KERN GROUNDWATER AUTHORITY

1800 30th Street Ste #390, Bakersfield
Regular Meeting of Board of Directors
April 24, 2024 8:00 a.m.
The public may attend the meeting via zoom platform. Public comment will be taken in person at the location above or on the zoom platform at the link below:
Zoom
https://us02web.zoom.us/j/85434179102?pwd=OC90UVJ4VlhRWE9BczA2TkpMa28wZz09

Meeting ID: 854 3417 9102
Passcode: 341423

Kern Groundwater Authority Board of Directors Agenda

This meeting is held in accordance with the Brown Act pursuant to Section 54956 of the California Government Code and the Kern Groundwater Authority Joint Powers Agreement.

1. **Roll Call - Quorum Determination**
   In the absence of a quorum the Board will handle only those items not needing a quorum.

2. **Flag Salute**

3. **Public Input**
   This portion of the meeting is set aside to provide the public an opportunity to bring to the attention of the Board matters of which the Board may not be aware and which are not on the current agenda. No action can be taken on any matter raised during this portion of the meeting; however, a Board member may request that the matter be placed on any future agenda for further review and possible action. Members of the public may directly address the Board of Directors on any item of interest within the Board's subject matter jurisdiction, before or during the Board's consideration of the item. The President may limit the time allowed for comment.

4. **Approval of Minutes**
   a. February Regular Board Meeting Minutes*

5. **Financial Report**
   a. Financial Report & Accounts Payable – February *
   b. Financial Report & Accounts Payable – March *

6. **Attorney Report**
   a. Update on State Water Resources Control Board Probationary Process for Tulare Lake
   b. Groundwater Legislation

- Denotes Action Item

7. DWR Grant

a. Update on DWR Grant.

b. Action to facilitate grant submission and/or payment distribution. *

8. Authorize new DWR point of contact for DWR Grant.

a. Action authorizing Jason Gianquinto to communicate with DWR and sign behalf of KGA for administration of DWR contracts. *

9. Revised Joint Powers Authority

a. Review and potentially consider action on Revised KGA JPA. *

10. Revised KGA Groundwater Sustainability Plan

a. Update and discussion on KGA GSP revisions.

11. New Business

This Portion of the Meeting is set aside to provide each Board member an opportunity to bring to the attention of other Board members and the public matters which have come to their attention and/or which may be appropriate for future consideration. No action can be taken on any matter raised during this portion of the meeting; however, a Board member may request that the matter be placed on any future agenda for further review and possible action.

12. Correspondence

a. Kern County Water Agency Letter dates 4.12.24.

13. Closed Session

a. Conference with Legal Counsel – Potential Litigation: Closed Session pursuant to Government Code Section 54956.9(d)(2), (e)(2) (two matters)

14. Adjournment

A person with a qualifying disability under the Americans with Disabilities Act of 1990 may request the Authority provide disability-related modification or accommodation in order to participate in any public meeting of the Authority. Such assistance includes appropriate alternative formats for the agendas and agenda packets. Requests should be made in person, by telephone, facsimile and/or written correspondence to the Authority office, at least 48 hours before a public Authority meeting. Written materials related to an item on this agenda to be considered in open session that are public documents and that are distributed to board members after the posting of the agenda, will be made available for public inspection when they are so distribution at the office of the Authority located at 1800 30th Street, Ste #280, Bakersfield, California during normal business hours. Documents that are public documents provided by others during a meeting will be available at the same location during business hours after the meeting.

- Denotes Action Item

JPA Regular Board Meeting Minutes
Kern Groundwater Authority
Wednesday, February 28, 2024, 8:00 a.m.
Participation by Teleconference/ZOOM

JPA DISTRICT REPRESENTATIVES AND ALTERNATES PRESENT
Royce Fast, Kern County Water Agency
Kim Brown, Kern Water Bank Authority
Dan Waterhouse, Semitropic WSD
Gary Morris, West Kern WD
Rob Goff, Westside District Water Authority

JPA DISTRICT REPRESENTATIVES ABSENT
Andrew Pandol, Kern-Tulare WD
Chad Hathaway, Eastside Water Management Area (non-voting member)

OTHERS PRESENT/PARTICIPATING
Valerie Kincaid, Paris Kincaid Wasiewski LLP

1. **Roll Call - Quorum Determination** – Chairman Waterhouse called the meeting to order at 8:00 a.m. after it was confirmed there was a quorum. The Board met the threshold for a quorum under the JPA and operated under it.

2. **Flag Salute** – Completed.

3. **Public Input** – None.

4. **Approval of Minutes**
   a. January Regular Board Meeting Minutes*
   A motion was made by Director Goff and seconded by Director Brown to approve the January 2024 Regular Board Meeting Minutes as presented. The motion was unanimously carried.

5. **Treasurer's Report**
   a. Financial Report & Accounts Payable – January*
   Ms. Kincaid referred the Board to the Accountant's Report for January 2024 and requested approval of the disbursement of accounts payable in the amount of $16,949.19 as presented in Exhibit E. She noted that deposits, disbursements, cash calls, receivables, and grant statuses could be seen in Exhibits A, B, C and D. A motion was made by Director Fast and seconded by Director Gary Morris to approve the financial report and disbursement of payments as advised by Ms. Kincaid. The motion was unanimously carried.

6. **Attorneys Report**

a. Legislative Subcommittee Hearing on SGMA Update February 21, 2024

Ms. Kincaid noted that the hearing was comprised of two panels providing a SGMA update. She stated that the DWR was at the tail-end of evaluating plans and would soon be focusing its efforts on implementation. She noted that it was confirmed that January 2025 would remain the subbasin hearing date with the Tulare Lake Basin still scheduled for April 16, 2024. She also noted that the State Water Board gave its staff direction to examine the current fee basis and determine if they were too high. She noted that the assembly committee had requested information on where money from these fees would go and noted that many believed not investing the funds in sustainability was a bad idea.

She concluded by noting that two policies were emphasized: the transition of farm workers, and the fallowing of agriculture and the impacts on air quality.

b. Interconnected Surface Water Guidance from DWR

Ms. Kincaid stated that DWR released its first paper which is one of a three-part series on interconnected surface water guidance. The second would be techniques for estimating and the third would provide examples of approaches.

She noted that although the DWR did not fail anyone during its analysis, it made some technical conclusions that are worth GSAs looking into.

Ms. Kincaid recommended that members review the guidance and provide comments to the DWR on implementation and potential environmental challenges.

c. Update on GSP Litigation Statewide

Ms. Kincaid stated that the DWR issued 13 inadequate determinations but highlighted that it had received 6 challenges. She noted that the DWR is getting sued for the first time and expected to defend its determinations in court.

7. **DWR Grant**

a. Update on DWR Grant

Mr. Gianquinto confirmed that the reimbursement claim for September to December 2023 had been submitted and USGS has mobilized for the construction work.

b. Action to facilitate grant submission and/or payment distribution. *

No action made.

8. **Election of Officers: Chair, Vice Chair, and Treasurer**

a. Section 3.02 of the Joint Powers Authority requires the election of officers of Chair and Vice Chair. Section 4.02 requires the KGA select a member as treasurer to serve as the fiscal agent of the Authority. These positions require a nomination, a second and majority vote. *

Ms. Kincaid reminded the Board of its need for a fiscal agent and requested nominations. A motion was made by Director Fast and seconded by Director Gary Morris for Dan Waterhouse to remain as Chair, Royce Fast as Vice Chair, and Rob Goff as Treasurer. The motion was unanimously carried.

9. **Annual Report**
   a. **Update on Annual Report development and submission to DWR.**
   Ms. Kincaid confirmed Todd Groundwater is still working on the annual report and that she expects an update in March at the coordination level.

10. **Form 700**
   a. **Form 700 Reminder**
   Ms. Kincaid confirmed that she was in receipt of some forms and reminded the Board to submit to her prior to the upcoming deadline on April 1, 2024.

11. **New Business** – None.

12. **Correspondence** – None.

13. **Closed Session** – No reportable action reported.

14. **Adjournment** – At 8:26 a.m. open session convened into closed session.

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2024-0012

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

WHEREAS:

1. Groundwater provides a significant portion of California's water supply, making up more than one-half of the water used by Californians in drought years when other sources are unavailable. When properly managed, groundwater resources provide for communities, farms, and the environment and help protect against prolonged dry periods and climate change, preserving water supplies for existing and potential beneficial uses. However, excessive groundwater extraction can cause long-term overdraft, failed wells, deteriorated water quality, environmental damage, and irreversible land subsidence that damages infrastructure and diminishes the capacity of aquifers to store water for the future, all of which can have substantial economic impacts. Additionally, failure to manage groundwater to prevent long-term overdraft can potentially infringe on rights to or use of groundwater or interconnected surface water;

2. In 2014, the State of California enacted Assembly Bill 1739, and Senate Bills 1168 and 1319, collectively referred to as the Sustainable Groundwater Management Act (SGMA). SGMA is intended to ensure the proper and sustainable management of groundwater resources in California;

3. The State Water Board recognizes that near-term SGMA implementation has the potential to result in substantial economic impacts in overdrafted basins. The State Water Board further recognizes that the goal of SGMA is sustainable groundwater management that will ensure the long-term viability of groundwater resources for future use by communities, farms, businesses, and the environment;

4. SGMA allows local agencies overlying alluvial groundwater basins determined by the Department of Water Resources to be high- or medium-priority to form Groundwater Sustainability Agencies (GSAs), and requires each GSA to prepare and implement a Groundwater Sustainability Plan (GSP) to achieve sustainable management of the basin;

5. SGMA recognizes that groundwater management is best accomplished locally; however, if local agencies fail to form a GSA or prepare a GSP for a groundwater basin, or the Department of Water Resources determines that the GSP is inadequate or not being implemented in a way that is likely to achieve SGMA's sustainability goal, SGMA authorizes the State Water Resources Control Board (State Water Board or Board) to intervene in the basin to ensure that the basin is managed sustainably;

6. SGMA requires GSAs, which can have broad impacts within their basins, to consider the interests of all beneficial uses and users of groundwater and to encourage the active involvement of diverse elements of the population of a groundwater basin during the development and implementation of GSPs;

7. To implement SGMA's state intervention process, the State Water Board may designate a basin as probationary. If the State Water Board designates a basin as probationary, it must identify the deficiencies in the GSP, identify potential actions to remedy the deficiencies, and exclude from probationary status any portion of a basin for which a GSA demonstrates compliance with SGMA's sustainability goal;

8. The deadline for GSAs in critically overdrafted high- and medium-priority basins to adopt and submit GSPs for review by the Department of Water Resources was January 31, 2020;

9. The Tulare Lake Subbasin is depicted in Attachment 1 and is a critically overdrafted high-priority basin;

10. The South Fork Kings Groundwater Sustainability Agency, the Mid-Kings River Groundwater Sustainability Agency, the El Rico Groundwater Sustainability Agency, the Tri-County Water Authority Groundwater Sustainability Agency, and the Southwest Kings Groundwater Sustainability Agency (collectively, the Tulare Lake Subbasin GSAs) were recognized by the Department of Water Resources as the GSAs for the Tulare Lake Subbasin;

11. The Tulare Lake Subbasin GSAs submitted the Tulare Lake Subbasin 2020 GSP to the Department of Water Resources for review on January 29, 2020;

12. On January 28, 2022, the Department of Water Resources issued a determination that the Tulare Lake Subbasin 2020 GSP was incomplete and provided the Tulare Lake Subbasin GSAs with 180 days to address the deficiencies identified in the incomplete determination;

