recharge basins planned, and the plans for developing
14 demand management when necessary. (2022 GSP, at 7-2 to 7-15.)

15 100. The State Water Board does not address this exhaustive information or refute it; but
16 rather ignores this information and then concludes the GSP did not include it.

17 101. For these reasons, the Staff Report’s determination regarding groundwater level
18 deficiency 5 is arbitrary, capricious, and lacking in evidentiary support.

19 **D. GROUNDWATER LEVEL DEFICIENCY 6**

20 102. The State Water Board finds that the 2022 GSP is deficient because the “GSAs do
21 not consider the effects on other sustainability indicators, such as groundwater storage, subsidence,
22 degradation of groundwater quality, and depletions of interconnected surface water.” (Staff Report,
23 Appendix A, at A-5.)

24 103. The State Water Board made this determination based on the finding that, “Board
25 staff notes that the 2022 GSP did not describe the effects of MTs on degradation of groundwater
26 quality if groundwater levels decline to the MTs in the A-, B-, and C-zones. The potential migration
27 of de-designated water if groundwater elevations decline to MTs was not addressed in the 2022
28 GSP. Board staff also notes that declining groundwater levels may result in the migration of

1 shallow constituents into wells. Additionally, declining groundwater levels may require existing
2 wells to be deepened; newly deepened wells may be impacted by an existing constituent of concern,
3 prohibiting the intended beneficial use for those wells. The 2022 GSP also does not discuss the
4 impact of MTs in the R-zone and the A-zone on depletions of interconnected surface water.” (Id.)

5 104. These findings are not explained and do not otherwise have evidentiary support. The
6 Staff Report points to no specific part of the 2022 GSP analysis that is lacking.

7 105. Rather, these findings are contradicted by information in the 2022 GSP. The 2022
8 GSP has a specific section related to the impacts of the groundwater elevation MT on other
9 sustainability indicators. (2022 GSP, at 2.4.4.)

10 106. For these reasons, the Staff Report’s determination regarding groundwater level
11 deficiency 6 is arbitrary, capricious, and lacking in evidentiary support.

12 **E. GROUNDWATER QUALITY DEFICIENCY 1A**

13 107. The State Water Board finds that the 2022 GSP is deficient because the “2022 GSP
14 does not clearly describe the water quality conditions and impacts that would result in an
15 undesirable result for the basin.” (Staff Report, Appendix A, at A-9.)

16 108. The State Water Board made this determination based on the finding that, “[w]ithout
17 a clear description of impacts that are significant and unreasonable, GSAs and Board staff cannot
18 evaluate whether MTs or broader quantitative definitions of an undesirable result that would guide
19 day-to-day basin management are appropriate for avoiding undesirable results.” (Id.)

20 109. These findings are not explained and do not otherwise have evidentiary support.

21 110. Rather, these findings are contradicted by information in the 2022 GSP. The 2022
22 GSP goes to extensive lengths to describe the groundwater quality impacts that would result in an
23 undesirable result. Section 4 of the 2022 GSP Addendum begins with a lengthy description of
24 constituents of concern.

25 111. Section 4 then describes each of the beneficial uses and users, and how each use may
26 be affected by groundwater quality. (2022 GSP Addendum, at 32-33.) Section 4.2 identifies what
27 uses need water quality protection and section 4.3 describes the approach for evaluating the water

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1 quality sustainability indicator, which includes the evaluation of every specific constituent of
2 concern. (Id., at 32-27.)

3 112. Section 4.4 describes undesirable groundwater quality methods, including a
4 description of significant and undesirable results. (Id., at 37-39.)

5 113. This same section discusses the causes and potential impacts that can occur from
6 water quality violations.

7 114. Finally, section 4.5 discusses the minimum thresholds for degraded groundwater
8 quality. (Id., at 39-45.) Exceedance of these minimum thresholds would result in reducing water
9 quality that would also affect “the amount of usable groundwater in the Subbasin” which “could be
10 reduced. If treatment is not feasible, this degradation could affect the groundwater supplies for
11 agricultural, municipal, industrial, and domestic needs. Additional costs would be incurred as some
12 treatment could be needed, some supply wells may have to be deepened or their pumps lowered,
13 new wells may have to be drilled, and yields may be reduced. Also, should undesirable results
14 occur with respect to groundwater quality, the amount of usable groundwater in storage may be
15 reduced.” Thus, the 2022 GSP fully discusses the groundwater minimum thresholds and the
16 impacts that would result from lacking water quality analysis.

17 115. For these reasons, the Staff Report’s determination regarding groundwater quality
18 deficiency 1a is arbitrary, capricious, and lacking in evidentiary support.

19 **F. GROUNDWATER QUALITY DEFICIENCY 1C**

20 116. The State Water Board finds that the 2022 GSP is deficient because the “GSP does
21 not describe how it would determine whether significant and unreasonable degradation of water
22 quality was associated with basin management.” (Staff Report, Appendix A, at A-10.)

23 117. The State Water Board made this determination based on the finding that, “the 2022
24 GSP lacks crucial, related information on (1) the impact of projects and management actions on
25 water quality, and (2) the impact of subsidence on water quality.” (Id.)

26 118. These findings are not explained and do not otherwise have evidentiary support.

27 119. Rather, these findings are contradicted by information in the 2022 GSP. The 2022
28 GSP adds an entire new chapter on groundwater quality. (2022 GSP, at Addendum Ch. 4.) In

1 Chapter 4, the 2022 GSP describes each constituent of concern, whether that constituent of concern
2 is naturally occurring, and whether these constituents of concern can be controlled or affected by
3 activities under the jurisdiction of the Tulare Lake GSAs. (Id.)

4 120. In addition, Chapter 4 explains that an undesirable result would occur if groundwater
5 quality degradation has a casual nexus to GSP activities. Such activities include groundwater
6 extraction and recharge. Therefore, the 2022 GSP is clear that a causal nexus would occur if
7 groundwater management – including recharge and extractions – are causing the groundwater
8 quality change. (2022 GSP, at Addendum p. 36-40.)

9 121. The 2022 GSP discusses how water quality issues outside the purview of the GSAs
10 are regulated and otherwise covered by groundwater quality regulatory agencies. (Id., at 37-38.)

11 122. The 2022 GSP then explains how it is implementing a proactive approach which will
12 allow the GSAs to monitor and recognize when groundwater quality levels are changing and
13 evaluate what impact GSP management has on these changes. (Id., at 38-39.)

14 123. Contrary to the conclusions above, the 2022 GSP explains which actions would
15 cause a nexus between GSP management and groundwater quality and how that nexus will be
16 evaluated related to constituents of concern.

17 124. Contrary to the Staff Report allegations related to lacking information on how
18 subsidence will affect water quality, the 2022 GSP concludes that based on the best available
19 science, subsidence does not affect water quality. (Id., at 41.) It is not clear why the Staff Report
20 concludes this is not sufficient and the Staff Report does not clarify what further information is
21 required.

22 125. The Staff Report allegations related to lacking information on how projects and
23 management actions will affect water quality are not supported by law or factual findings. The
24 2022 GSP sets forth many projects and management actions that each of the Tulare Lake GSAs plan
25 to undertake. The 2022 GSP is a planning document that is not subject to CEQA and is not required
26 to include a full, project-level analysis of each project or management action. Rather, as these
27 projects and management actions are implemented, there will be a project-level analysis, including
28 the impacts to groundwater quality. SGMA requires a GSP set forth groundwater quality

1 sustainable management criteria, it does not require a project-level analysis for each potentially
2 proposed project or management action. The State Water Board is exceeding its jurisdiction by
3 faulting the 2022 GSP for not including an analysis of how each project and management action
4 affects groundwater quality.

5 126. For these reasons, the Staff Report’s determination regarding groundwater quality
6 deficiency 1c is arbitrary, capricious, and lacking in evidentiary support.

7 **G. GROUNDWATER QUALITY DEFICIENCY 2D**

8 127. The State Water Board finds that the 2022 GSP is deficient because the “MTs
9 are sometimes set to the highest detected concentrations.” (Staff Report, Appendix A, at A-10.)

10 128. The State Water Board made this determination based on the finding that the “2022
11 GSP appears to set MTs at the highest observed concentration in these cases. While GSAs are not
12 required to address undesirable results for groundwater quality that occurred before 2015, Board
13 staff strongly object to using the highest detected concentration as a baseline for pre-2015
14 conditions.” (Id.)

15 129. These findings are not explained and do not otherwise have evidentiary support.

16 130. The Board has not provided any legal or factual basis for its objection to occasional
17 use of the highest detected concentrations, particularly where GSAs are not required to address
18 undesirable results for groundwater quality that occurred before 2015.

19 131. For these reasons, the Staff Report’s determination regarding groundwater quality
20 deficiency 2d is arbitrary, capricious, and lacking in evidentiary support.

21 **H. GROUNDWATER QUALITY DEFICIENCY 2E**

22 132. The State Water Board finds that the 2022 GSP is deficient because the “MTs at
23 some wells are based on data from wells nearby the RMS wells, rather than from the RMS wells
24 themselves, without justification.” (Staff Report, Appendix A, at A-10.)

25 133. The State Water Board made this determination based on the finding that the “GSP
26 does not clearly indicate which MTs rely on nearby data. Without supporting information, these
27 MTs cannot be reviewed to assess whether use of nearby well data is appropriate.” (Id.)

28 134. These findings are not explained or otherwise supported with evidentiary support.

1 135. Rather, these findings are contradicted by information in the 2022 GSP. The 2022
2 GSP sets water quality minimum thresholds at the higher of (a) MCL requirements; or (b) existing
3 conditions, at RMS or nearby wells. The 2022 GSP states that “nearby” means a well that would be
4 in the same aquifer zone as the RMS well. Therefore, the 2022 GSP explains when and how it will
5 use nearby well data and where those wells will be located. The State Water Board’s conclusion
6 that it cannot evaluate the minimum threshold because of the use of nearby wells is without support
7 or merit.

8 136. For these reasons, the Staff Report’s determination regarding groundwater quality
9 deficiency 2e is arbitrary, capricious, and lacking in evidentiary support.

10 **I. GROUNDWATER QUALITY DEFICIENCY 5A**

11 137. The State Water Board finds that the 2022 GSP is deficient because “additional
12 sampling is not triggered when MTs are exceeded.” (Staff Report, Appendix A, at A-12.)

13 138. The State Water Board made this determination based on the finding that “2022
14 GSP does not include management actions that are responsive to MT exceedances. It is difficult to
15 understand how the GSAs can avoid significant and unreasonable impacts from degradation of
16 groundwater quality if MT exceedances don’t trigger additional monitoring to better characterize
17 risks to drinking water users.” (Id.)

18 139. These findings are not explained or otherwise supported with evidentiary support.

19 140. Rather, these findings are contradicted by information in the 2022 GSP. The 2022
20 GSP includes an entire section on water quality monitoring and exceedances that require additional
21 monitoring. Section 4.9 of the 2022 GSP Addendum states that if there are increasing groundwater
22 quality trends, additional coordination with groundwater regulatory agencies, additional
23 geochemical testing, additional aquifer testing, zone well testing and well restriction testing are all
24 required. (2022 GSP, at Addendum 43-44.)

25 141. For these reasons, the Staff Report’s determination regarding groundwater quality
26 deficiency 5a is arbitrary, capricious, and lacking in evidentiary support.

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1 **J. GROUNDWATER QUALITY DEFICIENCY 5B**

2 142. The State Water Board finds that the 2022 GSP is deficient because the “[w]ell
3 mitigation plans do not address MT exceedances.” (Staff Report, Appendix A, at A-15.)

4 143. The State Water Board made this determination based on the finding that “It is
5 difficult to understand how GSAs can avoid significant and unreasonable impacts from degradation
6 of groundwater quality if the GSAs have not even developed—let alone implemented—a well
7 mitigation plan to address MT exceedances.” (Id.)

