

January 8, 2025

Via email

Board of Directors  
Salinas Valley Basin Groundwater Sustainability Agency  
P.O. Box 1350  
Carmel Valley, CA 93924  
[board@svbgsa.org](mailto:board@svbgsa.org)

Re: 180/400-Foot Aquifer Subbasin Groundwater Sustainability Plan 2025 Periodic Evaluation

Dear Members of the Board:

On behalf of LandWatch Monterey County, please consider the following comments on the 180/400-Foot Aquifer Subbasin Groundwater Sustainability Plan 2025 Periodic Evaluation (“5-Year Evaluation”).

Preliminarily, we note that the 5-year evaluation was not released in final form until January 3, 2025. We are unclear whether and how the GSA Board will revise this document before submitting it to DWR. Accordingly, these comments are addressed to both the GSA Board and copied to DWR.

In summary, our comments make the following points.

Missed milestones: DWR should find that the GSA has not met its obligation to implement the 2020 GSP for the 180/400 Subbasin because the 180/400 Subbasin has not met its interim milestones and is unlikely to meet the 2030 milestone for seawater intrusion. There is no analytical basis to conclude that the GSA will meet its measurable objectives by 2040.

Delayed assessments of projects and management actions: The GSA has not adopted projects and management actions that will meet interim milestones and SMCs in the future, and cannot now do so timely, because it has set back the timeline for project selection and for beginning project implementation from 2023 to 2027. DWR should direct the GSA to commit resources to accelerate analysis, comparison, and selection of necessary projects and management actions, even if it means increasing fees.

Abandonment of Water Charges Framework and pumping allocations: The GSA has failed to implement the 2020 GSP because it has abandoned any timetable or mandate for the Water Charges Framework that was intended to manage demand in the subbasin and that was the primary plan feature cited by DWR in approving the 2020 GSP. Critically, the GSA has taken no steps to develop the pumping allocations that were to be

established in tandem with the Water Charges Framework. These pumping allocations are essential to implementing demand management and to apportioning project costs. DWR should instruct the GSA to implement the Water Charges Framework and develop necessary pumping allocations.

Failure to prepare for interim pumping reductions: Interim pumping reductions may be essential to meet interim milestones in 2030 or to meet measurable objectives by 2040. However, the GSA has not made sufficient progress in planning a demand management program. DWR should direct the GSA to develop a demand management program to be deployed as necessary to meet interim milestones pending longer term infrastructure projects.

Failure to protect Deep Aquifers: The GSA has failed to take action urgently needed to protect the Deep Aquifers, a primary source of domestic water supply for disadvantaged communities. DWR should direct it to do so.

Failure to assess willingness and responsibility to pay for projects: The GSA has failed to pursue critical paths to sustainability implementation including assessments of both the willingness and the responsibility to pay for projects and management actions. The GSA delayed undertaking a willingness to pay study based on agricultural economics and will not have results until at least mid-2025. The GSA has not apparently initiated a study of the most critical element to determine responsibility to pay for projects and management action, i.e., principled consideration of groundwater and surface water rights as a basis to apportion project costs between subbasins or among user classes. Assessment of responsibility to mitigate unsustainable groundwater conditions as between subbasins and as between urban and agricultural pumpers is required to apportion the cost of groundwater projects needed to attain sustainability. This assessment must be informed by water rights analysis since SGMA solutions must honor water rights. DWR should instruct the GSA to prioritize analysis of water rights to enable apportionment of costs.

Detailed comments follow.

**I. The 180/400 Subbasin has not met its interim milestones.**

The GSA has failed to meet the 2025 interim milestones for seawater intrusion and groundwater levels for the 180/400 Subbasin and there is no analytic basis to conclude that it could meet the 2030 milestones.

The minimum threshold and 2025 milestone for seawater intrusion is the 2017 extent of the 500 mg/L chloride isocontour for the 180- and 400-Foot Aquifers, and the line defined by Highway 1 for the Deep Aquifers. (5-year Evaluation, Table 3-8.) There has been new intrusion and/or intrusion beyond the 2017 extent every year from 2019 to 2023 in both the 180- and 400-Foot Aquifers, which constitutes an undesirable result. (5-Year Evaluation, Table 3-9.) In short, the GSA has failed to meet the 2025 interim milestone for seawater intrusion

The measurable objective calls for rolling back seawater intrusion to Highway 1 by 2040. (5-Year Evaluation, Table 8.) Interim milestones in 2030 and 2035 require progress toward that roll-back. The GSA is unlikely to be able to attain these milestones and this objective because it has made insufficient progress on projects and management actions.

For example, the large capital projects such as the \$1 billion to \$1.5 billion pumping barrier/desalination project would take at least a decade to plan, approve, finance, and construct. The current modeling for the barrier/desalination project predicts that seawater intrusion will continue to advance through 2030 in all three project size scenarios, which means that the 2025 and 2030 interim milestones will not be met – because these interim milestones call for a halt of intrusion at the 2017 line of advancement by 2025 and then a partial rollback toward Highway 1 by 2030.<sup>1</sup> Indeed, the modeling does not project attainment of the measurable objective to roll back seawater intrusion to Highway 1 by 2040 – or even by 2070.

Seawater intrusion is caused by groundwater levels that are below sea level, which are too low to hold back intrusion. Despite this, the GSA set its groundwater SMCs at 2003 (measurable objective) and 2015 elevations (minimum threshold), i.e., levels that were below sea level and that permit continued seawater intrusion. (5-Year Evaluation, Table 3-4, p. 3-12.) But the GSA has not met even these unprotective groundwater level SMCs. There have been undesirable results in groundwater levels each year from 2019 to 2023. (5-year Evaluation, Table 3-6, p. 3-16.) Many wells have failed to meet the interim milestones for 2025, particularly wells in the northern (coastal) portion of the subbasin where lowered groundwater elevations cause seawater intrusion. (5-year Evaluation, p. 3-16.)

Failure to meet interim milestones and the lack of any analytic evidence that committed projects and management actions will meet these milestones in the future is evidence that the GSA has not adequately implemented the GSP for the 180/400 Subbasin.

**II. The GSA has not adopted projects and management actions that will meet interim milestones and SMCs in the future, and cannot now do so timely, because it has set back the timeline for project selection and for beginning project implementation from 2023 to 2027.**

The GSA has delayed the timeline specified in the 2020 GSP for selection of projects and management actions. The 2020 GSP called for the GSA to begin implementation of projects in 2023: “The refined water charges framework, projects, and management actions will then be implemented Valley wide approximately one year after all six GSPs are complete.” (2020 GSP, p. 10-14; see also p. 10-15, Figure 10-1.) Even if some

---

<sup>1</sup> Montgomery and Associates, Brackish Groundwater Restoration Project Overview and Modeling Results, presentation, slides 15, 22, 29, available at <https://svbgsa.org/wp-content/uploads/2024/12/P-Brackish-GWR-Project-FS-2024-12-19.pdf>.

projects were expected to take longer to implement, the 2020 GSP projected that project selection would be completed by 2023.

