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**VIA FIRST CLASS MAIL & EMAIL**

State Water Resources Control Board  
Division of Water Rights  
ATTN: Mitchell Moody  
P.O. Box 2000  
Sacramento, CA 95812-2000

**Re: Comments Regarding Kings River Fully Appropriated Stream Status & Petitions Filed by CID/FID/Alta and Semitropic**

Dear Mr. Moody:

Our office represents the McMullin Area Groundwater Sustainability Agency (“MAGSA”) located within the Kings Subbasin in Fresno County, California. MASGA is a joint powers authority created by Fresno County, the Raisin City Water District and the Mid-Valley Water District pursuant to the McMullin Area Groundwater Sustainability Agency Joint Powers Agreement, dated January 31, 2017. MAGSA is a Groundwater Sustainability Agency (“GSA”) formed pursuant to the Sustainable Groundwater Management Act of 2014 (Water Code §§ 10720 *et seq.*) (“SGMA”). MAGSA submits this comment letter in response to the Petitions submitted by the Consolidated Irrigation District (“CID”), Fresno Irrigation District (“FID”), and Alta Irrigation District (“Alta”) (altogether “Consolidated *et al.*”) and the Semitropic Water Storage District (“Semitropic”) and to urge the State Water Resources Control Board (“State Board”) to find that reasonable cause exists to hold a hearing to determine whether revision and/or revocation of the Kings River Stream System Fully Appropriated Status Declaration (“Kings River FAS Declaration”) is appropriate.

**Background**

SGMA requires that groundwater basins designated by the Department of Water Resources (“DWR”) as high- or medium-priority basins “subject to critical conditions of overdraft,” as defined in Bulletin 118, be managed by a GSA pursuant to a Groundwater Sustainability Plan (“GSP”) by January 31, 2020. MAGSA is located in the Kings Subbasin, as identified as Basin No. 5-22.08 in DWR’s Bulletin 118, designated by DWR as a high-priority basin in its 2014 Final Basin Prioritization. The Kings Subbasin was determined to be “subject to critical conditions of overdraft” in DWR’s 2018 Map and List of Critically Overdrafted Basins released in February 2019. There are seven (7) GSAs organized within the Kings Subbasin, including MAGSA, which are working diligently to prepare and coordinate their respective GSPs in advance of the state-mandated deadline.

Beneficial users of water within the MAGSA service area are wholly dependent on groundwater. Currently there is no surface water available to MAGSA for groundwater recharge or storage efforts, with the exception of Kings River flood flows that travel through Fresno Slough/James Bypass and that have historically contributed to natural groundwater recharge within the McMullin Area. As a major component of MAGSA's sustainability planning efforts, MAGSA intends to appropriate surface water from the Kings River for direct and in-lieu groundwater recharge purposes.

In addition to SGMA compliance, MAGSA's interest in the currently pending Petitions is the protection of the water supply for disadvantaged communities within its service area. The most recent Census tract data and Disadvantaged Community ("DAC") pilot studies conducted by the Kings Basin Water Authority and County of Tulare indicate that the majority of MAGSA's service area meets the California Water Code definition of a Severely DAC<sup>1</sup>. California law recognizes the need to address water supply and quality issues for DACs, and is a substantial consideration for MAGSA in submitting these comments on the Kings River FAS Declaration Petitions.

#### Legal Standard for FAS Declaration Revocation/Revision

Pursuant to California Code of Regulations, title 23, section 871, subdivision (c)(1), the Chief of the Division of Water Rights "may determine that reasonable cause exists to conduct a hearing on the question whether the fully appropriated status of the stream system should be revoked or revised." (23 Cal. Code Regs. § 871(c)(1).) Reasonable cause exists when "additional information has become available since the Board listed the [Kings] River as fully appropriated" to justify the State Board holding a hearing to consider revision and/or revocation of the Kings River FAS Declaration. (State Water Board Order No. WR-2010-0010 (2010 WL 2674816) at p. 3.) This additional information "could be based on court decisions or [State] Board orders, **or hydrological data showing periods of flows exceeding recognized rights.**" (*Id.* [emphasis added].)