13. The Tulare Lake Subbasin GSAs submitted the Tulare Lake Subbasin 2022 GSP to the Department of Water Resources for review on July 27, 2022;

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

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

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

17. When issuing the notice, the State Water Board posted the notice on its website and sent the notice by electronic mail to its SGMA email listserv, to the Department of Water Resources, to each city and county within which any part of the Tulare Lake subbasin is situated, and to the points of contact for each of the Tulare Lake Subbasin GSAs;

18. On October 13, 2023, the State Water Board mailed the notice to all persons known to the Board who extract or who propose to extract water from the basin;

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

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

21. State Water Board staff, after reviewing and considering input from public comments submitted at the workshops and during the public comment period, have revised and finalized the staff report, which supports the staff recommendation that the State Water Board designate the Tulare Lake Subbasin as a probationary basin under SGMA;

22. The State Water Board has reviewed and considered the staff report and public testimony and comments received during the public comment period and at the public probationary hearing;

23. The State Water Board recognizes the established Human Right to Water policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes;

24. The State Water Board is committed to upholding California's human right to water and making racial equity, diversity, inclusion, and environmental justice a central consideration in water law;

25. The State Water Board has a duty to consider adverse impacts groundwater extraction would have on public trust resources and to protect public trust resources where feasible;

26. The State Water Board acknowledges and appreciates the efforts of the Tulare Lake Subbasin GSAs to develop and revise the Tulare Lake Subbasin GSP, including continued constructive engagement with State Water Board staff on technical information and approaches to remedy deficiencies, but these efforts have not been sufficient to rectify the deficiencies in the GSP;

27. Based on its review and consideration the State Water Board agrees that the Tulare Lake Subbasin should be designated at this time as probationary and agrees with other staff recommendations as resolved herein.

THEREFORE BE IT RESOLVED THAT:

The State Water Board:

1. Finds that the Tulare Lake Subbasin is subject to Water Code section 10720.7, subdivision (a)(1), and that the Department of Water Resources, in consultation with the State Water Board, has determined that the 2022 groundwater sustainability plan for the Tulare Lake Subbasin is inadequate.

2. Designates the Tulare Lake Subbasin as a probationary basin pursuant to Water Code section 10735.2, subdivision (a)(3).

3. Identifies deficiencies in the Tulare Lake Subbasin 2022 GSP and corresponding potential actions, identified in the final staff report as potential actions that can correct those deficiencies pursuant to Water Code section 10735.6, subdivision (a). Deficiencies identified:

    a. Groundwater Levels (GL)

        i. Deficiency GL-1 – The 2022 GSP does not clearly describe the groundwater level conditions that would result in an undesirable result for the basin.

        ii. Deficiency GL-2 – The GSAs did not consider all beneficial uses and users in setting sustainable management criteria (SMC) for groundwater levels in the 2022 GSP or adequately describe the impacts of criteria on beneficial uses and users. Minimum thresholds (MTs) in the A-zone would allow for significant and unreasonable water level declines.

        iii. Deficiency GL-3 – The monitoring network does not provide sufficient coverage to monitor for impacts to beneficial uses and users in the three aquifers in the subbasin (due to data gaps in A-zone coverage and inconsistent sampling).

        iv. Deficiency GL-4 – The 2022 GSP's discussion of well impact mitigation lacks important details and the GSP does not

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

v. Deficiency GL-5 – The 2022 GSP does not describe a feasible path for halting chronic lowering of groundwater levels.

vi. Deficiency GL-6 – The GSAs do not consider the effects on other sustainability indicators, such as groundwater storage, subsidence, degradation of groundwater quality, and depletions of interconnected surface water.

b. Land Subsidence (LS)

i. Deficiency LS-1 - The 2022 GSP does not clearly describe the subsidence conditions that would result in an undesirable result for the basin.

ii. Deficiency LS-2 - The GSAs did not consider all beneficial uses and users in setting quantitative criteria for subsidence in the 2022 GSP or adequately describe the impacts of criteria on beneficial uses and users.

1. Deficiency LS-2a – MTs were not established based on avoiding undesirable results.

2. Deficiency LS-2b – Some MTs appear to exceed subsidence limits set in other pre-existing agreements.

3. Deficiency LS-2c – Measurable objectives (MOs) and intermediate milestones (IMs) were not established.

iii. Deficiency LS-3 – The GSAs did not adequately consider the impacts of subsidence on flood protection infrastructure.

iv. Deficiency LS-4 – The GSP does not provide adequate implementation details.

c. Groundwater Quality (GWQ)

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

1. Deficiency GWQ-1a – The 2022 GSP does not clearly describe the water quality conditions and impacts that would result in an undesirable result for the basin.

2. Deficiency GWQ-1b – The triggers for determining an undesirable result set by the 2022 GSP would result in delayed identification of an undesirable result and therefore delayed management of the basin.

3. Deficiency GWQ-1c – The GSP does not describe how it would determine whether significant and unreasonable degradation of water quality was associated with basin management.

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

1. Deficiency GWQ-2a – The 2022 GSP establishes minimum thresholds that exceed regulatory water quality thresholds without explaining how that would not cause significant and unreasonable results or impacts to beneficial uses and users.

2. Deficiency GWQ-2b – Some MTs are inexplicably based on data that may represent undesirable results.

3. Deficiency GWQ-2c – The GSP does not explain how it quantifies "current conditions," yet uses current conditions to justify establishing MTs that exceed Maximum Contaminant Levels (MCLs) or Secondary Maximum Contaminant Levels (SMCLs).

4. Deficiency GWQ-2d – MTs are sometimes set to the highest detected concentrations.

5. Deficiency GWQ-2e – MTs at some wells are based on data from wells nearby the representative monitoring site (RMS) wells, rather than from the RMS wells themselves, without justification.

iii. Deficiency GWQ-3 – MOs set by the 2022 GSP for groundwater quality are not consistent with GSP Regulations.

1. Deficiency GWQ-3a – The 2022 GSP allows MOs that exceed regulatory water quality thresholds (e.g., MCLs) without explaining how that would not cause significant and unreasonable results or impacts to beneficial uses and users.

2. Deficiency GWQ-3b – Some MOs are inexplicably based on data that may represent undesirable results.

3. Deficiency GWQ-3c – The GSP does not explain how it quantifies current conditions, yet the GSP uses current conditions to justify establishing MOs that exceed MCLs or SMCLs.

4. Deficiency GWQ-3d – MOs are sometimes effectively set to 95th percentile concentrations.

5. Deficiency GWQ-3e – MOs at some wells are based on data from wells nearby the RMS wells, rather than from the RMS wells themselves, without justification.

6. Deficiency GWQ-3f – The 2022 GSP establishes measurable objectives that may vary over time without explanation of how that would provide operational flexibility while avoiding significant and unreasonable results or impacts to beneficial uses and users.

iv. Deficiency GWQ-4 – The water quality monitoring plan in the 2022 GSP is not consistent with GSP regulations.

1. Deficiency GWQ-4a – The GSP does not monitor or manage the aquifer below the de-designated zone.

2. Deficiency GWQ-4b – The proposed monitoring frequency is insufficient to detect short-term and seasonal trends.

3. Deficiency GWQ-4c – The proposed monitoring network does not adequately monitor key aquifers.

4. Deficiency GWQ-4d – The proposed sampling plan relies entirely on other agencies, despite temporal and spatial data gaps in those networks.

v. Deficiency GWQ-5 – The proposed management actions do not address quality degradation.

1. Deficiency GWQ-5a – Additional sampling is not triggered when MTs are exceeded.

2. Deficiency GWQ-5b – Well mitigation plans do not address MT exceedances.

4. Adopts the following requirements and exclusions regarding reporting and metering of groundwater extractions:

a. Any person who extracts more than two acre-feet of groundwater per year from the subbasin or who extracts groundwater from the subbasin for purposes other than domestic uses must report their extractions made on or after July 15, 2024, to the State Water Board pursuant to Water Code section 5202 and pay to the State Water Board the associated fee imposed pursuant to California Code of Regulations, title 23, section 1040 et seq.

b. Any person who extracted more than 500 acre-feet from the Tulare Lake subbasin during the period of October 1, 2022, through September 30, 2023, and any person who anticipates extracting more than 500 acre-feet during the period of October 1, 2023, and September 30, 2024, must install and use meters that meet the

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

c. For individuals required to report who do not already have meters installed, the State Water Board will consider alternative compliance pathways to the metering requirement, taking into account the reliability and accuracy of alternative measurement techniques and whether auditable information is used. Specific considerations include but are not limited to whether:

    i. groundwater is extracted for uses not captured by evapotranspiration,

    ii. sufficient details about crop irrigation and irrigation efficiency are provided, and

    iii. contributions of precipitation and other sources to consumptive use are known and accounted for.

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

5. Modifies the extraction reporting deadline for groundwater extraction reports required by Water Code section 5202 from February 1 to December 1 of each year and requires the first report to be submitted by December 1, 2024.

6. Exempts any person who extracts two acre-feet per year or less for domestic purposes only from the Tulare Lake subbasin from the requirement to report groundwater extractions and pay the associated fees.

7. Directs State Water Board staff to continue to provide technical feedback to the Tulare Lake Subbasin GSAs regarding the GSAs' efforts to resolve the deficiencies in the GSP and to periodically update the State Water Board regarding the GSAs' progress made towards resolving the deficiencies, including whether, if the GSAs propose actions to correct the

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

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

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

CERTIFICATION

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

AYE:	Chair E. Joaquin Esquivel Vice Chair Dorene D'Adamo Board Member Sean Maguire Board Member Laurel Firestone Board Member Nichole Morgan
NAY:	None
ABSENT:	None
ABSTAIN:	None

Courtney Tyler
Clerk to the Board

AMENDED IN SENATE APRIL 16, 2024

SENATE BILL No. 1390

Introduced by Senator Caballero
(Coauthor: Assembly Member Soria)

February 16, 2024

An act to amend Section 1242.1 of the Water Code, relating to groundwater.

LEGISLATIVE COUNSEL'S DIGEST

SB 1390, as amended, Caballero. Groundwater recharge: floodflows: diversion.

Existing law declares that all water within the state is the property of the people of the state, but the right to the use of the water may be acquired by appropriation in the manner provided by law. Existing law requires the appropriation to be for some useful or beneficial purpose. Existing law provides, however, that the diversion of floodflows for groundwater recharge does not require an appropriative water right if certain conditions are met, including that a local or regional agency *that* has adopted a local plan of flood control or has considered flood risks *as* part of its most recently adopted general ~~plan.~~ *plan has given notice, as provided, of imminent risk of flooding and inundation of lands, roads, or structures.* Existing law also requires the person or entity making the diversion *for groundwater recharge purposes* to file with the State Water Resources Control Board a final report *15 days* after the diversions ~~cease, as provided.~~ *cease.* These requirements apply to diversions commenced before January 1, 2029.

