

# Appendix C – Public Process, Tribal Consultation, and Engagement; Draft Staff Report Comments

State intervention under SGMA is a public process. The State Water Board encourages public participation in its decision-making process regarding the Tule subbasin. Public participation can help shape the staff recommendations, help the State Water Board decide whether to place the Tule subbasin on probation, and help identify improvements to the GSP to better manage groundwater in the subbasin.

## California Native American Tribes

Meaningful engagement and consultation with California Native American Tribes are fundamental to the mission of the Water Boards. Guided by the Governor’s Executive Order B-10-11, the [CalEPA Tribal Consultation Policy](#) and the [CalEPA Tribal Consultation Protocol](#), and the [State Water Board’s Tribal Consultation Policy](#), the SGMA probationary hearing process includes significant tribal engagement and consultation. The State Water Board mailed and emailed a formal letter with notification of consultation opportunity dated March 8, 2024, to ten California Native American tribes that are on the list provided by the California Native American Heritage Commission with cultural and traditional affiliation with the Tule subbasin. State Water Board staff also presented on the probationary hearing notice, Draft Staff Report, and the opportunity to consult at the Department of Water Resources’ SGMA Tribal Advisory Group meeting on November 1, 2023. The State Water Board has thus far received no requests for government-to-government consultation on the potential probationary determination.

## Hearing Notice

The State Water Board issued a probationary hearing notice for the Tule subbasin on March 7, 2024, pursuant to Water Code section 10736. The notice includes information about the GSP, public hearing, staff report, public workshops, and public participation opportunities.

The notice was emailed to Tulare County, Kern County, and City of Porterville.

The notice was mailed to approximately 1,500 parcel owners identified by the State Water Board as persons who extract or propose to extract groundwater from the subbasin based on publicly available well information. The owner/extractor mailing list includes all public water systems (community, non-community non transient, transient) and state small water systems in the subbasin. The State Water Board developed an English and Spanish fact sheet flyer and cover letter which were included in the mailings.

Subscribers to the State Water Board's groundwater management email list received an English and Spanish electronic notification. The notice was also emailed to representatives of the eight Groundwater Sustainability Agencies (GSAs) and the Department of Water Resources (DWR). The notice, staff report Executive Summary, and flyer are available in English and Spanish on [the State Water Board's Tule Subbasin webpage](#).

## **Additional Outreach**

In addition to the statutory noticing requirements, the State Water Board performed focused outreach to approximately 70 interested parties and local groups (e.g., churches, community organizations, libraries) in the subbasin via phone calls, interviews, and email. The State Water Board has contracted with DUDEK and Kearns & West to support outreach and engagement services in the subbasin.

## **Schools**

The State Water Board sent an email transmittal to Hope Elementary School, Columbine School and the Columbine Elementary School District, Saucelito Elementary School and the Saucelito Elementary School District, Rockford School, the University of California –Davis School of Veterinary Medicine Center (Tulare), the Burton Elementary School District, the Pixley Union School District, and the Porterville Unified School District. on March 7, 2024. The transmittal included information about the workshops and requested that the schools distribute the flyer to local families. The State Water Board also contacted the Tulare County Office of Education, who shared the English and Spanish flyer with district superintendents for distribution to their communities.

## **Community Based Organizations**

The State Water Board has consulted with the Community Water Center, Clean Water Action, Self-Help Enterprises, and the Leadership Counsel for Justice and Accountability on outreach efforts in the subbasin. Through these efforts, the State Water Board has been able to gather community input and distribute information about the public hearing and workshops to the community. Additional local organizations that

were contacted include faith communities and community service organizations located in the subbasin.

## Workshops

The State Water Board hosted two public workshops to share information about the state intervention process and gather public input. The workshop locations and times, including an evening session, were designed to promote effective engagement and accommodate interested parties who would otherwise be unable to attend.

- April 5, 2024, held remotely via Zoom, 11:00 am to 1:30 pm
- April 8, 2024, in-person in Porterville, CA, 5:30 pm to 8:30 pm

Spanish language interpretation was provided during the workshop presentations and time was allotted for public comments and questions and answers to allow the public to engage with staff. A video recording of the April 5<sup>th</sup> Tule virtual workshop [is posted online on YouTube and the State Water Board website](#).

Approximately 196 people attended the remote workshop on April 5 and approximately 115 people attended the workshop in Porterville on April 8.