#### The State Board Did Not Consider Kings River Flood Flows in Issuing Decision D-1290

The State Board Decision D-1290 ("D-1290") adopted on November 30, 1967, approved nine (9) applications held by FID as trustee to appropriate water from the Kings River, currently held by the Kings River Water Association ("KRWA"), FID's successor in interest as trustee agency. As noted in D-1290, although "it is the intention of KRWA members to utilize the full runoff of the [Kings River] ... this is not possible in years of extreme flood." (D-1290 at p. 35.) Thus, although D-1290 acknowledges extreme flood runoff, it does not *consider* whether these flows are available for appropriation. Likewise, it appears that the hydrological data available since 1967 when D-1290 was adopted demonstrates that water is available for appropriation. That the State Board did not consider these flood flows in D-1290 warrants a determination by the Chief of the Division of Water Rights that reasonable cause exists to hold a hearing on the Kings River FAS Declaration to examine the information that has become available since D-1290 was issued.

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<sup>1</sup> MAGSA's Severely Disadvantaged Communities status can be observed using the DAC Mapping Tool from the Department of Water Resources, available at the following link: <https://gis.water.ca.gov/app/dacs/>.

MAGSA is not a Kings River Water Association (“KRWA”) member unit, but is currently engaged in discussions with KRWA to evaluate membership and availability of water for MAGSA under KRWA’s permits. MASGA is also not currently within KRWA’s place of use. However, KRWA’s currently pending water right change petition would add MAGSA to KRWA’s service area, allowing MAGSA to utilize water made available from KRWA for groundwater recharge.

### The Petitions to Revise and/or Revoke the Kings River FAS Declaration

#### *CID/FID/Alta Petition*

Consolidated *et al.* filed a Petition for Reconsideration of Fully Appropriated Stream Kings River System, Tributary to Tulare Lake Basin (“CID/FID/Alta Petition”) on May 9, 2017, and notes that “Kings River water is periodically discharged to the San Joaquin River during above average water years,” and thus “it could be argued that some Kings River water is available for appropriation.” (CID/FID/Alta Petition at p. 1.) The CID/FID/Alta Petition further notes that although “it has always been the intention of the KRWA member units to utilize all of the runoff of the river, they have not always been able to achieve that goal in years of extreme flood.” (*Id.* at p. 2.) The Petition concludes that in years of extreme flooding conditions there are Kings River flows available that are not currently being put to reasonable and beneficial use, and that since the completion of Pine Flat Dam in 1954, “the hydrology of the Kings River has produced flood years on average of about once every three years.” (*Id.*) Consequently, Consolidated *et al.* claim there is water available from the Kings River, on average, approximately every three years, which is discharged out of Fresno Slough (James Bypass) and into the San Joaquin River without being beneficially used.<sup>2</sup> (*Id.*; see also Table 1 of CID/FID/Alta Petition.) The CID/FID/Alta Petition indicates that Kings River Floodwater volumes are not insignificant, sometimes amounting to several hundred thousand acre-feet per year between the years 1954 and 2016. (*Id.* at p. 4, Figure 1.)

The hydrologic information provided in the CID/FID/Alta Petition establishes reasonable cause for the Chief of the Division of Water Rights to conduct a hearing on the Kings River FAS Declaration.

#### *Semitropic Petition*

Semitropic filed its Petition to Revoke and/or Revise the Declaration that the Kings River System (Tributary to Tulare Lake Basin) is a Fully Appropriated Stream System (“Semitropic Petition”) on May 25, 2017. The Semitropic Petition cites to Kings River hydrologic data summarized in several sources, including a memorandum prepared by GEI, a Flood Water Agreement, and other legal authorities, as evidence that reasonable cause exists to hold a hearing on the Kings River FAS Declaration. (Semitropic Petition at p. 3.) Semitropic explains that the

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<sup>2</sup> Although MAGSA agrees that Kings River flood flows are discharged through Fresno Slough/James Bypass into the San Joaquin River, MAGSA disagrees that all such flows travel unused to the San Joaquin. These flood flows historically flow through MAGSA and contribute to groundwater recharge within the McMullin Area.

data summarized by GEI “shows large flows of Kings River water have left and have not been used within the King [*sic*] River Service Area.” (*Id.*)

In support of its Petition, Semitropic attaches a Flood Water Agreement from the year 1991 by and between Kings River Water Association (“KRWA”) members to allegedly demonstrate that there are periods when all KRWA members are able to meet their then current water demands within the Kings River Service Area, and water is leaving the Kings River Service Area via the Fresno Slough (James Bypass) channel. The GEI memorandum includes several tables noting several years between 1977 and 2017 in which flood flows were released unused through the Fresno Slough (James Bypass) and into the San Joaquin River. (GEI memorandum at pp. 2-4.)