The 5-Year Evaluation now projects that the GSA will not be able to make a comprehensive selection of projects and management actions until 2027. (5-Year Evaluation, p. 4-47.) This schedule is however inconsistent with the revised GSP, i.e. “Amendment 1” to the 2020 GSP, which calls for initiating projects by 2024. (Amendment 1, p. 10-22, Figure 10-1 [General Schedule of 5-year start up plan].) If the comprehensive selection of the major capital projects is not completed until 2027, it is not clear what could be implemented in 2024.

Part of the delay may be attributable to the abandonment of the initial plan for integrated Valley-wide selection of PMAs across the six subbasins. Instead, PMAs must now be selected by individual subbasin committees and then somehow integrated later. Both the 2020 GSP and Amendment 1 stress that projects in this Subbasin should be integrated with projects for the other SVBGSA subbasins as appropriate during GSP implementation.

Development of the 2020 GSP involved a broad stakeholder process and considered a Valleywide approach to PMAs. Following its submittal, SVBGSA shifted to an integrated subbasin approach, whereby PMAs were identified for each subbasin and then integrated across the Valley.

(5-year Evaluation, p. 4-1.) The cumbersome process of developing projects and management actions through subbasin implementation committees has delayed and siloed consideration of those projects that require action in multiple subbasins or the commitment of resources from multiple subbasins. In particular, it has resulted in substantial delays in projects that move water from southern subbasins to northern subbasins that suffer overdraft and seawater intrusion.

Thus, the GSA has not considered, and is not apparently planning to consider, a robust enough range of projects to move water to the north. In particular, the GSA is not considering a conjunctive use proposal with sufficient scope to address seawater intrusion in the 180/400 Subbasin. Such a project was recommended by DWR in its Bulletin 52, calling for construction of reservoirs and conjunctive use facilities using available groundwater storage capacity in the Forebay Subbasin. The purpose of the conjunctive use facilities would have been to support groundwater transfers to the north for in-lieu recharge to address overdraft and seawater intrusion in the Eastside and 180/400-Foot Aquifer Subbasins. Although the reservoirs were built, the transfer facilities to implement conjunctive use based on available groundwater storage capacity were not completed. The failure to provide effective facilities to move water to the north caused or aggravated a political concern that the Basin-wide investments in water management projects have not been made effectively and equitably and/or that the existing infrastructure has not been operated effectively or fairly.

A white paper prepared for MCWRA by group of ten Salinas Valley hydrologists confirms that the benefits of the San Antonio and Nacimiento reservoirs, the two major capital projects funded by the entire Basin, have not been equitably or effectively distributed. The problem is that the entire scope of the project has never been completed and water supplies are not being moved to the north.<sup>2</sup> The white paper explains:

The dams that were recommended have been constructed, but the companion transfer facilities have not been constructed. The result of partially completing the project has been an uneven distribution of benefits throughout the Valley. The Forebay Area and Upper Valley Areas have enjoyed relatively large benefits from San Antonio and Nacimiento reservoirs that would have been shared equally with the Pressure and East Side Areas if the intended transfer facilities had been built. In the absence of the transfer facilities, seawater intrusion into the Pressure Area and water-level declines within the East Side Area have not been mitigated.<sup>3</sup>

The white paper recommends completion of the originally proposed conjunctive use component of the reservoir projects. DWR should instruct the GSA to evaluate a

---

<sup>2</sup> Hydrogeology And Water Supply Of Salinas Valley, A White Paper prepared by Salinas Valley Ground Water Basin Hydrology Conference For Monterey County Water Resources Agency, June 1995, pp. 15-16.

<sup>3</sup> Id., p. 16.

conjunctive use project similar in scope to the project that DWR proposed and evaluated in Bulletin 52.<sup>4, 5</sup>

Regardless of the reason for its delay and its failure to assess a robust conjunctive use option, the GSA is in no position to make a timely comparison of projects and management actions to determine which may be financially feasible and what selection of feasible projects would be the least cost and most effective.

The GSA has spent millions of dollars in an extended assessment of the engineering feasibility of one project, the barrier/desalination project,<sup>6</sup> but has not yet provided any substantial information about the feasibility of other projects. The GSA's work plan demonstrates that assessments of projects and management actions are not synchronized sufficiently to enable informed decisions to rule out technically or financially infeasible

---

<sup>4</sup> The GSA is evaluating a small-scale conjunctive use project known as the Somavia Road or Eastside irrigation project that would move about 3,000 AFY north from a wellfield around Chualar. (Amendment 1, pp. 9-82 to 9-83.) However, this is an order of magnitude less water than needed to replace the coastal extractions that cause seawater intrusion. For example, Yates found that halting the 71,000 afy of pumping between Salinas and the coast would be necessary. (Eugene Yates, Simulated Effects Of Ground-Water Management Alternatives For The Salinas Valley, California, USGS Water-Resources Investigations Report 87-4066, prepared in cooperation with the Monterey County Flood Control and Water Conservation District, 1988, pp. 75-78.) Geoscience found that 60,000 AFY of in lieu pumping supply would be necessary. (Geoscience, Protective Elevations To Control Sea Water Intrusion in the Salinas Valley, CA, 2013, p. 11, available at <https://www.co.monterey.ca.us/home/showdocument?id=19642>.) The GSA's own modeling for the pumping barrier/desalination project shows that 64,900 AFY would be required for an alternative that would eventually meet the seawater intrusion measurable objective. (Montgomery and Associates, Brackish Groundwater Restoration Project Overview and Modeling Results, presentation, slide 4, available at <https://svbgsa.org/wp-content/uploads/2024/12/P-Brackish-GWR-Project-FS-2024-12-19.pdf>.)

<sup>5</sup> The GSA is also evaluating projects and management actions intended to move surface water north, such as the Seasonal Release with Aquifer Storage and Recovery (ASR) or Direct Delivery project and the Reservoir Reoperation management action. (Amendment 1, pp. 9-22, 9-76.) However, these projects are also limited in scope and would fail to take advantage of the groundwater storage and banking opportunities in the DWR's Bulletin 52 conjunctive use program.

<sup>6</sup> The GSA may have focused disproportionately on the pumping barrier/desalination project because it would be implemented in the northern subbasins and appears not to require the participation of or funding from the southern subbasins. This may not be an accurate assessment of the responsibility of other subbasins to pay for sustainability problems in the 180/400 Subbasin.

projects.<sup>7</sup> The GSA should either increase its budget for feasibility assessments or use its existing budget to assess a meaningful range of potentially feasible projects and management actions in less initial detail. The GSA should recognize that assessment of alternatives and project selection can be an iterative process in which each option will be assessed at a similar level of detail in a series of increasingly detailed reviews and that some options will be abandoned after a first or second level review.

As discussed in Section VI below, there are substantial unresolved issues related to willingness and responsibility to pay for projects and management actions. These issues will likely bear directly on the financial feasibility of proposed projects and management actions. Resolution of these critical path issues and attaining necessary stakeholder consensus is a significant bottleneck. Because the GSA has not tackled these issues head on, it remains uncertain whether the GSA will actually be able to commit itself to a selection of projects and management actions by 2027.