8 144. These findings are not explained or otherwise supported with evidentiary support.

9 145. The State Water Board does not have the authority to require well mitigation. There
10 is no SGMA requirement that GSAs must mitigate the impacts that occur from groundwater
11 extractions. There is no requirement that SGMA avoid undesirable results prior to GSP
12 implementation, within the 20-year horizon. The State Water Board does not have the authority to
13 require mitigation or to require the avoidance of impacts in a shortened time frame.

14 146. In addition to the State Water Board’s unsupported legal position related to
15 Groundwater Quality Deficiency 5b, these Staff Report findings are contradicted by information in
16 the 2022 GSP. The 2022 GSP includes an entire Appendix dedicated to the development and
17 adoption of a mitigation plan. (2022 GSP, at Appendix D.)

18 147. For these reasons, the Staff Report’s determination regarding groundwater quality
19 deficiency 5b is arbitrary, capricious, and lacking in evidentiary support.

20 **SECOND CAUSE OF ACTION**

21 **Writ of Mandate – Probationary Designation Is Arbitrary,
22 Capricious, and Lacking in Evidentiary Support
(Code of Civil Procedure § 1085)**

23 **The Probationary Designation Determination that No Portion of the
24 Subbasin Be Excluded from Probation Is Not Supported by
Findings of Fact and Otherwise Lacks Evidentiary Support**

25 148. Petitioners hereby reallege and incorporate herein by reference the allegations
26 contained in the above paragraphs as though fully set forth herein.

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1 149. Water Code section 10735.2(e) requires the State Water Board to exclude any
2 portion of the subbasin from probationary status that demonstrates compliance with the
3 sustainability goal.

4 150. The Probationary Designation determines that no portion of the Tulare Lake
5 Subbasin demonstrated compliance with the sustainability goal (Good Actor Determination).
6 (Probationary Designation, at 5.)

7 151. The Probationary Designation does not provide support for the Good Actor
8 Determination; rather, the Good Actor Determination is not explained, the State Water Board
9 provides no citation supporting the Good Actor Determination, and it provides no evidence or facts
10 that could support its Good Actor Determination. For these reasons alone, the Probationary
11 Designation must be set aside.

12 152. The Staff Report also fails to provide a support for the Good Actor Determination.
13 The Staff Report “recommends the State Water Board not exclude any portions of the subbasin
14 from the probationary designation” (Good Actor Recommendation). (Staff Report, at 126.)

15 153. This Good Actor Recommendation fails to provide support for the Good Actor
16 Determination because it is also deficient and based on flawed legal interpretation rather than
17 analysis related to compliance with the sustainability goal.

18 154. The Good Actor Recommendation is based on two incorrect interpretations (or
19 underground regulations as more fully explained below). First, the Good Actor Recommendation is
20 based on the improper interpretation of the law that the State Water Board need only consider the
21 application of section 10735.2(e) when it is “requested.” The Staff Report states only two GSAs
22 “requested exclusion from a probationary designation under Water Code section 10735.2,
23 subdivision (e).” The Staff Report further frames its Good Actor Recommendation as deciding only
24 on these two requests.

25 155. This application of the law is flawed. The State Water Board has an affirmative duty
26 to exclude from probation *all* portions of the subbasin that have demonstrated compliance with the
27 sustainability goal. The law does not require specific requests for exclusion; if compliance is

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1 demonstrated it is the State Water Board’s responsibility to recognize that compliance with or
2 without a specific request.

3 156. Second, the Good Actor Recommendation misinterprets the phrase “compliance with
4 the sustainability goal.” The State Water Board concludes that if there is not an approved GSP, no
5 one within the subbasin can demonstrate compliance with the sustainability goal. Specifically, the
6 Staff Report concludes: “For a GSA to comply with the sustainability goal of the basin, and make a
7 case for a ‘good actor’ exemption, the GSA needs to be implementing a GSP capable of achieving
8 sustainable groundwater management. The only plan covering the Tulare Lake subbasin is
9 inadequate for the reasons described in DWR’s inadequate determination and the Final Staff Report.
10 Therefore, no GSAs implementing the plan would qualify for the exemption: GSAs cannot qualify
11 for the good actor exemption with plans that do not meet SGMA’s requirements.” (Staff Report, at
12 127.)

13 157. This interpretation is overly narrow and not consistent with the language of SGMA
14 or the legislative intent of section 10735.2(e).

15 158. The Good Actor Recommendation is overly narrow because it determines an
16 approved GSP is a necessary component of proving compliance with the sustainability goal.
17 SGMA defines sustainability goal as: “the existence and implementation of one or more
18 groundwater sustainability plans that achieve sustainable groundwater management by identifying
19 and causing the implementation of measures targeted to ensure that the applicable basin is operated
20 within its sustainable yield.” (Wat. Code, § 10721(u).)

21 159. The definition of sustainability goal does not require the existence or implementation
22 of an *approved* or *adequate* GSP.

23 160. Rather, the sustainability goal definition requires a GSP that achieves sustainable
24 groundwater management and implements measures “targeted” to achieve sustainability – another
25 way to say the avoidance of undesirable results and measures that target the elimination of
26 overdraft by the 2040 statutory deadline.

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1 161. Thus, to the extent that a GSP avoids undesirable results and overdraft – in *any*
2 portion of the subbasin – that portion would qualify for exclusion from probation regardless of
3 whether the GSP has been deemed adequate or inadequate for the larger area it covers.

4 162. The State Water Board did not undertake this level of analysis. Rather, the Good
5 Actor Recommendation failed to look at specific portions of the subbasin as required by Water
6 Code section 10735.2(e) and decided the inadequate GSP meant it did not have to consider whether
7 a portion of the subbasin was on track to avoid undesirable results and target overdraft by 2040.
8 Due to the Board’s flawed interpretation of the law, it failed to consider the possibility that a portion
9 of the subbasin is managing in a way that would comply with the sustainability goal, even though
10 the GSP was found to be not adequate. For example, a GSA with recharge programs during wet
11 years and allocation restrictions in dry years could avoid overdraft and undesirable results in a
12 specific portion of the subbasin. Under the approach applied by the State Water Board here, this
13 portion of the subbasin would be ineligible for exclusion from probation, despite complying with
14 the sustainability goal.

15 163. Because of this flawed interpretation, the Good Actor Recommendation is
16 premature, erroneous, and unsupported by findings or evidence.

17 164. The Probationary Designation must be set aside until the Good Actor Determination
18 is revised in compliance with SGMA.

19 **THIRD CAUSE OF ACTION**

20 **State Water Board Probationary Designation Violates the Equal Protection Clause**
21 **(California Constitution Article I, section 7(a))**

22 165. Petitioners hereby reallege and incorporate herein by reference the allegations
23 contained in the above paragraphs as though fully set forth herein.

24 166. The California Constitution Article I, section 7(a) provides that a “person may not be
25 ... denied equal protection of the laws.” An agency violates this constitutional right when it
26 intentionally treats that person differently from other similarly situated persons without any rational
27 basis for the difference in treatment. (*Genesis Environmental Services, supra*, 113 Cal.App.4th 597,
28 605.)

1 167. An agency’s selective enforcement or unequal treatment when implementing a
2 statute violates this equal protection right. (See, e.g., id. at pp. 601-02, 607 [finding that the plaintiff
3 had sufficiently alleged an equal protection claim where an air pollution control district’s new
4 policy irrationally resulted in certain non-complying contractors being laid off while other non-
5 compliant contractors were allowed to continue working].)

6 168. The Probationary Designation finds that the Tulare Lake Subbasin does not comply
7 with the requirements of SGMA, despite the fact that GSPs that used the same or similar methods to
8 the Tulare Lake GSP were determined to comply with SGMA.

9 169. Neither the Probationary Designation nor the Staff Report provide any reason or
10 support for applying disparate treatment to the Tulare Lake Subbasin.

11 170. For this reason, the Probationary Designation violates the equal protection clauses of
12 the California Constitution.

13 **FOURTH CAUSE OF ACTION**

14 **Writ of Mandate – Probationary Designation Exceeds the State Water Board’s Authority and**
15 **the State Water Board Failed to Proceed in a Manner Required by Law**
(Code of Civil Procedure § 1085)

16 **The Probationary Designation Is Unlawful and Exceeds the State Water Board’s**
17 **Authority as Provided in the Sustainable Groundwater Management Act**

18 171. Petitioners hereby reallege and incorporate herein by reference the allegations
19 contained in the above paragraphs as though fully set forth herein.

20 172. The State Water Board has specific, but limited duties as set forth in SGMA.

21 173. The Probationary Designation and the Staff Report that the State Water Board relied
22 upon to support the Probationary Designation exceeds the State Water Board’s authority or
23 otherwise contradicts SGMA in several ways.

24 **A. STATE WATER BOARD PROCEDURES THAT REQUIRE**
25 **THE SUBMISSION OF AN AMENDED GSP TO THE BOARD**
DURING THE INTERVENTION PROCESS ARE UNLAWFUL

26 174. SGMA allows a GSA to amend a GSP “after a public hearing, held at least 90 days
27 after providing notice to a city or county within the area of the proposed plan or amendment.” (Wat.
28 Code, § 10728.4.)

1 175. After amending a GSP, SGMA requires the revised or amended GSP be submitted
2 to DWR. (Wat. Code §§ 10728.4; 10733.)

3 176. In addition to the Water Code provisions for submission of GSP amendments, DWR
4 developed and adopted regulations to further guide the process for submitting an amended GSP.

5 177. The DWR Regulations provide that any amendment to a GSP must be provided to
6 DWR so that it may evaluate whether the GSP complies with SGMA. (Cal. Code Regs., tit. 23,
7 § 355.10(a) [“[a]ny amendment to a Plan shall be evaluated by the Department for consistency with
8 the requirements of the Act and of this Subchapter”].)

9 178. The DWR Regulations provide that a GSA may amend a GSP “at any time” and the
10 procedure for submitting such an amended GSP is to provide to DWR for review. (Cal. Code
11 Regs., tit. 23, § 355.10(b).)

12 179. The DWR Regulations provide the specific rules and procedures for the submission
13 of an amended GSP while a subbasin is in probation. (Cal. Code Regs., tit. 23, § 355.2(d).) In this
14 instance, the GSP must be submitted to DWR, which will review the GSP after consultation with
15 the Board. (Cal. Code Regs., tit. 23, § 355.2(d) [“If the Board has jurisdiction over the basin or a
16 portion of the basin pursuant to Water Code Section 10735.2, the Department, after consultation
17 with the Board, may proceed with an evaluation of a Plan.”].)

18 180. However, in violation of the law, the State Water Board’s Probationary Designation
19 sets forth a different and unlawful procedure for the submission of a GSP during probation. As set
20 forth in the Probationary Designation, the procedure for submitting a revised GSP while a subbasin
21 is in probation mandates the GSAs submit the amended GSP to State Water Board staff.
22 (Probationary Designation, at para. 7.)

23 181. This mandated procedure for submitting an amended GSP to State Water Board staff
24 is unlawful.

25 182. As noted more fully below, these rules for the submission and review of an amended
26 GSP amount to underground regulations.

27 183. Not only do these rules amount to underground regulations, but the mandate to
28 provide an amended GSP to the State Water Board instead of DWR is unlawful because such a

1 mandate directly conflicts with the existing and controlling law on this issue, which requires any
2 amended GSP be submitted to DWR, not the State Water Board or State Water Board staff.

3 **B. THE STATE WATER BOARD’S ADDITION OF DEFICIENCIES BEYOND THOSE**
4 **INCLUDED IN THE INADEQUATE DETERMINATION BY DWR IS UNLAWFUL**

5 184. The Staff Report includes purported deficiencies beyond those included in DWR’s
6 determination of inadequacy.

7 185. The State Water Board does not have the authority to add deficiencies apart from
8 those identified in the determination of inadequacy.

9 186. When determining whether a GSP is inadequate, SGMA requires DWR to work with
10 and coordinate with the State Water Board. (Wat. Code, § 10735.2(a)(3).)

