

PROPOSED

San Joaquin County

Statement and Recommendations Regarding Proposed Groundwater Management Reform

The County of San Joaquin (“County”) has closely monitored the recent discussions regarding proposed groundwater management reform and agrees that groundwater management is a critical component of comprehensive water management in California. Over the past forty years, local stakeholders within San Joaquin County have individually and collaboratively implemented successful groundwater management projects and measures with substantial benefit to the basin. This local management of the basin has resulted in significant groundwater level increases as the basin approaches stabilization. Maintaining locally-based governance by local stakeholders who are dependent on the health of the underlying basin is essential to successful groundwater management. The County has significant concerns with several substantive elements of the proposals for legislation as well as the process by which any groundwater management framework would be established and implemented.

San Joaquin County includes both heavily-populated urban areas as well as vast stretches of some of the most productive agricultural areas in the State. Most urban and agricultural water users within the County rely, some to a great extent, on groundwater. Historically, stakeholders in Eastern San Joaquin County have had difficulty mitigating the conditions of overdraft in the region. Moreover, increasingly efficient irrigation practices have resulted in less agricultural water applied which has reduced the amount of surface water introduced to the basin through historically significant agricultural recharge. Local agencies began addressing these issues by implementing projects within their jurisdictions to benefit the basin on a localized level.

Since 1980, local stakeholders have implemented over \$700 million in water resources projects which have increased surface water distribution and use and decreased stress on the basin. Of particular note is the City of Stockton’s transition from groundwater to surface water as the primary water supply source for its customers. Within the past several decades, a surface water treatment plant was constructed and expanded to supply Calaveras and Stanislaus River water to the City. Most recently the City began operating its Delta Water Supply Project which treats and distributes Delta and Mokelumne River water to customers within the City. These projects have enabled stakeholders to reduce their reliance on the groundwater basin as a primary drinking water source which has resulted in the recovery of groundwater levels under the Stockton Metropolitan Area effectively combating salinity intrusion that has historically threatened the basin.

With the establishment of the Eastern San Joaquin County Groundwater Basin Authority (“GBA”) in 2001, stakeholders in San Joaquin County have employed a consensus-based approach to groundwater management with significant success. Through the GBA, San Joaquin County has collaboratively and actively pursued sustainable groundwater management including a robust Integrated Regional Water Management planning process. Significant groundwater level increases over the past several decades throughout the County are evidence of this management.

The County is increasingly concerned that the proposed reform as currently being discussed will interfere with vested property rights of water users and impede the effective management efforts of the local stakeholders and the GBA. The following recommendations are intended to address those concerns.

Recommendation #1: Surface water storage should be expanded.

Any discussion regarding water resources management in California should begin with a discussion of expanded surface water storage. With respect to groundwater management, insufficient surface water capture and storage increases the burden on groundwater basins throughout the State. Expanded surface water storage could benefit areas that have had surface water supplies curtailed due to competing interests or have been unable to develop a reliable surface water supply due to inadequate storage opportunities.

Inadequate storage requires reallocation of limited surface water supplies such as subordinating the surface water rights of predominately agricultural users to those with high urban uses under the municipal preference of Water Code Section 1460. In 1956, the State Water Board's D-858 denied North San Joaquin Water Conservation District ("NSJWCD") an independent water right on the Mokelumne River despite the NSJWCD application being senior in priority to EBMUD, the ultimate beneficiary of the decision. The denial of a reliable water source to NSJWCD has contributed to increased groundwater pumping and stress on the basin in that region. Other unrealized potential sources of surface water such as the Folsom South Canal/Auburn Dam project have impeded efforts to fully recover the basin.

Similarly, existing surface water supplies have been systematically reallocated away from areas of origin and other protected regions. Increased surface water demands to address adverse fishery impacts due primarily to the export projects are not met by the projects. Rather, fishery impacts are mitigated by reallocating surface water to meet fishery needs and away from users who must then rely on groundwater. The CVPIA dedicated 800,000 acre-feet annually from the CVP to fish and wildlife preservation and habitat restoration, primarily taken from New Melones to meet USBR Delta water quality objectives at Vernalis. The 2008 and 2009 OCAP Biological Opinions issued by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service for the long-term operations of the SP and CVP also require additional flows for fishery needs. These dedications impact water supplies available to water purveyors in the County including South San Joaquin Irrigation District, Stockton East Water District ("SEWD"), and Central San Joaquin Water Conservation District ("CSJWCD"), each a member-agency of the GBA.

Lastly, a requirement for greater unimpaired flow on the Stanislaus, Tuolumne, and Merced Rivers through the Bay-Delta Plan process will decrease an already short supply of surface water. SEWD and CSJWCD will have their respective Stanislaus River allocations curtailed dramatically if not completely eliminated. These regulatory-induced shortages ultimately result in increased stress on the basin.

Recommendation #2: Groundwater recharge should be designated a beneficial use.

Conjunctive use projects and other projects which benefit groundwater basins should be promoted. Currently, groundwater recharge is not recognized as a beneficial use. Local agencies seeking to implement surface water projects with recharge benefits must identify an ultimate beneficial use of water other than groundwater recharge. Requiring that recharged groundwater be extracted to constitute a beneficial use defeats the purpose of groundwater recharge for basin recovery. This impediment to projects which could serve to rehabilitate groundwater basins should be removed.

The County currently has an application to appropriate available wet year water from the Mokelumne River with the intent to provide surface water for use in-lieu of groundwater pumping and to recharge the basin. The County has entered into an agreement with a regional partner for a Groundwater Recharge Demonstration Project as a precursor to a larger regional groundwater recharge and banking program. A successful program would have significant restoration benefits for the basin. Similarly, SEWD and NSJWCD have pending water right application for groundwater recharge. Designating groundwater recharge as a beneficial use would facilitate implementation of these and other similar projects beneficial to groundwater management.