**III. The GSA has failed to implement the 2020 GSP because it has abandoned the timetable and mandate for developing the Water Charges Framework intended to manage demand in the subbasin, which was the primary plan feature cited by DWR in approving the 2020 GSP. Furthermore, the GSA has taken no steps to develop the associated pumping allocations, which are essential to implementing demand management or apportioning project costs. DWR should instruct the GSA to implement the Water Charges Framework and develop necessary pumping allocations.**

Amendment 1 to the 2020 GSP admits that the GSA has abandoned the Water Charges Framework that DWR called out as a critical rationale for its approval of the 2020 GSP. (2020 GSP, pp. 9-2 to 9-10; Amendment 1, p. 9-12.) Because the Water Charges Framework, based on pumping allocations for each user, was intended to provide the foundation for demand management and for apportioning the cost of water supply projects, and because the GSA has not identified any alternative approach that will provide these essential functions, DWR should instruct the GSA to implement the Water Charges Framework and develop pumping allocations.

**A. DWR relied on a mandatory Water Charges Framework based on pumping allocates when it approved the 2020 GSP.**

DWR found the Water Charges Framework to be the “fundamental structure for managing groundwater in the Subbasin.”<sup>8</sup> DWR described the Water Charges

---

<sup>7</sup> GSA Fiscal 2025 Work Plan, available at [https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/2484526/6.1\\_Work\\_Plan\\_FY\\_2025\\_2024-03-06.pdf](https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/2484526/6.1_Work_Plan_FY_2025_2024-03-06.pdf)

<sup>8</sup> DWR, GSP Assessment Staff Report Salinas Valley – 180/400 Foot Aquifer (Basin No. 3-004.01), p. 33, at <https://sgma.water.ca.gov/portal/service/gspdocument/download/4471>.

Framework as part of a Valley-wide plan for funding necessary projects and management actions as follows:

To achieve sustainability, the Plan proposes to assess fees for groundwater extraction and use these funds to implement other projects or management actions, as needed. The proposal to charge fees for extraction is called the water charges framework and involves a three-tiered system where groundwater users will be charged a series of fees based on the volume of annual groundwater extraction. The proposal includes exemptions for some groundwater pumpers, including de minimis users that will not be included in the fee program. The foundation of the water charges framework is a sustainable pumping allowance that each parcel will be allocated based on the calculated sustainable yield. Groundwater users will be allowed to pump more than their sustainable allocation; however, this additional pumping (supplemental pumping) will be subject to higher extraction fees. The proposed water charges framework is also proposed to be instituted in the other five groundwater subbasins overseen by the SVBGSA, representing a Salinas Valley Basin-wide management action.<sup>9</sup>

...the Plan explains that implementation of projects will depend, fully or partially, on revenue generated by the proposed water charges framework.<sup>10</sup>

... The Plan outlines how the water charges framework will provide long-term funding to support the SVBGSA and fund these projects. The combination of a series of projects which will address the proposed overdraft, a stable funding source, and partnering with other entities to maximize resources appears likely to help ensure sustainability in the Subbasin.<sup>11</sup>

DWR found that the Water Charges Framework was the only element of the GSP that was mandatory:

The Plan includes a list of management actions that are intended to reduce or optimize local groundwater use. One management action, the water charges framework, will initially be implemented and the other management actions will only be implemented if they are deemed cost effective and necessary to achieve sustainability. [footnote]

---

<sup>9</sup> Id. p. 5.

<sup>10</sup> Id., p. 13.

<sup>11</sup> Id., p. 33.



The water charges framework establishes a three-tiered system that will charge fees for groundwater extraction in the Subbasin. Each parcel will be allocated a sustainable pumping allowance based on the sustainable yield of the Subbasin, with the summation of all sustainable pumping allowances equaling the sustainable yield. Groundwater users will be allowed to pump more groundwater than their sustainable allowance; however, this groundwater will be subject to higher fees. The water charges framework includes a transitional pumping allowance that will expire during GSP implementation but is aimed to allow groundwater users the ability to adapt to their sustainable pumping allowance without paying the highest level of fees. All groundwater pumped in excess of the transitional pumping allowance, called supplemental pumping, will be subject to the highest fee, disincentivizing pumping at this level. The tiered-rate structure of the water charges framework intends to promote voluntary pumping reductions by charging higher fees for pumping in excess of the sustainable yield and provide funding for the GSA and projects by collecting fees. The Plan identifies exempt pumpers (i.e., de minimis pumpers) in the water charges framework and plans to implement the water charges framework within the Subbasin while further developing the overall structure of the program for the entire Salinas Valley Basin. [footnote]

The Plan provides a general structure for how the water charges framework will be implemented but also acknowledges many of the specific components of the water charges framework still need to be negotiated and further developed during GSP implementation. The primary effort, within the first 3 years of Plan implementation, will consist of interested party engagement and negotiations to establish the criteria for the water charges framework, such as determining allowances for each user type and the fee for each fee tier. [footnote]<sup>12</sup>

Despite the 2020 GSP's and DWR's reliance on the mandatory Water Charges Framework, Amendment 1 to the 2020 GSP relegates it to a possible funding approach that may or may not be implemented. (Amendment 1, p. 9-12; 10-21.) DWR should instruct the GSA that it must implement the Water Charges Framework on which both the 2020 GSP and DWR relied.

**B. Pumping allocations are essential to any equitable system of demand management or to apportion project costs.**

Amendment 1 to the 2020 GSP simply fails to acknowledge that some form of pumping allocations will be needed to apportion the cost borne by users to attain sustainability, whether the sustainability route is via pumping reductions or supply augmentation.

If and to the extent that sustainability were pursued through demand management, an orderly and equitable demand management program would require pumping allocations.

---

<sup>12</sup> Id.

An equitable program of mandatory pumping reductions must be based on an equitable system of pumping allocations, whether based on acreage, historical pumping, crop types, prescription, or some hybrid approach. Even if a demand management program were to be implemented through a voluntary fallowing program, users who do not fallow would presumably be apportioned the cost to compensate those who did fallow. An equitable apportionment of that fallowing cost would have to be in proportion to equitable pumping allocations.

If and to the extent that sustainability were pursued through water supply projects instead of demand management, pumping allocations would still be required in order to equitably apportion the cost of those projects. The Water Charges Framework recognized that an equitable apportionment of the cost of water supply projects must be based on the amount by which individual users pump in excess of a fairly allocated portion of the yield that would be sustainable in the subbasin without those water supply projects. Users who pump within their fairly allocated portion of sustainable yield would not bear the cost of additional water supplies. Those who pump in excess of their allocated share of sustainable yield would pay in proportion to that excess to fund the projects that make excess pumping feasible.

Despite this, Amendment 1 implies that pumping allocations are somehow not necessary to implement demand management or to apportion project costs. For example, it states that pumping allocations “could be” used as the basis to apportion project costs, but it does not suggest how project costs could be apportioned without pumping allocations. (Amendment 1, p. 10-21.)

The only funding source that would not depend on pumping allocations is grant funding, which it would be foolish to assume would cover all costs. All of the other sources of project funding identified in Amendment 1 – benefit assessments under Proposition 218, fees, fines and penalties, or special taxes – would require some form of pumping allocation if they were to be imposed legally and equitably. A pumping allocation is implicit in any form of funding mechanism that purports to be based on a benefit assessment.