11 187. Section 355.2(e)(3)(C) of DWR Regulations set forth the terms under which DWR
12 may determine a GSP is inadequate. Each of the potential bases for inadequacy allow the GSP to be
13 revised to correct “deficiencies” identified by DWR, in consultation with the State Water Board.
14 (Cal. Code Regs., tit. 23, § 355.2(e)(3)(C).)

15 188. Section 355.2(e)(3)(C) provides that DWR “shall disapprove” a GSP if “after
16 consultation with the [State Water Board]” DWR determines the GSP is inadequate based on the
17 failure to correct deficiencies identified by DWR. (Cal. Code Regs., tit. 23, § 355.2(e)(3)(C).)

18 189. The State Water Board has an opportunity to provide DWR with any deficiencies the
19 State Water Board may identify during the consultation period prior to determining a GSP is
20 inadequate.

21 190. The State Water Board consulted with DWR behind closed doors, at undisclosed
22 times, during meetings that were not open to the public. Neither the State Water Board nor DWR
23 reported on these meetings and the State Water Board did not notice any closed session items
24 related to DWR meetings. The only public information that was provided was that the State Water
25 Board staff confirmed it had coordinated with DWR during the public hearing on November 8,
26 2023.

27 191. The consultation between DWR and the State Water Board was not publicly noticed
28 and did not include the opportunity for GSA or landowner participation.

1 192. The behind-closed-doors consultation between DWR and the State Water Board was
2 not reported and did not generate any publicly available report, update, or other information.
3 Therefore, it is unclear whether the State Water Board provided DWR with deficiencies during the
4 coordination prior to the determination of inadequacy.

5 193. The State Water Board’s authority to designate a subbasin as probationary due to an
6 inadequate GSP is set forth in Water Code section 10735.2(a)(3).

7 194. Under Water Code section 10735.2(a)(3), the State Water Board’s probationary
8 authority is triggered when “[DWR] in consultation with the [State Water Board] determines that a
9 groundwater sustainability plan is inadequate.”

10 195. If the State Water Board designates a subbasin as probationary, it “shall identify the
11 specific deficiencies and identify potential actions to address the deficiencies.” (Wat. Code,
12 § 10735.6.)

13 196. The deficiencies referenced in Water Code section 10735.6 are those identified by
14 DWR and the State Water Board in determining the GSP to be inadequate. Section 10735.6 does
15 not allow the State Water Board to expand deficiencies beyond those it identified along with DWR
16 in the determination of inadequacy.

17 197. Water Code section 10735.6 cannot be interpreted to allow the State Water Board to
18 expand the deficiencies beyond those identified in the inadequate determination because such an
19 interpretation would (a) provide the State Water Board with a second opportunity to add
20 deficiencies; (b) this second opportunity would be untimely and not allow for any cure of these
21 deficiencies prior to the designation of probation; and (c) contradict the clear intent of the language,
22 which reflects that the deficiencies referenced in Water Code section 10735.6 are those in the DWR
23 inadequacy determination because this section authorizes the State Water Board to request DWR
24 provide “technical recommendations to remedy the deficiencies” which implicitly recognizes these
25 are deficiencies for which DWR would be familiar and have the most technical expertise and could
26 not be deficiencies the State Water Board developed secondarily and after its coordination with
27 DWR.

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1 198. Because SGMA does not authorize the State Water Board to add additional
2 deficiencies during the probationary designation process, the addition of deficiencies renders the
3 Probationary Designation improper and unlawful.

4 **C. THE STATE WATER BOARD UNLAWFULLY REQUIRES**
5 **COMPLIANCE WITH THE SUSTAINABILITY GOAL IMMEDIATELY**
6 **AND IN VIOLATION OF THE TIMELINES MANDATED BY SGMA**

7 199. SGMA provides that sustainability must be achieved within 20 years from the
8 submission of the GSP. California Code of Regulations, title 23, section 354.24 provides that a
9 GSP must “establish ... a sustainability goal for the basin that culminates in the absence of
10 undesirable results within 20 years of the applicable statutory deadline.” For the Tulare Lake
11 Subbasin, this means the Subbasin must manage without undesirable results by 2040.

12 200. The State Water Board ignores this provision of law and replaces it with the
13 unsupported and unlawful rule that undesirable results must be avoided immediately.

14 201. The State Water Board states that well mitigation is not an affirmative duty required
15 by SGMA, “however, it is most likely needed in critically overdrafted subbasins subject to SGMA
16 in order to avoid undesirable results.” (Staff Report, at C-6.)

17 202. The State Water Board concludes that mitigation is required to avoid undesirable
18 results that it alleges are occurring currently and/or prior to 2040. In order to stop undesirable
19 results, the State Water Board requires the GSA “adopt a mitigation plan to avoid undesirable
20 results.” (Staff Report, at 81-82.)

21 203. The State Water Board requirement that undesirable results must be eliminated
22 immediately or prior to 2040 is unlawful, as it contradicts SGMA.

23 **D. THE STATE WATER BOARD EXPANDS ITS AUTHORITY**
24 **UNDER SGMA BY UNLAWFULLY REDEFINING UNDESIRABLE**
25 **RESULTS TO INCLUDE BOARD POLICIES OUTSIDE OF SGMA**

26 204. The Staff Report unlawfully expands SGMA’s requirement to sustainably manage
27 groundwater by avoiding undesirable results.

28 205. The Staff Report unlawfully and without any stated support concludes that “the
Board may consider how a GSP that does not meet SGMA’s mandate to sustainably manage

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1 groundwater by avoiding undesirable results affects other Board programs and policies.” (Staff
2 Report, at 58.)

3 206. From this conclusion that the State Water Board has the authority to change its role
4 and expand its limited authority under SGMA, the Staff Report then states the State Water Board
5 has the authority to define the failure to avoid undesirable results related to lowering of groundwater
6 as requiring consistency with (a) the Human Right to Water Resolution adopted by the State Water
7 Board in 2016; (b) the Racial Equity Resolution adopted by the State Water Board in 2021; and (c)
8 the Policy Implementing the Safe and Affordable Funding for Equity and Resilience Program Fund
9 Expenditure Plan adopted by the State Water Board in 2021 (collectively referred to as “Equity
10 Commitments”). (Staff Report, at 58.)

11 207. This is an unlawful expansion of State Water Board authority for several reasons.

12 208. First, the State Water Board adopted these Equity Commitments after SGMA was
13 passed, which means the State Water Board understood when it adopted the Equity Commitments
14 that SGMA did not afford it the authority to implement the Equity Commitment through its limited
15 role as defined by SGMA.

16 209. Second, SGMA provides very specific rules and mandates related to undesirable
17 results and how GSAs must structure undesirable results. These rules do not include incorporation
18 of the Equity Commitments and it would be unlawful to change the requirements for undesirable
19 results to add additional requirements, such as those proposed by the State Water Board in the name
20 of compliance with the Equity Commitments.

21 210. Section 354.26 of DWR’s Regulations defines undesirable results as “Undesirable
22 results occur when significant and unreasonable effects for any of the sustainability indicators are
23 caused by groundwater conditions occurring throughout the basin.” (Cal. Code Regs., tit. 23,
24 § 354.26.) This section further provides that each GSA has the authority to set forth the criteria for
25 significant and undesirable effects: “Each Agency shall describe in its Plan the processes and
26 criteria relied upon to define undesirable results applicable to the basin.” (Cal. Code Regs., tit. 23,
27 § 354.26.)

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1 211. Section 354.26 specifically requires the GSA to consider the following information
2 in evaluating undesirable results: (a) the cause of groundwater conditions that could lead to
3 undesirable results based on information described in the basin setting, and other data or models as
4 appropriate, (b) a quantitative description of the combination of minimum threshold exceedances
5 that cause significant and unreasonable effects in the basin, and (c) potential effects on the
6 beneficial uses and users of groundwater that may occur from undesirable results. (Cal. Code Regs.,
7 tit. 23, § 354.26(b).)

8 212. Thus, there is already existing law that controls the development, definition, and
9 application of undesirable results. The Staff Report’s attempt to expand State Water Board authority
10 to allow the State Water Board to define undesirable results to include consistency with its own
11 Equity Commitments is unlawful and inconsistent with the existing law that guides undesirable
12 results.

13 **E. THE STATE WATER BOARD PROBATIONARY**
14 **DESIGNATION VIOLATES THE EQUITY COMMITMENTS**

15 213. As noted above, the State Water Board does not have the authority to override
16 existing law to insert the provisions of the Equity Commitments into the requirements for setting
17 undesirable results.

18 214. However, the State Water Board is required to ensure that its own process and
19 actions fulfill the responsibilities to which it committed in the Equity Commitments.

20 215. The Probationary Designation decision in the Tulare Lake Subbasin violates the
21 State Water Board’s Equity Commitments.

22 216. State Water Board Resolution 2021-0050, Condemning Racism, Xenophobia,
23 Bigotry, and Racial Injustice and Strengthening Commitment to Racial Equity, Diversity, Inclusion,
24 Access and Anti-Racism (Racial Equity Resolution) commits the State Water Board to “centering
25 our work and decision-making on Black, Indigenous, and people of color who are
26 disproportionately represented in the most vulnerable communities and in unsheltered populations,
27 while ensuring the full benefits of the Water Boards’ programs for all people.” (Racial Equity
28 Resolution, para. 3.)

1 217. In addition, the Staff Report states: “The State Water Board will continue to engage
2 with and consider the needs of potentially affected DACs and Black, Indigenous, and people of
3 color (BIPOC) communities in the Tulare Lake Subbasin as it implements its responsibilities under
4 SGMA.” (Staff Report, at 31.)

5 218. However, the Probationary Designation fell short of its commitment to focus on
6 people of color and the State Water Board failed to engage with BIPOC communities.

7 219. The Staff Report does not provide any description or explanation of State Water
8 Board outreach to BIPOC communities related to its Probationary Designation.

9 220. The Staff Report discusses at length the engagement it had with the Santa Rosa
10 Rancheria Tachi Yokut Tribe. However, the Staff Report recognizes that the Tulare Lake Subbasin
11 has a very small Native American population (.25%). (Staff Report, at 38.) The Santa Rosa
12 Rancheria Tachi Yokut Tribe does not have land in the Tulare Lake Subbasin, is not adjacent to the
13 Tulare Lake Subbasin, and is not impacted by the Probationary Designation. The Staff Report
14 concedes its engagement with the Santa Rosa Rancheria Tachi Yokut Tribe was limited to the State
15 Water Board’s California Environmental Quality Act (CEQA) exemption and the lack of evaluation
16 of environmental impacts of its Probationary Designation and not focused on the State Water
17 Board’s Probationary Designation in the Tulare Lake Subbasin.

18 221. The Staff Report fails to describe any meaningful outreach to the BIPOC
19 communities affected by its Probationary Designation. The State Water Board dedicates two
20 sentences to outreach in the appendix to the Staff Report, stating it “consulted” with community-
21 based organizations “on the issue of outreach.” Consulting on the concept of outreach does not
22 satisfy the State Water Board requirements of the Racial Equity Resolution. Consulting about
23 outreach is not the same as conducting outreach related to the Probationary Designation. For
24 example, the Board may have asked community organizers how to access BIPOC communities
25 (although this is unclear from the State Water Board’s limited description). However, the State
26 Water Board failed to hold meetings to explain the proposed Probationary Designation to BIPOC
27 communities, it did not evaluate the impacts of the Probationary Designation on BIPOC
28 communities, it did not explain the monitoring requirements and fee requirements being imposed to

1 BIPOC communities, it did not evaluate the impact of the fees on BIPOC communities, and it did
2 not document any outreach to BIPOC communities. From the public participation at the local
3 workshops and Probationary Hearing, it appears there was little to no representation or input from
4 BIPOC communities.