## Public Comments

State Water Board staff invited written and verbal public comments on the Draft Staff Report, which included staff's recommendations to the State Water Board regarding a probationary designation. The public comment period was March 7, 2024, to May 7, 2024. At the two workshops, approximately 29 attendees gave verbal comments. The State Water Board also received 53 written comments on the Draft Tule Staff Report. An additional opportunity for public comment will be provided at the September 2024 hearing.

Staff considered all comments received and has provided compiled responses to relevant common topics below. Some topics in the comment letters are beyond the scope of this staff report and are not addressed herein. Some comment letters suggested changes to the staff report but did not include sufficient evidence to change staff recommendations and are also summarized below.

## GSA Authorities Regarding Groundwater Quality

Several comment letters expressed concern with how the Draft Staff Report characterized the GSAs' obligations regarding groundwater quality degradation. These included comments regarding GSAs' obligations for both managing groundwater quality degradation and monitoring groundwater quality.

SGMA does not attempt to resolve all water quality issues but aims to ensure that operation of a basin within its sustainable yield does not cause undesirable results, including significant and unreasonable degradation of water quality (Wat. Code, § 10721, subd. (x)(4)). SGMA provides GSAs with authorities that may be used to avoid significant and unreasonable water quality degradation. For example, GSAs may acquire, transport, or import surface water or groundwater and may also “transport, reclaim, purify, desalinate, treat, or otherwise manage and control polluted water, wastewater, or other waters for subsequent use” as needed to achieve sustainable groundwater conditions (Wat. Code, § 10726.2, subds. (b), (e)). In addition, a GSA has the authority to regulate groundwater extractions (Wat. Code, § 10726.4, subd. (a)). It is the responsibility of a GSA to ensure that its management of groundwater conditions in the basin and any other action taken by the GSA will not significantly and unreasonably degrade water quality. A GSA’s authority does not, however, limit or supersede the authorities of the State Water Resources Control Board (State Water Board), the Regional Water Quality Control Boards (Regional Water Boards), the California Department of Public Health, or county or city governments (Wat. Code, § 10726.8, subds. (e), (f)).

Staff encourages GSAs to utilize data collected by other water quality monitoring programs (SAFER, GAMA, CV-SALTS, ILRP, etc.), if possible, and to coordinate with those programs, but GSAs may need to fill data gaps in the existing water quality monitoring networks in the subbasin in order to meet the GSAs’ sustainability goals for water quality.

Staff edited Deficiency GWQ-1 based on comments. See also [the State Water Board’s SGMA Water Quality Frequently Asked Questions](#).

## **Well Mitigation**

Multiple comment letters commended the inclusion of the well mitigation program potential action in the Tule staff report (Potential Action GL-8). Other comment letters state that well mitigation programs are not required by SGMA. Commenters also note it will take time for GSAs in other subbasins to develop them, if they are locally appropriate.

Staff acknowledges that a well mitigation program may not be necessary in every basin. While not explicitly required in SGMA statute or GSP regulations, a well-funded, comprehensive, equitable well mitigation program is most likely needed in critically-overdrafted subbasins subject to SGMA in order to avoid undesirable results by managing impacts to beneficial uses and users of groundwater. A groundwater management plan that allows for significant impacts to drinking water wells would be considered by Board staff to be unreasonable unless mitigation actions are facilitated by the GSAs. The Tule 2022 GSP allows for significant and unreasonable impacts to well

owners and therefore requires the development and implementation of a well-funded, comprehensive, equitable well mitigation program.

The groundwater level sustainable management criteria (SMC) described in the Tule 2022 GSP allow for the dewatering of a significant number of wells if groundwater levels decline to the minimum thresholds (MTs). Additionally, since the groundwater quality SMC in the 2022 GSPs do not explicitly consider the mobilization of constituents if groundwater levels decline to the MT elevations, it is possible that additional wells could experience groundwater quality degradation. It is also possible for wells to be impacted by subsidence that is allowed under the revised plan.

## **GSA Projects and Management Actions**

Several public comment letters discussed projects and management actions. Context for these discussions included, but was not limited to, i) project and management action selections that support and do not disproportionately negatively impact under-represented farmers, ii) not including the GSA's project and management actions in the groundwater flow model so as to not mask the impact of pumping from neighboring GSAs, iii) spotlighting that the subbasin is aggressively implementing project and management actions to reach sustainability, iv) advocating for use of evapotranspiration rather than metering so that resources can be focused on project and management actions, and v) assuring that project and management descriptions would be provided in the revised GSP.

State Water Board staff appreciates the efforts GSAs continue to take in implementing their plans and making progress towards groundwater sustainability. Staff encourages the GSAs to include relevant details in any updated GSP so the State Water Board can evaluate how management criteria, monitoring, and projects and management actions will work in concert to achieve sustainability in the subbasin.