For example, the equitably determined water supply related special benefit under a Prop 218 Engineers Report would have to be based explicitly or implicitly on a pumping allocation for each user. This is because the water supply related special benefit would represent the amount each user is enabled by the project to pump in excess of their share of the sustained yield that would be available without the water supply project.

Amendment 1 claims inaccurately that pumping allocations are not actually necessary to implement pumping reductions:

Pumping controls or reductions can be implemented based on an allocation structure; however, there are other options for managing pumping. For example, pumping reductions could be implemented as a percentage reduction from prior years.

(Amendment 1, p. 9-13.) This discussion fails to acknowledge that a “percentage reduction from prior years” is in effect a form of pumping allocation. If the GSA chooses that form of allocation it should do so deliberately and with stakeholder engagement. For example, some might object that a percentage reduction from prior years creates incentives for excessive pumping before reductions are mandated and that it penalizes those who are using less or no water now.

Amendment 1 uses the term “demand planning” instead of “demand management” as if some active management to reduce pumping were not required by an effective program. However, the discussion of demand planning makes it clear that any “demand planning” that would actually have an effect on water use must be directed toward determining fees to pay for projects, and that those fees must be based on pumping allocations:

Demand planning can be used as the basis for pumping fees, which can raise funds for projects and management actions. For example, a fee structure could be defined such that each extractor has a pumping allowance that is based on their allocation, and a penalty or disincentive fee is charged for extraction over that amount. If the sustainable yield is lower than current extraction, a transitional pumping allowance could be developed to transition from a groundwater user’s actual historical pumping amounts (estimated or measured) to their allowance based on the sustainable yield. The purpose of this transitional allowance is to ensure that no pumper is required to immediately reduce their pumping, but rather pumpers have an opportunity to reduce their pumping over a set period. Transitional pumping allowances could then be phased out until total pumping allowances in each subbasin are less than or equal to the calculated sustainable yield.

(Amendment 1, p. 9-13.) This discussion simply recapitulates the method to pay for projects that was set out in 2020 with the Water Charges Framework. But the discussion is problematic because, by treating the water charges framework as a mere “example” of a fee structure, it implies that there is some other equitable fee structure that is not based on pumping allocations, and it licenses the GSA to postpone development of pumping allocations as an essential preliminary step toward any funding system. Amendment 1 fails to suggest any other equitable basis for apportioning project costs among users, and it fails to acknowledge the complexities of developing pumping allocations within user classes, between user classes, and between subbasins.

Again, DWR should instruct the GSA to implement the Water Charges Framework program set out in the 2020 GSP, starting with the development of a principled basis for pumping allocations within each user class in the subbasin, between the user classes in the subbasin, and between the 180/400 Subbasin and the other subbasins whose water use affects the 180/400 Subbasin. As discussed in Section VI below, the GSA will have to tackle complex and divisive water rights issues to develop pumping allocations.

**IV. Interim pumping reductions may be essential to meet interim milestones in 2030 or to meet measurable objectives by 2040. However, the GSA has not made sufficient progress in planning a demand management program. DWR should direct it to do so.**

The GSA has now deferred project selections to 2027. With only 13 years between 2027 and 2040 and no water supply infrastructure project on the horizon that is projected to roll back seawater intrusion by 2040,<sup>13</sup> progress toward interim milestones and the measurable objective depends on near term reductions in pumping. As discussed above, the GSA has not undertaken the necessary work to implement orderly pumping reductions because it has not planned for demand management or begun to develop pumping allocations.

Instead, after conducting a preliminary assessment of stakeholder interest in demand management, the GSA postponed development of any demand management programs. Not only did the GSA walk away from demand management programs, it accepted a recommendation from its consultant not to pursue even a demand management “policy:”

The Salinas Valley Basin Groundwater Sustainability Agency should NOT pursue a formal Demand Management Policy at this time. The Agency should sponsor a comprehensive, stakeholder-based Demand Management Dialogue Process to engage Basin stakeholders in a meaningful, transparent, focused, and time limited collaborative process.<sup>14</sup>

Since 2023, the GSA has pursued only a “Demand Management Dialog Process.”<sup>15</sup> This “dialog process” has consisted of some workshops and some discussions with some of the subbasin implementation committees. (5-year Evaluation, p. 3-24.) Some work on water rights and economic considerations has been contracted (id.), but, as discussed in Section VI below, no results of this work have been made public and the scope of this work remains unclear.

This decision not to develop either a demand management program or even a demand management policy was admittedly based on “political” concerns, apparently fueled by “inaccurate perspectives about what demand management is:”

---

<sup>13</sup> See Section I above, discussing modeling results from the barrier/desalination project assessment, the only project for which the GSA has published such results.

<sup>14</sup> Recommendation by CSUS, Demand Management Approach and Feasibility by the Salinas Valley Basin Groundwater Sustainability Agency, March 3, 2023.

<sup>15</sup> CSUA Agreement, available at [https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/2155592/Scope\\_DM\\_Dialogue\\_CSUS.pdf](https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/2155592/Scope_DM_Dialogue_CSUS.pdf).

The overarching finding of the 2022/2023 assessment was that it was premature to pursue a formal Demand Management Policy because of diverse and periodically inaccurate perspectives about what demand management is, and the associated social and economic concerns that these discrepancies raised. The concern was that immediate political actions by the SVBGSA Board would exacerbate regional tension about the topic. Therefore, the further recommendation was that rather than action on a Valley-wide policy, instead SVBGSA should sponsor a comprehensive, stakeholder-based Demand Management Dialogue Process to engage interested parties in the Valley in a meaningful, transparent, focused, and time limited collaborative process. The purpose of this approach was to inform the broad community of interested parties about the range of demand management options available as a means to reframe the regional discussion.

(5-Year Evaluation, p. 3-23.) Political opposition based inaccurate perspectives about demand management is not a reasonable basis to postpone what may be a critical interim management action identified by the 2020 GSP.

Furthermore, the suggestion in the 5-Year Evaluation that this “dialog process” about demand management will be “time limited” is unclear. There appears to be no timeline for development of a demand management policy or program that would meet the 2030 interim milestones for the 180/400 Subbasin if water supply or recharge projects cannot be in place timely to do so. For example, the Fiscal 2025 work plan identifies Task 52.4 as a “Plan for DM in overdrafted subbasins” to be developed in “FY 2025 & FY 2026 (2/2026).”<sup>16</sup> However, this plan is identified as a plan for the Langley and Eastside Subbasins, not the 180/400 Subbasin. Amendment 1 identifies an even more leisurely 5-year implementation schedule for “Demand Planning” in the 180/400 Subbasin. (Amendment 1, p. 9-15.)

Amendment 1 to the 2020 GSP further confuses the issue by using the euphemistic term “demand planning” instead of demand management. (Amendment 1, p. 9-12.) This terminology change is pointless, and it confuses programs intended to effect a reduction in pumping with programs that are merely intended to predict demand. For example, Amendment 1 characterizes changes to land use as a form of “demand planning” that does not require pumping allocations, despite the fact that the GSA has no land use authority. (Amendment 1, p. 9-13.) Merely forecasting land use and water demand do not constitute demand management.