5 222. The Probationary Designation is based on rules that the State Water Board
6 unlawfully developed behind closed doors, in coordination with DWR that was not open to the
7 public, in meetings with GSAs that were not open to the public or otherwise reported on, and the
8 development of technical information without the input of community organizers. The Probationary
9 Designation was the result of serial exclusionary processes, the exact type of process the State
10 Water Board condemned in its Racial Equity Resolution.

11 223. The Staff Report recognizes that 54% of the Tulare Lake Subbasin population is
12 Hispanic or Latino. (Staff Report, at 38.) However, the Staff Report was made available only in
13 English and never made available in Spanish, despite the State Water Board knowing the majority
14 of the population is Hispanic or Latino.

15 224. The State Water Board failed to respond to comments, questions, and concerns
16 related to the impact of the Probationary Designation on farming and the specific impact to the
17 Hispanic communities in the Subbasin.

18 225. The State Water Board's Probationary Designation violates the commitments it made
19 in the Equity Commitments.

20 **F. THE REQUIREMENT THAT ALL EXTRACTIONS MUST BE**
21 **METERED, MONITORED AND REPORTED TO THE STATE**
22 **WATER BOARD EXCEEDS THE STATE WATER BOARD'S JURISDICTION**

23 226. SGMA provides the State Water Board with limited authority to require groundwater
24 users who are in a probationary subbasin to report and pay fees related to the extraction of
25 groundwater. (Wat. Code, § 1529.5)

26 227. However, this authority is limited to the extraction of groundwater and does not
27 extend to or include the extraction of surface water that has been stored in an aquifer.

28 228. The Probationary Designation is imprecise and fails to distinguish between
extracting stored surface water and extracting groundwater in requiring reports on extractions and

1 payment of fees for extractions. (Probationary Designation, at 9 [using language such as “any
2 person who extracted more than 500 acre-feet from the Tulare Lake subbasin”].)

3 229. To the extent the Probationary Designation is intended to apply to extractions of
4 water that are not groundwater, the Resolution exceeds the State Water Board’s authority and is
5 unlawful.

6 **G. THE REQUIREMENT THAT GSAS APPLY**
7 **FOR A GOOD ACTOR EXCLUSION IS UNLAWFUL**

8 230. The Staff Report states that a GSA may request to be excluded from probation
9 pursuant to Water Code section 10735.2(e) (Good Actor Exclusion). (Staff Report, Appendix C, at
10 C-9 [“Many commenters made broader points regarding clarity around State Water Board
11 processes, including how to exit the Board’s oversight or how to request a “good actor” exclusion
12 under Water Code section 10735.2, subdivision (e).”].)

13 231. In addition, at the November 3, 2023, local workshop, State Water Board staff stated
14 that any group that believes it meets the criteria of the Good Actor Exclusion may submit that
15 information to the State Water Board staff and the staff will then make a recommendation to the
16 State Water Board.

17 232. At the April 16, 2024, probationary hearing, State Water Board members stated they
18 understood that any GSA could apply for the Good Actor Exclusion at any time.

19 233. The State Water Board’s requirement to apply or submit materials in order to
20 qualify for the Good Actor Exemption is unlawful.

21 234. The Water Code is clear that the State Water Board has a mandatory duty to exclude
22 from probation any portion of the subbasin that demonstrates compliance with the sustainability
23 goal. This duty exists regardless of whether a GSA has requested the State Water Board undertake
24 it.

25 235. The State Water Board’s requirement that persons and entities apply for the Good
26 Actor Exclusion is contrary to the law and contrary to the duties of the State Water Board. The State
27 Water Board’s application of this unlawful rule renders its Probationary Designation invalid.

28 ///

1 **FIFTH CAUSE OF ACTION**

2 **Writ of Mandate – State Water Board Failed to Notice**
3 **Landowners of the Probationary Hearing**
4 **(Water Code § 10736)**

5 236. Petitioners hereby reallege and incorporate herein by reference the allegations
6 contained in the above paragraphs as though fully set forth herein.

7 237. The Water Code requires the State Water Board to provide sixty (60) days’ notice of
8 the probationary hearing to (a) all persons known to the Board who extract or who propose to
9 extract water from the basin, and (b) all persons who have made written or electronic mail requests
10 to the Board for special notice of hearing pursuant to this part. (Wat. Code, § 10736(b)(3)(B).)

11 238. The Probationary Designation alleges the State Water Board mailed notices to “all
12 persons known to the Board who extract or propose to extract water from the basin” on October 13,
13 2023. (Probationary Designation, at para 18.)

14 239. However, the State Water Board does not provide a list of notices it sent, how it
15 compiled this list, how many notices were sent, or other information that would support satisfaction
16 of its notice requirements.

17 240. Not all landowners in the Tulare Lake Subbasin received notice of the April 16,
18 2024, probationary hearing.

19 241. Because not all landowners received notice and the State Water Board provides no
20 supporting documentation with regard to the notices, the State Water Board failed to satisfy its
21 notice requirements pursuant to Water Code section 10736.

22 242. The State Water Board’s Probationary Designation determination was made without
23 proper notice and therefore must be set aside.

24 **SIXTH CAUSE OF ACTION**

25 **Declaratory Relief – The Staff Report Includes Several Unlawful Underground Regulations**
26 **(Government Code § 11340; 23 CCR 649.1)**

27 243. Petitioners hereby reallege and incorporate herein by reference the allegations
28 contained in the above paragraphs as though fully set forth herein.

///

1 244. When adopting regulations, State agencies are required to follow the procedures set
2 forth in the Government Code 11340, *et seq.*, hereinafter referred to as the California
3 Administrative Procedures Act (APA).

4 245. Government Code section 11342.600 defines a “regulation” as “every rule,
5 regulation, order, or standard of general application or the amendment, supplement, or revision of
6 any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make
7 specific the law enforced or administered by it, or to govern its procedure.”

8 246. The Staff Report includes several regulations, as that term is defined by Government
9 Code section 11342.600, insofar as, among other things, it sets forth rules and standards of general
10 application. The State Water Board applied and relied on these rules and standards in support of its
11 Probationary Designation.

12 247. The State Water Board applied each of these regulations generally across all
13 stakeholders in the Tulare Lake Subbasin, and it has also applied them in other subbasins.

14 248. The regulations were not adopted pursuant to the APA or other proper procedures.
15 For example, in violation of Government Code section 11346, the State Water Board failed to
16 provide the regulations to the public for review, it failed to draft the regulations in “plain,
17 straightforward language,” and it failed to provide an initial statement setting forth the reason and
18 purpose of the regulations.

19 249. The State Water Board failed to disclose all “facts, evidence, documents, testimony,
20 or other evidence on which the agency relies to support an initial determination that the action will
21 not have a significant adverse economic impact on business.” (Gov. Code, § 11346.2(b)(5).)
22 Rather, the State Water Board failed to evaluate any adverse economic impacts of the development
23 and application of these regulations.

24 250. In violation of the APA, the State Water Board failed to provide a hearing on these
25 regulations and deprived the public of the “opportunity to present statements, arguments or
26 contentions in writing” prior to adoption and application of the regulations. (Gov. Code, § 11346.8.)

27 251. The State Water Board deprived the public of participation in developing the
28 regulations, and further deprived the public of the opportunity to challenge the regulations. The

1 State Water Board failed to adopt the regulations pursuant to the APA, thus depriving the public
2 from challenging the adoption of these regulations pursuant to Government Code section 11340.

3 252. All of these APA violations are major violations of transparent government; the State
4 Water Board developed rules and regulations related to its probationary process without public
5 disclosure and then applied those rules to punish the same people who were left out of the process.
6 This series of acts is unlawful and must be set aside.

7 **A. STATE WATER BOARD INTERVENTION REGULATION**

8 253. The State Water Board developed a set of rules and standards to guide the State
9 Water Board intervention process.

10 254. The Staff Report clearly sets forth this rule and process of intervention, stating:

11 “State intervention is additional to local management and intended to be
12 temporary, and is a two-step process: The first step of state intervention
13 under SGMA is for the State Water Board to determine, through a public
14 process, whether to place the basin on probation.

15 In the second step, through a public process, the State Water Board may
16 implement an interim plan for the basin. This can only happen if
17 deficiencies are not fixed after at least one year of the basin being on
18 probation.

19 In determining whether to put a basin on probation, the State Water Board
20 analyzes whether deficiencies identified by DWR were sufficiently
21 addressed prior to the probationary hearing. As part of its analysis, and as
22 reflected in State Water Board Resolution 2021-0050, Condemning
23 Racism, Xenophobia, Bigotry, and Racial Injustice and Strengthening
24 Commitment to Racial Equity, Diversity, Inclusion, Access and Anti-
25 Racism, the State Water Board considers the impacts of basin
26 non-compliance on vulnerable communities, including communities of
27 color. During a probationary period, GSAs would have time to resolve
28 deficiencies identified in their GSPs and the State Water Board would
collect data on groundwater extractions, collect fees from certain
groundwater users, and may conduct additional investigations. Extraction
data are important to good groundwater management and would support
development of an interim plan, if needed.” (Staff Report, at 13.)

24 255. The rules set forth above are hereinafter referred to as the “Intervention Regulation.”

25 256. The Intervention Regulation was developed by the State Water Board and applied to
26 the Tulare Lake Subbasin.

27 257. The State Water Board is implementing the Intervention Regulation in the Tule
28 Subbasin.

1 258. The State Water Board is implementing the Intervention Regulation in the Kaweah
2 Subbasin.

3 259. Because the Intervention Regulation applies to each of the GSAs and all of the
4 landowners in the Tulare Lake Subbasin, it is a rule or standard that applies generally across the
5 entire Tulare Lake Subbasin. Further, the State Water Board continues to apply the Intervention
6 Regulation in other subbasins as well, further supporting its general applicability.

7 260. SGMA provides the State Water Board with the authority to adopt regulations such
8 as the Intervention Regulation through a normal regulatory process consistent with provisions of the
9 APA. (Wat. Code, § 10736(d)(2).)

10 261. Certainly if such public process were provided, the public would have provided input
11 and demand clarity on several components of this regulation, including, but not limited to: (a) the
12 characterization that intervention is in addition to rather than in place of local management; (b) what
13 is meant by a temporary process; (c) how each of the two steps would be carried out by the State
14 Water Board; (d) how to avoid either step and the process for exiting intervention; (e) the
15 mechanism and standards the State Water Board uses to evaluate whether DWR deficiencies are
16 addressed; (f) the authority, standards, and mechanism the State Water Board relies upon to deter
17 “non-compliance” on communities of color; (g) the process and time a GSA has to remedy
18 deficiencies; and (h) the manner and use of data collection and the authority under which it would
19 conduct “additional investigations.”

20 262. However, the opportunity for such public comment and inquiry, which is required by
21 law, was not provided by the State Water Board.

22 263. The State Water Board had sufficient time to properly and lawfully develop and
23 adopt the Intervention Regulation.

24 264. The State Water Board received comments, requests, and recommendations to more
25 fully explain the intervention process. In fact, the public asked the State Water Board several times
26 for more information related to state intervention.

27 265. Despite the authority, time, and requests, the State Water Board failed to adopt the
28 Intervention Regulation in a lawful and transparent manner.

1 266. Instead, the State Water Board developed the Intervention Regulation as an unlawful
2 underground regulation and in violation of the requirements of the APA.

3 267. Therefore, the Intervention Regulation is an unlawful, underground regulation and
4 cannot serve as the basis for a probationary decision pursuant to Water Code section 10735.2.

5 **B. STATE WATER BOARD PROBATIONARY DESIGNATION REGULATION**

6 268. The State Water Board developed a set of rules and standards that guide the State
7 Water Board probationary process.

8 269. Existing law provides the State Water Board with the authority to designate a
9 subbasin as probationary in specific circumstances, including (a) when no GSP is adopted, (b) when
10 no GSA is formed, and (c) when a GSP is determined to be inadequate. (Wat. Code, § 10735.2.)

