

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

State intervention under the Sustainable Groundwater Management Act (SGMA) is a public process. The State Water Resources Control Board (State Water Board or Board and, together with the Regional Water Quality Control Boards, Water Boards) encourages public participation in its decision-making process regarding the Kern County Subbasin. Public participation can help shape State Water Board staff recommendations, help the State Water Board decide whether to place the Kern County Subbasin on probation, and help identify improvements to the Groundwater Sustainability Plans (GSPs) to better manage groundwater in the subbasin.

## California Native American Tribes

Meaningful engagement and consultation with California Native American Tribes are fundamental to the mission of the Water Boards. Guided by the Governor's Executive Order B-10-11, the [CalEPA Tribal Consultation Policy](#) and the [CalEPA Tribal Consultation Protocol](#), and the [State Water Board's Tribal Consultation Policy](#), the SGMA probationary hearing process includes significant tribal engagement and consultation. The State Water Board mailed and emailed a formal letter with notification of consultation opportunity dated July 26, 2024, to 13 California Native American tribes that are on the list provided by the California Native American Heritage Commission with cultural and traditional affiliation with the Kern County Subbasin. The State Water Board has thus far received no requests for government-to-government consultation on a potential probationary determination.

## Hearing Notice

The State Water Board issued a probationary hearing notice for the Kern County Subbasin on July 25, 2024, pursuant to Water Code section 10736. The notice includes information about the GSP, public hearing, Draft Staff Report, public workshops, and public participation opportunities.

The notice was emailed to Kern County, San Luis Obispo County, City of Bakersfield, City of Arvin, City of Delano, City of Los Angeles, City of McFarland, City of Shafter, and City of Wasco.

The notice was mailed to approximately 1,800 parcel owners identified by Board staff as persons who extract or propose to extract groundwater from the subbasin based on

publicly available well information and county parcel information. The owner/extractor mailing list includes all public water systems (community, non-community non transient, transient) and state small water systems in the subbasin. Board staff developed an English and Spanish fact sheet flyer and cover letter that were included in the mailings.

Subscribers to the State Water Board's groundwater management email list received an English and Spanish electronic notification. The notice was also emailed to representatives of the 20 Groundwater Sustainability Agencies (GSAs) and the Department of Water Resources (DWR). The notice, Staff Report Executive Summary, and flyer are available in English and Spanish on the State Water Board's Kern County Subbasin webpage at [bit.ly/sgma-kern](https://bit.ly/sgma-kern).

## **Additional Outreach**

In addition to the statutory noticing requirements, Board staff performed focused outreach to over 80 interested parties and local groups (e.g., churches and faith communities, community organizations, libraries, clubs, committees) in the subbasin via phone calls, interviews, and email. In addition, staff conducted targeted email outreach to public water systems in the Kern County Subbasin as a follow up to the formal notices sent by mail. The State Water Board has contracted with DUDEK and Kearns & West to support outreach and engagement services in the subbasin.

## **Schools and Universities**

Board staff sent an email transmittal to the Kern County Superintendent of Schools, Bakersfield City School District, Lakeside Union School District, McFarland School District, and Kern High School District in August 2024 and requested that they distribute English and Spanish flyers about the August 26 and 29, 2024 public workshops to local families. Board staff also shared flyers with other organizations that work with local students and their families, including the Boys and Girls Club of Kern County and the Citizen Scientist Project, and conducted outreach to University of California Agriculture and Natural Resources and California State University Bakersfield.

## **Community Based Organizations**

Board staff has consulted with the Community Water Center, Clean Water Action, Self-Help Enterprises, the Leadership Counsel for Justice and Accountability, and the Central California Environmental Justice Network on outreach efforts in the subbasin. Through these efforts, the State Water Board has been able to gather community input and distribute information about the public hearing and August 2024 workshops to the community.

## Workshops

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

- August 26, 2024, held remotely via Zoom, 11:00 am to 1:30 pm
- August 29, 2024, in-person in Bakersfield, CA, 5:30 pm to 8:30 pm

Spanish and Punjabi language interpretation was provided during the workshop presentations and time was allotted for public comments and questions to allow the public to engage with the State Water Board and Board staff. A video recording of the August 26<sup>th</sup> Kern County virtual workshop [is posted online on YouTube and the State Water Board website](#).