DWR should direct the GSA to prepare an effective demand management program for the 180/400 Subbasin to make progress toward sustainability pending the longer term implementation of infrastructure-based water supply projects, whether that demand

---

<sup>16</sup> GSA Fiscal 2025 Work Plan, available at [https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/2484526/6.1\\_Work\\_Plan\\_FY\\_2025\\_2024-03-06.pdf](https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/2484526/6.1_Work_Plan_FY_2025_2024-03-06.pdf)

management be implemented via compensated voluntary fallowing or via mandated pumping reductions.

**V. The GSA has failed to take action urgently needed to protect the Deep Aquifers.**

Perhaps the most egregious delay in implementing needed interim demand management is the GSA's failure to take action to implement the pumping reductions in the Deep Aquifers that three studies have demonstrated to be essential. The Deep Aquifers are a critical source of water for urban users, including many disadvantaged urban communities.

Management Action 5 in the 2020 GSP called for the GSA to support and strengthen Monterey County Restrictions on Additional Wells in the Deep Aquifers. (5-Year Evaluation, p. 4-13.)

The Deep Aquifers were a little used resource until seawater intrusion contaminated production wells in the upper aquifers in the coastal zone, i.e., wells in the 180-Foot and 400-Foot aquifers.

The first Deep Aquifer production well was drilled in 1974, and four more Deep Aquifer agricultural wells were drilled in coastal areas and used by farmers whose wells in the upper aquifers had salted up between 1974 and 1995.

Pressure to install new Deep Aquifer agricultural wells abated for several years after the 1998 Castroville Seawater Intrusion Project (CSIP) project began to provide recycled water to coastal farmers, who in exchange reduced their groundwater use. Thus, from 1998 until 2005, no new Deep Aquifer agricultural wells were installed, and the Deep Aquifers were primarily used by Marina Coast Water District (MCWD) for urban uses in Marina and Fort Ord. The Deep Aquifers still represent the primary source of water for Marina and Fort Ord.

The Deep Aquifers are ancient water that has an extremely limited source of recharge, primarily from vertical migration from the upper aquifers. Increased pumping of the Deep Aquifers essentially mines this ancient water and at the same time induces vertical migration of water from the upper aquifers causing two adverse effects: it induces more seawater intrusion into the upper aquifers and it potentially contaminates the Deep Aquifers themselves by pulling in seawater contaminated upper aquifer water.

Beginning in 2006, farmers resumed drilling Deep Aquifer wells in coastal areas, and did so at an accelerating pace. The number of wells doubled from 2006 to 2020. Now there are at least 49 wells.<sup>17</sup>

---

<sup>17</sup> Montgomery and Associates, Deep Aquifer Study, April 2024, Figure 1-2, p. 15, at [https://svbgsa.org/wp-content/uploads/2024/05/Deep-Aquifers-Study-Report\\_no-appendices\\_compressed.pdf](https://svbgsa.org/wp-content/uploads/2024/05/Deep-Aquifers-Study-Report_no-appendices_compressed.pdf).

Based on this trend and the lack of good information about the sustainable yield of the Deep Aquifers, in October 2017 the Monterey County Water Resource Agency (MCWRA) recommended a two-year moratorium on Deep Aquifer wells to allow completion of a study and development of regulations to protect the Deep Aquifers. Thus, in May 2018, the County enacted a two-year moratorium on new Deep Aquifer wells, exempting municipal supply wells. However, despite MCWRA's recommendation to the contrary, the County also decided to exempt "replacement" wells in the Deep Aquifer, so it continued to permit these high production agricultural wells. The County did not commence the recommended Deep Aquifer study.

In May 2020, MCWRA staff urged the County to extend the moratorium when it was set to expire, and this time to prohibit "replacement" wells. Faced with demands from agricultural interests to let the moratorium lapse or at least to continue permitting replacement wells, the County took no action and let the moratorium lapse in May 2020. The County still did not commence the recommended Deep Aquifer study. Thus, between 2018 and 2020, fourteen more high-capacity agricultural replacement wells were installed in the Deep Aquifer.

Although an August 2020 California Supreme Court case requires CEQA compliance before issuing a well permit, the County permitted Deep Aquifer replacement wells without any environmental review, claiming CEQA's exemption for "emergency" projects. And County General Plan Policy PS-3.4 also exempted replacement wells from routine County analysis of adverse impacts. Thus, with no environmental review, the County permitted the very wells that MCWRA has urged the County not to permit due to their environmental damage.

Finally, in January 2022 the GSA, rather than the County, commenced a Deep Aquifer study, which was projected to take two years. In August 2022, GSA's hydrologists issued a preliminary, interim report finding that current extraction is unsustainable. Their Interim Guidance Based on Scientific Data called for reducing existing extractions, limiting new extractions, and enforcing currently unenforced monitoring. GSA staff's response was to advise the GSA that "[n]o action is recommended at this time."<sup>18</sup> And the GSA Board has still taken no action to limit Deep Aquifer pumping.

The GSA issued its final report on the Deep Aquifers in April 2024. Again, the report found that extractions are not sustainable and that demand management, provision of alternative water supply, and/or injection are required.<sup>19</sup> Management guidance calls for

---

<sup>18</sup> GSA Staff Report, August 11, 2022, available [https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/1502324/7.a\\_Deep\\_Aquifers\\_Study\\_Staff\\_Report.pdf](https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/1502324/7.a_Deep_Aquifers_Study_Staff_Report.pdf).

<sup>19</sup> Deep Aquifer Study, pp. 127-128, available at [https://svbgsa.org/wp-content/uploads/2024/05/Deep-Aquifers-Study-Report\\_no-appendices\\_compressed.pdf](https://svbgsa.org/wp-content/uploads/2024/05/Deep-Aquifers-Study-Report_no-appendices_compressed.pdf).

reducing net extractions.<sup>20</sup> At minimum, the report recommends that the County and GSA not permit any increase in extractions.<sup>21</sup> Despite this, the GSA has not implemented any controls on Deep Aquifer pumping. Instead, it has convened yet another group to consider what action to take, and that group is not expected to report back until 2025.

DWR should direct the GSA to prohibit new Deep Aquifer wells and take immediate action to reduce existing pumping.

**VI. The GSA has failed to pursue critical paths to sustainability implementation including assessment of willingness and responsibility to pay for projects and management actions.**

**A. The GSA delayed undertaking a willingness to pay study based on agricultural economics and will not have results until at least 2025.**

The determination of willingness to pay is essential to determining the economic feasibility of projects and management actions. Where infrastructure project costs exceed WTP, demand management is the rational economic choice

Since 2021, LandWatch has repeatedly asked that the GSA determine willingness to pay (WTP) based on an econometric analysis of the of the marginal value of an acre-foot of water to beneficial users.<sup>22</sup> For example, econometric research for the San Joaquin Valley determined that most farmers would not be willing to pay more than \$300 to \$500 per AF for new long-term supplies because an additional acre-foot of water would not generate long-term profits over this amount.<sup>23</sup> After implementing all projects that can deliver water at these cost levels, San Joaquin Valley farmers would prefer to attain SGMA

---

<sup>20</sup> Montgomery and Associates, Deep Aquifer Study Presentation to GSA Board of Directors, May 2024, Slide 31, [https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/2596250/6.3\\_Presentation\\_Deep\\_Aquifers\\_Study.pdf](https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/2596250/6.3_Presentation_Deep_Aquifers_Study.pdf).