This bill would extend the operation of these requirements to diversions commenced before ~~January 1, 2034.~~ *June 1, 2032.* The bill would revise, recast, and expand the conditions that are required to be

met ~~to include a requirement~~ *for the diversion of flood waters for groundwater recharge that do not require an appropriative water right. The bill would require* that a local or regional agency ~~make~~ *take specified actions, including making* a declaration that ~~its proposed~~ diversion *of floodflows for groundwater recharge from a delineated stretch of waterway within its jurisdiction* is in accordance with one of certain enumerated plans relating to flood control or flood risk, as specified, or a county emergency operations plan. *The bill would require diversions to cease no later than 90 days after commencing, unless they are renewed, and would authorize a local or regional agency to renew a diversion for an additional 30 days by notifying the board of its intention to continue diverting 15 days before its expiration.* The bill would also require the final report to *be made by an entity and* contain information, if applicable, describing the forecasting models used to determine a likely imminent escape of surface water and a description of the methodology used to determine the abatement of flood conditions. *The bill would require that temporary floodflow diversions be consistent with the most junior priority relative to all water rights holders in the watershed and prohibit those diversions from injuring a prior water rights holder.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1242.1 of the Water Code is amended to read:

1242.1. The diversion of floodflows for groundwater recharge ~~shall~~ *does* not require an appropriative water right if all of the following conditions are met:

(a) (1) A local or regional agency has taken the following actions:

(A) Made a declaration that ~~its proposed diversion~~ *diversion of floodflows for groundwater recharge from a delineated stretch of waterway within its jurisdiction* is in accordance with one of the following:

(i) An adopted local plan of flood control pursuant to Section 8201.

(ii) An applicable general plan *updated within the previous eight years* that considers flood risk.

(iii) A county emergency operations plan.

~~(iv) A publicly available regional flood plan certified by the department.~~

(B) Has given notice via its internet website, electronic distribution list, emergency notification service, or another means of public notice, that ~~flows downstream of the point of diversion are~~ *a delineated area within the local or regional agency's jurisdiction is* at imminent risk of flooding and inundation of land, roads, or structures.

(2) As used in this section, "floodflow" means any of the following:

(A) ~~Where~~ *If* a waterbody is subject to a defined flood stage, flows in excess of flood stage ~~where~~ *if* actions are necessary to avoid threats to human health and safety.

(B) (i) Except as provided in clause (ii), ~~where~~ *if* a waterbody is not subject to a defined flood stage, surface water escaped ~~from~~ *from*, or ~~is~~ likely to imminently escape ~~from~~ *from*, a channel or waterbody causing or threatening to cause inundation of residential or commercial structures, or roads needed for emergency response. Likely imminent escape from a channel or waterbody shall be demonstrated by measured ~~or projected~~ flows *projected by the local or regional agency to be* in excess of the maximum design capacity of a flood control project, ~~where such a~~ *if that* project is present and the maximum design capacity is readily available information.

(ii) This subparagraph does not apply to flows that inundate wetlands, working lands, or floodplains, events that constitute a "design flood," groundwater seepage, or waters confined to a "designated floodway."

(C) ~~Where~~ *If* flows would inundate or are projected *by the local or regional agency* to inundate ordinarily dry areas in the bed of a terminal lake to a depth that floods dairies and other ongoing agricultural activities, or areas with substantial residential, commercial, or industrial development.

(3) As used in this subdivision, "imminent" means a high degree of confidence that a condition will begin or is projected to begin ~~in the near future.~~ *within the next 15 days.*

(b) *(1)* The diversions cease when the flood conditions described in the public notice provided pursuant to subdivision (a) have abated to the point there is no longer a risk of flooding and

inundation of land, roads, or structures downstream of the point of diversions, as determined by the local or regional agency making the diversion. *Diversions shall cease no later than 90 days after commencing, unless they are renewed.*

(2) A local or regional agency may renew a diversion pursuant to paragraph (1) for an additional 30 days by notifying the board of its intention to continue diverting 15 days before its expiration.

(c) Any water diverted is not diverted to, and will not be applied to, any of the following:

(1) Any barns, ponds, or lands where manure or waste from an animal facility that generates waste from the feeding and housing of animals for more than 45 days per year in a confined area that is not vegetated are applied.

(2) Any agricultural field that has been identified as an outlier with respect to nitrogen application by any of the following:

(A) The board.

(B) The appropriate regional board.

(C) An agricultural coalition charged with implementation of the Irrigated Lands Regulatory Program.

(3) Any area that could cause damage to critical levees, infrastructure, wastewater and drinking water systems, drinking water wells or drinking water supplies, or exacerbate the threat of flood and other health and safety concerns.

(4) Any area that has not been in active irrigated agricultural cultivation within the past three years, including grazing lands, annual grasslands, and natural habitats. This limitation does not apply to facilities already constructed for the purpose of groundwater recharge or managed wetlands.

(d) With respect to diversions from water tributaries to the Sacramento-San Joaquin Delta (Delta), water rights holders are not making releases of stored water or reoperating facilities to provide flow for the purposes of meeting water quality control plan or endangered species requirements in the Delta at the time of the diversion. *In addition to the other prerequisites in this section, water may be diverted under this section only when the Delta is in excess conditions without restrictions pursuant to the Agreement between the United States of America and the State of California for Coordinated Operation of the Central Valley Project and the State Water Project, as amended. The diverter shall monitor conditions daily using the Delta Operations Summary*

report published on the internet website of the Department of Water Resources to determine whether the Delta is in excess conditions without restrictions.

(e) The diversion of floodflows for groundwater recharge uses the following as part of the diversion:

(1) Either existing diversion infrastructure or temporary pumps.

(2) Existing groundwater recharge locations, where available.

(3) No new permanent infrastructure or permanent construction.

(4) For diversions directly from rivers or streams, protective screens on temporary pump intakes to minimize the impacts of diversion to fish and other aquatic life. Those screens shall be constructed of any rigid material, perforated, woven, or slotted, that provides water passage while physically excluding fish. The screen face shall be parallel to the flow and adjacent to the water's edge. The upstream and downstream transitions to the screen structure shall be designed and constructed to minimize eddies upstream of, in front of, and downstream of the screen, while minimizing entrainment to the degree feasible. Prior to implementing this paragraph, the Department of Fish and Wildlife shall conduct at least one public workshop to review recommended design parameters and ranges of scenarios for deployment and use of protective screens. These recommendations and any other guidelines provided by the Department of Fish and Wildlife on the implementation of this paragraph ~~shall not be~~ *are not* subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

(f) The ~~person or~~ entity making the diversion for groundwater recharge does not claim any water right based on that diversion and ~~recharge.~~ *recharge, and any diversion pursuant to this section is not evidence in support of a subsequently filed standard water right application for the same or similar project or against modification or development of an existing appropriative water right.*

(g) (1) The ~~person or~~ entity making the diversion for groundwater recharge files all of the following with the board and with any applicable groundwater sustainability agency, as defined in Section 10721, for the basin:

(A) A notice that provides the information specified in subparagraphs (A) to (C), inclusive, of paragraph (2), 48 hours

before whenever feasible, and in no event later than 48 hours ~~after~~ *after,* initially commencing diversion of floodflows for groundwater recharge.

(B) A preliminary report no later than 14 days after initially commencing diversion of floodflows for groundwater recharge.

(C) A final report no later than 15 days after diversions cease. The final report shall contain information, if applicable, describing the forecasting models used to determine a likely imminent escape of surface water pursuant to subdivision (a). *This description shall include any publicly available data used for these models.* The final report shall also include a description of the methodology used to determine the abatement of flood conditions. *Additionally, the report shall include an explanation of any diversion renewals, if applicable.*

(2) The preliminary and final reports shall do all of the following:

(A) Identify the ~~person or~~ entity making the diversion for groundwater recharge.

(B) Provide the Global Positioning System (GPS) coordinates for the point of diversion, a map identifying the approximate area inundated by the floodflows, and the corresponding assessor parcel numbers.

(C) Identify ~~the time~~ when diversions of floodflows to groundwater recharge commenced, and, for final reports, when diversions ceased.

(D) Provide an estimate, as of the report's date, of the amount of floodflows diverted for groundwater recharge.

(h) Temporary floodflow diversions pursuant to this section are consistent with the most junior priority relative to all water rights holders in the watershed and shall not injure a prior water rights holder. This section does not apply to temporary floodflow diversions that are not consistent with this requirement.

~~(h) This section shall only apply to diversions~~

(i) The diversions are commenced before ~~January 1, 2034.~~ *June 1, 2032. This section does not apply to diversions commenced on or after June 1, 2032.*

(j) This section does not diminish or alter the authority of the board to administer or enforce water rights.

O

PROPOSED AMENDMENTS TO ASSEMBLY BILL NO. 2079

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL **No. 2079**

Introduced by Assembly Member Bennett

February 5, 2024

Amendment 1

An act to ~~amend Section 10735.4 of~~ *add Article 5 (commencing with Section 13807) to Chapter 10 of Division 7 of* the Water Code, relating to groundwater.

LEGISLATIVE COUNSEL'S DIGEST

AB 2079, as introduced, Bennett. ~~Sustainable Groundwater Management Act: groundwater basins.~~ *Groundwater extraction: large-diameter, high-capacity wells: permits.*

Existing law, the Sustainable Groundwater Management Act, requires all groundwater basins designated as high- or medium-priority basins by the Department of Water Resources to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans, except as specified. Existing law authorizes any local agency or combination of local agencies overlying a groundwater basin to decide to become a groundwater sustainability agency for that basin and imposes specified duties upon that agency or combination of agencies, as provided.

Existing law requires the State Water Resources Control Board to adopt a model water well, cathodic protection well, and monitoring well drilling and abandonment ordinance implementing certain standards for water well construction, maintenance, and abandonment and requires each county, city, or water agency, where appropriate, not later than January 15, 1990, to adopt a water well, cathodic protection well, and monitoring well drilling and abandonment

ordinance that meets or exceeds certain standards. Under existing law, if a county, city, or water agency, where appropriate, fails to adopt an ordinance establishing water well, cathodic protection well, and monitoring well drilling and abandonment standards, the model ordinance adopted by the state board is required to take effect on February 15, 1990, and is required to be enforced by the county or city and have the same force and effect as if adopted as a county or city ordinance.

This bill would require a local enforcement agency, as defined, to perform specified activities at least 30 days before determining whether to approve a permit for a new large-diameter, high-capacity well, as defined. By imposing additional requirements on a local enforcement agency, the bill would impose a state-mandated local program. The bill would require a groundwater sustainability agency with oversight for the area of the basin where the local enforcement agency has well permitting jurisdiction to provide specified information to the local enforcement agency, including, but not limited to, the name of the applicable groundwater sustainability agency, the agency manager and contact information, and the applicable sustainable management criteria related to groundwater levels, including the groundwater level measurable objectives and minimum thresholds. The bill would provide various requirements for the local enforcement agency to consider before approving or denying a permit. The bill would provide exemptions for its provisions for specified wells if they are proposed to be constructed with well screens and pump depths below the applicable minimum thresholds for groundwater levels as reported by the groundwater sustainability agency. The bill would provide that its provisions apply only to applications for permits for the construction, maintenance, abandonment, or destruction of water wells in basins identified in the Department of Water Resources Bulletin 118.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law, the Sustainable Groundwater Management Act, authorizes the State Water Resources Control Board to designate a groundwater basin as a probationary basin if the state board makes a certain determination and to develop an interim plan for the probationary~~

~~basin. The act requires that a local agency or groundwater sustainability agency have 180 days to remedy the deficiency if the board designates the basin as a probationary basin.~~

~~This bill would make nonsubstantive changes to the latter provision.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ *yes*. State-mandated local program: ~~no~~ *yes*.

