

FILED

BY SUPERIOR COURT OF CALIFORNIA,
COUNTY OF KINGS

08/12/2026

NOCONA SOBOLESKI, CLERK OF THE COURT
JAKE WILLIAMS, DEPUTY



SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KINGS

KINGS COUNTY FARM BUREAU et
al.,

Plaintiffs/Petitioners,

vs.

STATE WATER RESOURCES
CONTROL BOARD,

Defendant/Respondent.

No. 24CU0198

**RULING ON SUBMITTED MATTER:
ORDER GRANTING IN PART
PETITIONERS' REQUEST FOR
PRELIMINARY INJUNCTION**

Petitioners Kings County Farm Bureau, Helen Sullivan, and Julie Martella ("Petitioners") filed a second request for a preliminary injunction on March 27, 2026, seeking to enjoin Respondent State Water Resources Control Board (the "State Board") from taking certain actions to enforce the Probationary Designation Resolution and the Extraction Reporting Fee Resolution that are the subject of this action. The matter came before the court for hearing on June 3, 2026 at 1:30 p.m. in Department 2 of the Kings County Superior Court. Valerie Kincaid, Esq., appeared on behalf of Petitioners. Margaret V. Tides, Esq., and Kate Fritz, Esq., appeared on behalf of the State Board. Following the hearing, the court took the matter under submission.

1 After reviewing the pleadings and admissible evidence, and hearing all oral
2 arguments provided by the parties, the court finds as follows:

3 **I. Relevant Procedural History**

4 As stated above, the instant motion comprises Petitioners' second request for
5 injunctive relief pending the merits hearing in this action. Petitioners previously sought an
6 injunction to enjoin the State Board's enforcement of Resolution 2024-0012, which
7 designated the Tulare Lake subbasin as probationary under the Sustainable Groundwater
8 Management Act ("SMGA"). This request was granted in an order entered on September
9 12, 2024.¹ On October 29, 2025, the Fifth District Court of Appeals filed its opinion
10 reversing the injunction. (*Kings County Farm Bureau v. State Water Resources Control Bd.*
11 (2025) 115 Cal.App.5th 782, 824 ("KCFB v. SWRCB").) In a companion opinion, filed that
12 same day, the Court of Appeals ordered this court to vacate its order overruling the State
13 Board's demurrer, effectively dismissing Petitioners' sixth, seventh, and ninth causes of
14 action. (*State Water Resources Control Bd. v. Super. Ct.* (2025) 115 Cal.App.5th 734, 780
15 ("SWRCB v. Sup. Ct.")). This order will incorporate portions of those opinions as relevant
16 to the instant motion.

17 Following remittitur, Petitioners filed an Amendment to Petition for Writ of Mandate
18 and Verified Complaint for Declaratory and Injunctive Relief, modifying certain verbiage in
19 their eighth cause of action relating to Resolution 2024-011, which amended the SGMA fee
20 schedules. (Amendment (filed Feb. 26, 2026) at ¶¶372-390.)

21 On March 27, 2026, Petitioners filed the instant motion. The State Board filed its
22 Opposition on April 8, 2026. Petitioners filed a Reply on April 14, 2026.

23 **II. Summary of the Issues**

24 Petitioners seek an injunction to enjoin the State Board from (i) requiring any
25 persons in the subbasin to install and use certain water meters, (ii) requiring groundwater
26 extractions reports from the subbasin to be submitted prior to the conclusion of the merits
27 hearing, (iii) requiring any person to pay groundwater extraction or other fees to the State
28 Board, or (iv) "[t]aking any actions or imposing any requirements that are based on the
authority derived from its designation of the [s]ubbasin as probationary[.]" (Motion at p. 2.)
Petitioners request this injunction on the grounds that they are likely to prevail on the merits

¹ Hon. Kathy Ciuffini presiding.

1 of their “good actor exclusion” and “fee challenge” claims and that the balance of harms
2 weighs sharply in their favor. (Memo. of P&A at p. 11-14, 15-19.)

3 The State Board argues that Petitioners are not likely to succeed on the merits of
4 either claim and that they offer no evidence that past harms are continuing. (Opp. at p. 7-
5 13, 13-19.) The State Board also contends that an injunction would cause irreparable harm
6 to communities in the subbasin. (*Id.* at p. 20.)