Recommendation #3: Groundwater management reform should not be expedited to meet a political timeline, but rather must percolate through the ordinary legislative process.

Groundwater management in California is an immensely complex undertaking. Any reform towards heightened governance must necessarily consider a broad range of legal, political, financial, and operational constraints implicated by such an undertaking. The County is increasingly concerned that the Governor, the legislature, or both will expedite reform without conducting the necessary analysis or receiving sufficient stakeholder input. An effective comprehensive reform requires carefully reasoned and vetted proposals with substantial input from counties and local agencies. The formation of a non-partisan group of stakeholders and appropriate experts to study the implications of groundwater management reform and to make recommendations would benefit the process.

Recommendation #4: Groundwater use by overlying users should not be regulated without considering the implications of a regulatory taking.

Overlying groundwater rights are private property rights of the overlying user and are not subject to regulation by the State Water Resources Control Board or otherwise. This includes the exercise of dormant groundwater rights by overlying users in the future. Regulation restricting overlying uses constitutes an interference with a private property right and must be compensated as a regulatory taking.

Recommendation #5: Groundwater management must be controlled at the local level with State intervention only in the most extreme situations.

The local agencies and stakeholders overlying the groundwater basin rely on the health of the basin and are in the best situation to know and take the best course of action towards sustainable management. Local regulation is necessary as each area is unique and an understanding of the local dynamics is essential to effectively regulate and manage the groundwater problems and opportunities. Except in basins where no local agency is currently managing the basin, all aspects of groundwater management should be controlled by local stakeholders. This includes determining the sufficiency of “sustainable groundwater management plans” as “sustainable groundwater management” should be a locally-derived concept.

Specifically, any factual or legal determination should not be made by Department of Water Resources or the State Water Resources Control Board. One possibility for preserving local control is to establish a hearing system with a pool of Administrative Law Judges (ALJ) with expertise in groundwater management with jurisdiction to hear issues related to the implementation of sustainable groundwater management. For example, if sustainable groundwater management is to occur through the framework of groundwater management plans, plans could be submitted to DWR for review and approval but disputes and plan rejections would be subject to review and final determination by an ALJ.

Recommendation #6: A statutory definition of “sustainable groundwater management” should be conceptual allowing for customization by local management agencies as appropriate for individual basins and regions.

“Sustainable groundwater management” is not a one-basin-fits-all concept and should be determined based on the characteristics of and demands on the individual basins. Local management agencies should determine any thresholds and proper administration of “sustainable groundwater management” in the best interest of their respective basin.

Recommendation #7: Management area boundaries should consider localized geologic and hydrogeologic conditions, surface water source, urbanization level, crop types, soil conditions, as well as respect existing governance structures.

There are practical concerns with delineating groundwater management areas as the sub-basins defined in DWR’s Bulletin 118. First, it may be necessary to provide for more narrowly delineated management areas within the sub-basin where the sub-basin is large and single water “balance-sheet” does not accurately reflect the localized status of the basin. This may be because differing levels of salinity intrusion, access to surface water sources, urbanization levels, and/or predominant crop types and irrigation practices. Second, sub-basins may span into several counties implicating jurisdictional issues for planning and management. Developing and implementing regional projects designed to enhance groundwater levels will require that local management agencies have the ability to manage the basin on a localized level that references political boundaries. Groundwater management reform should respect existing governance structures and not require the formulation of new inter-county entities. This will necessarily

require local management agencies to coordinate with neighboring management agencies that overlie the same groundwater basin.

A majority of the Eastern San Joaquin Sub-basin, as described in Bulletin 118, underlies San Joaquin County, but small portions of the sub-basin also underlie three other counties. Even within San Joaquin County, the underlying portion of the sub-basin is extensive enough that management activities in one area are localized and not realized throughout the sub-basin. One reason for the success of the GBA is the fact that member-agencies are actively engaged in management activities where localized regions within the sub-basins are autonomously managed, albeit with consideration of the whole. The designation of management areas should consider these realities rather than establish unrealistic boundaries.

Recommendation #8: Local agencies must have access to a reliable and continuous source of funding for management activities.

The County opposes State-imposed fees or charges which would allow for State control of the funds and therefore the management activities. Local management agencies, however, must have access to a reliable funding source to execute management activities whether from appropriation of State bond funds, State grants, or locally-imposed groundwater assessments, fees, or special taxes.

Even with State funds made available, they must be more readily and reliably accessible to local management agencies. For example, State grant programs do not recognize restoration of groundwater elevations to be an economic benefit, except through indirect means such as calculated reduced pumping lifts or reductions in municipal treatment costs. The economic analysis guidelines do not permit including the avoided costs of alternative supply projects to restore groundwater levels. Rather, the guidelines specify comparison to a no action condition, which for the County is continued reliance on groundwater supplies. Loss of agricultural production cannot be considered in the analysis because the State assumes this production will move to other parts of the State, resulting in no net loss of production from a statewide perspective. For restoration of groundwater levels to be a statewide objective, local economic benefit must be recognized. Simply mandating reductions in water use, with consequent reductions in economic production, would have negative impacts to this County and others.

Again, the County agrees that groundwater management is a critical component of comprehensive water resources management in California. But groundwater management must necessarily be controlled by local stakeholders with minimal, if any, State interference. The County hopes that the Governor, State Water Resources Control Board, and legislators will consider the efforts and accomplishments of this County, its local stakeholders, and the GBA as an example of successful local groundwater management.