11 270. Existing law requires that before the State Water Board designates a subbasin as
12 probationary, it must first provide notice and hold a hearing. (Wat. Code, § 10735.2.) However,
13 there is no existing law that establishes the process by which the State Water Board will designate a
14 subbasin as probationary.

15 271. The State Water Board has developed a set of rules and standards for the
16 probationary process that go beyond the existing rules of law and amount to an underground
17 regulation. For example, the State Water Board’s probationary process includes issuing a draft staff
18 report, taking comments on the draft staff report, finalizing the draft staff report, including staff
19 recommendations on probation in the final staff report, allowing staff to present its staff report and
20 recommendations at a one-day hearing, and allowing GSAs less than an hour to present information
21 and evidence related to the Staff Report (Probationary Designation Regulation).

22 272. The Probationary Designation Regulation was developed for the Tulare Lake
23 Subbasin.

24 273. The State Water Board is implementing the Probationary Designation Regulation in
25 the Tule Subbasin.

26 274. The State Water Board is implementing the Probationary Designation Regulation in
27 the Kaweah Subbasin.

28 ///

1 275. Because the Probationary Designation Regulation applies to each of the GSAs and
2 all of the landowners in the Tulare Lake Subbasin, it is a rule or standard that applies generally
3 across the entire Tulare Lake Subbasin. Further, the State Water Board continues to apply
4 Probationary Designation Regulation in other subbasins as well, further supporting its general
5 applicability.

6 276. SGMA provides the State Water Board with the authority to adopt regulations such
7 as the Probationary Designation Regulation through a normal regulatory process, consistent with
8 provisions of the APA. (Wat. Code, § 10736(d)(2).)

9 277. The State Water Board had sufficient time to properly and lawfully develop and
10 adopt the Probationary Designation Regulation.

11 278. The State Water Board received multiple comments, requests, and recommendations
12 to more fully explain the probationary process.

13 279. Despite the authority, time and requests, the State Water Board failed to adopt the
14 Probationary Designation Regulation in a lawful and transparent manner.

15 280. Instead, the State Water Board developed the Probationary Designation Regulation
16 as an unlawful underground regulation.

17 281. Therefore, the Probationary Designation Regulation is an unlawful, underground
18 regulation and cannot serve as the basis for a probationary decision pursuant to Water Code section
19 10735.2.

20 **C. GOOD ACTOR REGULATION**

21 282. Water Code section 10735.2(e) states that the State Water Board “shall exclude from
22 probationary status any portion of a basin for which a groundwater sustainability agency
23 demonstrates compliance with the sustainability goal.”

24 283. Section 10735.2(e) is an affirmative mandate, it is not an optional duty.

25 284. The Staff Report recognizes this requirement, stating “The State Water Board must
26 exclude from probation any portions of the basin for which a GSA demonstrates compliance with
27 the sustainability goal (Wat. Code, § 10735.2, subd. (e)).” (Staff Report, at 126.)

28 ///

1 285. The Staff Report includes several rules and standards that the State Water Board
2 developed in order to apply section 10735.2(e).

3 286. The Staff Report states that section 10735.2(e) can only apply where a GSA is
4 “implementing a GSP capable of achieving sustainable groundwater management” (Good Actor
5 Regulation). (Staff Report, at 127.)

6 287. The Staff Report further applied the Good Actor Regulation to the GSAs in the
7 Tulare Lake Subbasin, concluding that the “only plan covering the Tulare Lake subbasin is
8 inadequate for the reasons described in DWR’s inadequate determination and the Final Staff Report.
9 Therefore, no GSAs implementing the plan would qualify for the exemption: GSAs cannot qualify
10 for the good actor exemption with plans that do not meet SGMA’s requirements.” (Staff Report, at
11 127.)

12 288. Based on the Good Actor Regulation, the State Water Board determined that no
13 portion of the Tulare Lake Subbasin qualified to be excluded from probation. (Resolution, at para.
14 27 [“Based on its review and consideration the State Water Board agrees that the Tulare Lake
15 Subbasin should be designated at this time as probationary and agrees with other staff
16 recommendations as resolved herein.”].)

17 289. The State Water Board includes Good Actor Regulation in its Draft Staff Report for
18 the Tule Subbasin.

19 290. The State Water Board includes Good Actor Regulation in its Draft Staff Report for
20 the Kaweah Subbasin.

21 291. Because the State Water Board applied the Good Actor Regulation generally to each
22 of the GSAs and all of the landowners in the Tulare Lake Subbasin, it is a rule or standard the State
23 Water Board applied generally across the entire Tulare Lake Subbasin. Further, the State Water
24 Board continued to apply Good Actor Regulation in other subbasins as well, further supporting its
25 general applicability.

26 292. SGMA provides the State Water Board with the authority to adopt regulations such
27 as the Good Actor Regulation through a normal regulatory process, consistent with provisions of the
28 APA. (Wat. Code, § 10736(d)(2).)

1 293. The State Water Board had sufficient time to properly and lawfully develop and
2 adopt the Good Actor Regulation.

3 294. The State Water Board received significant comments and recommendations that it
4 should provide further guidance and adopt regulations related to exclusions pursuant to Water Code
5 section 10735.2(e).

6 295. Despite the authority, time and requests, the State Water Board failed to adopt the
7 Good Actor Regulation in a lawful and transparent manner.

8 296. Instead, the State Water Board developed the Good Actor Regulation as an unlawful
9 underground regulation.

10 297. In fact, the State Water Board recognizes that the Good Actor Regulation needed to
11 be adopted pursuant to the rules and regulations in the APA. The Staff Report states:

12 “The State Water Board is developing a Frequently Asked
13 Questions document to provide more context and guidance for
14 GSAs on some Board processes under Chapter 11, the chapter of
15 the SGMA statute which covers the Board’s state intervention
16 authorities. To lay out more specific rules for state intervention, the
17 State Water Board would have to develop and adopt regulations
18 regarding the adoption of a probationary designation or an interim
19 plan (Wat. Code § 10735.8, subd. (d)). The Board may develop
20 regulations in the future.” (Staff Report, Appendix C, at C-9.)

21 298. Contrary to the Board’s statement that it may develop regulations in the future, it has
22 already developed and implemented a rule, but it did so in violation of the requirements for public
23 notice, disclosure, ability to comment, and ability to challenge the adopted regulation.

24 299. The Good Actor Regulation is an unlawful, underground regulation and cannot serve
25 as the basis for a probationary decision pursuant to Water Code section 10735.2.

26 **D. PROBATION EXIT REGULATION**

27 300. The State Water Board developed a set of rules and standards that guide the process
28 for exiting the designation of probation.

 301. The Staff Report states that in order to exit probation, GSAs must adopt revised
GSP(s) that resolve any deficiencies, submit the revised GSP to the State Water Board for review,
and the State Water Board will review the new GSP (Probation Exit Regulation). (Staff Report, at
56 [“After GSAs have adopted a revised plan (or plans) that resolve the deficiencies, they can seek

1 to exit probationary status by submitting the plan (or plans) to the State Water Board. If the State
2 Water Board determines that deficiencies were addressed, the Board may resolve to have the GSA
3 (or GSAs) exit probation”].)

4 302. This Probation Exit Regulation applies to each GSA and every landowner in the
5 Tulare Lake Subbasin.

6 303. The State Water Board includes the Probation Exit Regulation in its Draft Staff
7 Report for the Tule Subbasin.

8 304. The State Water Board includes the Probation Exit Regulation in its Draft Staff
9 Report for the Kaweah Subbasin.

10 305. The State Water Board asserts it will further develop the Probation Exit Regulation
11 through future non-regulatory actions, such as issuing FAQs. (Staff Report, at C-9 to C-10 [“The
12 State Water Board’s forthcoming Frequently Asked Questions document will address questions
13 regarding processes for exiting Chapter 11.”].)

14 306. Because the Probation Exit Regulation applies to each of the GSAs and all of the
15 landowners in the Tulare Lake Subbasin, it is a rule or standard that applies generally across the
16 entire Tulare Lake Subbasin. Further, the State Water Board continues to apply Probation Exit
17 Regulation in other subbasins as well, further supporting its general applicability.

18 307. SGMA provides the State Water Board with the authority to adopt regulations such
19 as the Probation Exit Regulation through a normal regulatory process, consistent with provisions of
20 the APA. (Wat. Code, § 10736(d)(2).)

21 308. The State Water Board had sufficient time to properly and lawfully develop and
22 adopt the Probation Exit Regulation.

23 309. The State Water Board received multiple comments and recommendations that it
24 should adopt regulations to develop a process for exiting probation.

25 310. Despite the authority, time and requests, the State Water Board failed to adopt the
26 Probation Exit Regulation in a lawful and transparent manner.

27 311. Instead, the State Water Board developed the Probation Exit Regulation as an
28 unlawful underground regulation.

1 312. Therefore, the Probation Exit Regulation is an unlawful, underground regulation and
2 cannot serve as the basis for a probationary decision pursuant to Water Code section 10735.2.

3 **E. CONTINUED GSA MANAGEMENT REGULATION**

4 313. The State Water Board developed a set of rules and standards that require GSAs to
5 manage pursuant to the existing, although inadequate, GSP during the probationary period
6 (Continued GSA Management Regulation).

7 314. The law does not mandate that a GSA continue to manage pursuant to an inadequate
8 GSP during the probationary period.

9 315. In addition, the Staff Report states that during probation, “the GSA retains its
10 authorities and responsibilities and must continue to implement its GSP regardless of if the basin is
11 in probation.” (Staff Report, at 13 (emphasis added); see also Staff Report at 27.)

12 316. The State Water Board includes the Continued GSA Management Regulation in its
13 Draft Staff Report for the Tule Subbasin.

14 317. The State Water Board includes the Continued GSA Management Regulation in its
15 Draft Staff Report for the Kaweah Subbasin.

16 318. Because the Continued GSA Management Regulation applies to each of the GSAs
17 and all of the landowners in the Tulare Lake Subbasin, it is a rule or standard that applies generally
18 across the entire Tulare Lake Subbasin. Further, the State Water Board continues to apply
19 Continued GSA Management Regulation in other subbasins as well, further supporting its general
20 applicability.

21 319. SGMA provides the State Water Board with the authority to adopt regulations such
22 as the Continued GSA Management Regulation through a normal regulatory process, consistent
23 with provisions of the APA. (Wat. Code, § 10736(d)(2).)

24 320. The State Water Board had sufficient time to properly and lawfully develop and
25 adopt the Continued GSA Management Regulation.

26 321. The State Water Board received multiple comments that a designation of probation
27 would make continued GSA management more difficult and less effective.

28 ///

1 322. Despite the authority, time, and expressed concern, the State Water Board failed to
2 adopt the Continued GSA Management Regulation in a lawful and transparent manner.

3 323. Instead, the State Water Board developed the Continued GSA Management
4 Regulation as an unlawful underground regulation.

5 324. Therefore, the Continued GSA Management Regulation is an unlawful, underground
6 regulation and cannot serve as the basis for a probationary decision pursuant to Water Code section
7 10735.2.

8 **F. WELL MITIGATION REGULATION**

9 325. The State Water Board developed a set of rules and standards that require well
10 mitigation when there are undesirable results.

11 326. The Staff Report recognizes that existing law does not affirmatively require well
12 mitigation.

13 327. However, in response to several identified GSP deficiencies, the Staff Report states
14 that well mitigation is required to offset the continuing decline in water levels (Well Mitigation
15 Regulation). (Staff Report, at A-4 [actions to correct deficiency GL-4, “Establish accessible,
16 comprehensive, and appropriately funded well impact mitigation programs that mitigate impacts to
17 wells affected by lowering of groundwater levels and degradation of water quality.”].)

18 328. The State Water Board includes the Well Mitigation Regulation in its Draft Staff
19 Report for the Tule Subbasin.

20 329. The State Water Board includes the Well Mitigation Regulation in its Draft Staff
21 Report for the Kaweah Subbasin.