The Semitropic hydrologic information, taken together with the information and data provided in the CID/FID/Alta Petition, establishes reasonable cause to conduct a hearing on the Kings River FAS Declaration.

**Any Water Found to be Available for Appropriation Should Remain Within the Kings Subbasin for Groundwater Recharge and SGMA Compliance**

Water available in years of exceptionally high runoff should be allowed to flow through Fresno Slough to contribute to historic recharge of the McMullin Area of the Kings Subbasin, or it should be first allocated for appropriation by MAGSA for recharge or underground storage within the MAGSA service area. As both Petitions demonstrate, in years of high flood events, flood water flows out to the San Joaquin River through Fresno Slough/James Bypass. As indicated on the maps attached as **Exhibit A** and incorporated by this reference, the Fresno Slough/James Bypass flows directly adjacent to the MAGSA area.

Unappropriated water should be permitted for appropriation by MAGSA for recharge or underground storage, or appropriated under KRWA’s permits for use within the MAGSA area for groundwater recharge.

Export of surface water away from the Kings Subbasin would substantially interfere with MAGSA’s efforts and plans to sustainably manage groundwater within the Subbasin and comply with SGMA. Semitropic’s proposed Tulare Lake Storage Project (“Project”) would divert and export surface water from the Kings Subbasin for use in Kern County, California.

As noted, the Kings Subbasin suffers from conditions of critical overdraft. Semitropic’s Appropriative Water Right Application directly threatens to interfere with MAGSA’s ability to achieve sustainability within the Kings Subbasin. Exportation of Kings River water from the Kings Subbasin would significantly threaten MAGSA’s ability to implement groundwater recharge and storage projects within its service area.

Semitropic’s Proposal to Export Water from the Kings Subbasin is Inconsistent with the Area of Origin Statutes

Semitropic’s proposed exportation of Kings River water outside of the Kings River Basin and the Kings Subbasin could deprive water users within the Kings Subbasin of access to Kings River water, in conflict with Water Code § 1216.

Water Code section 1216:

A protected area shall not be deprived directly or indirectly of the prior right to all the water reasonably required to adequately supply the beneficial needs of the protected area, or any of the inhabitants or property owners therein, by a water supplier exporting or intending to export water for use outside a protected area pursuant to applications to appropriate surface water filed, or groundwater appropriations initiated, after January 1, 1985, that are not subject to Section 11460.

A “protected area” for purposes of Water Code section 1216:

means all of lands which normally drain to the ocean, to a hydraulic sink, or to another state within any of the following...river systems:

...

(4) The San Joaquin River System.

(Water Code § 1215.5(a)(4).) The Fresno Slough connects the North Fork of the Kings River to the San Joaquin River, and is part of the San Joaquin River System. As such, groundwater users within MAGSA’s service area adjacent to Fresno Slough and the Kings Subbasin are within a “protected area” for purposes of Water Code section 1216, and shall not be deprived of the prior right to all Kings River water reasonably required for the beneficial needs of the Kings Subbasin area. (Water Code § 1216.)

The Petitions Demonstrate Reasonable Cause Exists for the State Board to Conduct a Hearing

The existing record contains substantial hydrological data and information to demonstrate the potential existence of unappropriated waters in the Kings River in excess of existing water rights, and that such water is available frequently. This data and information establish reasonable cause to conduct a hearing on whether the Kings River FAS Declaration should be revoked and/or revised consistent with Title 23 Cal. Code Regs. § 871(c)(1).

MAGSA respectfully requests that the Chief of the Division of Water Rights determine that reasonable cause exists to conduct a hearing on the Kings River FAS Declaration, and to notice such a hearing as soon as is practicable.