7 **III. Standard for Issuance of a Preliminary Injunction**

8 A preliminary injunction is reserved for circumstances in which the applicant can
9 show it faces a real and immediate threat of irreparable injury before a trial can be held.
10 (*Amgen Inc. v. Health Care Servs.* (2020) 47 Cal.App.5th 716, 731.) When deciding
11 whether to issue a preliminary injunction, the court must consider: (1) the likelihood that
12 Petitioners’ will prevail on the merits, and (2) the interim harm that Petitioners are likely to
13 sustain if the injunction were denied as a compared to the harm that the defendant/cross-
14 defendant is likely to suffer if the injunction were issued. (*Ibid.* [citing *ITV Gurney Holding*
15 *Inc. v. Gurney* (2017) 18 Cal.App.5th 22, 28-29].) Where a preliminary injunction is issued,
16 a deposit in lieu, a bond, or an undertaking is required. (Code of Civ. Proc. §529(a); see
17 also Code of Civ. Proc. §§995.210(b), 995.710.)

18 The court in reaching its decision herein has taken note of the California Supreme
19 Court’s holding in *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 446-447,
20 to wit: “[t]he likelihood of success on the merits and the balance-of-harm analysis are
21 ordinarily ‘interrelated’ factors in the decision whether to issue a preliminary injunction.
22 (*King v. Meese* (1987), 43 Cal.3d 1217, 1226; *IT Corp. v. County of Imperial* (1983) 35
23 Cal.3d 63, 69.) The presence or absence of each factor is usually a matter of degree, and
24 if the party seeking the injunction can make a sufficiently strong showing of likelihood of
25 success on the merits, the trial court has discretion to issue the injunction notwithstanding
26 that party’s inability to show that the balance of harms tips in his favor. (*King v. Meese*,
27 *supra*, 43 Cal.3d at pp. 1227-1228 [dictum].)”

28 **IV. Likelihood of Success**

a. Good Actor Exclusion Claim

In their second cause of action, Petitioners contend the State Board was required to
exclude from probation all portions of the subbasin that have demonstrated compliance

1 with the subbasin's sustainability goal, also known as the "good actor exclusion
2 requirement." (Pet. ¶¶148-164; Wat. Code § 10735.2, subd. (e).) Petitioners allege the
3 State Board improperly concluded "that if there is not an approved [groundwater
4 sustainability plan], no one within the subbasin can demonstrate compliance with the
5 sustainability goal." (*Id.* ¶156.) In the instant motion, Petitioners assert they are likely to
6 succeed on the merits of this claim *and* that, consequently, a basin-wide injunction remains
appropriate. (Memo. of P&A at p. 18.)

7 In its opinion on the previous injunction, the Fifth District agreed with Petitioners as
8 to their good actor exclusion claim in certain respects. The court first held that the State
9 Board does not have an affirmative obligation to consider areas of a basin for exclusion and
10 that therefore a groundwater agency would need to alert the State Board to all relevant
11 considerations, *i.e.*, the agency was required to request the exclusion and demonstrate
12 compliance. (*KCFB v. SWRCB*, *supra*, 115 Cal.App.5th at p. 804.) The court agreed with
13 Petitioners, however, that the State Board applied the incorrect standard to the two good
actor exclusion requestors here.² More specifically, the court stated:

14 The State Board is alleged to have wholly failed to consider [the two requestors']
15 offer of proof on the ground that the global plan was inadequate. If this allegation
16 were proven, and assuming no portions of the overall rejection demonstrate that
17 the adopted plan fails to meet the sustainability goal in these local areas, a point
18 we do not consider at this stage of the proceedings, the statutory scheme requires
19 that these portions of the basin be excluded from the probationary designation.
Given the facts presented to the trial court suggesting the exclusion was denied
based on the failure of the unified sustainability plan alone, the trial court was
correct in finding a likelihood of success on the merits as to the good actor
exclusion claim.

20 (*Id.* at p. 806 [emphasis added].)

21 Here, therefore, this court adopts the Court of Appeals' conclusion and finds that
22 Petitioners are highly likely to succeed on their good actor exclusion claim. It remains clear
23 from the record that the State Board denied the two requests for exclusion on a standard
24 that was rejected by the Fifth District, *i.e.*, that "[a]ll five GSAs have adopted and are
25 implementing the same GSP, which [the Department of Water Resources] has determined
26 to be inadequate." (AR00000937 [March 2024 Final Staff Report]; AR00000938 ["The only

27 ² These requestors are the Tri-County Water Authority GSA and the Southwest Kings GSA. (Administrative
Record ("AR") 00000937.)