22 330. Because the Well Mitigation Regulation applies to each of the GSAs and all of the
23 landowners in the Tulare Lake Subbasin, it is a rule or standard that applies generally across the
24 entire Tulare Lake Subbasin. Further, the State Water Board continues to apply Well Mitigation
25 Regulation in other subbasins as well, further supporting its general applicability.

26 331. SGMA provides the State Water Board with the authority to adopt regulations such
27 as the Well Mitigation Regulation through a normal regulatory process, consistent with provisions
28 of the APA. (Wat. Code, 10736(d)(2).).

1 332. The State Water Board had plenty of time to properly and lawfully develop and
2 adopt the Well Mitigation Regulation.

3 333. The State Water Board received multiple comments and recommendations to more
4 fully explain its position on well mitigation, why the State Water Board was requiring well
5 mitigation, and the extent to which well mitigation had to be defined.

6 334. Despite the authority, time, and requests, the State Water Board failed to adopt the
7 Well Mitigation Regulation in a lawful and transparent manner.

8 335. Instead, the State Water Board developed the Well Mitigation Regulation as an
9 unlawful underground regulation.

10 336. Therefore, the Well Mitigation Regulation is an unlawful, underground regulation
11 and cannot serve as the basis for a probationary decision pursuant to Water Code section 10735.2.

12 **G. DWR COORDINATION REGULATION**

13 337. The State Water Board developed a set of rules and standards that guide the State
14 Water Board's coordination with DWR in SGMA, including the coordination on DWR's
15 determination of inadequacy and the coordination on the Probationary Designation.

16 338. The Staff Report states that the State Water Board coordinated with DWR.

17 339. The Resolution states that the State Water Board coordinated with DWR.

18 340. In response to public comments, the State Water Board affirmatively responded that
19 it had coordinated with DWR.

20 341. The State Water Board and DWR developed a process by which the State Water
21 Board and DWR coordinated on the 2022 GSP Inadequate Determination, the Staff Report, and the
22 State Water Board's intervention process (DWR Coordination Regulation).

23 342. The State Water Board applied the DWR Coordination Regulation to the Tulare
24 Lake Subbasin.

25 343. The State Water Board is following the DWR Coordination Regulation in the Tule
26 Subbasin.

27 344. The State Water Board is following the DWR Coordination Regulation in the
28 Kaweah Subbasin.

1 345. Because the DWR Coordination Regulation is being applied by the State Water
2 Board to each of the GSAs and all of the landowners in the Tulare Lake Subbasin, it is a rule or
3 standard that applies generally across the entire Tulare Lake Subbasin. Further, the State Water
4 Board continues to apply DWR Coordination Regulation in other subbasins as well, further
5 supporting its general applicability.

6 346. SGMA provides the State Water Board with the authority to adopt regulations such
7 as the DWR Coordination Regulation through a normal regulatory process, consistent with
8 provisions of the APA. (Wat. Code, § 10736(d)(2).)

9 347. The State Water Board had sufficient time to properly and lawfully develop and
10 adopt the DWR Coordination Regulation.

11 348. The State Water Board received comments and questions related to its coordination
12 with DWR and the process that coordination would follow.

13 349. Despite the authority, time, and inquiries, the State Water Board failed to adopt the
14 DWR Coordination Regulation in a lawful and transparent manner.

15 350. Instead, the State Water Board developed the DWR Coordination Regulation as an
16 unlawful underground regulation.

17 351. Therefore, the DWR Coordination Regulation is an unlawful, underground
18 regulation and cannot serve as the basis for a probationary decision pursuant to Water Code section
19 10735.2.

20 **SEVENTH CAUSE OF ACTION**

21 **Declaratory Relief – Government Code Section 11350**

22 **Groundwater Extraction Fee Violates California Constitution,
23 Article XIII A, Section 3 and Water Code Section 1529.5**

24 352. Water Code section 1529.5 permits the State Water Board to adopt a schedule of fees
25 by emergency regulation pursuant to Water Code section 1530 to recover costs incurred in
26 administering SGMA. Recoverable costs include, but are not limited to, costs “incurred in
27 connection with investigations, facilitation, monitoring, hearings, enforcement, and administrative
28 costs in carrying out these actions.” (Wat. Code, § 1529.5(a).)

1 353. All fees adopted pursuant to Water Code section 1529.5 must be set in accordance
2 with Section 3 of Article XIII A of the California Constitution. (Wat. Code, § 1529.5(c).)

3 354. California Constitution, article XIII A, section 3 was “approved by initiative as
4 Proposition 13, on June 6, 1978.” (*Northern California Water Assn. v. State Water Resources*
5 *Control Bd.* (2018) 20 Cal.App.5th 1204, 1209, fn. 2.)

6 355. Section 3 of Article XIII A of the California Constitution was amended, in part, in
7 2010 pursuant to Proposition 26. (*California Building Industry Assn. v. State Water Resources*
8 *Control Bd.* (2018) 4 Cal.5th 1032, 1047.)

9 356. Consistent with Proposition 26, Section 3 of Article XIII A of the California
10 Constitution provides, “[a]ny change in state statute which results in any taxpayer paying a higher
11 tax must be imposed by an act passed by not less than two-thirds of all members elected to each of
12 the two houses of the Legislature.” (Cal. Const., art. XIII, § 3(a).) Unlike taxes, regulatory fees
13 “need only the assent of a simple majority.” (*California Farm Bureau Federation v. State Water*
14 *Resources Control Bd. (Farm Bureau II)* (2011) 51 Cal.4th 421, 428, fn. 2.)

15 357. Assembly Bill 1739, by which Water Code section 1529.5 was enacted, passed the
16 Legislature by less than a two-thirds vote, and therefore the amount charged under Water Code
17 section 1529.5 is invalid if it is a tax rather than a regulatory fee.

18 358. To determine if a charge or levy amounts to a tax or fee, “courts [must] examine the
19 costs of the regulatory activity to determine if there was a reasonable relationship between the fees
20 assessed and the costs of the regulatory activity.” (*Farm Bureau II, supra*, 51 Cal.4th at 441.)

21 359. A charge or levy “only qualifies as a regulatory fee if (1) the amount of the fee does
22 not exceed the reasonable costs of providing the services for which it is charged, (2) the fee is not
23 levied for unrelated revenue purposes, and (3) the amount of the fee bears a reasonable relationship
24 to the burdens created by the fee payers’ activities or operations.” (*California Building Industry*
25 *Assn. v. State Water Resources Control Bd.* (2018) 4 Cal.5th 1032, 1046.) If these conditions are
26 not met, the levy is a tax. (*Id.*)

27 360. “The State bears the burden of proving by a preponderance of the evidence that a
28 levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the

1 reasonable costs of the governmental activity, and that the manner in which those costs are allocated
2 to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from,
3 the governmental activity.” (Cal. Const., art. XIII A, § 3(d).)

4 361. On or about June 29, 2017, pursuant to Water Code section 1529.5, the State Water
5 Board adopted, by emergency regulation, a schedule of fees to recover costs purportedly incurred in
6 connection with SGMA.

7 362. On or about March 19, 2024, the State Water Board adopted an emergency
8 regulation revising the fee schedule originally adopted on or about June 29, 2017, requiring that all
9 groundwater extractions in probationary basins be subject to a volumetric charge of \$20 per acre-
10 foot of groundwater extracted during the preceding water year. (Cal. Code Regs., tit. 23,
11 § 1040(b)(1).)

12 363. As of March 19, 2024, the State Water Board had not placed any basins in
13 probationary status.

14 364. The emergency regulation revising the fee schedule to \$20 per acre-foot for
15 groundwater extractions in probationary basins (\$20/AF Extraction Fee) became final and effective
16 on April 17, 2024, upon approval by the Office of Administrative Law (OAL).

17 365. The Board’s stated purpose for the \$20/AF Extraction Fee included, among other
18 things, balancing revenue stability for the program with the uncertainty about whether the State
19 Water Board will place any specific basin on probation, how long a basin might remain on
20 probation, how much revenue would be collected from the basin(s), and unspecified other factors.

21 366. The \$20/AF Extraction Fee became applicable to the Petitioners and the Tulare Lake
22 Subbasin on or about April 16, 2024, when the State Water Board adopted the Probationary
23 Designation.

24 367. As applied to Petitioners and the Tulare Lake Subbasin by the Probationary
25 Designation, the \$20/AF Extraction Fee is an unlawful tax because the amount of the fee exceeds
26 the reasonable costs of providing the services for which it is charged.

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1 368. As applied to Petitioners and the Tulare Lake Subbasin by the Probationary
2 Designation, the \$20/AF Extraction Fee is an unlawful tax because it is levied for revenue purposes
3 unrelated to the services for which it is charged.

4 369. As applied to Petitioners and the Tulare Lake Subbasin by the Probationary
5 Designation, the \$20/AF Extraction Fee is an unlawful tax because the amount of the fee does not
6 bear a reasonable relationship to the burdens created by the fee payers' activities or operations.

7 370. As applied to Petitioners and the Tulare Lake Subbasin by the Probationary
8 Designation, the \$20/AF Extraction Fee violates California Water Code section 1529.5 because it
9 exceeds recoverable costs as that term is defined in Water Code section 1529.5.

10 371. Pursuant to California Government Code section 11350 which entitled any interested
11 person to obtain a judicial declaration as to the validity of any regulation, Petitioners/Plaintiffs are
12 entitled to a declaration that the \$20/AF Extraction Fee is invalid, unconstitutional, unlawful, and
13 otherwise improper.

14 **EIGHTH CAUSE OF ACTION**

15 **Writ of Mandate – Code of Civil Procedure 1085**

16 **State Water Board Resolution 2024-0011 Amending SGMA Fee Schedules Violates**
17 **California Constitution, Article XIII A, Section 3 and Water Code Section 1529.5**

18 372. Water Code section 1529.5 permits the State Water Board to adopt a schedule of fees
19 by emergency regulation pursuant to Water Code section 1530 to recover costs incurred in
20 administering SGMA. Recoverable costs include, but are not limited to, costs “incurred in
21 connection with investigations, facilitation, monitoring, hearings, enforcement, and administrative
22 costs in carrying out these actions.” (Wat. Code, § 1529.5(a).)

23 373. All fees adopted pursuant to Water Code section 1529.5 must be set in accordance
24 with Section 3 of Article XIII A of the California Constitution. (Wat. Code, § 1529.5(c).)

25 374. California Constitution, article XIII A, section 3 was “approved by initiative as
26 Proposition 13, on June 6, 1978.” (*Northern California Water Assn. v. State Water Resources*
27 *Control Bd., supra*, 20 Cal.App.5th at 1209, fn. 2.)

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1 375. Section 3 of Article XIII A of the California Constitution was amended, in part, in
2 2010 pursuant to Proposition 26. (*California Building Industry Assn. v. State Water Resources*
3 *Control Bd., supra*, 4 Cal.5th at 1047.)

4 376. Consistent with Proposition 26, Section 3 of Article XIII A of the California
5 Constitution provides, “[a]ny change in state statute which results in any taxpayer paying a higher
6 tax must be imposed by an act passed by not less than two-thirds of all members elected to each of
7 the two houses of the Legislature” (Cal. Const., art. XIII, § 3(a).) Unlike taxes, regulatory fees
8 “need only the assent of a simple majority.” (*California Farm Bureau Federation v. State Water*
9 *Resources Control Bd. (Farm Bureau II), supra*, 51 Cal.4th at 428, fn. 2.)

10 377. Assembly Bill 1739, by which Water Code section 1529.5 was enacted, passed the
11 Legislature by less than a two-thirds vote, and therefore the amount charged under Water Code
12 section 1529.5 is invalid if it is a tax rather than a regulatory fee.

13 378. To determine if a charge or levy amounts to a tax or fee, “courts [must] examine the
14 costs of the regulatory activity to determine if there was a reasonable relationship between the fees
15 assessed and the costs of the regulatory activity.” (*Farm Bureau II, supra*, 51 Cal.4th at 441.)