<sup>21</sup> Deep Aquifer Study, pp. 131-132.

<sup>22</sup> E.g., Selection of Projects and Management Actions for Salinas Valley Water Supplies, Oct. 28, 2021, <https://landwatch.org/pages-new/policy/water/SVBGSA/102921-DraftReport-SVWaterSupplies.pdf>; Environmental Justice and Cost Apportionment Considerations in Planning Projects and Management Actions, June 28, 2022, <https://landwatch.org/pages-new/policy/water/SVBGSA/062822-LWComments-EJ-CostApportionment.pdf>.

<sup>23</sup> Hanak et al, Water and the Future of the San Joaquin Valley, p. 22, Feb. 2019, available at <https://www.ppica.org/wp-content/uploads/water-and-the-future-of-the-san-joaquin-valley-february-2019.pdf>.



compliance via pumping reductions because the marginal productivity of water does not justify higher costs.

In the Salinas Valley, a WTP study can help the GSA determine for any project for which the cost per acre-foot is known whether it is worth pursuing instead of demand management. Some proposed projects may exceed WTP and not be economically feasible.<sup>24</sup>

Despite this, the GSA did not commission an economic study until August 2024. The results will not be available until at least June 2025. And GSA staff have advised LandWatch that an interim technical report that was due in December 2024 is not yet available. (Piret Harmon, email to John Farrow, Dec. 28, 2024.)

**B. Assessment of inter-subbasin responsibility to implement sustainability, i.e., assessment of responsibility to mitigate groundwater conditions by funding projects that benefit other subbasins, is required to apportion project costs.**

In addition to willingness to pay, the GSA must also determine the responsibility to pay, which, for a given project or management action, may differ among subbasins, between urban and agricultural users within a subbasin, and between pumpers within the same class within a subbasin.

A water user's share of project costs depends on the size of the assessment base over which costs are apportioned and the differential obligations of different water user categories. Costs must be apportioned within each user class (e.g., agricultural users, urban water suppliers) based on some relevant metric (e.g., agricultural acreage, crop type, historic pumping, historic infrastructure assessments, urban water connections, or some combination). Costs must be apportioned between subbasins to the extent that there is a principled basis for doing so.

However, the GSA has not yet even begun to articulate any principled basis for cost apportionment of major infrastructure projects or the costs of demand management among subbasins and as between urban and agricultural users, despite stakeholders' interest in establishing a common understanding of who must pay for SGMA compliance.

---

<sup>24</sup> The Salinas Valley is likely more productive than the San Joaquin Valley on average. However, even if marginal agricultural value of water is five times higher per acre in the Salinas Valley than in the San Joaquin Valley, it may be unrealistic to expect agricultural users to pay more than \$1,500 to \$2,500 per acre-foot for new water infrastructure projects to avoid pumping reductions. For example, cost estimates indicated that desalinated water from the pumping barrier project would cost over \$2,000 per acre-foot, suggesting that there is a significant possibility that the project may not be economically feasible and that users would prefer to reduce pumping than to incur the costs.

Fairness, Proposition 218, and political accountability require that the GSA be prepared to apportion project and management action costs based on the proportional benefit to users, using a principled and transparent methodology that identifies the responsibility to meet the sustainability criteria in each subbasin.

The responsibility to pay for the cost of SGMA compliance may vary by location of users and by priority of water rights. First, users located in subbasins that do not cause or suffer overdraft and seawater intrusion may arguably have no mitigation responsibility for these problems in other subbasins; and even if these subbasins cause some lesser amount of the problem, their mitigation responsibility should arguably be proportional to the harm their water use causes.

Second, urban users with priority water rights should bear no mitigation responsibility for the amounts pumped within their priority rights.

In short, a user who has no legal obligation to mitigate groundwater conditions obtains no benefit from a mitigation project, and without a benefit, such a user cannot be assessed under Proposition 218.

LandWatch discussed in detail the need to assess willingness to pay and to develop a principled and equitable apportionment of project costs based on mitigation responsibility its June 28, 2022 letter regarding Environmental Justice and Cost Apportionment Considerations in Planning Projects and Management Actions.<sup>25</sup> Determination of responsibility to pay would require careful consideration of water rights of urban vs. agricultural users and an assessment of inter-subbasin equities. These are not simple matters. But the GSA must consider these issues now, because it will not be possible to determine if a given project is economically feasible without knowing whether its fairly apportioned cost exceeds the responsibility to pay of the specific users to whom its costs may be apportioned.

An example may be helpful. If the full cost of a pumping barrier/desalination project were allocated primarily to agricultural users in the 180/400 Subbasin because the GSA determined that urban users have priority water rights and/or that other subbasins bear less or no responsibility to mitigate overdraft and seawater intrusion in the 180/400 Subbasin, the project cost would be more likely to exceed the willingness to pay of the agricultural users in the 180/400 than if the cost were apportioned more widely. Faced with the choice of paying thousands of dollars per acre-foot or using less water, agricultural users in the 180/400 Subbasin might decide not to approve Proposition 218 funding for the pumping barrier/desalination project.

---

<sup>25</sup> Environmental Justice and Cost Apportionment Considerations in Planning Projects and Management Actions, June 28, 2022, <https://landwatch.org/pages-new/policy/water/SVBGSA/062822-LWComments-EJ-CostApportionment.pdf>.

The scope of work for the economic analysis now finally being undertaken for the GSA (the ERA study) purports to include an analysis of the cost per acre-foot for various projects and management actions. The purpose of this analysis is to determine the least-cost suite of projects and management actions. Presumably only those projects within the responsible users' willingness to pay would be found feasible. However, not all water users in the SVGB may be responsible for project costs and the fairly apportioned cost per acre foot for a given project may not be the same for all users.

Accordingly, the GSA should identify the users who would be responsible to pay the costs of each project, and in what proportion, so that realistic estimates of potential assessments to different groups of groundwater users can be estimated.

In particular, the SVBGSA must determine what responsibility, if any, the subbasins with positive water balances bear for SGMA compliance costs in other subbasins. Southern subbasin stakeholders have suggested that they should bear no compliance cost to rectify seawater intrusion or overdraft in northern subbasins. Stakeholders in the 180/400 Subbasin have disagreed.