1 plan covering the Tulare Lake subbasin is inadequate for the reasons described in DWR's
2 inadequate determination and the Final Staff Report. Therefore, no GSAs implementing
3 the plan would qualify for the exemption: GSAs cannot qualify for the good actor exemption
4 with plans that do not meet SGMA's requirements."]; see 115 Cal.App.5th at p. 805 ["Under
5 the exclusion provision, any portion of the basin for which the adopted plan meets the
6 sustainability goal by avoiding undesirable results must be excluded from that
7 designation."].) Accordingly, Petitioners are likely to succeed on their good actor exclusion
8 claim, at least to the extent the probationary designation is made applicable to the good
9 actor exclusion requestors, *i.e.*, the Tri-County Water Authority GSA and the Southwest
10 Kings GSA. (*KCFB v. SWRCB*, *supra*, 115 Cal.App.5th at p. 813 [observing that
11 Petitioners would succeed in showing that two groundwater agencies "were improperly
12 denied an analysis that could, *at most*, exclude *them* from the overall probationary
13 designation"] [emphasis added].)

14 The State Board argues, however, that notwithstanding the Fifth District's holding,
15 Petitioners cannot establish a likelihood of success on the merits of their good actor
16 exclusion claim, because the administrative record supports the State Board's exclusion
17 determination. (Opp. at p. 11.) Not so. Petitioners' second cause of action is based on the
18 State Board's alleged application of an incorrect standard to the good actor exclusion
19 requests. (Pet. ¶¶156-161, 162 ["The State Water Board did not undertake this level of
20 analysis."].) It is therefore not before the court at this time, either by way of the petition or
21 the instant motion, whether the State Board's determination can be supported by
22 substantial evidence.

23 In the same vein, this court also rejects Petitioners' contention that their likelihood of
24 success on the good actor claim is sufficient to support a basin-wide injunction. (Memo. of
25 P&A at pp. 18-19.) As the Fifth District pointed out, this court's prior analysis regarding the
26 potential for success on the merits of the good actor exclusion claim, "was overly broad,
27 encompassing the entirety of the Tulare subbasin, despite the only valid underlying claim
28 covering a portion of the subbasin." (*KCFB v. SWRCB*, *supra*, 115 Cal.App.5th at p. 819.)
Thus, an order enjoining the State Board from enforcing the probationary designation as a

1 whole is overly board at least to the extent it is based solely on the good actor exclusion
2 claim.³

3 In sum, the court finds that Petitioners have shown they are likely to succeed on the
4 merits of their claim that the State Board failed to apply the correct standard or undertake
5 the appropriate analysis in the first instance as to the good actor exclusion requestors,
6 which, if sufficient harm is shown, would be adequate to support an injunction enjoining
7 enforcement of the probationary designation as to those requestors.

8 **b. Validity of Fee Resolution Claim**

9 Petitioners' fee claim is based on their eighth cause of action, as amended, which is
10 a writ claim seeking to set aside the State Board's resolution amending the SGMA fee
11 schedules to require that all groundwater extractions in probationary basins be subject to a
12 volumetric charge of \$20 per acre-foot of groundwater extracted during the previous year.
13 (Amendment to Pet. ¶¶372-390.) Petitioners allege the \$20/acre-foot extraction fee is an
14 unlawful regulatory fee because it "exceeds recoverable costs as that term is defined is
15 Water Code section 1529.5." (*Id.* ¶390.)

16 The State Board argues that Petitioners are not likely to succeed on the merits of
17 this claim by application of the "pay first" rule. Petitioners counter that the pay first rule
18 does not apply here, because Petitioners do not challenge the fee resolution as an unlawful
19 tax but rather solely as an unlawful regulatory fee. (Memo. of P&A at p. 15.) Alternatively,
20 Petitioners contend that even if the pay first rule applies, Petitioner Martella has presented
21 evidence of her payment of the \$20/acre-foot fee for the past two years, thus satisfying the
22 pay first rule. (*Ibid.*; Martella Decl. ¶5, Exh. 1; Reply at p. 5.)