16 379. A charge or levy “only qualifies as a regulatory fee if (1) the amount of the fee does
17 not exceed the reasonable costs of providing the services for which it is charged, (2) the fee is not
18 levied for unrelated revenue purposes, and (3) the amount of the fee bears a reasonable relationship
19 to the burdens created by the fee payers’ activities or operations.” (*California Building Industry*
20 *Assn. v. State Water Resources Control Bd., supra*, 4 Cal.5th at 1046.) If these conditions are not
21 met, the levy is a tax. (Id.)

22 380. “The State bears the burden of proving by a preponderance of the evidence that a
23 levy, charge, or other exaction is not a tax, that the amount is no more than necessary to cover the
24 reasonable costs of the governmental activity, and that the manner in which those costs are allocated
25 to a payor bear a fair or reasonable relationship to the payor’s burdens on, or benefits received from,
26 the governmental activity.” (Cal. Const., art. XIII A, § 3(d).)

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1 381. On or about June 29, 2017, pursuant to Water Code section 1529.5, the State Water
2 Board adopted, by emergency regulation, a schedule of fees to recover costs purportedly incurred in
3 connection with SGMA.

4 382. On or about March 19, 2024, by State Water Board Resolution No. 2024-0011, the
5 State Water Board adopted an emergency regulation revising the fee schedule originally adopted on
6 or about June 29, 2017, requiring that all groundwater extractions in probationary basins be subject
7 to a volumetric charge of \$20 per acre-foot of groundwater extracted during the preceding water
8 year. (Cal. Code Regs., tit. 23, § 1040(b)(1).)

9 383. As of March 19, 2024, the State Water Board had not placed any basins in
10 probationary status.

11 384. The State Water Board’s adoption of the emergency regulation revising the fee
12 schedule to \$20 per acre-foot for groundwater extractions in probationary basins became final and
13 effective on April 17, 2024, upon approval by OAL.

14 385. The Board’s stated purpose for the \$20/AF Extraction Fee included, among other
15 things, balancing revenue stability for the program with the uncertainty about whether the State
16 Water Board will place any specific basin on probation, how long a basin might remain on
17 probation, how much revenue would be collected from the basin(s), and unspecified other factors.

18 386. The \$20/AF Extraction Fee became applicable to Petitioners and the Tulare Lake
19 Subbasin on or about April 16, 2024, when the State Water Board adopted the Probationary
20 Designation.

21 387. The State Water Board’s adoption of Resolution No. 2024-0011 should be set aside
22 as unlawful because, as applied to Petitioners and the Tulare Lake Subbasin by the Probationary
23 Designation, the \$20/AF Extraction Fee constitutes an unlawful tax as the amount of the fee
24 exceeds the reasonable costs of providing the services for which it is charged.

25 388. The State Water Board’s adoption of Resolution No. 2024-0011 should be set aside
26 as unlawful because, as applied to Petitioners and the Tulare Lake Subbasin by the Probationary
27 Designation, the \$20/AF Extraction Fee is an unlawful tax as it is levied for revenue purposes
28 unrelated to the services for which it is charged.

1 389. The State Water Board’s adoption of Resolution No. 2024-0011 should be set aside
2 as unlawful because, as applied to Petitioners and the Tulare Lake Subbasin by the Probationary
3 Designation, the \$20/AF Extraction Fee is an unlawful tax as the amount of the fee does not bear a
4 reasonable relationship to the burdens created by the fee payers’ activities or operations.

5 390. The State Water Board’s adoption of Resolution No. 2024-0011 should be set aside
6 as unlawful because, as applied to Petitioners and the Tulare Lake Subbasin by the Probationary
7 Designation, the \$20/AF Extraction Fee violates California Water Code section 1529.5 as it exceeds
8 recoverable costs as that term is defined in Water Code section 1529.5.

9 **NINTH CAUSE OF ACTION**

10 **Declaratory Relief – Code of Civil Procedure § 1060**

11 391. Petitioners/Plaintiffs hereby reallege and incorporate herein by reference the
12 allegations contained in the above paragraphs as though fully set forth herein.

13 392. Pursuant to Code of Civil Procedure section 1060, “[a]ny person ... may ask for a
14 declaration of rights or duties, either alone or with other relief; and the court may make a binding
15 declaration of these rights or duties, whether or not further relief is or could be claimed at this
16 time.” (Code of Civ. Proc., § 1060.)

17 393. Pursuant to Government Code section 11350, “[a]ny interested person may obtain a
18 judicial declaration as to the validity of any regulation or order by bringing an action for declaratory
19 relief in the superior court in accordance with the Code of Civil Procedure.” (Gov. Code, § 11350.)

20 394. Petitioners contend that the Probationary Designation violates, among other things,
21 the limitations on the State Water Board’s authority as set forth in SGMA, Petitioners’ property and
22 due process rights, and the California Water Code.

23 395. The State Water Board, on the other hand, contends the Probationary Designation
24 complies with all applicable laws, rules and regulations.

25 396. An actual controversy exists surrounding the legality of the Probationary
26 Designation.

27 397. A judicial determination of these controversies is necessary and appropriate at this
28 time.

1 398. WHEREFORE, Petitioners pray for relief as set forth below.

2 **IX. PRAYER FOR RELIEF**

3 Petitioners pray for relief as follows:

4 1. A peremptory writ of mandate under Code of Civil Procedure section 1085 setting
5 aside the Probationary Designation and Resolution No. 2024-0011.

6 2. For a determination pursuant to Code of Civil Procedure section 1085 that:

7 (a) the Probationary Designation exceeds the State Water Board’s authority and
8 jurisdiction;

9 (b) the Probationary Designation violates the due process rights of Petitioners
10 and their respective members;

11 (c) the Probationary Designation violates the rules of SGMA;

12 (d) the Probationary Designation is arbitrary, capricious and not supported by
13 evidence;

14 3. For a judicial declaration pursuant to Code of Civil Procedure section 1060 and/or
15 Government Code section 11350, that:

16 (a) the Probationary Designation violates Government Code section 11340;

17 (b) the Probationary Designation violates Water Code sections 10735.2 and
18 10736;

19 (c) the Probationary Designation violates the California Constitution and Equal
20 Protection clauses of the United States Constitution;

21 (d) the \$20/AF Extraction Fee violates Section 3 of Article XIII A, of the
22 California Constitution;

23 4. For just compensation;

24 5. For costs of suit;

25 6. For attorney’s fees in accordance with Section 1021.5 of the California Code of Civil
26 Procedure; and

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7. For such other and further relief as the Court deems just and proper.

DATED: May 15, 2024

PARIS KINCAID WASIEWSKI, LLP



VALERIE C. KINCAID
Attorneys for Petitioners/Plaintiffs
KINGS COUNTY FARM BUREAU, HELEN
SULLIVAN, and JULIE MARTELLA

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VERIFICATION

I, VALERIE C. KINCAID, state that I am an attorney representing Petitioners/Plaintiffs KINGS COUNTY FARM BUREAU, HELEN SULLIVAN, and JULIE MARTELLA. I have read the foregoing **KINGS COUNTY FARM BUREAU, HELEN SULLIVAN, AND JULIE MARTELLA’S PETITION FOR WRIT OF MANDATE AND VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** and have personal knowledge that the matters set forth therein are true and correct, and on that basis allege them to be true and correct. I make this verification in accordance with California Code of Civil Procedure section 446, subdivision (a) as Petitioners/Plaintiffs’ counsel because the Petitioner/Plaintiff is an association and representatives are absent from Sacramento County, where I have my office and the facts are within my knowledge.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this verification was executed on May 15, 2024, at Sacramento, California.




VALERIE C. KINCAID

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VERIFICATION

I, Dustin J. Ference, state that I am the Executive Director/CEO for Petitioner/Plaintiff KINGS COUNTY FARM BUREAU. I have read the foregoing **KINGS COUNTY FARM BUREAU, HELEN SULLIVAN, AND JULIE MARTELLA’S PETITION FOR WRIT OF MANDATE AND VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** and have personal knowledge that the matters set forth therein are true and correct, and on that basis allege them to be true and correct. I make this verification in accordance with California Code of Civil Procedure section 446, subdivision (a).

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this verification was executed on May 15, 2024, at Hanford, California.



Dustin J. Ference
Executive Director/CEO
Kings County Farm Bureau

EXHIBIT 1

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2024-0012**

**DESIGNATING THE TULARE LAKE GROUNDWATER SUBBASIN AS
PROBATIONARY UNDER THE SUSTAINABLE GROUNDWATER
MANAGEMENT ACT**

WHEREAS:

1. Groundwater provides a significant portion of California's water supply, making up more than one-half of the water used by Californians in drought years when other sources are unavailable. When properly managed, groundwater resources provide for communities, farms, and the environment and help protect against prolonged dry periods and climate change, preserving water supplies for existing and potential beneficial uses. However, excessive groundwater extraction can cause long-term overdraft, failed wells, deteriorated water quality, environmental damage, and irreversible land subsidence that damages infrastructure and diminishes the capacity of aquifers to store water for the future, all of which can have substantial economic impacts. Additionally, failure to manage groundwater to prevent long-term overdraft can potentially infringe on rights to or use of groundwater or interconnected surface water;
2. In 2014, the State of California enacted Assembly Bill 1739, and Senate Bills 1168 and 1319, collectively referred to as the Sustainable Groundwater Management Act (SGMA). SGMA is intended to ensure the proper and sustainable management of groundwater resources in California;
3. The State Water Board recognizes that near-term SGMA implementation has the potential to result in substantial economic impacts in overdrafted basins. The State Water Board further recognizes that the goal of SGMA is sustainable groundwater management that will ensure the long-term viability of groundwater resources for future use by communities, farms, businesses, and the environment;
4. SGMA allows local agencies overlying alluvial groundwater basins determined by the Department of Water Resources to be high- or medium-priority to form Groundwater Sustainability Agencies (GSAs), and requires each GSA to prepare and implement a Groundwater Sustainability Plan (GSP) to achieve sustainable management of the basin;

5. SGMA recognizes that groundwater management is best accomplished locally; however, if local agencies fail to form a GSA or prepare a GSP for a groundwater basin, or the Department of Water Resources determines that the GSP is inadequate or not being implemented in a way that is likely to achieve SGMA's sustainability goal, SGMA authorizes the State Water Resources Control Board (State Water Board or Board) to intervene in the basin to ensure that the basin is managed sustainably;
6. SGMA requires GSAs, which can have broad impacts within their basins, to consider the interests of all beneficial uses and users of groundwater and to encourage the active involvement of diverse elements of the population of a groundwater basin during the development and implementation of GSPs;
7. To implement SGMA's state intervention process, the State Water Board may designate a basin as probationary. If the State Water Board designates a basin as probationary, it must identify the deficiencies in the GSP, identify potential actions to remedy the deficiencies, and exclude from probationary status any portion of a basin for which a GSA demonstrates compliance with SGMA's sustainability goal;
8. The deadline for GSAs in critically overdrafted high- and medium-priority basins to adopt and submit GSPs for review by the Department of Water Resources was January 31, 2020;
9. The Tulare Lake Subbasin is depicted in Attachment 1 and is a critically overdrafted high-priority basin;
10. The South Fork Kings Groundwater Sustainability Agency, the Mid-Kings River Groundwater Sustainability Agency, the El Rico Groundwater Sustainability Agency, the Tri-County Water Authority Groundwater Sustainability Agency, and the Southwest Kings Groundwater Sustainability Agency (collectively, the Tulare Lake Subbasin GSAs) were recognized by the Department of Water Resources as the GSAs for the Tulare Lake Subbasin;
11. The Tulare Lake Subbasin GSAs submitted the Tulare Lake Subbasin 2020 GSP to the Department of Water Resources for review on January 29, 2020;