The people of the State of California do enact as follows:

Amendment 2

+ *SECTION 1. Article 5 (commencing with Section 13807) is added to Chapter 10 of Division 7 of the Water Code, to read:*
+
+ *Article 5. Well Sustainability*
+
+ *13807. This article shall apply only to applications for permits for the construction, maintenance, abandonment, or destruction of water wells in basins identified in the Department of Water Resources Bulletin 118.*
+ *13807.5. The Legislature finds and declares all of the following:*
+ *(a) The groundwater extraction from large-diameter, high-capacity wells can interfere with nearby drinking water wells and result in impacts to critical infrastructure from subsidence.*
+ *(b) It is in the public interest to ensure that the permitting of new wells extracting groundwater will be conducted to minimize the impacts to drinking water wells and subsidence.*
+ *(c) Sustainable groundwater management in many parts of the state requires coordination between local agencies permitting water wells and groundwater sustainability agencies managing groundwater basins.*
+ *(d) People, businesses, and industries seeking to construct or operate water wells should be adequately informed about groundwater conditions and groundwater management programs that may affect the current or future use and operation of their wells.*
+ *(e) Applicants seeking, and agencies permitting, the construction and operation of water wells should take into account the reliability and sustainability of the groundwater sources intended to be used to avoid unexpected or unplanned well dewatering or loss of well production capacity, which could lead to higher rates of*

+ *unexpected, unplanned, or premature well abandonment and dereliction that could pose additional threats to groundwater quality.*

+ *(f) Agencies permitting for the construction and operation of water wells should consider the potential for those wells to cause or contribute to land subsidence, which can have impacts on water quality by adversely affecting the concentration of naturally or artificially occurring chemical constituents of concern and posing other serious public health and economic problems.*

+ *13808. The following definitions shall apply to this article:*

+ *(a) "Large-diameter, high-capacity well" means any water well with a diameter of more than eight inches and intended to produce greater than two acre-feet annually.*

+ *(b) "Local enforcement agency" means any city, county, or water agency that has adopted and is administering an ordinance for the construction, maintenance, abandonment, or destruction of a water well pursuant to this chapter.*

+ *13808.5. (a) A local enforcement agency shall perform all of the following activities at least 30 days before determining whether to approve a permit for a new large-diameter, high-capacity well:*

+ *(1) Provide electronic notice to the general public by posting notice of receipt of the application and the contents of the application on the local enforcement agency's internet website.*

+ *(2) Provide notice to all groundwater sustainability agencies managing within a 10-mile radius of a proposed well, including those in adjacent basins or counties, as applicable.*

+ *(3) Provide notice to all other local enforcement agencies, if any, administering well permitting programs within the basin in which the activities covered in the application would occur.*

+ *(4) Provide written notice through the United States Postal Service to the registered owners or agents of all parcels within a one-mile radius of the site where the activities covered in the application would occur and any relevant information on the well permitting process.*

+ *(b) The groundwater sustainability agency with oversight for the area of the basin where the local enforcement agency has well permitting jurisdiction shall provide all of the following information to the local enforcement agency:*

+ *(1) The name of the applicable groundwater sustainability plan being implemented and where an electronic copy of the plan may be accessed.*
+ *(2) The name of the applicable groundwater sustainability agency, the agency manager and contact information, and the applicable sustainable management criteria related to groundwater levels, including the groundwater level measurable objectives and minimum thresholds.*
+ *(3) The estimated depth to the groundwater level based on the most recent monitoring conducted by the groundwater sustainability agency for the area of the basin where the proposed activities covered by the application would occur.*
+ *(4) Any fees, allocation, metering, spacing determinations, or other regulations or ordinances that the groundwater sustainability agency has adopted.*
+ *(5) Any updates to the information provided pursuant to this subdivision as necessary, should changes occur.*
+ *(c) Before approving any well permit for a large-diameter, high-capacity well, a local enforcement agency shall provide all of the following information to the applicant:*
+ *(1) The basin name, number, and priority as assigned by the department in its most recent Bulletin 118.*
+ *(2) The name of all groundwater sustainability agencies, if any, managing the basin in which the activities covered in the application would occur.*
+ *(3) Information on regulations or ordinances adopted by the groundwater sustainability agency relevant to the construction and operation of the proposed well.*
+ *(4) Notice to the applicant that the approval of the application and granting of any associated permit is subject to the regulatory authority of any groundwater sustainability agency managing the portion of the basin in which the activities covered in the application would occur. The notice shall specifically inform the applicant that in addition to any regulatory authority already being exercised, a groundwater sustainability agency may exercise authority to limit groundwater extraction, the imposition of fees, and metering.*
+ *13809. (a) A local enforcement agency shall not approve a permit for a large-diameter, high-capacity well if that well is proposed to be located within one-quarter mile of a well used for*

+ *supplying domestic water to one or more persons or to a community.*
+ *(b) (1) A local enforcement agency shall not approve a permit for a large-diameter, high-capacity well if that well is proposed to be located within one-quarter mile of an area that has subsided greater than 0.5 feet in total since January 1, 2015, as reported and defined by the department based upon provided InSAR subsidence data report posted on the Natural Resources Agency open data portal and department internet websites.*
+ *(2) A local enforcement agency may approve a permit for a large-diameter, high-capacity well if the area identified in paragraph (1) has not had subsidence of over 0.1 feet for four consecutive years, is consistent with the local groundwater sustainability plan, and is screened above geologic units known to be susceptible to compaction.*
+ *(c) A local enforcement agency shall not approve a permit for any well unless that well is screened below the minimum thresholds applicable to that portion of the basin as established by the groundwater sustainability agency pursuant to paragraph (2) of subdivision (b) of Section 13808.5.*
+ *(d) To ensure the reliability and long-term operation of wells within its jurisdiction, a local enforcement agency may determine not to approve an application or grant a permit based on criteria that are more stringent than those provided in this section.*
+ *13809.5. This article does not apply to applications or permits for the following wells if they are proposed to be constructed with well screens and pump depths below the applicable minimum thresholds for groundwater levels as reported by the groundwater sustainability agency pursuant to paragraph (2) of subdivision (b) of Section 13808.5 or otherwise provided to the local enforcement agency by the groundwater sustainability agency:*
+ *(a) Wells that will draw less than two acre-feet per acre.*
+ *(b) Wells that will be located on a parcel of five acres or fewer that is in an area that has been zoned by the local land use authority for rural residential use.*
+ *(c) Public supply wells or state small or community water systems.*
+ *SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service*

\+ *charges, fees, or assessments sufficient to pay for the program or*
\+ *level of service mandated by this act, within the meaning of Section*
\+ *17556 of the Government Code.*

Amendment 3

Page 1

~~SECTION 1. Section 10735.4 of the Water Code is amended to read:~~

~~10735.4. (a) If the board designates a basin a probationary basin pursuant to paragraph (1), (2), or (4) of subdivision (a) of Section 10735.2, a local agency or groundwater sustainability agency shall have 180 days to remedy the deficiency. The board~~

Page 2

~~may appoint a mediator or other facilitator, after consultation with affected local agencies, to assist in resolving disputes, and identifying and implementing actions that will remedy the deficiency.~~

~~(b) After the 180-day period provided by subdivision (a), the board may provide additional time to remedy the deficiency if it finds that a local agency is making substantial progress toward remedying the deficiency.~~

~~(c) The board may develop an interim plan pursuant to Section 10735.8 for the probationary basin at the end of the period provided by subdivision (a) or any extension provided pursuant to subdivision (b), if the board, in consultation with the department, determines that a local agency has not remedied the deficiency that resulted in designating the basin a probationary basin.~~

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AB-560 Sustainable Groundwater Management Act: groundwater adjudication. (2023-2024)

SHARE THIS:

Date Published: 06/26/2023 09:00 PM

AMENDED IN SENATE JUNE 26, 2023

AMENDED IN SENATE JUNE 14, 2023

AMENDED IN ASSEMBLY MAY 18, 2023

AMENDED IN ASSEMBLY APRIL 12, 2023

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

ASSEMBLY BILL NO. 560

Introduced by Assembly Member Bennett

February 08, 2023

An act to amend Section 10737.8 of the Water Code, relating to groundwater.

LEGISLATIVE COUNSEL'S DIGEST

AB 560, as amended, Bennett. Sustainable Groundwater Management Act: groundwater adjudication.

Existing law prohibits a court from approving entry of judgment in certain adjudication actions for a basin required to have a groundwater sustainability plan under the Sustainable Groundwater Management Act, unless the court finds that the judgment would not substantially impair the ability of a groundwater sustainability agency, the State Water Resources Control Board, or the Department of Water Resources to comply with the act and to achieve sustainable groundwater management.

This bill would require the ~~court~~ *parties to an adjudication action* to ~~refer a~~ *submit a* proposed settlement *agreement* determining rights to water to the board for a nonbinding advisory determination as to whether the proposed ~~judgment~~ *settlement agreement* will substantially impair the ability of a groundwater sustainability agency, the board, or the department to achieve sustainable groundwater ~~management,~~ *management before filing the proposed settlement agreement with the court. The bill would require the board to provide its nonbinding advisory determination to the parties no later than 120 days after the proposed settlement agreement was submitted, and would require the parties to include the board's nonbinding advisory determination in the court filing,* as provided. The bill would require the board to consult with the department before making its *nonbinding* advisory determination, and would require the *nonbinding* advisory determination to include findings on the consistency of the proposed ~~judgment~~ *settlement agreement* with the groundwater sustainability ~~plan, as specified,~~ *plan* and on how the proposed ~~judgment~~ *settlement agreement* would affect small and disadvantaged groundwater ~~users.~~ *users, as specified.*

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 10737.8 of the Water Code is amended to read:

10737.8. (a) In addition to making any findings required by subdivision (a) of Section 850 of the Code of Civil Procedure or any other law, the court shall not approve entry of judgment in an adjudication action for a basin required to have a groundwater sustainability plan under this part unless the court finds that the judgment will not substantially impair the ability of a groundwater sustainability agency, the board, or the department to comply with this part and to achieve sustainable groundwater management.

(b) (1) Before ~~entering final judgment,~~ *filing a proposed settlement agreement with* the ~~court~~ *court, the parties to an adjudication action* shall ~~refer a~~ *submit the* proposed ~~settlement, pursuant to Section 2001,~~ *settlement agreement* to the board for ~~an~~ *a nonbinding* advisory determination as to whether the proposed ~~judgment~~ *settlement agreement* will substantially impair the ability of a groundwater sustainability agency, the board, or the department to achieve sustainable groundwater management. The board shall consult with the department before making its *nonbinding* advisory ~~determination.~~ *determination and shall provide its nonbinding advisory determination to the parties of the adjudication action no later than 120 days after the submission of the proposed settlement agreement.*

(2) The board's *nonbinding* advisory determination shall include findings on both of the following:

(A) The consistency of the proposed ~~judgment~~ *settlement agreement* with the technical findings and conclusions ~~of the~~ *from the existing* groundwater sustainability plan adopted by a groundwater sustainability agency and approved by the department.

(B) How the proposed ~~judgment~~ *settlement agreement* would affect small and disadvantaged groundwater ~~users.~~ *users under the existing groundwater sustainability plan adopted by a groundwater sustainability agency and approved by the department.*

(3) The parties shall include the board's nonbinding advisory determination of the proposed settlement agreement when filing the proposed settlement agreement with the court. The proposed settlement agreement filed with the court shall be the same as was submitted to the board for a nonbinding advisory determination.

~~(3)~~

(4) The court shall not be bound to enter judgment in a manner consistent with the *nonbinding* advisory determination of the board pursuant to this subdivision.