23 Under the pay first rule: "No legal or equitable process shall issue in any proceeding
24 in any court against this state or any officer thereof to prevent or enjoin the collection of any
25 tax. After payment of a tax claims to be illegal, an action may be maintained to recover the
26 tax paid, with interest, in such manner as may be provided by the Legislature." (Art. XIII, §
27

28 ³ Similarly, the court rejects Petitioners' argument that the Fifth District's "new determination" that "it is the
groundwater agency's obligation to request and prove it is entitled to the exclusion" requires enjoining
enforcement of the probation designation across the basin as a whole in order to "afford GSAs that did not
previously request a good actor exclusion an opportunity to do so." (Memo. of P&A at pp. 18-19 [quoting
KCFB v. SWRCB, *supra*, 115 Cal.App.5th at p. 803].) Nothing in the Fifth District's opinion supports enjoining
enforcement of the probationary designation as a whole to allow new purported good actors to put forth their
exclusions requests.

32; *SWRCB v. Sup. Ct.*, *supra*, 115 Cal.App.5th at p. 769.) The Fifth District addressed the application of the pay first rule at length in its companion opinion relating to the State Board's demurrer. (*SWRCB v. Sup. Ct.*, *supra*, 115 Cal.App.5th at pp. 770-74.)

In addressing the State Board's demurrer to the unlawful fee claims, the Fifth District determined that the pay first rule applied thereto. (*Id.* at p. 773-74.) Relying on *Water Replenishment District of Southern California v. City of Cerritos* ("Cerritos") (2013), the court held that "regardless of the nature of the assessment, a challenge raised under tax concepts trigger[s] the pay first rule." (*Id.* at p. 773 [citing 220 Cal.App.4th 1450, 1469, 1470].) The Fifth District then concluded that "[h]ere, too, the challenge raised relies on concepts designed to limit excessive taxation. . . . In the context of the challenges raised in this case, we think this latter fact sufficient to trigger application of the pay first rule." (*Ibid.*) The court further explained that "although the structure of the statutory scheme clearly indicates a fee was intended, *the Farm Bureau chose to attack that fee as if it were a tax.* In doing so, it triggered the protections of article XIII, section 32, as the challenge is now regarded as attacking a potential tax." (*Id.* at p. 774 [emphasis added].)

Although the Fifth District's opinion arose in the context of the seventh cause of action, this court finds it relevant to Petitioners' eighth cause of action underlying their injunction request. Even as amended, the petition plainly seeks to attack the "unlawful regulatory fee" (¶389) as running afoul of the constitutional protections against improperly enacted taxes. (See, e.g., *id.* ¶380 [quoting Cal. Const., art. XIII A, § 3(d), in part].) Petitioners' alteration of the words "unlawful tax" to "unlawful regulatory fee" does not appear sufficient to evade the mandates of the pay first rule where Petitioners seek to trigger the protections of the constitutional requirements for enactment of a lawful tax. (See, e.g., *Cerritos*, 220 Cal.App.4th at p. 1470 [concluding that the "City cannot claim the assessment is not a 'tax' and at the same time seek protections under Proposition 218, which seeks to maintain the intentions of Proposition 13"].) The court therefore finds that the pay first rule is triggered by Petitioners' eighth cause of action.

Petitioners contend that the Martella Declaration, indicating she has paid her \$20/acre-foot groundwater assessments to the State Board for 2024 and 2025, "alone is enough to end the pay first discussion." (Reply at p. 5; Martella Decl. ¶5.) The court disagrees. Evidence of Martella's payment may be sufficient to satisfy the pay first rule as

1 to Martella but in the pleading stage only. The court is inclined to agree with the State
2 Board that the pay first rule remains a bar to injunctive relief. (See Opp. at p. 8 [citing Cal.
3 Const., art. XIII, § 32; *Cerritos*, 220 Cal.App.5th at p. 1454 ["under the doctrine of 'pay first,
4 litigate later,' the City must pay the assessment until there is a final judgment in its
5 Proposition 218 Lawsuit."].)