Approximately 250 people attended the virtual workshop on August 26<sup>th</sup> and approximately 145 people attended the in-person workshop in Bakersfield on August 29<sup>th</sup>.

## Public Comments

Board staff invited written and verbal public comments on the Draft Staff Report, which included Board staff's recommendations to the State Water Board regarding a probationary designation. The public comment period was July 26, 2024, to September 23, 2024. At the August 2024 workshops, approximately 25 attendees gave verbal comments. During the public comment period, the State Water Board received 46 written comments on the Kern County Subbasin Draft Staff Report. An additional opportunity for public comment will be provided at the February 2025 hearing.

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

## Well Mitigation

Multiple comment letters commended the inclusion of the well mitigation program in the Kern County Subbasin Draft Staff Report (Potential Action GL-2, or GL-2b in the Final Staff Report). Specifically, comment letters acknowledge that the Kern County GSAs are committed to developing and implementing a subbasin-wide well mitigation plan in coordination with Self-Help Enterprises. One commenter also noted that although Kern

County GSAs are coordinating with Self Help Enterprises, the well-mitigation plan has not been posted for public review nor has a financing plan been provided.

Board staff acknowledges that a well mitigation program may not be necessary in every basin. While not explicitly required in SGMA or GSP regulations, a well-funded, comprehensive, and equitable well mitigation program is likely needed in critically-overdrafted subbasins subject to SGMA to avoid undesirable results by managing impacts to beneficial uses and users of groundwater. A groundwater management plan that allows for significant impacts to drinking water wells would be considered by Board staff to be unreasonable unless mitigation actions are facilitated by the GSAs. The Kern County Subbasin 2024 GSPs allow for significant and unreasonable impacts to well owners and therefore requires the development and implementation of a well-funded, comprehensive, equitable well mitigation program.

The groundwater level sustainable management criteria (SMC) described in the Kern 2024 GSPs may allow for the dewatering of a significant number of wells if groundwater levels decline to the minimum thresholds (MTs) but more information is needed for a more robust analysis (see Section 4.1.2.3 of the Final Staff Report for more details on Well Impact Mitigation). Additionally, since the groundwater quality SMC in the 2024 Draft GSPs do not explicitly consider the impacts from constituents and how each are influenced by management activities, it is unclear how mitigation for degradation of groundwater quality will be addressed. There is no discussions of estimated costs of mitigation for degradation of groundwater quality (see Section 4.1.4.3 for more details). It is also possible for wells to be impacted by subsidence; however, GSAs do not appear to account for subsidence related impacts in their mitigation plan except for one section of the Friant-Kern Canal (see Section 4.1.3.3 for more details).

## **GSA Projects and Management Actions**

Several public comment letters discussed projects and management actions. Context for these discussions included, but was not limited to, i) acknowledging the Kern County GSAs' demand reduction target efforts, which will be executed through their respective Project and Management Actions (PMAs), ii) PMA selections that stabilize groundwater levels by 2030 and minimize GSA-related land subsidence by 2040, iii) noting that the modeling conducted for the Kern County Subbasin demonstrates that the planned PMAs will support the achievement of the subbasin's sustainability goal, and iv) PMAs may be costly and insufficient in supporting wetlands within the subbasin, specifically, wetlands that provide habitat but do not have access to adequate surface water supplies. Board staff appreciates the efforts GSAs continue to take in implementing their plans and making progress towards groundwater sustainability. Board staff encourages the GSAs to include relevant details in any updated GSP so the State Water Board can evaluate how management criteria, monitoring, and PMAs will work in concert to achieve sustainability in the subbasin.

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

In a public comment letter, Henry Miller Water District GSA (HMWD) requested to be excluded from probation under Water Code section 10735.2, subdivision (e). This section of the statute, informally called the “good actor” exemption, directs the State Water Board to “exclude from probationary status any portion of the basin for which a groundwater sustainability agency demonstrates compliance with the sustainability goal.”