AB-779 Groundwater: adjudication. (2023-2024)

SHARE THIS:

Date Published: 07/03/2023 02:00 PM

AMENDED IN SENATE JULY 03, 2023

AMENDED IN SENATE JUNE 28, 2023

AMENDED IN SENATE JUNE 19, 2023

AMENDED IN ASSEMBLY MAY 26, 2023

CALIFORNIA LEGISLATURE— 2023–2024 REGULAR SESSION

ASSEMBLY BILL NO. 779

Introduced by Assembly Member Wilson

February 13, 2023

An act to amend Sections 840 and 850 of, and to add Section 831.5 to, the Code of Civil Procedure, and to amend Section 10737.4 of, and to add Sections 10737.3 and 10737.9 to, the Water Code, relating to groundwater.

LEGISLATIVE COUNSEL'S DIGEST

AB 779, as amended, Wilson. Groundwater: adjudication.

(1) Existing law establishes various methods and procedures for a comprehensive adjudication of groundwater rights in civil court.

This bill would require the court to appoint one party to forward all case management orders, judgments, and interlocutory orders to the Department of Water Resources within 10 business days of issuance. The bill would require the court to allocate payment of the costs incurred by the party appointed to forward all case management orders, judgments, and interlocutory orders to the department among the parties in an amount and a manner that the court deems equitable. The bill would require the department to post the documents on its internet website in the interest of transparency and accessibility within 20 business days of receipt from a party, as specified. The bill would ~~encourage the court to invite a representative from the department or the State Water Resources Control Board to a hearing where they may provide technical assistance or expert testimony on equitable and sustainable pumping allocations for the basin, sustainable groundwater management best practices and recommendations, and the water use of small farmers and disadvantaged communities and potential impacts on their needs.~~ *authorize the court to refer the matter to the State Water Resources Control Board for investigation and report in order to assist the court in making findings pursuant to these provisions, and would authorize a party to request that the court refer the matter to the board for these purposes.* The bill

would require the court to consider the water use of small farmers and disadvantaged communities, as those terms are defined, before entering a judgment.

(2) Existing law, the Sustainable Groundwater Management Act, requires all groundwater basins designated as high- or medium-priority basins by the Department of Water Resources to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans, except as specified. Existing law authorizes any local agency or combination of local agencies overlying a groundwater basin to decide to become a groundwater sustainability agency for that basin and imposes specified duties upon that agency or combination of agencies, as provided. Existing law requires, among other duties, a groundwater sustainability agency to evaluate its groundwater sustainability plan periodically. Existing law requires a groundwater sustainability agency, on the April 1 following the adoption of a groundwater sustainability plan and annually thereafter, to report specified information about the groundwater basin to the department.

This bill would require a groundwater sustainability agency to submit copies of those reports to the court during the duration of an adjudication proceeding. The bill would require all monitoring and reporting required under a groundwater sustainability plan or an interim plan for a basin subject to an adjudication to continue throughout the duration of the adjudication proceeding.

The bill would require a groundwater sustainability agency, upon receiving notice that an adjudication has commenced in its basin, to invite the department to present an information update at a public meeting to explain the adjudication process and the status of the adjudication to water users within the basin and the public. The bill would require a recording or summary of the presentation to be posted to a public internet website hosted by either the groundwater sustainability agency or the watermaster. The bill would authorize a groundwater sustainability agency to invite the state board or the department to send a representative to the meeting in order to help explain the adjudication process. The bill would apply these provisions only to basins in which a comprehensive adjudication has not been commenced by January 1, 2024.
Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 831.5 is added to the Code of Civil Procedure, to read:

831.5. (a) The court shall appoint one party to forward all case management orders, judgments, and interlocutory orders to the department within 10 business days of issuance. The department shall post the documents on its internet website in the interest of transparency and accessibility within 20 business days of receipt from a party. This section does not apply to any documents that have been sealed by the court.

(b) The court shall allocate payment of the costs incurred by the party appointed to forward all case management orders, judgments, and interlocutory orders to the department among the parties in an amount and a manner that the court deems equitable.

SEC. 2. Section 840 of the Code of Civil Procedure is amended to read:

840. (a) In managing a comprehensive adjudication, the court shall do both of the following:

(1) Convene a case management conference as provided by the California Rules of Court.

(2) In an adjudication action for a basin required to have a groundwater sustainability plan under the Sustainable Groundwater Management Act (Part 2.74 (commencing with Section 10720) of Division 6 of the Water Code), manage the case in accordance with Section 10737.2 of the Water Code.

(b) In an initial case management conference, or as soon as practicable, the court may consider the following in addition to other matters:

(1) Determining whether to seek adjustment of the basin boundaries pursuant to Section 841.

(2) Staying the action pursuant to Section 848.

(3) Appointing a special master pursuant to Section 845.

(4) Scheduling a hearing on a preliminary injunction pursuant to Section 847.

(5) Dividing the case into phases to resolve legal and factual issues.

(6) Issuing orders to ensure that issues resolved in one phase are not relitigated in another phase.

(7) Limiting discovery to correspond to the phases.

(8) Scheduling early resolution of claims to prescriptive rights.

(9) Forming a class or classes of overlying groundwater rights holders pursuant to the criteria specified in Section 382.

SEC. 3. Section 850 of the Code of Civil Procedure is amended to read:

850. (a) The court may enter a judgment in a comprehensive adjudication if the court finds that the judgment meets all of the following criteria:

(1) It is consistent with Section 2 of Article X of the California Constitution.

(2) It is consistent with the water right priorities of all non-stipulating parties and any persons who have claims that are exempted pursuant to Section 833 in the basin.

(3) It treats all objecting parties and any persons who have claims that are exempted pursuant to Section 833 equitably as compared to the stipulating parties.

(4) The water use of small farmers and disadvantaged communities have been considered.

(b) The court may enter judgment in an adjudication action for a basin required to have a groundwater sustainability plan under the Sustainable Groundwater Management Act (Part 2.74 (commencing with Section 10720) of Division 6 of the Water Code), if in addition to the criteria enumerated in subdivision (a), the court also finds that the judgment will not substantially impair the ability of a groundwater sustainability agency, the State Water Resources Control Board, or the department to comply with the Sustainable Groundwater Management Act and to achieve sustainable groundwater management.

(c) In order to assist the court ~~in considering the criteria under subdivision (a), the court is encouraged to invite a representative from the department or the State Water Resources Control Board to a hearing where the representative may provide technical assistance or expert testimony regarding equitable and sustainable pumping allocations for the basin, sustainable groundwater management best practices and recommendations, and the water use of small farmers and disadvantaged communities and potential impacts on their needs.~~ *in making the findings required by this section, the court may refer the matter to the State Water Resources Control Board for investigation and report pursuant to Section 2001 of the Water Code. A party may request that the court refer the matter to the State Water Resources Control Board pursuant to this subdivision.*

(d) If a party or group of parties submits a proposed stipulated judgment that is supported by more than 50 percent of all parties who are groundwater extractors in the basin or use the basin for groundwater storage and is supported by groundwater extractors responsible for at least 75 percent of the groundwater extracted in the basin during the five calendar years before the filing of the complaint, the court may adopt the proposed stipulated judgment, as applied to the stipulating parties, if the proposed stipulated judgment meets the criteria described in subdivision (a). A party objecting to a proposed stipulated judgment shall demonstrate, by a preponderance of evidence, that the proposed stipulated judgment does not satisfy one or more criteria described in subdivision (a) or that it substantially violates the water rights of the objecting party. If the objecting party is unable to make this showing, the court may impose the proposed stipulated judgment on the objecting party. An objecting party may be subject to a preliminary injunction issued pursuant to Section 847 while their objections are being resolved.

(e) For purposes of this section the following definitions apply:

(1) "Disadvantaged communities" ~~mean~~ *means* communities identified by the California Environmental Protection Agency as disadvantaged communities pursuant to Section 39711 of the Health and Safety Code.

(2) "Small farmers" means farmers with between ten thousand dollars ($10,000) and four hundred thousand dollars ($400,000) in gross farm sales, as referenced in the Department of Food and Agriculture's California Underserved and Small Producers Program.

SEC. 4. Section 10737.3 is added to the Water Code, to read:

10737.3. (a) (1) Unless otherwise ordered by the court, all monitoring and reporting required under all groundwater sustainability plans approved by the department, or submitted to and awaiting approval by the

department, for a basin subject to an adjudication, or under any interim plan adopted by the board pursuant to Section 10735.8 for a basin subject to an adjudication, shall continue throughout the duration of the adjudication proceeding.

(2) All groundwater sustainability agencies required to submit reports to the department pursuant to Section 10728 regarding a basin subject to adjudication shall submit copies of the reports to the court during the duration of the adjudication proceeding. The court may order more frequent reporting than the reports required pursuant to Section 10728.

(3) The board shall submit to the court during the duration of the adjudication proceeding the information it receives from a person required to submit monitoring program reports to the board pursuant to Section 10736.6 regarding a basin subject to adjudication. If, during the proceeding, the board prepares a report regarding the subject basin containing information listed in Section 10728, the board shall submit a copy of that report to the court.

(b) (1) Throughout the duration of the adjudication proceeding, a party to the adjudication, and any other person extracting water from the basin, shall comply with the groundwater sustainability plan or plans for the subject basin or the interim plan for the subject basin adopted by the board pursuant to Section 10735.8, except as may be authorized by the court pursuant to Section 847 of the Code of Civil Procedure or other injunctive relief.

(2) For purposes of this subdivision, the terms of a groundwater sustainability plan, interim plan, or preliminary injunction shall not determine the rights in a final judgment of the comprehensive adjudication.

(c) Throughout the duration of the adjudication proceeding, a party to the adjudication, and any other person extracting water from the basin, shall not use new or increased groundwater use to establish a new claim of prescription during the proceeding.

SEC. 5. Section 10737.4 of the Water Code is amended to read:

10737.4. (a) Chapter 11 (commencing with Section 10735) shall not apply to a judgment approved by the court pursuant to Section 850 of the Code of Civil Procedure if both of the following apply:

(1) A local agency or a party directed by the court to file the submission submits the judgment to the department for evaluation and assessment pursuant to paragraph (2) of subdivision (b) of Section 10733.6.

(2) The department determines that the judgment satisfies the objectives of this part for the basin.

(b) A party or group of parties proposing a stipulated judgment pursuant to subdivision (d) of Section 850 of the Code of Civil Procedure may submit the proposed stipulated judgment to the department for evaluation and assessment pursuant to paragraph (2) of subdivision (b) of Section 10733.6.

(c) Notwithstanding subdivision (c) of Section 10733.6, a judgment or proposed stipulated judgment pursuant to this section may be submitted to the department after January 1, 2017.

(d) A determination of the department on a submission pursuant to this section is subject to judicial review pursuant to Section 1085 of the Code of Civil Procedure. Venue shall be in the court with jurisdiction over the adjudication action and the case shall be coordinated with the adjudication action.

SEC. 6. Section 10737.9 is added to the Water Code, to read:

10737.9. (a) Upon receiving notice that an adjudication has commenced in its basin, a groundwater sustainability agency shall invite the department to present an information update at a public meeting to explain the adjudication process and the status of the adjudication to water users within the basin and the public. A recording or summary of the presentation shall be posted to a public internet website hosted by either the groundwater sustainability agency or the watermaster.

(b) A groundwater sustainability agency may invite the state board or the department to send a representative to the meeting in order to help explain the adjudication process.

(c) This section shall only apply to basins in which a comprehensive adjudication has not been commenced by January 1, 2024.

THIRD AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT

KERN NON-DISTRICTED LAND AUTHORITY

THIS THIRD AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT (**Agreement**) is made and effective on the last date executed (**Effective Date**) pursuant to the California Joint Exercise of Powers Act (Govt. Code, §§ 6500 *et seq.*) by and among the public agencies listed on the attached **Exhibit A** (each, a **Member** and collectively, **Members**) (**Authority**) and setting the terms pursuant to which the Authority will operate.