6 The court acknowledges the Fifth District's determination that "[a] proper challenge
7 to the discretionary decision to declare a basin probationary may seek injunctive relief,
8 even if such relief may delay fees authorized by statute and triggered by the decision."
9 (115 Cal.App.5th at p. 820.) However, the eighth cause of action—the claim challenging
10 the subject fees—does not seek to challenge the probationary designation decision but
11 rather challenges only the amendment to the SGMA fee schedules. (See Amendment to
12 Pet. ¶390.) Because the court finds that the pay first rule applies to the eighth cause of
13 action, it appears there is no basis for injunctive relief on that claim.

14 Finally, and even if the pay first rule somehow did not bar injunctive relief, the court
15 finds an additional basis to conclude that Petitioners have failed to establish their challenge
16 to the fee schedule amendment supports injunctive relief. While Petitioners are correct that
17 the State Board bears the burden of demonstrating that the fee it adopted is lawful (see
18 Cal. Const., art. XIII A, § 3(d)), it is Petitioners' burden "as the parties seeking injunctive
19 relief, to show all elements necessary to support issuance of a preliminary injunction."
20 (Weil & Brown, Cal. Practice Guide: Civ. Proc. Before Trial ¶9:632.1 [citing *O'Connell v.*
21 *Superior Court* (2006) 141 Cal.App.4th 1452, 1481].) Here, however, the court finds the
22 figures presented by Petitioners to establish the purported unlawfulness of the fee to be of
23 minimal use, especially when considering the recent resolution to exclude forty-four percent
24 of the groundwater users from reporting and fee requirements. (Reply at p. 7 [citing
25 Resolution No. 2026-0012].) Nor do the figures account for the exclusion of at least two
26 groundwater agencies under the good actor exclusion. In short, while Petitioners rely on
27 the reduction in costs to the State Board in light of these exclusions in support of their
28 argument that the fee is disproportionate (see, e.g., Memo. of P&A at p. 10), Petitioners do
not adequately address the corresponding reduction in revenue to the State Board from

1 these exclusions. Without more, the court finds that Petitioners cannot demonstrate a
2 likelihood of success on the merits of their fee claim.⁴

3 **V. Balance of Harms**

4 Because the court has found a likelihood of success on the merits only as to the
5 good actor exclusion claim, it follows that the court may consider the potential harms only
6 as to those good actor exclusion requestors, were the injunction not to issue.⁵ The court
7 finds that Petitioners have presented only minimal evidence of such harms.

8 Petitioners direct this court to the Fifth District's discussion of the previous
9 injunction's analysis of the harms at issue and finding of no error therein. (*KCFB v.*
10 *SWRCB*, *supra*, 115 Cal.App.5th at p. 814-19.) Specifically, the Court of Appeals
11 highlighted this court's reliance on evidence that "imposing substantial statutory
12 requirements on large groundwater extractors, including multiple farmers, during irrigation
13 season would result in substantial harm," including that "many of the monitoring
14 requirements imposed would need to be completed in a short period of time, at a relatively
15 high cost, during a period of time where irrigation requirements meant that repairs were
16 normally deferred to avoid affecting crop yields and, ultimately, the success of the harvest."
17 (*Id.* at p. 817.) The Fifth District found that this court's reliance on evidence "the effect
18 immediate compliance would have on the less tangible interests of the people and viability
19 of the businesses affected . . . could support injunctive relief." (*Id.* at pp. 817-18.) The
20 court expressly noted, however, "that it is unclear whether the trial court would balance the
21 competing harms in the same way had it properly determined the likelihood of success on
22 the merits." (*Id.* at p. 819.)

23 As the State Board points out, and Petitioners do not appear to dispute, Petitioner
24 Martella—the only party to have presented a declaration in support of the instant motion—
25 is not a member of either of the purported "good actor" groundwater agencies. (See
26 Martella Decl. ¶13 [stating her farm operates within the Mid-Kings River GSA]; AR00000937
27

28 ⁴ Arguably, further briefing would be appropriate to address the impact of these exclusions on the fee
analysis. However, because the court finds that application of the pay first rule precludes injunctive relief in
the first instance, it declines to request further briefing on this issue at this time.

⁵ Even if the court had concluded that Petitioners were likely to succeed on their fee claim, it appears that the
harms at issue would be solely pecuniary, which is generally insufficient to justify injunctive relief. (*KCFB v.*
SWRCB, *supra*, 115 Cal.App.5th at p. 814 [the balance of harms "typically do[es] not . . . include harms that
can be fully compensated by the payment of damages].)