12. On January 28, 2022, the Department of Water Resources issued a determination that the Tulare Lake Subbasin 2020 GSP was incomplete and provided the Tulare Lake Subbasin GSAs with 180 days to address the deficiencies identified in the incomplete determination;
13. The Tulare Lake Subbasin GSAs submitted the Tulare Lake Subbasin 2022 GSP to the Department of Water Resources for review on July 27, 2022;
14. On March 2, 2023, the Department of Water Resources issued a determination that the Tulare Lake Subbasin 2022 GSP was inadequate;
15. The State Water Board reviewed the Tulare Lake Subbasin 2022 GSP and the Department of Water Resources' determination of inadequacy, and Board staff prepared a draft staff report that describes the GSP's deficiencies and recommends potential actions that GSAs could take to remedy the deficiencies, and which supports designating the Tulare Lake Subbasin as a probationary basin under SGMA;
16. On October 12, 2023, the State Water Board made the draft staff report available to the public and issued notice of public staff workshops, opportunities to comment on the draft staff report, and the date of the public board hearing for the proposed designation of the Tulare Lake Subbasin as a probationary basin;
17. When issuing the notice, the State Water Board posted the notice on its website and sent the notice by electronic mail to its SGMA email listserv, to the Department of Water Resources, to each city and county within which any part of the Tulare Lake subbasin is situated, and to the points of contact for each of the Tulare Lake Subbasin GSAs;
18. On October 13, 2023, the State Water Board mailed the notice to all persons known to the Board who extract or who propose to extract water from the basin;
19. The public comment period for the probationary hearing notice and draft staff report ran from October 12, 2023, to December 11, 2023;

20. The State Water Board staff held informational workshops on November 3, 2023, and November 8, 2023, to explain the draft staff report, share more about how to participate in the State Water Board's state intervention process, and accept verbal public comments regarding the draft staff report;
21. State Water Board staff, after reviewing and considering input from public comments submitted at the workshops and during the public comment period, have revised and [finalized the staff report](#), which supports the staff recommendation that the State Water Board designate the Tulare Lake Subbasin as a probationary basin under SGMA;
22. The State Water Board has reviewed and considered the staff report and public testimony and comments received during the public comment period and at the public probationary hearing;
23. The State Water Board recognizes the established Human Right to Water policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes;
24. The State Water Board is committed to upholding California's human right to water and making racial equity, diversity, inclusion, and environmental justice a central consideration in water law;
25. The State Water Board has a duty to consider adverse impacts groundwater extraction would have on public trust resources and to protect public trust resources where feasible;
26. The State Water Board acknowledges and appreciates the efforts of the Tulare Lake Subbasin GSAs to develop and revise the Tulare Lake Subbasin GSP, including continued constructive engagement with State Water Board staff on technical information and approaches to remedy deficiencies, but these efforts have not been sufficient to rectify the deficiencies in the GSP;
27. Based on its review and consideration the State Water Board agrees that the Tulare Lake Subbasin should be designated at this time as probationary and agrees with other staff recommendations as resolved herein.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Finds that the Tulare Lake Subbasin is subject to Water Code section 10720.7, subdivision (a)(1), and that the Department of Water Resources, in consultation with the State Water Board, has determined that the 2022 groundwater sustainability plan for the Tulare Lake Subbasin is inadequate.
2. Designates the Tulare Lake Subbasin as a probationary basin pursuant to Water Code section 10735.2, subdivision (a)(3).
3. Identifies deficiencies in the Tulare Lake Subbasin 2022 GSP and corresponding potential actions, identified in the final staff report as potential actions that can correct those deficiencies pursuant to Water Code section 10735.6, subdivision (a). Deficiencies identified:
 - a. Groundwater Levels (GL)
 - i. Deficiency GL-1 – The 2022 GSP does not clearly describe the groundwater level conditions that would result in an undesirable result for the basin.
 - ii. Deficiency GL-2 – The GSAs did not consider all beneficial uses and users in setting sustainable management criteria (SMC) for groundwater levels in the 2022 GSP or adequately describe the impacts of criteria on beneficial uses and users. Minimum thresholds (MTs) in the A-zone would allow for significant and unreasonable water level declines.
 - iii. Deficiency GL-3 – The monitoring network does not provide sufficient coverage to monitor for impacts to beneficial uses and users in the three aquifers in the subbasin (due to data gaps in A-zone coverage and inconsistent sampling).
 - iv. Deficiency GL-4 – The 2022 GSP's discussion of well impact mitigation lacks important details and the GSP does not

explain how well impact mitigation fits into the GSAs' approach for avoiding undesirable results.

- v. Deficiency GL-5 – The 2022 GSP does not describe a feasible path for halting chronic lowering of groundwater levels.
- vi. Deficiency GL-6 – The GSAs do not consider the effects on other sustainability indicators, such as groundwater storage, subsidence, degradation of groundwater quality, and depletions of interconnected surface water.

b. Land Subsidence (LS)

- i. Deficiency LS-1 - The 2022 GSP does not clearly describe the subsidence conditions that would result in an undesirable result for the basin.
- ii. Deficiency LS-2 - The GSAs did not consider all beneficial uses and users in setting quantitative criteria for subsidence in the 2022 GSP or adequately describe the impacts of criteria on beneficial uses and users.
 - 1. Deficiency LS-2a – MTs were not established based on avoiding undesirable results.
 - 2. Deficiency LS-2b – Some MTs appear to exceed subsidence limits set in other pre-existing agreements.
 - 3. Deficiency LS-2c – Measurable objectives (MOs) and intermediate milestones (IMs) were not established.
- iii. Deficiency LS-3 – The GSAs did not adequately consider the impacts of subsidence on flood protection infrastructure.
- iv. Deficiency LS-4 – The GSP does not provide adequate implementation details.

c. Groundwater Quality (GWQ)

i. Deficiency GWQ-1 – The 2022 GSP’s definition of an undesirable result is not consistent with GSP Regulations.

1. Deficiency GWQ-1a – The 2022 GSP does not clearly describe the water quality conditions and impacts that would result in an undesirable result for the basin.
2. Deficiency GWQ-1b – The triggers for determining an undesirable result set by the 2022 GSP would result in delayed identification of an undesirable result and therefore delayed management of the basin.
3. Deficiency GWQ-1c – The GSP does not describe how it would determine whether significant and unreasonable degradation of water quality was associated with basin management.

ii. Deficiency GWQ-2 – MTs set by the 2022 GSP are not consistent with GSP Regulations.

1. Deficiency GWQ-2a – The 2022 GSP establishes minimum thresholds that exceed regulatory water quality thresholds without explaining how that would not cause significant and unreasonable results or impacts to beneficial uses and users.
2. Deficiency GWQ-2b – Some MTs are inexplicably based on data that may represent undesirable results.
3. Deficiency GWQ-2c – The GSP does not explain how it quantifies “current conditions,” yet uses current conditions to justify establishing MTs that exceed Maximum Contaminant Levels (MCLs) or Secondary Maximum Contaminant Levels (SMCLs).
4. Deficiency GWQ-2d – MTs are sometimes set to the highest detected concentrations.

5. Deficiency GWQ-2e – MTs at some wells are based on data from wells nearby the representative monitoring site (RMS) wells, rather than from the RMS wells themselves, without justification.
- iii. Deficiency GWQ-3 – MOs set by the 2022 GSP for groundwater quality are not consistent with GSP Regulations.
1. Deficiency GWQ-3a – The 2022 GSP allows MOs that exceed regulatory water quality thresholds (e.g., MCLs) without explaining how that would not cause significant and unreasonable results or impacts to beneficial uses and users.
 2. Deficiency GWQ-3b – Some MOs are inexplicably based on data that may represent undesirable results.
 3. Deficiency GWQ-3c – The GSP does not explain how it quantifies current conditions, yet the GSP uses current conditions to justify establishing MOs that exceed MCLs or SMCLs.
 4. Deficiency GWQ-3d – MOs are sometimes effectively set to 95th percentile concentrations.
 5. Deficiency GWQ-3e – MOs at some wells are based on data from wells nearby the RMS wells, rather than from the RMS wells themselves, without justification.
 6. Deficiency GWQ-3f – The 2022 GSP establishes measurable objectives that may vary over time without explanation of how that would provide operational flexibility while avoiding significant and unreasonable results or impacts to beneficial uses and users.
- iv. Deficiency GWQ-4 – The water quality monitoring plan in the 2022 GSP is not consistent with GSP regulations.

1. Deficiency GWQ-4a – The GSP does not monitor or manage the aquifer below the de-designated zone.
 2. Deficiency GWQ-4b – The proposed monitoring frequency is insufficient to detect short-term and seasonal trends.
 3. Deficiency GWQ-4c – The proposed monitoring network does not adequately monitor key aquifers.
 4. Deficiency GWQ-4d – The proposed sampling plan relies entirely on other agencies, despite temporal and spatial data gaps in those networks.
- v. Deficiency GWQ-5 – The proposed management actions do not address quality degradation.
1. Deficiency GWQ-5a – Additional sampling is not triggered when MTs are exceeded.
 2. Deficiency GWQ-5b – Well mitigation plans do not address MT exceedances.
4. Adopts the following requirements and exclusions regarding reporting and metering of groundwater extractions:
- a. Any person who extracts more than two acre-feet of groundwater per year from the subbasin or who extracts groundwater from the subbasin for purposes other than domestic uses must report their extractions made on or after July 15, 2024, to the State Water Board pursuant to Water Code section 5202 and pay to the State Water Board the associated fee imposed pursuant to California Code of Regulations, title 23, section 1040 et seq.
 - b. Any person who extracted more than 500 acre-feet from the Tulare Lake subbasin during the period of October 1, 2022, through September 30, 2023, and any person who anticipates extracting more than 500 acre-feet during the period of October 1, 2023, and September 30, 2024, must install and use meters that meet the

requirements of Cal Code Regs., title 23, section 1042 on each of their production wells within the Tulare Lake Subbasin before July 15, 2024.

- c. For individuals required to report who do not already have meters installed, the State Water Board will consider alternative compliance pathways to the metering requirement, taking into account the reliability and accuracy of alternative measurement techniques and whether auditable information is used. Specific considerations include but are not limited to whether:
 - i. groundwater is extracted for uses not captured by evapotranspiration,
 - ii. sufficient details about crop irrigation and irrigation efficiency are provided, and
 - iii. contributions of precipitation and other sources to consumptive use are known and accounted for.

The Board delegates authority to approve alternative compliance pathways to the Executive Director or the Executive Director's delegee pursuant to Water Code Section 7.

- 5. Modifies the extraction reporting deadline for groundwater extraction reports required by Water Code section 5202 from February 1 to December 1 of each year and requires the first report to be submitted by December 1, 2024.
- 6. Exempts any person who extracts two acre-feet per year or less for domestic purposes only from the Tulare Lake subbasin from the requirement to report groundwater extractions and pay the associated fees.
- 7. Directs State Water Board staff to continue to provide technical feedback to the Tulare Lake Subbasin GSAs regarding the GSAs' efforts to resolve the deficiencies in the GSP and to periodically update the State Water Board regarding the GSAs' progress made towards resolving the deficiencies, including whether, if the GSAs propose actions to correct the

GSP's deficiencies (other than the potential actions identified by the State Water Board), those actions meet SGMA's standards.

8. Delegates to the Executive Director the authority to amend the reporting and metering requirements of this probationary designation after the provision of at least 30 days' public notice.

9. Directs staff to provide notice and opportunity for public comment at least 30 days before bringing to the State Water Board for consideration and potential approval a resolution to adopt amendments of this probationary designation that are not delegated to the Executive Director or to repeal this probationary designation.

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on April 16, 2024.

AYE: Chair E. Joaquin Esquivel
 Vice Chair Dorene D'Adamo
 Board Member Sean Maguire
 Board Member Laurel Firestone
 Board Member Nichole Morgan

NAY: None

ABSENT: None

ABSTAIN: None



Courtney Tyler
Clerk to the Board