RECITALS

A. Some of the Members previously entered into a Joint Exercise of Powers Agreement to form the Kern Groundwater Authority under the California Joint Exercise of Powers Act (Govt. Code, §§ 6500 *et seq.*). The member agencies of the Kern Groundwater Authority, as they existed from time to time, have twice amended and restated their Joint Exercise of Powers Agreement. The Members now want to again amend and restate that agreement by this Agreement for the purposes described below as well as change the name of the joint powers authority to more accurately reflect its singular purpose.

B. Each of the General Members is a local agency, as defined by the Sustainable Groundwater Management Act of 2014 (**SGMA**), duly organized and existing under and by virtue of the laws of the State of California, or an approved groundwater sustainability agency under SGMA, able to exercise powers related to groundwater management within its boundaries.

C. The Members, individually and collectively, have the goal of cost-effective, sustainable groundwater management in the Kern County Subbasin considering the interests and concerns of the Members and other stakeholders. As used in this Agreement, "**Kern County Subbasin**" means that basin as defined in Department of Water Resources Bulletin 118, as its boundaries may be modified from time to time through the procedures described in California Water Code section 10722. The Kern County Subbasin is designated as a high-priority basin by the Department of Water Resources (**DWR**).

D. Water Code section 10735.2(a)(2) provides that the State Water Resources Control Board (**State Board**) may designate the Kern County Subbasin as a probationary basin if after January 31, 2020 none of the following have occurred:

1. A groundwater sustainability agency (**GSA**) has adopted a groundwater sustainability plan (**GSP**) for the entire Kern County Subbasin;

2. A collection of local agencies has adopted GSPs that collectively serve as a GSP for the entire Kern County Subbasin; or

3. DWR has approved an alternative pursuant to Water Code section 10733.6.

E. No GSA within the Kern County Subbasin has adopted a GSP for the entire Kern County Subbasin nor has DWR approved an alternative pursuant to Water Code section 10733.6. However, the Members have, either individually or with others, adopted GSPs collectively serving as a GSP for the entire Kern County Subbasin.

F. Water Code section 10724(a) provides that, "[i]n the event that there is an area within a high- or medium-priority basin that is not within the management area of a [GSA], the county within which that unmanaged area lies will be presumed to be the [GSA] for that area." The County of Kern declined to serve as the GSA for the unmanaged areas within the Kern County Subbasin.

G. The Kern County Water Agency (**KCWA**), having water management and supply responsibilities within the entire Kern County Subbasin, has previously agreed to provide the Kern Groundwater Authority (**KGA**) with KCWA's jurisdictional authority over the Kern County Subbasin for the unmanaged areas lying outside the boundaries of any public agency with the required water management and supply responsibilities (**Non-districted Land**). The KGA or, in some cases, the County of Kern then entered into agreements with certain Members to enable those Members to include some Non-districted Land within their GSP or GSP chapter, as the case may be (**Outside Member Land**).

H. The intent of the Members is that the Authority will offer GSP coverage for Non-districted Land and, in some cases, offer regulatory authority to certain Members for Outside Member Land, through a grant of jurisdiction from KCWA, to maintain GSA and GSP coverage of the entire Kern County Subbasin and to avoid a probationary determination for the Kern County Subbasin by the State Board due to an adverse finding under Water Code section 10735.2(a)(2). The Members expressly intend that the Authority will *not* have the authority to limit or interfere with a Member's rights and authorities under its GSP, what lands are included in a Member's GSA or GSP, or over a Member's own internal matters, including, but not limited to, a Member's surface water supplies, groundwater supplies, projects, facilities, operations, and water management.

THEREFORE, in consideration of the mutual promises, covenants and conditions herein set forth, the Members agree as follows:

ARTICLE 1
DEFINITIONS

1.1 "Associate Members" means those Members of the Authority identified on the attached

Exhibit A as an Associate Member or later admitted as an Associate Member in accordance with the terms and provisions of this Agreement and consistent with SGMA that are not General Members. The Board of Directors may from time to time admit Associate Members on terms and conditions consistent with SGMA and as determined by the Board. Representatives of Associate Members may not serve on the Board and/or Board Committees. Likewise, while the Board of Directors welcomes their input, the representatives of Associate Members shall be non-voting, their presence shall not be counted in determining whether a quorum is present, and they shall not be permitted in closed sessions of the Board of Directors, unless directed otherwise by the Board of Directors.

1.2 "Board of Directors" or "Board" means the governing body of the Authority as established by Section 3.01 below.

1.3 "General Member" means those Members of the Authority identified as General Members on the attached **Exhibit A** or later admitted as a General Member in accordance with the terms and provisions of this Agreement. A local agency as defined by SGMA may participate as a General Member on its own behalf or join with one or more agencies as a single General Member. Multiple agencies which elect to coordinate their representation as one General Member shall, for purposes of this Agreement, be treated as one General Member.

1.4 "Jurisdictional Member" means the Kern County Water Agency. The Jurisdictional Member is not a General Member or an Associate Member of the Authority. The sole purpose of the Jurisdictional Member within the Authority is to provide the Authority with regulatory authority under SGMA for Non-districted Land, including Outside Member Land. The Jurisdictional Member will not have any obligation to fund the Authority or otherwise pay money to the Authority under Article 5 of this Agreement. The Jurisdictional Member has no seat or voting rights on the Board of Directors, no responsibility to draft a GSP or GSP chapter covering any Non-districted Land or Outside Member Land, or any other responsibility under this Agreement unless otherwise agreed in writing by the Jurisdictional Member.

1.5 "Members" means the General Members, Associate Members, and Jurisdictional Member.

1.6 "Special Activities" means activities that are consistent with the purpose of this Agreement, but undertaken by all or fewer than all the Members in the name of the Authority pursuant to Section 4.9 below.

ARTICLE 2
CREATION OF AUTHORITY

2.1 **Creation of Authority.** There is hereby created under the provisions of Government Code sections 6500 *et seq.,* a joint powers authority, which will be a public entity separate from the Members and shall be known as the Kern Non-Districted Land Authority. Within 30 days after the

Effective Date and after any amendment, the Authority shall cause a notice of this Agreement or amendment to be prepared and filed with the office of the California Secretary of State containing the information required by Government Code section 6503.5. Within 70 days after the Effective Date, the Authority shall cause a statement of the information concerning the Authority required by Government Code section 53051 to be filed with the office of the California Secretary of State and with the County Clerk for the County of Kern setting forth the facts required to be stated under Government Code section 53051(a).

2.2 Purpose of the Authority. The Authority intends, among other things, to adopt and implement a GSP or GSP chapter for Non-districted Land, and enter into agreements, as necessary and requested, with General Members to provide them with the required regulatory authority to include Outside Member Land in a General Member's GSP or GSP chapter. The sole purpose of the Authority is to provide regulatory authority for Non-districted Land so those lands are able to be regulated under a GSP as required by SGMA.

2.3 Term. This Agreement will become effective upon execution by all of the Members and will remain in effect until terminated by agreement of a 75 percent majority of then participating Members. Unless and until terminated, this Agreement shall remain in effect and be binding upon the Members, and upon all future Members for a period of five years following its effective date, except as to any party which withdraws or is terminated from its participation in the Authority in accordance with this Agreement. Notwithstanding the foregoing, this Agreement will terminate upon designation of the Kern Subbasin as a probationary basin by the State Water Resources Control Board.

ARTICLE 3
POWERS

The Authority shall possess the power in its own name to exercise any and all common powers of its General Members reasonably related to the purpose of the Authority, including (1) making and entering into contracts with the Jurisdictional Member, General Member(s), Associate Member(s), and others as necessary to accomplish the Authority's purpose, (2) serving as a GSA, as well as developing, adopting and implementing a GSP or GSP chapter, for Non-districted Land, except Outside Member Land for which a General Member serves as a GSA, and (3) such other powers as are expressly set forth in the Joint Exercise of Powers Act (Govt. Code, §§ 6500 *et seq*.), and may be exercised consistent with the purpose of the Authority. In the development and adoption of a GSP or GSP chapter, the Authority must reasonably consider the interests of owners of Non-districted Land who have historically extracted groundwater for use on those lands. The Authority will not oppose the inclusion of any Non-districted Lands in the GSA/GSP of any Member, as may be agreed upon a Member and Non-districted Landowner. In the implementation of a GSP or GSP chapter for Non-districted Land, the Authority shall promptly take actions as are reasonably necessary to

collect funding from landowners of Non-districted Land. For purposes of Government Code section 6509, and unless the Authority has adopted applicable rules, regulations, policies, bylaws and procedures, the powers of the Authority shall be exercised subject to the restrictions upon the manner of exercising such powers as are imposed on Cawelo Water District or, if Cawelo Water District ceases to be a General Member, another California water district that is a General Member of the Authority.

ARTICLE 4
INTERNAL ORGANIZATION

4.1 Governing Body. The Authority will be governed by a Board of Directors which is hereby established, and which shall be initially composed of representatives of the General Members. Membership on the Authority's Board of Directors will not include representatives from Associate Members. Without amending this Agreement, the Board of Directors composition will be altered from time to time to reflect the termination and/or admission of any new General Members. While the Board of Directors is initially composed of General Member representatives to facilitate the purpose of the Authority in timely manner, the Members are committed to transitioning SGMA implementation over Non-districted Land to the owners of those lands who have historically extracted groundwater for use on those lands. This transition will occur when 90 percent or more, or such other percentage as may be determined by the Board, of the Authority's funding is attributable to Non-districted Land. At that time, the Members shall provide for representation of Non-districted Land on the Board of Directors. This representation may be accomplished by creating positions on the Board of Directors for representatives of Non-districted Land. However, any Non-districted Land representation on the Board of Directors may not collectively have more than 25 percent of the voting power under Sections 4.6 and 4.7 below.

4.2 Directors. Each Member's governing board shall select a representative from its governing body to serve as its Board member. A Member may designate a representative from its governing body to serve as its alternate Director. The role of each alternate Director is to assume the duties of the Director appointed by his/her Member agency in the event of the absence or unavailability of such Director, including the Director's duties as a member of any Committee established pursuant to Section 4.4 below. A Director and any alternate Director so named will continue to serve until his or her respective successor is appointed.

4.3 Officers. The Board shall select a Chair from among the Board of Directors who shall be the presiding officer of the Board meetings. The Board shall also select a Vice Chair from among the Board of Directors who shall serve as the presiding officer in the absence of the Chair. The Board shall also select a Secretary, who need not be a member of the Board of Directors. The terms of such Officers shall be established by the Board of Directors from time to time and as necessary.

4.4 Committees. The Board of Directors may from time to time appoint one or more ad hoc or standing committees to assist in carrying out the purposes and objectives of the

Authority. The Board shall determine the purpose and need for such committees. No committee or participant on such committee will have any authority to act on behalf of the Authority.

4.5 Quorum. Directors holding two-thirds of the voting power on the entire Board of Directors on a matter shall constitute a quorum for the transaction of Authority business, including any committee meetings. Any Board member abstaining from a vote shall be counted for purposes of determining the existence of a quorum, but shall not be deemed to be voting.

4.6 Voting. Voting by the Board of Directors shall be made on the basis of one vote for each Director. A Director may vote on all matters of Authority business unless disqualified because of a conflict of interest pursuant to California law or the local conflict of interest code adopted by the Board of Directors. A Director (including a Director serving as a member of a committee) may vote on any matter or action even if (a) that would affect the Member represented by such Director, or (b) that would impact any land or landowners within the boundaries of the Member represented by such Director or Outside Member Land managed in whole or in part by such Member.