## **“Good Actor” Exemption: Tule GSA Requests**

One Irrigation District (the Angiola Water District of the Tri-County Water Authority GSA) and one GSA, (the Delano-Earlimart Irrigation District (DEID) GSA) requested to be excluded from probation under Water Code section 10735.2, subdivision (e) with approximately 20 public commenters supporting exemption for DEID. This section of the statute, informally called the “good actor” exemption, directs the State Water Board to “exclude from probationary status any portion of the basin for which a groundwater sustainability agency demonstrates compliance with the sustainability goal.”

Based on its evaluations, Board staff recommends that DEID and Kern-Tulare Water District (Kern-Tulare) GSAs be excluded from reporting extractions and paying fees. Board staff does not currently recommend a Fee Exclusion for the Angiola Water District

of the Tri-County Water Authority GSA. Further information about these recommendations can be found in Section 4.2 of the Final Staff Report.

## **Reporting Deadline**

One GSA submitted comments regarding State Water Board staff's recommendation to modify the groundwater extraction reporting due date from February 1 to December 1. The comment "supports the staff recommendation ... to move up the extraction reporting deadline ... to December 1 of each year". The comment further states that this allows "additional time to review the data and potentially address ongoing deficiencies in advance of the following year's irrigation season".

Staff notes that September 30 is the last day of each extraction recording period. The previously proposed reporting deadline of December 1 would have allowed extraction reporters two months to organize their information and file their extraction reports. Section 4.3 of the Final Staff Report, however, recommends that the reporting deadline remain as February 1 of each year. This provides extractors an extra two months (for a total of four months) to organize information and file extraction reports.

## **Metering Requirements**

Some comment letters questioned the need to require the installation and use of meters on wells for pumpers who use more than 500 AFY, noting the effectiveness of using evapotranspiration data to determine groundwater consumption.

Understanding where and how much groundwater is being extracted from the subbasin is crucial to monitoring groundwater conditions throughout the basin and successfully reaching sustainability goals required by SGMA. Though there may be indirect methods of measuring groundwater use, such as evapotranspiration data, installing meters on wells is the most accurate method of monitoring groundwater extractions, as described in Section 4.4.1.1 of the Final Staff Report. Presently, none of the seven GSAs in the Tule subbasin have a measuring device requirement according to the Plans and Annual Reports. The Angiola Water District, in their comment letter (dated May 7, 2024) on the Tule Subbasin Draft Staff Report, states that "All of Angiola's wells have long been metered" and they have been providing "quarterly reports of all well field pumping and given permission" to other GSAs in the subbasin to "access the well field to verify those reports".

Board staff reiterates their recommendation that all groundwater extractors who extract over 500 AFY of groundwater from the subbasin be required to install meters and that the Board encourage other extractors using less than 500 AFY of groundwater to install meters voluntarily to improve the accuracy of groundwater extraction data in the

subbasin. [More information regarding groundwater extraction reporting](#) can be found on the Water Boards SGMA website.

## **Exemption from Reporting**

Several comment letters discussed exemption for classes of pumpers or drinking water systems from reporting groundwater extractions, paying fees, or metering groundwater well extraction rates. Context of these discussions include supporting staff recommendation to exempt domestic users pumping less than 2 AF/Y, adjusting fee rates so small farms do not pay the same fees per well or acre-feet as those pumpers responsible for most of the overdraft, and exempting pumpers who are recovering surface water stored underground. The Final Staff Report's Section 4.5 discusses reporting exclusions for drinking water systems and groundwater banking operations.

## **Requests to Delay Probationary Hearing**

Some comment letters requested that the State Water Board postpone probation until the Board can perform a complete review of forthcoming GSP revisions. Other comment letters requested that the State Water Board expedite probation.

The probationary hearing date for Tule subbasin allows the GSAs more than two and a half years to remedy deficiencies after DWR issued its incomplete determination for the basin in January 2022. Board staff is concerned that continuing to prolong SGMA implementation could cause the basin to miss SGMA's 2040 deadline for sustainability and put beneficial users of groundwater at risk. The State Water Board acknowledges the GSAs' ongoing efforts to improve the GSP and these efforts will be taken into consideration at the September 2024 hearing. At the hearing in September 2024, the State Water Board may adopt a probationary designation or decide to revisit the matter at a future date.