1 [indicating the two requesting agencies as the Tri-County Water Authority GSA and the
2 Southwest Kings GSA].) Neither do the previous declarations submitted in support of the
3 initial request for an injunction appear to include statements from individuals or entities
4 operating within the two requestor agencies. (See Sullivan Decl. (filed July 10, 2024) ¶3
5 [farm operates within the Mid-Kings River GSA]; Bickner Decl. (filed July 10, 2024) ¶3
[same].)

6 Thus, while the Fifth District found no error in this court's prior analysis of the
7 harms, it appears to have done so in reliance on declarations that were indicative of the
8 impact of the probationary designation on the subbasin as a whole. (*KCFB v. SWRCB*,
9 *supra*, 115 Cal.App.5th at pp. 817-18.) Therefore, while the Fifth District's conclusions
10 have some bearing on the harm as to the two "good actor" GSAs, without any recent and
11 competent evidence of the non-speculative harms to those operating within the Tri-County
12 Water Authority GSA or the Southwest Kings GSA were this court to deny Petitioners'
13 request for an injunction, the court finds Petitioners' showing of harm as to those GSAs is
14 minimal. (*Id.* at p. 819 [a preliminary injunction should be tailored to the demonstrated
15 likelihood of harm and employ the "least disruptive remedy adequate to the task"]; see also
16 *O'Connell v. Superior Court*, *supra*, 141 Cal.App.4th at p. 1481 [acknowledging it is a
17 plaintiff's burden "to formulate the nature of the remedy they were seeking"].)

18 Petitioners also contend there exists a "new harm" caused by the State Board
19 requiring backdated reporting and payments for the period during the prior injunction.
20 (Motion at p. 2; Memo. of P&A at pp. 16-17.) While the court does not determine at this
21 time whether this requirement is lawful and acknowledges that the "confusion created" by
22 this requirement may constitute a validly considered harm (see *KCFB v. SWRCB*, *supra*,
23 115 Cal.App.5th at p. 814), it remains significant that Petitioners present no declarations or
24 other evidence from any groundwater extractors operating within the two "good actor"
25 agencies to demonstrate the harm they will purportedly experience if the injunction is
26 denied. The court finds the Martella Declaration (and the previously submitted declarations)
27 insufficient to establish that the confusion cited therein is typical of those operating within
28 the two "good actor" GSAs or to establish a high degree of harm to those GSAs' operations
at this time.

1 Although Petitioners have presented only minimal evidence of harm, the court must
2 still look to the potential harms to the State Board if the injunction were to issue. (*White v.*
3 *Davis* (2003) 30 Cal.4th 528, 561 [the court must consider the *relative* balance of hardships
4 even if a party makes a sufficient showing of likely success on the merits].) The court finds
5 the evidence such harms similarly lacking. As an initial matter, the Fifth District found no
6 error with this court's prior determination that "the State Board would not suffer a
7 substantial level of harm from an injunction through the course of a trial on the relevant
8 claims, in part because the short-term delay would not prohibit the State Board from
9 meeting the statutory scheme's long-term goals of sustainability." (*KCFB v. SWRCB*,
10 *supra*, 115 Cal.App.5th at p. 817.) Similarly, with respect to loss of revenue, the Court of
Appeals specifically stated that the expected fees "would not be needed to run an enjoined
program." (*Id.* at p. 822.)

11 To the extent the State Board now argues that the harm of an erroneous injunction
12 means "more families, farmers, and communities will lose access to water," (Opp. at p. 19),
13 the court finds that the State Board fails to demonstrate this harm would necessarily result
14 were the injunction issue only as to the two "good actor" GSAs. (*White v. Davis, supra*, 30
15 Cal.4th at p. 554 ["The ultimate goal of any test to be used in deciding whether a
16 preliminary injunction should issue is to minimize the harm which an erroneous interim
17 decision may cause."].) In other words, were this court to issue an injunction enjoining
18 enforcement of the probationary designation as to the Tri-County Water Authority GSA and
19 Southwest Kings GSA only, the State Board presents only limited evidence that the harms
20 it cites in its Opposition—subsidence, failing water systems, well collapses—would be
21 greatly exacerbated. (See Opp. at pp. 19-20 [citing the March 2024 Final Staff Report]; see
22 also *KCFB v. SWRCB, supra*, 115 Cal.App.5th at p. 815 [finding no error in this court's
determination that the State Board had failed to demonstrate a sufficient "nexus between
the failure to implement and the issues of concern"].)