4.7 Affirmative Decisions of the Board of Directors. Except as otherwise provided in this Agreement, all decisions of the Board of Directors require the affirmative vote of 75 percent of the total number of Directors on the Board [present and voting].

4.8 Meetings. Meetings of the Board of Directors and any committee (to the extent applicable) shall be conducted in accordance with the Ralph M. Brown Act (Govt. Code, §§ 54950, *et seq.*)

4.9 Special Activities. With the prior approval of the entire Board of Directors, Members may undertake Special Activities in the name of the Authority. All Members shall be given the opportunity to participate in each Special Activity of the Authority. Prior to undertaking a Special Activity, the Members electing to participate in the Special Activity shall enter into an activity agreement. Such activity agreement shall provide that (a) no Special Activity undertaken pursuant to such agreement shall conflict with the terms of this Agreement and (B) the Members to the activity agreement shall indemnify, defend and hold the Authority, and the Authority's other Members, harmless from and against any liabilities, costs or expenses of any kind arising as a result of the Special Activity described in the activity agreement. All assets, rights, benefits, debts, liabilities and obligations attributable to a Special Activity shall be assets, rights, benefits debts, liabilities and obligations solely of the Members that have entered into the activity agreement for that Special Activity, in accordance with the terms of the activity agreement, and shall not be the assets, rights, benefits, debts, liabilities and obligations of those Members that have not executed the activity agreement. Members not electing to participate in the Special Activity shall have no rights, benefits, debts, liabilities, or obligations attributable to such Special Activity.

4.10 Admission, Withdrawal and Termination of Members.

(a) Additional parties may join in this Agreement and become Members or Associate Members upon the approval of the entire Board of Directors, subject to terms and conditions as may be established by the Board of Directors. Prior to being admitted as a new Member, an entity shall execute an agreement to be bound by the terms of this Agreement and any other terms and conditions established by the Board of Directors.

(b) Notwithstanding anything herein to the contrary, any Member may withdraw from this Agreement by giving 60 days' written notice of its election to do so, which notice shall be given to the Board of Directors and to each of the other parties. Upon withdrawal, the Member shall not be relieved of, and shall remain obligated under this Agreement for, continued financial contribution for the development, adoption, and implementation of a GSP or GSP chapter under this Agreement to avoid putting local management of the Kern Subbasin in jeopardy. This obligation will survive a Member's withdrawal from this Agreement and continue for the balance of the remaining initial term of this Agreement under section 2.3 above, and is for the express benefit of the remaining Members. In the event of a Member's withdrawal, the Authority shall make a reasonable estimate of the withdrawing Member's financial obligation over the balance of the then-remaining initial term following the withdrawal and may require the withdrawing Member's payment of the determined amount into an escrow or similar account for incremental release to the Authority when the withdrawing Member's financial obligations to the Authority would be due absent the withdrawal. Any interest on that account shall be payable to the withdrawing Member as the interest is earned. The Authority and the withdrawing Member shall periodically "true up" any shortfall or overpayment in the estimation as reasonably determined by the Board of Directors. Any resulting payment shall be paid within 60 days of its determination by the Board and any delinquency in that payment shall accrue interest at the highest legal rate. Notwithstanding a Member's withdrawal, the Authority shall continue to provide jurisdictional coverage for SGMA purposes to that Member for its Outside Member Land during the period for which the Member is not in default in its payment obligations under this section.

(c) A Member may be terminated by a 75 percent vote of the Directors representing Members not subject to the termination vote if such Member is then in breach of this Agreement and the breach is identified in the vote of the Board of Directors. Upon termination, the breaching Member shall no longer be a Member of the Authority; provided, that such termination shall become effective no earlier than 90 days after such vote of the Board of Directors and shall only be effective if the breach identified in the vote of the Board of Directors has not been cured by the effective date for the termination.

(d) The withdrawing or terminated Member will also be entitled to copies of all non-confidential documents, information, and material developed by the Authority and paid for in whole or in part by the Member prior to the Member's withdrawal or termination.

ARTICLE 5
FINANCIAL PROVISIONS

5.1 Fiscal Year. The fiscal year of the Authority shall be from January 1 through December 31 of each calendar year (**Fiscal Year**).

5.2 Funds; Accounts. An outside certified public accountant shall serve as the fiscal agent and Treasurer of the Authority unless otherwise determined by the entire Board. The fiscal agent shall be responsible for all money of the Authority from whatever source. The Board may compensate the fiscal agent for services rendered.

(a) All funds of the Authority shall be strictly and separately accounted for and regular reports shall be rendered of all receipts and disbursements at least quarterly during the Fiscal Year. The books and records of the Authority shall be open to inspection by the Members.

(b) The Authority shall contract with a certified public accountant to make an audit or review of the accounts and records of the Authority which shall be conducted in compliance with Section 6505 of the California Government Code. All costs associated with this Audit will be the full responsibility of the Authority.

5.3 Property; Bonds. The Board of Directors shall from time to time designate the officers and persons, in addition to those specified in Section 5.3 above, who shall have charge of, handle, or have access to any property of the Authority. Each such officer and person shall file a bond in an amount designated by the Board of Directors.

5.4 Budget. By a date set by the Board of Directors each Fiscal Year, the Board of Directors shall adopt a budget for the Authority for the ensuing Fiscal Year; provided, that except as provided in Section 5.5 below, the Authority shall not impose assessments or other charges on Members. Notwithstanding the foregoing, by its execution of this Agreement, each Member confirms that it has authorized its Director and any alternate Director to approve or disapprove actions and expenditures by the Authority over and above the approved annual budget of the Authority for a Fiscal Year that do not create a fiscal obligation greater than $5,000 on such Member without further action of such Member.

5.5 Payments to the Authority.

(a) Except as otherwise provided, all fees, costs and expenses incurred by the

Authority for general administrative services, such as legal, preparation of audits, and other general administrative functions, and activities related to development and implementation of a GSP for Non-districted Land covered by the Authority's GSP or GSP chapter shall be funded (i) from permissible contributions from or charges to third parties, including landowners within the Non-districted Land covered by the Authority's GSP or GSP chapter and (ii) assessments on the Members and Associate Members, levied from time to time by the Board of Directors to carry out the activities of the Authority generally applicable to all General Members and Associate Members, as shown on the attached **Exhibit A**.

(b) No Member or Associate Member shall be bound, financially or otherwise, by any obligation, contract or activity undertaken by the Authority unless and except to the extent agreed upon by the Member, except that each Member shall be obligated to fund its then current annual share of the annual budget (i.e., general administrative services, such as legal, preparation of audits, and other general administrative functions) of the Authority, provided such budgets are otherwise approved as provided herein. Funding of other matters shall be through Special Activity agreements or as otherwise agreed to by the Members in writing.

5.6 Liability For Debts. The Members do not intend to be obligated either jointly or severally for the debts, liabilities or obligations of the Authority, except as may be specifically provided for in under Government Code section 895.2, as amended or supplemented. Provided, however, if any Member(s) of the Authority are, under such applicable law, held liable for the acts or omissions of the Authority caused by negligent or wrongful act or omission occurring in the performance of this Agreement, such parties shall be entitled to contribution from the other Members so that after said contributions each Member shall bear an equal share of such liability, as shown on the then-current attached **Exhibit A**.

5.7 SGMA-Related Expenses Incurred by Members. Expenses incurred by a Member or Associate Member, or group of Members, for SGMA implementation within its or their boundaries shall be borne solely by that Member, Associate Member, or group of Members. Neither the Authority nor its other Members shall be liable for those expenses.

5.8 Separate Entity; Property. In accordance with Government Code sections 6506 and 6507, the Authority shall be a public entity separate and apart from the parties to this Agreement. Unless, and to the extent otherwise agreed herein, the debts, liabilities and obligations of the Authority shall not be debts, liabilities or obligations of the Member entities. The Authority shall own and hold title to all funds, property and works acquired by it during the term of this Agreement.

5.9 Disposition of Property Upon Termination or Determination by Board of Directors of Surplus.

(a) Upon termination of this Agreement or upon determination by the Board of Directors that any surplus funds on hand, such surplus money shall be returned to the payors of the subject surplus funds. The distribution of said surplus to Members and Associate Members shall be proportionate to the current year percentages as shown in the attached **Exhibit A**, or as modified after the inclusion of new Members.

(b) The Board of Directors shall first offer any surplus properties, works, rights and interests of the Authority for sale to the Members and the sale shall be at the Authority's actual cost unless otherwise required by law. If no such sale is consummated, then the Board of Directors shall offer the surplus properties, works, rights and interests of the Authority for sale in accordance with applicable law to any governmental agency, private entity or persons for good and adequate consideration.

ARTICLE 6
MANAGEMENT

The Authority may, by contract, hire for management services to the Authority. In lieu of that hiring, the Authority may engage one or more staff members from the Members, with the consent of that Member, to manage any or all of the business of the Authority on terms and conditions acceptable to the Board of Directors. Any staff member so engaged shall remain the employee of the Member employing him or her, and that Member shall be solely responsible for the staff member's compensation.

ARTICLE 7
MISCELLANEOUS PROVISIONS

7.1 **Amendment.** This Agreement may be amended from time to time by the concurrence of 75 percent of the General Members. To provide non-concurring parties an opportunity to withdraw from the Authority, an amendment shall be binding on all parties 60 days after the required concurrence has been obtained.

7.2 **Severability and Validity of Agreement.** If the participation of any party to this Agreement, or any part, term or provision of this Agreement is decided by a Court or the Legislature to be illegal, in excess of that party's authority, in conflict with any law of the State of California, or otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms or provisions of this Agreement shall not be affected thereby and each party hereby agrees it would have entered into this Agreement upon the remaining terms and provisions.

7.3 **Assignment.** Except as otherwise provided in this Agreement, the rights and duties of the

parties to this Agreement may not be assigned or delegated without the advance written consent of the Authority (as evidenced by a majority vote of the Board of Directors), and any attempt to assign or delegate such rights or duties in contravention of this section shall be null and void. Any assignment or delegation permitted under the terms of this Agreement shall be consistent with the terms of any contracts, resolutions or indentures of the Authority then in effect, including any Special Activity agreement to which the assigning or delegating Member is a party. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. This section does not prohibit a party from entering into an independent agreement with another agency regarding the financing of that party's contributions to the Authority or the disposition of proceeds which that party receives under this Agreement so long as such independent agreement does not affect, or purport to affect, the rights and duties of the Authority or the parties under this Agreement.

7.4 Execution in Parts or Counterparts. This Agreement may be executed in parts or counterparts, each part or counterpart being an exact duplicate of all other parts or counterparts, and all parts or counterparts shall be considered as constituting one complete original and may be attached together when executed by the parties hereto. Facsimile or electronic signatures shall be binding.

7.5 Notices. Notices authorized or required to be given pursuant to this Agreement shall be in writing and shall be deemed to have been given when mailed, postage prepaid, or delivered during working hours to the addresses set forth for each of the parties hereto on the attached **Exhibit A**, or to such other changed addresses communicated to the Authority and the Members in writing, and to such other entities that become Members.

7.6 Entire Agreement. This Agreement represents the entire agreement of the parties with respect to the subject matter hereof. All understandings and agreements heretofore had between the parties respecting this transaction, including without limitation, any offers, counteroffers or letters of intent, are merged in this Agreement, which fully and completely expresses the agreement of the parties. There are no representations, warranties, covenants or agreements except as specifically and expressly set forth herein and in the exhibits annexed hereto.