## **Impacts of Probation on the Local Economy and Confidence in GSAs**

Some commenters expressed concern that, if the State Water Board designated the subbasin probationary, groundwater pumpers in the subbasin would lose confidence in the GSAs. Commenters also expressed concerns that pumpers would be less likely to pay fees due to the GSAs if pumpers also had to pay fees to the State Water Board, and that fees paid to the State Water Board would negatively impact the local economy and disproportionately burden on small farms.

Board staff acknowledges these concerns; however, the State Water Board's State Intervention authorities represent an important backstop under SGMA to ensure protection of groundwater and everyone who relies on sustainable groundwater management. SGMA requires the State Water Board to charge fees to recover the cost

of its program and has recently reassessed and reduced its fees for extraction reporting in probationary basins.

If the State Water Board designates the subbasin probationary, staff would continue to work with GSAs to address the deficiencies in order to return the subbasin to full local control. Staff will continue to message out that the GSAs should continue to implement their plans.

Staff also notes that SGMA gives the GSAs authorities to collect fees and enforce their own rules, among other powers (Wat. Code, §§ 10725 et seq.).

## **Standards of GSP Review**

Some comment letters noted the importance of State Water Board and DWR applying consistent review standards and criteria when reviewing GSPs.

Both the State Water Board and DWR review all GSPs according to the GSP Regulations (Cal. Code Regs., tit. 23, § 350 et seq.) and the Water Code. The regulatory or statutory basis for each deficiency is described in both Section 4.1 as well as Appendix A of the Draft and Final Staff Reports.

## **Well Data**

One comment letter described the limitations of DWR's Online System of Well Completion Reports (OSWCR) dataset.

Staff utilized OSWCR data when conducting analyses of potential well impacts experienced throughout the basin. OSWCR is recognized as the best available statewide well dataset, and Board staff acknowledges the incomplete nature of this dataset. Staff performed a thorough review of the OSWCR data and only used well completion reports that contained adequate information to contribute to the analyses performed.

Staff's use of OSWCR data in the Final Staff Report does not preclude GSAs from augmenting OSWCR with better, local datasets, such as from county well permits or from the GSAs' ongoing well inventory effort, in updating or implementing their GSP.

## **Fees**

Several comments were concerned with fees, assessment of fees, and their impact to local communities.

The State Water Board adopted revised fees at its March 19, 2024, meeting. Newly reassessed fees will be shared through electronic subscription mailing lists (aka: listservs). To stay informed on new fee assessment and other SGMA topics and receive



updates, you can [subscribe to the State Water Board's Groundwater Management listserv](#).

## **Board Processes**

Many commenters made broader points regarding clarity around State Water Board processes, including how to exit the Board's oversight or how to request a "good actor" exclusion under Water Code section 10735.2, subdivision (e).

The State Water Board is developing a Frequently Asked Questions document to provide more context and guidance for GSAs on some Board processes under Chapter 11, the chapter of the SGMA statute which covers the Board's state intervention authorities. To lay out more specific rules for state intervention, the State Water Board would have to develop and adopt regulations regarding the adoption of a probationary designation or an interim plan (Wat. Code § 10735.8, subd. (d)). The Board may develop regulations in the future.

## **Exiting Chapter 11**

The State Water Resources Control Board received several comments regarding the process of exiting State Water Board oversight (i.e., "Chapter 11") before the probationary hearing.

Fundamentally, GSAs can exit State Water Board purview by correcting the deficiencies in their GSP and resubmitting the GSP to the State Water Board for review. Staff review takes time, and submission of an updated plan does not necessarily pause or postpone a hearing notice or a scheduled hearing.

The State Water Board's forthcoming Frequently Asked Questions document will address questions regarding processes for exiting Chapter 11. Board staff also discussed this question at the Board's December 19, 2023 Board Meeting. [A video recording of the December 19th informational item](#) is available on the State Water Board's website.

## **Probationary Hearing Format**

Some commenters requested clarity on the structure of the hearing and the role of GSAs at the hearing.

Other than specifying that the procedures for quasi-legislative action apply, the SGMA statute does not address the structure of probationary hearings and to date the State Water Board has not developed regulations regarding the state intervention process.

Board staff released a Tule probationary hearing agenda on August 22, 2024, to provide clarity on opportunities for participation at the hearing. Staff had previously provided information to the Tule GSAs regarding their options for participation during the hearing.

The hearing will include a Board staff presentation and a panel presentation by the Tule GSAs to speak to their concerns and progress they have made in updating the GSP. The hearing may also involve panels of groups with organized comments specific to the Tule subbasin. Anyone can participate and provide comments at the hearing in-person or virtually (by phone or computer). As with all Board meetings, the Board chair may place a time limit on public comments (e.g., 5 minutes per comment).