23 In sum, Petitioners have failed to demonstrate that the balance of harms tips
24 heavily in their favor. Nevertheless, the court may still exercise its discretion to issue the
25 injunction based on Petitioners' strong showing of likelihood of success on the merits of
26 their good actor exclusion claim. (*Common Cause v. Board of Supervisors* (1989) 49
27 Cal.3d 432, 447 ["[I]f the party seeking the injunction can make a sufficiently strong
28

1 showing of likelihood of success on the merits, the trial court has discretion to issue the
2 injunction notwithstanding that party's inability to show that the balance of harms tips in his
3 favor."].) The court finds it appropriate to enjoin enforcement of the probationary
4 designation—only as to the two good actor requestor agencies—despite the failure to show
5 that the balance of harms tips strongly in Petitioners' favor.

6 **VI. Bond**

7 Because the court grants the injunction in part, a bond must be ordered. (Code Civ.
8 Proc. § 529, subd. (a).) The State Board requests a bond in the amount of \$234,000 to
9 cover the approximate cost of attorney fees that may be incurred to overturn an injunction.
10 (Opp. at p. 20; Fritz Decl. ¶2.) The State Board expressly states it is not seeking program
11 costs through bond. (Opp. at p. 20.)

12 Petitioners assert the State Board presents no evidence of damages it may sustain
13 by the injunction, arguing that the Fritz Declaration in support of the requested amount of
14 attorney fees "confirms that the [Attorney General] is 'incur[ing] [*sic*] the costs of litigating
15 this case, not the Board." (Reply at p. 13.) The court agrees. While the Fifth District
16 recognized that an injunction bond "may include costs like attorney fees," (*KCFB v.*
17 *SWRCB*, *supra*, 115 Cal.App.5th at p. 823) the State Board does not present evidence that
18 the State Board will suffer costs in an appeal to overturn the instant injunction that are not
19 already accounted for in the statutory scheme.

20 Indeed, as the Fifth District recognized, "In this unique case, the statutory fees
21 should already account for attorney fees incurred in setting aside the injunction. For such
22 fees to be reasonably considered when setting the undertaking, there must be some basis
23 to conclude they would not be recovered in full under the statutory fee structure once the
24 injunction was set aside." (*Id.* at p. 823, fn. 12.) While the Court of Appeals declined to
25 take a position on the issue with respect to any future requests, it noted it could see "no
26 indication in the record" that such fees would not later be recovered. (*Ibid.*) Because the
27 Board does not adequately address this issue in its bond request or otherwise demonstrate
28 the requested attorney fees "would not be recovered in full under the statutory fee structure
once the injunction was set aside," the court declines to consider attorney fees in setting
the bond amount. Accordingly, the court imposes only a nominal bond as set forth below.

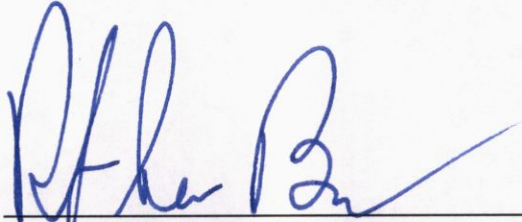
1 Based upon the foregoing, **IT IS HEREBY ORDERED** Petitioners' request for
2 injunctive relief is **GRANTED IN PART** and **DENIED IN PART**:

3 1. The State Board is enjoined from enforcing Resolution 2024-0012,
4 "Designating the Tulare Lake Groundwater Subbasin as Probationary Under the
5 Sustainable Groundwater Management Act," only with respect to the Tri-County Water
6 Authority GSA and the Southwest Kings GSA until the hearing on the merits in this action;

7 2. The State Board is not enjoined from taking any other actions with respect to
8 Resolution 2024-0012 or Resolution 2024-0011 at this time;

9 3. The court imposes a \$1.00 nominal bond requirement without prejudice to the
10 State Board's filing of an objection to the amount of the undertaking consistent with
11 California Code of Civil Procedure section 529, subdivision (a).

12 Dated: August 12th, 2026

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17 Hon. R. Shane Burns, Judge
18 Kings County Superior Court
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