Based on its evaluations, Board staff does not recommend that HMWD be excluded from probationary status or from reporting extractions and paying fees at this time. Further information about this recommendation can be found in Section 4.2 of the Final Staff Report.

## **Exemption from Reporting**

Several comment letters discussed exemptions for classes of pumpers or drinking water systems from reporting groundwater extractions, paying fees, or metering groundwater well extractions. Additional content in the comment letters included supporting Board staff’s recommendation in the Draft Staff Report to exempt domestic users pumping two acre-feet per year or less, as well as adjusting fee rates so small farms do not pay the same fees per well or per acre-foot as those pumpers responsible for most of the overdraft, and exempting pumpers who are recovering surface water stored underground. The Final Staff Report’s Section 4.5 discusses reporting exclusions for drinking water systems and groundwater banking operations.

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

One comment letter suggests the State Water Board is unequally applying the “good actor” exemption. (Wat. Code, § 10735.2, subd. (e).) Another comment letter stated the 2024 Draft GSPs were inadequate for any GSA to receive a “good actor” exemption.

The criteria for the “good actor” exemption are set in statute. SGMA requires the Board to “exclude from probationary status any portion of a basin for which a groundwater sustainability agency demonstrates compliance with the sustainability goal.” (Wat. Code, § 10735.2, subd. (e).) Section 4.2 of the Final Staff Report describes the statutory requirements in more detail.

## **Requests to Delay Probationary Hearing**

Some comment letters requested that the State Water Board postpone the probationary hearing to allow additional time for GSA collaboration and for Board staff to complete a full review of the 2024 GSPs.

The current probationary hearing date for Kern County Subbasin has allowed the GSAs more than three years to remedy deficiencies after DWR issued its incomplete determination for the basin in January 2022 and five years since their initial 2020 GSP submissions. Board staff is concerned that continuing to prolong SGMA implementation could cause the subbasin to miss SGMA's 2040 deadline for sustainability and put beneficial users of groundwater at risk. The State Water Board acknowledges the GSAs' ongoing efforts to improve the GSPs and these efforts will be taken into consideration at the February 2025 hearing. At the hearing, the State Water Board may adopt a probationary designation or decide to revisit the matter at a future date. As of the time of this report's release, GSAs have not taken sufficient action to correct identified deficiencies, therefore Board staff does not recommend a delay. Additionally, Board staff has reviewed the 2024 Final GSPs and incorporated findings into the Final Staff Report. Board staff has been in coordination with the GSAs to discuss deficiencies since the basin was recommended for state intervention, has provided feedback on GSA methodologies, and provided recommended options that Board staff believes would address the deficiencies.

## **Impacts of Probation on the Local Economy**

Some commenters expressed concern that, if the State Water Board designated the subbasin probationary, groundwater pumpers and the economy of the subbasin would suffer.

Board staff acknowledges this concern; however, the State Water Board's State Intervention authorities represent an important backstop under SGMA to ensure protection of groundwater for beneficial uses and users. SGMA requires the State Water Board to charge fees to recover the cost of its program and has recently reassessed and reduced its fees for extraction reporting in probationary basins.

If the State Water Board designates the subbasin probationary, Board staff would continue to work with GSAs to address the deficiencies in order to return the subbasin to full local control and encourage GSAs to continue to implement their plans.

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

## **Fees**

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

The State Water Board revised its fees at its March 19, 2024, meeting. To stay informed on new fee assessment and other SGMA topics and receive updates, you can subscribe

to the State Water Board's Groundwater Management listserv at [bit.ly/SWRCB-email-subscriptions](https://bit.ly/SWRCB-email-subscriptions) (under State Water Board General Interests).

## **Wetlands**

Several comment letters were submitted regarding managed wetlands. Many of these commenters expressed concern that groundwater and surface water would no longer be available to support managed wetlands and/or that the cost of water would prohibit these wetlands from continuing to be managed. Commenters stated that reductions in water applied to these wetlands would devastate the wildlife communities that depend on this critical habitat, which comprises less than 1 percent of the geographic area of the subbasin.