Guidance for staff to review material and revised GSPs has been further discussed under paragraph “Exiting Chapter 11” in this section above.

### **“Good Actor” Exemption: Criteria**

Several comments requested more information on how a GSA would qualify for an exclusion from probation under Water Code section 10735.2, subdivision (e) (the “good actor” exemption). One comment letter requested the State Water Board develop a process for evaluating “subsets of a subbasin in their potential to achieve their sustainability goal while acknowledging that the GSP is being revised.”

The criteria for the “good actor” exemption are set in the statutory provisions. SGMA requires the Board to “exclude from probationary status any portion of a basin for which a groundwater sustainability agency demonstrates compliance with the sustainability goal.” (Wat. Code, § 10735.2, subd. (e).)

Section 4.2 of the Final Staff Report describes the statutory requirement in more detail. The State Water Board’s forthcoming Frequently Asked Questions document will address questions regarding the “good actor” exemption.

### **Land Subsidence**

Comments from Tule GSAs highlight commitments made by the organizations to address Land Subsidence deficiencies through updated MTs and new programs to be featured in revised GSPs. In addition to the programs proposed by GSAs, other stakeholders have advocated for additional demand and supply side actions, including pumping and well restrictions, land repurposing, land retirement, fallowing, flood managed aquifer recharge, agricultural managed aquifer recharge, and groundwater recharge.

Several commenters expressed concern over an upward gradient developing through a portion of the Friant-Kern Canal. One commenter shared frustration over the costs of repairing the Friant-Kern Canal only to have continued land subsidence further diminish

its utility. To better manage subsidence through the Friant-Kern Canal, one GSA intends to implement a well application review process that considers the proximity of proposed new wells to the Friant Kern Canal.

Board staff met with Tule Subbasin GSAs to provide feedback on updated MTs and support the development of updated GSPs that better target land subsidence issues. Furthermore, the Final Staff Report identifies many of the demand and supply actions proposed by commentors as potential actions to address land subsidence deficiencies.

Mitigating land subsidence near the Friant-Kern Canal poses a unique challenge to the Tule Subbasin with far reaching consequences. As simultaneous repair and land subsidence impact the canal's operational capacity, there is a growing need for regional collaboration and programmatic interventions such as the proposed well review process. Staff cannot comment on these programs as they have not been formally proposed, but staff meets regularly with GSAs to provide feedback on proposed GSP revisions and programs.

## **Groundwater Recharge**

The proactive use of groundwater recharge through irrigation districts and farmers in the Tule subbasin was a common point of interest shared by commenters. Since the passing of SGMA, the Tule Subbasin has spent more than \$40 million to construct recharge basins, with certain projects directing benefits towards disadvantaged community (DAC) water systems. However, despite the benefits of recharge, there is concern around the connection between recharge activity and underlying groundwater quality. One irrigation district has developed a management action to collect data on the issue and support sustainable recharge in the future.

Board staff recognizes Tule's commitment to recharge through existing and planned projects. However, as pointed out by some commentors, recharge projects could result in the mobilization of shallow constituents into wells. Recharge projects may influence the migration of legacy constituents within the vadose zone (unsaturated zone between the ground surface and the top of the water table) or may change groundwater conditions that may favor the mobilization of constituents not previously in solution. Recharge projects need to be carefully engineered, operated, and monitored to avoid groundwater quality degradation.

## **Water Trading/Water Markets**

Two primary concerns emerge from comments on water credits and water markets. Firstly, the use of a "precipitation credit" allows certain GSA members to "trade" credits based on a running long-term average of precipitation. This may result in an inconsistency between the volume of water that is exchanged via credits and the actual

hydrological conditions in the subbasin during the time of trading. Secondly, equity issues exist around the concept of groundwater markets, as socially disadvantaged and tenant farmers may be unable to compete.

The Draft Staff Report addressed potential precipitation credit issues. It cites the use of a long-term average to calculate credits as a source of potential inaccuracy, especially as climate change alters seasonal precipitation patterns. It also notes that the precipitation credits appear to assume total infiltration and recharge to aquifers, which is not reasonable. With respect to equity, Deficiency GL-4 in the Final Staff Report notes that groundwater trading may undermine sustainability goals or negatively impact vulnerable users if not carefully designed and managed. Potential Action GL-4 therefore recommends that the Tule Subbasin follow best practice guidance from the California Water Commission and that GSPs provide a detailed description of the groundwater credits/trading system and clarify safeguards that are in place to ensure its sustainable and fair implementation.