7.7 Interpretation. The words and phrases defined in Article 1 will, in addition to the definitions contained in the Preamble and Recitals as indicated with bold font, govern interpretation of this Agreement. When a reference is made in this Agreement to Articles, sections, or Exhibits, such reference shall be to an Article, section of or exhibit to this Agreement unless otherwise indicated. All attached exhibits are incorporated herein by reference. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words "include," "includes," and "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." No provision of this Agreement shall be construed to require any person to take any action that would violate any applicable law, rule, or regulation.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year set forth on the attached **Exhibit A**.

Memo

To:	Kristin Pittack, Plan Manager Tim Ashlock, GSP Fiscal Agent
From:	Stephanie Hearn, GEI Consultants Mike Maley, Todd Groundwater
Date:	March 27, 2024
Subject:	Kern Groundwater Authority (KGA) Un-managed Lands

The purpose of this memorandum is to document a change in Scope of Work, the associated cost estimate, and budget impact for GEI Consultants and Todd Groundwater. As the Subbasin worked through developing a revised GSP, it was acknowledged that the KGA un-managed lands need more attention than general coverage of the Subbasin to adequately address issues identified in the Department of Water Resources (DWR) Incomplete and Inadequate Determination Letters.

DWR Comments and Corrective Actions

The KGA GSP provides little information on the characteristics of these non-management-area portions of its GSP area and does not appear to set any sustainable management criteria for these areas. The table of page 297 of the Coordination Agreement indicates that non-districted lands account for 18,013 acre-feet per year of total demand, which Department Staff note is a larger volume than occurs in many of the areas covered by the management area plans. Suggested corrective actions include:

- Provide a comprehensive discussion of areas covered by the KGA but are not covered by another GSA.
- Provide maps of areas covered.
- Describe the uses and users of groundwater in these areas.
- Either set Sustainable Management Criteria (SMCs) or include robust discussions justifying why SMCs are not required.

Approach to Implementing the Corrective Actions

Review of KGA's 2022 GSP and response to deficiencies matrix highlights discrepancies and lack of comprehensive data for the KGA un-managed lands. There are several sections of the GSP that reference different dataset and report varying acres of un-managed lands throughout the report. This is likely caused by changes over time where districts forming new GSAs who are now providing coverage to some

of the un-managed lands. There is currently not a single reconciled shapefile of GSA boundaries. Both GEI and Todd Groundwater recommend preparing a single dataset that reconciles GSA boundaries by Assessor Parcel Number (APN) and aligns the borders between GSAs. This effort will include integrating Eastside Water Management Area's (EWMA) current shapefile of APNs to differentiate managed but un-districted lands from un-managed lands covered by the KGA.

- **Deliverables.** 1) Complete shapefile of GSAs within the Kern Subbasin that will be shared with the Technical Working Group (TWG) to use as the base file for all final mapping efforts. 2) Map of KGA lands to be inserted into the revised GSP. 3) Calculated acres of lands covered by KGA and EWMA to clearly differentiate between managed and un-managed lands.

To provide a comprehensive discussion of areas covered by the KGA, Todd Groundwater will apply the reconciled shapefile to their land use dataset to identify the uses and users of water supplies available to the landowners. Results will be reported in the GSP with maps and statistical data including the water supply (groundwater, recycled water, other), groundwater demand, and the estimated water balance of KGA and EWMA lands.

GEI will apply the well inventory to the reconciled shapefile to identify domestic, small community, or other beneficial user types.

- **Deliverables.** 1) Statistical land use data and model results of water balance. 2) maps of land uses and GSP text addressing areas covered by KGA. 3) identification of beneficial uses and users in areas covered by KGA and EWMA.

GEI will coordinate with LSCE to apply their monitoring network shapefiles to the reconciled shapefile of GSA boundaries to evaluate if the KGA lands have adequate coverage to evaluate sustainable management of groundwater levels, subsidence, water quality, and depletion of groundwater supply with the existing monitoring network. It should be noted that a monitoring gap has been identified in the Round Mountain / Hart Park area where there are a handful of small community water systems. GEI presented a recommendation for coverage in this area at the March 15 manager's meeting: Manager's response was recommendation to proceed with the proposed well. GEI will coordinate with the Plan Manager to reach out to the small water system to initiate an agreement.

- **Deliverables.** 1) Opinion of monitoring network coverage across the KGA lands (excluding EWMA which is already covered). 2) Recommendation for monitoring network addition(s) and proposed SMCs, if needed.

Robust discussion of KGA lands will be incorporated into the GSP in all areas that currently include GSA-specific text. Throughout the GSP, KGA un-managed lands will

be addressed with consistent language and application of data and methodologies to establish SMCs. At a minimum, KGA text will be added into the following sections:

- Chapters 1-4. Incorporate discussion of the KGA's role into Chapters 3 and 4 to clearly explain the Subbasin's current organizational structure and how it covers the KGA un-managed lands, and the Subbasin's role with SGMA implementation in these areas.
- Chapter 5. Draft bullet point description of plan area in Section 5.1.2; address water supply and beneficial uses and users in Section 5.3.3; groundwater levels and pumping in Section 5.4.1, as appropriate; communications, public outreach and engagement in Section 5.7.3; and interagency coordination in Section 5.7.4.
- Chapter 17. GEI will work with a subcommittee of Subbasin Managers and/or the Attorney Working Group on plan implementation to incorporate appropriate discussion of KGA into SGMA implementation.

Cost Estimates and Budget Implication

GEI and Todd Groundwater worked together to develop this scope and estimated budget for each firm. The maximum estimated budget is $15,000 as summarized in Table 1. Project Manager's for each firm evaluated budget status as of mid-March and anticipate the additional Scope of Work can be implemented without budget augmentation.

Table 1. Budget Estimates

Firm	Deliverable	Budget
GEI	Reconciled Shapefile	6,500
Todd/GEI	Comprehensive Discussion of KGA Lands	3,500
GEI	Evaluation of SMC Coverage Across KGA Lands	2,500
Todd/GEI	Robust Discussion of KGA Lands in Revised GSP	2,500
Total Budget Estimate		15,000

Through March 23, GEI has expended 86% of its authorized budget, with approximately $49,000 available. Since the most labor-intensive work is complete, we anticipate the additional KGA Scope of Work can be implemented within the currently authorized budget.

Todd Groundwater's invoices through the end of January show they've expended 36% of their authorized budget. Based on their monthly average, work through the end of June would be within the currently authorized budget, including the KGA Scope of Work.

Directors:

Ted R. Page
President
Division 1

Laura Cattani
Division 2

Martin Milobar
Vice President
Division 3

Eric L. Averett
Division 4

Charles (Bill) W. Wulff, Jr.
Division 5

Royce Fast
Division 6

Gene A. Lundquist
Division 7

Thomas D. McCarthy
General Manager

Vacant
General Counsel

Phone No. (661) 634-1400

Mailing Address
3200 Rio Mirada Drive
Bakersfield, CA 93308

April 12, 2024

Via Electronic Mail

Mr. Derek Yurosek
Kern County Subbasin Coordination Committee

Re: Groundwater Management of Undistricted Lands

Dear Mr. Yurosek:

The Sustainable Groundwater Management Act (SGMA) requires the establishment of groundwater sustainability agencies (GSAs) to manage groundwater for all lands, including undistricted lands, overlying a groundwater basin. Under SGMA, it's the responsibility of Kern County (County) to manage undistricted lands; however, in 2018, following the County's withdrawal from the Kern Groundwater Authority (KGA), the Kern County Water Agency (Agency), as a Cooperative Member of the KGA, agreed to allow the KGA to utilize its jurisdiction for the exclusive purpose of providing groundwater management coverage to undistricted lands to meet the requirements of the SGMA. At the time, the KGA's boundaries covered a majority of the Kern County Subbasin and its membership included a majority of the Kern County Subbasin districts. Since that time, 8 out of 15 voting members have withdrawn from the KGA, and nearly all the remaining members have authority to, and have signaled their intent to, withdraw from the KGA. The Agency appreciates and supports their willingness to remain in the KGA while a subbasin-wide solution is developed to manage undistricted lands; however, should the remaining voting members withdraw and the KGA cease to exist, the Agency's jurisdictional coverage would automatically be revoked and the Kern County Subbasin could be placed into probation by the State Water Resources Control Board. Additionally, since its withdrawal from the KGA, the County has lent its jurisdictional coverage to the South of Kern River and North Central Kern GSAs, demonstrating the County's willingness to reengage in SGMA efforts.

Recognizing the KGA may be dissolved and that undistricted lands are a subbasin-wide issue, in September 2023, the Agency called upon the Coordination Committee to develop a subbasin-wide mechanism to address undistricted lands, including reengaging the County to provide jurisdictional coverage. Since that time, the Agency has repeatedly expressed in Coordination Committee and Subbasin Manager meetings that the undistricted lands are a subbasin-wide issue that must be addressed collectively and collaboratively and, assuming the County fails to provide jurisdictional coverage, that the Agency is

unwilling to enter into multiple, individual agreements to provide jurisdictional coverage to the Kern County Subbasin. In response to questions, the Agency has also repeatedly expressed that it has neither the staffing, funding nor direct relationships with landowners needed to enact groundwater management.

Although a joint powers agreement (JPA) has recently been drafted that would address undistricted lands, very little progress has been made over the last six months to finalize a JPA and multiple entities have indicated an unwillingness to execute a JPA without offering an alternative subbasin-wide methodology to address undistricted lands. Additionally, although there have been at least two recent meetings with County representatives, the County has not committed to reengaging in Kern County Subbasin efforts. Due to the lack of significant progress toward a subbasin-wide solution to manage undistricted lands, the Agency requests the Coordination Committee members take action to execute a JPA to provide groundwater management coverage to undistricted lands prior to resubmittal of the Groundwater Sustainability Plans (GSPs) this May. The Agency is committed to working with the Subbasin to develop a subbasin-wide solution to manage undistricted lands. However, as previously stated the Agency is unwilling to enter into multiple, individual agreements to provide jurisdictional coverage to the Kern County Subbasin. If a subbasin-wide solution is not executed prior to the submittal of the GSPs in May, the Agency may take action to withdraw from the KGA as a Cooperative Member to revoke its jurisdictional coverage from the KGA.

If you have any questions or would like to discuss this further, please contact Lauren Bauer at (661) 634-1411.

Sincerely,

Ted R. Page
Board President

cc: Dan Waterhouse, Kern Groundwater Authority
Derek Yurosek, Arvin-Edison Water Storage District
Michael Blaine, Wheeler Ridge-Maricopa Water Storage District
Mark Valpredo, Tejon-Castac Water District
Rodney Palla, Kern Delta Water District
Bob Smith, City of Bakersfield
Brandon Morris, Southern San Joaquin Municipal Utility District
Randy Bloemhof, Shafter-Wasco Irrigation District
Kevin Andrew, North Kern Water Storage District
John Gaugel, Cawelo Water District
Rob Goff, Westside District Water Authority
Dan Waterhouse, Semitropic Water Storage District
Kim Brown, Kern Water Bank Authority
Gary Morris, West Kern Water District
Andrew Hart, Kern-Tulare Water District
Chad Hathaway, Eastside Water
Gary Unruh, Rosedale-Rio Bravo Water Storage District
Jeof Wyrick, Henry Miller Water District
Jim Nickel, Olcese Water District
Terry Chicca, Buena Vista Water Storage District
Supervisor David Couch, County of Kern