Some commenters requested that managed wetlands be excluded from State Water Board fees. Still other commenters expressed concern that the 2024 Draft GSPs do not recognize environmental uses of groundwater.

In Section 3.5.1.3 of the Final Staff Report, Board staff states that wetlands are considered a beneficial user of groundwater and that their protection should be considered in the 2024 GSPs in accordance with Executive Order W-59-93 to ensure no overall net loss, and a long-term net gain, in the quantity, quality, and permanence of wetlands acreage and values in California.

## **Review of 2024 GSPs**

Several comment letters were submitted requesting that Board staff complete a full review of the 2024 Draft GSPs before releasing the Final Staff Report. Board staff has completed a thorough review of the 2024 Draft GSPs. Board staff's findings are located in Section 4.1 of the Final Staff Report.

## **Land Subsidence**

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

Mitigating land subsidence near the Friant-Kern Canal and California Aqueduct poses a unique challenge to the Kern County Subbasin with far reaching consequences. The Final Staff Report identifies many of the demand and supply actions proposed by commentors as potential actions to address land subsidence deficiencies.

## **Groundwater Recharge**

A few commenters acknowledged the importance of water infrastructure, such as recharge ponds and unlined canals, to support groundwater recharge in the subbasin. Commenters also noted that the water conveyance networks support implementation of supply augmentation PMAs, supplementing the subbasin's capacity to recharge flood waters. Additionally, commenters stated that to achieve the minimization of subsidence by 2040 and limit declining groundwater levels, there will need to be an increase in the volume of surface water used for groundwater recharge.

Board staff recognizes the Kern County Subbasin's commitment to recharge through existing and planned projects. However, Board staff notes that recharge projects need to be carefully engineered, operated, and monitored to avoid groundwater quality degradation, contamination plume migration, and the alteration the groundwater chemistry (see Potential Action GWQ-1a in Section 4.1.4.4 in the Final Staff Report for more details).

## **Water Banking**

Two primary concerns emerge from comments for water banking operations within the Kern County Subbasin. Firstly, in response to the importance of banking operations in the subbasin, Board staff acknowledges that water banks and conjunctive use can be an important means of sustainably managing water use and Board staff does not dismiss its necessity within the subbasin. Board staff further notes that large fluctuations in groundwater levels as a result of banking operations may be a challenging aspect to appropriately setting SMC in relation to the rest of the subbasin. However, Board staff notes that beneficial users of groundwater in close proximity to water banks may be adversely impacted during extended periods of banking operations withdrawing stored water from the basin. Therefore, Board staff continues to encourage GSAs to ensure SMC and monitoring networks capture the potential impacts that may affect beneficial users as climate extremes continue to persist. See Potential Action GL-3a in Section 4.1.2.4 of the Final Staff Report for more details.

In response to agencies concerned about in-lieu recovery subjected to reporting and fees, Board staff acknowledges that in-lieu banking operations are an important component to conjunctive use in the subbasin. However, Board staff remains concerned that, even with leave-behind obligations from outside banking partners, there may be adverse impacts to groundwater storage volumes due to inconsistencies between the volume of water that is provided in-lieu and the net losses from the primary aquifer system used for return deliveries. This issue is compounded by the large contributions of overdraft from Semitropic Water District and its consistent declines in groundwater levels. If the aquifer is losing water faster than the water that is provided in-lieu, then this may continue to cause periods of overdraft. Board staff will need to further assess



groundwater extractions for in-lieu operations on a case-by-case basis to ensure that the accounting of water aligns with conditions of sustainability.

Whether or not groundwater banks are required to report and pay fees on extractions is determined by accounting procedures for water that is recharged to the facility. Board staff would need to evaluate whether water classified as “stored” or “banked” under in-lieu operations/accounting procedures is native groundwater and subject to SGMA reporting and fees. (Wat Code, § 5202 [any person who “extracts groundwater from a probationary basin 90 days or more after the board designates the basin as a probationary basin” must file a groundwater extraction report with the State Water Board each year.] ) Surface water that is diverted to underground storage in the subbasin may continue to be extracted without being subject to reporting and fees.