In approving GSPs, DWR is required to determine "[w]hether the Plan will adversely affect the ability of an adjacent basin to implement its Plan or impede achievement of its sustainability goal."<sup>26</sup> The GSA has made this rule operational by stating that if a subbasin is meeting its own Sustainable Management Criteria, "neighboring subbasins will likely not be prevented from reaching of maintaining sustainability."<sup>27</sup> Since the southern subbasin GSPs current and projected water balances indicate that they do and will meet their SMCs without any additional projects or management actions, the GSA could presumably conclude that they would not be preventing other subbasins from reaching or maintaining sustainability. However, the GSA has also indicated that this conclusion may change, stating that "as part of the 5-year updates, the water budgets will be updated and sustainable management criteria reviewed to account for inter-basin flows and impacts on adjoining basins or subbasins."<sup>28</sup>

But without some principled legal basis for determining mitigation responsibility, the hydrological determination of these "inter-basin flows and impacts on adjoining basins or

---

<sup>26</sup> 23 CCR § 355.4(b)(7).

<sup>27</sup> 2022 180/400 GSP update, Response to comment letter 10.g, available at [https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/1403840/180400\\_Update\\_Comment\\_Letters\\_and\\_Responses\\_060122\\_2\\_.pdf](https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/1403840/180400_Update_Comment_Letters_and_Responses_060122_2_.pdf).

<sup>28</sup> The contemplation that GSP revisions in five years might affect responsibility for compliance costs is inconsistent with the commitment in the existing GSPs and the Two-Year Work Plan to evaluate, select, and determine funding for projects within the next two years.

subbasins” by itself cannot apportion SGMA compliance costs. One principled basis for cost apportionment would be the common law principles governing allocation of pumping rights from interconnected basins, because pumping allocations under SGMA must be consistent with these principles.<sup>29</sup> Pumping reductions, which must necessarily reflect these common law principles, are an alternative to expensive water projects. If the SVBGSA decides to avoid pumping reductions through water projects, arguably the cost of these projects should be borne in proportion to pumping that is in excess of water rights to a sustainable yield.

This is in effect what is required by the 2020 180/400 GSP’s Water Charges Framework, which plans to pay for projects with pumping fees based on pumping allowances.<sup>30</sup> The Water Charges Framework’s adoption reflects the SVBGSA’s principled acknowledgement that project costs should be apportioned in accordance with pumping in excess of water rights to the sustainable yield. Amendment 1 to the 2020 GSP equivocates, but it cannot deny this fundamental insight.

Although the correlative agricultural overlayers’ water rights within a subbasin may be of equal priority, it is not immediately clear how those water rights would be allocated among subbasins. Thus, for example, the Water Charges Framework identifies the equitable balance between subbasins of the pumping charges for water projects as a “detail to be developed” by 2023.<sup>31</sup> This “detail” must be consistent with water rights.

For example, a subbasin that would not be required to reduce its pumping through a hypothetical adjudication could argue that it should bear no share of the cost of projects to address overpumping problems in another subbasin. Alternatively, if mutual reductions in multiple subbasins were the expected result of adjudication, then those expected reductions would support a proportional allocation of the costs of projects to avoid such reductions. In sum, pumping allocations made under common law water rights principles may provide a useful proxy for apportioning the costs of water projects, because building water projects is an alternative to pumping allocations.

Again, while modeling inter-subbasin flows and hydrological impacts on adjoining subbasins may be necessary, it is not sufficient to provide a principled basis for project cost apportionment consistent with common law water rights. The water rights analysis must also be undertaken.

---

<sup>29</sup> Garner et al., The Sustainable Groundwater Management Act and the Common Law of Groundwater Rights—Finding a Consistent Path Forward for Groundwater Allocation, *Journal of Environmental Law* V38:2, 2020, pp. 166-167, 178-181, available at [https://www.edf.org/sites/default/files/documents/01JELP38-2\\_Garner\\_etal.pdf](https://www.edf.org/sites/default/files/documents/01JELP38-2_Garner_etal.pdf).

<sup>30</sup> 2020 180/400 GSP, pp. 9-2 to 9-10.

<sup>31</sup> 2020 180/400 GSP, p. 9-10.

Agricultural users account for over 85% of water use in the northern subbasins and over 90% across the entire Salinas Valley, but it is unclear which agricultural users have a legal obligation under SGMA to bear project costs, in large part because the GSA has not determined differential mitigation responsibility by subbasin. Thus, a fundamental hurdle in determining what projects are economically feasible is uncertainty whether there is a large enough assessment base to pay for them. Again, if the southern subbasins are not legally obligated to pay to mitigate seawater intrusion and overdraft in the northern subbasins, then the assessment base may not support the most expensive proposed projects. Again, even if the marginal value of agricultural water is much higher per acre in the Salinas Valley than in the San Joaquin Valley, it may be unrealistic to expect agricultural users to pay more than \$1,500 to \$2,500 per AF for projects to avoid pumping reductions. Elimination of the southern subbasins from the assessment base for projects may by itself rule out expensive projects like the pumping barrier/desalination.

Furthermore, as discussed below, assessments against urban suppliers may be limited by the priority of their water rights and by the fact that there is no apparent justification for apportioning the cost of more expensive projects to urban users and the cost of less expensive projects to agricultural users.

**C. Assessment of responsibility to implement sustainability as between urban and agricultural pumpers is required for project cost apportionment.**

In apportioning compliance costs, the SVBGSA will also have to recognize that existing urban users have priority in water rights over agricultural uses. Urban users should not have to pay for water projects to replace groundwater for which they have a priority claim.

As discussed, both the Water Charges Framework and the requirement that SGMA respect water rights principles requires that project costs should be apportioned in accordance with pumping in excess of water rights to sustainable pumping. Thus, if the GSA decides to build projects instead of reducing pumping, the project costs should be borne in proportion to the relief from pumping reductions that would otherwise be imposed.

Urban suppliers who have pumped in an overdrafted basin for five years have a prescriptive right that takes priority over pumping by agricultural overlies.<sup>32</sup> In an adjudication, the amount of that right is reduced by so-called “self-help” pumping by overlying landowners, and it would also likely be ramped down to reflect the “safe yield”

---

<sup>32</sup> Garner et al., *The Sustainable Groundwater Management Act and the Common Law of Groundwater Rights—Finding a Consistent Path Forward for Groundwater Allocation*, *Journal of Environmental Law* V38:2, 2020, pp. 187, 207.

of the aquifer (similar to SGMA’s “sustainable yield”).<sup>33</sup> Typically, the urban supplier would have the prescriptive right to pump the same percentage of the safe yield as the percentage of total pumping it pumped during the prescription period.<sup>34</sup> Urban suppliers would have this right even if no projects were built and SGMA compliance were achieved solely via pumping reductions. Accordingly, if costs are apportioned on the basis of pumping in excess of common law water rights, urban suppliers should not have to pay for projects to avoid pumping reductions they would not have to make in an adjudication.

Furthermore, urban suppliers may not be limited to prescriptive rights because the constitutional mandate for reasonable and beneficial use may make domestic water use a higher priority than agricultural use even without prescription.<sup>35</sup> In addition, Water Code Section 106 declares as state policy that domestic use is a higher priority than agricultural use, and one court interpreted this to require urban use even without prescription.<sup>36</sup> These constitutional and statutory priorities may further limit urban suppliers responsibility for project costs.

Urban suppliers understand their priority rights and will not be willing to forego them. Commenting on potential pumping allocations, Cal Water explains that its priority water rights and its claims under Water Code Section 106 require that its water rights be subject to less restriction than any other types of uses:

The above notwithstanding, Cal Water holds certain water rights to groundwater it has pumped and used as an overlying owner and appropriator. Cal Water’s water rights have been dedicated to a public use, and Cal Water is required by the California Public Utilities Commission to provide water to all customers within its designated service area under reasonable rules and regulations. Further, under California law municipal water rights and uses have a higher priority and are entitled to more protection than other uses of water, including in connection with the Sustainable Groundwater Management Act (SGMA). Use of water for domestic purposes is recognized as the “highest use” of water in the State of California pursuant to Water Code Section 106, and the rights of urban water purveyors should be protected to the fullest extent necessary for existing and future uses, pursuant to Water Code Section 106.5. SGMA was intended to preserve the security of water rights in the state to the greatest extent possible, and

---

<sup>33</sup> *Id.* at 189-190, 207. “Safe yield” is functionally equivalent to SGMA’s “sustainable yield.” (*Id.* at 206 n 189.)

<sup>34</sup> *Id.* at 187, 207.

<sup>35</sup> *Id.* at 177-178, 196-198.

<sup>36</sup> *Id.* at 197. No court has yet interpreted Water Code section 106.3, declaring the human right to water for domestic purposes.

was not intended to determine, modify or alter any surface water or groundwater rights or priorities. (Water Code §§ 10720.1(b), 10720.5(a) and (b).) SGMA should therefore not reduce, adversely impact or limit Cal Water's present or future exercise of its domestic water rights or its obligation to serve its municipal customers, and Cal Water's rights should be subject to less restrictions and limitations than any other types of water rights or uses.<sup>37</sup>

Applying the principle that project costs should be apportioned in accordance with pumping in excess of water rights, urban water suppliers will necessarily pay a smaller share of the cost of water projects than agricultural users on a per acre-foot basis. With the possible exception of the Corral de Tierra area of the Monterey subbasin and the Langlely subbasin, the amount pumped for urban use prescriptively is well below the safe or sustainable yield of the northern subbasins. Thus, under the doctrine of prescription, and even without Water Code Section 106, urban water users should not have to pay for water projects to provide their prescriptive right to existing pumping, because they would be entitled to this prescriptive right water without any reduction in a hypothetical adjudication. Urban users should pay at most an amount based on their non-prescriptive pumping, which would consist of increased pumping to accommodate future growth.<sup>38</sup> And if Water Code section 106 is given weight, urban suppliers enforceable share of project costs may be less, or zero.

Furthermore, if multiple projects and management actions are taken to attain sustainability, each with a different cost per acre-foot, urban suppliers should be required to pay at most only the average cost per acre-foot for their water for growth, not the highest cost. For example, even if urban suppliers were required to pay for water for growth, they should not be expected to subsidize the agricultural water use by paying thousands of dollars per acre-foot for desalinated drinking water while agricultural users pay less for surface water diversions or recycled water.

Thus, for example, if a desalination/pumping barrier project goes forward, northern subbasin agriculture may be required to pay the lion's share of its cost. It is unclear that agricultural users would be willing to pay these costs for water.

**D. The GSA has not evidently initiated consideration of water rights as a basis to apportion project costs between subbasins or among user classes. DWR should instruct it to do so.**

The GSA's failure to address through timely analysis the issues of responsibility to pay has compromised its ability to timely implement the projects and management actions

---

<sup>37</sup> Cal Water, Salinas District 2020 Urban Water Management Plan, App. G, p. G-9.

<sup>38</sup> Urban suppliers might also be required to pay for the overdraft percentage of their existing pumping. That is, if the subbasin had a 10% overdraft, their prescriptive right might be ramped down to 90% of their existing pumping.

needed to meet interim milestones and attain measurable objectives. DWR should instruct the GSA to commence the necessary assessments of responsibility to pay immediately. This assessment must be based on consideration of water rights within and among subbasins. And to the extent that solutions may require changes to the current uses of surface waters impounded by the reservoirs, the water rights analysis must assess both groundwater rights and surface water rights.

It is unclear what work the GSA has undertaken in this area. It has a contract with the Minasian law firm, but the contract's scope of work is entirely vague. It was amended in August 2022 to state that Minasian would "provided as needed advice" about the implementation of the GSPs "as such implementation relates to 1) water rights and 2) the applicability of the California Environmental Quality Act ('CEQA')." <sup>39</sup> It was amended again in August 2024 to extend the scope of work completion to June 2025 and to increase the contract amount from \$90,000 to \$130,000. <sup>40</sup>

Legal analysis of demand management is included in the Fiscal 2025 work plan (Task 52.3) but it is not clear if this analysis will relate to projects or other management actions. <sup>41</sup> Task 52.5, "assess inter-subbasin impacts of DM" is in the Fiscal 2025 work plan, but that plan indicates that this work is also part of the Fiscal 2026 work plan and will not be completed until February 2026. Furthermore, staff have indicated that the focus of the Minasian report, now expected in February 2025, will be related only to demand management. It appears that the report may offer no guidance for apportioning costs for projects or for apportioning costs between subbasins.

**E. The GSA has not begun to establish the pumping allocations needed for both demand management and project cost apportionment. DWR should instruct it to do so.**

As discussed in section III.B above, the GSA has taken no steps to develop pumping allocations, which are essential to implementing demand management or apportioning project costs. Again, pumping allocations are promised in the 2020 GSP as the foundation of the Water Charges Framework and as the only identified method to apportion the costs of projects and management actions. Development of pumping

---

<sup>39</sup> Amendment 1 to Minasian/GSA contract, August 2022, available at [https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/1502029/Amendment\\_No.\\_1\\_SV\\_BGSA\\_and\\_Minasian\\_Law\\_Firm.pdf](https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/1502029/Amendment_No._1_SV_BGSA_and_Minasian_Law_Firm.pdf).

<sup>40</sup> Amendment 3 to Minasian/GSA contract, undated draft, [https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/2770074/4.5\\_Amendment\\_No\\_3\\_Minasian.pdf](https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/2770074/4.5_Amendment_No_3_Minasian.pdf).

<sup>41</sup> GSA Fiscal 2025 Work Plan, available at [https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/2484526/6.1\\_Work\\_Plan\\_FY\\_2025\\_2024-03-06.pdf](https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/2484526/6.1_Work_Plan_FY_2025_2024-03-06.pdf).



January 8, 2025

Page 25


allocations would have to be consistent with water rights. Thus, the pumping allocations would require resolution of the differing rights as between user classes and as between subbasins.

DWR should direct the GSA to undertake pumping allocations within and among subbasins as the basis for apportioning project costs and implementing demand management.

Thank you for your consideration of these comments.

Yours sincerely,

M. R. WOLFE & ASSOCIATES, P.C.



John Farrow

JHF:hs

cc: Piret Harmon, [harmonp@svbgsa.org](mailto:harmonp@svbgsa.org)  
Craig Altare, [Craig.Altare@water.ca.gov](mailto:Craig.Altare@water.ca.gov)  
[Sustainable Groundwater Management Act \(SGMA\) Portal - Department of Water Resources](#)  
Michael DeLapa  
Laura Davis