Sincerely,

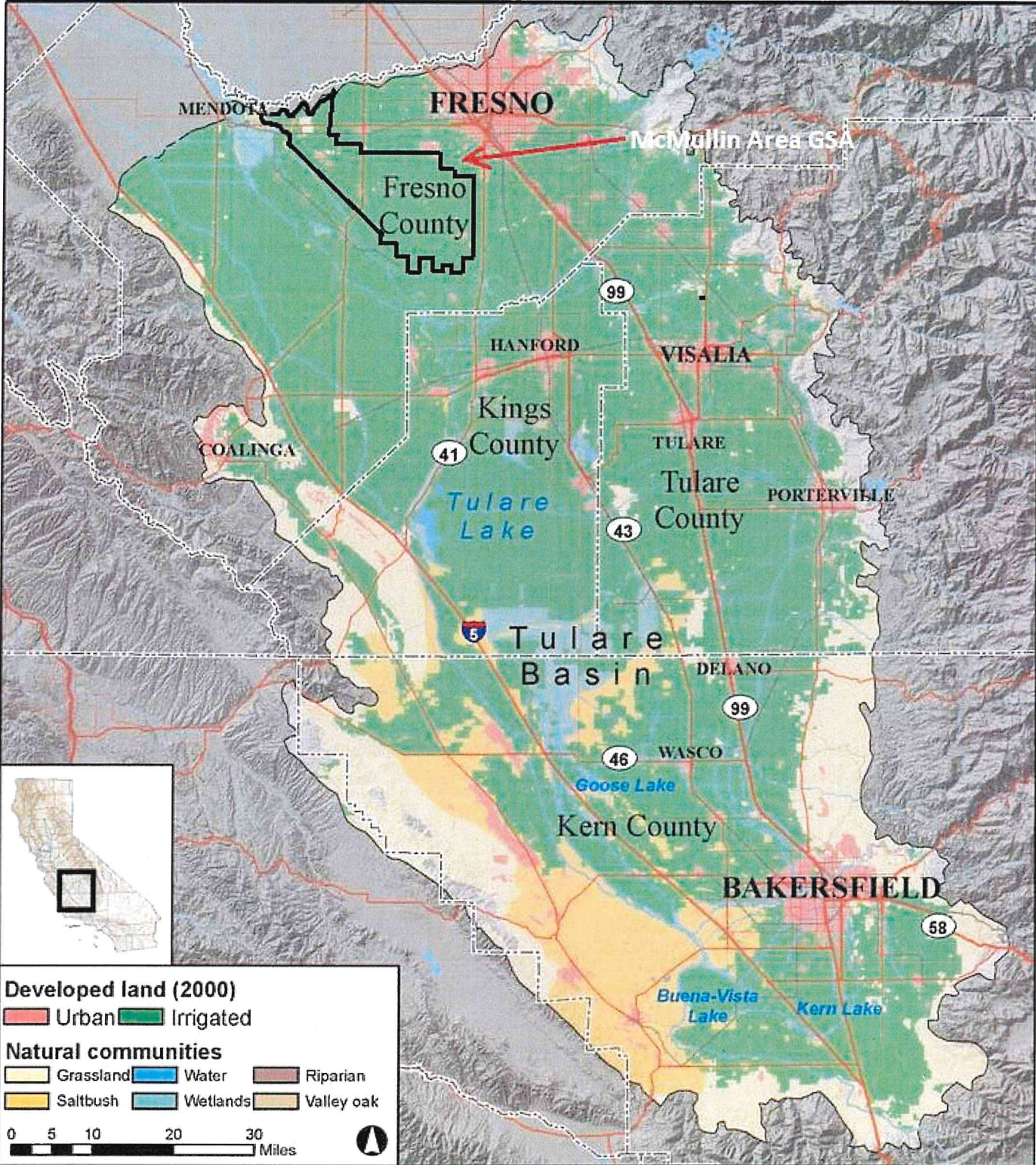


Janelle S.H. Krattiger  
MAGSA Legal Counsel  
On behalf of the McMullin Area  
Groundwater Sustainability Agency

cc: Semitropic Water Storage District  
c/o Kevin O'Brien  
Downey Brand LLP  
621 Capitol Mall, 18th Floor  
Sacramento, CA 95814

Consolidated Irrigation District  
Fresno Irrigation District  
Alta Irrigation District  
Attn: Phil Desatoff  
P.O. Box 209  
Selma, CA 93662

# **EXHIBIT A**



MENDOTA

FRESNO

McMillin Area GSA

Fresno County

99

HANFORD

VISALIA

41

Kings County

Tulare Lake

TULARE

Tulare County

43

PORTERVILLE

5

Tulare Basin

DELANO

99

46

WASCO

Kern County

Goose Lake

BAKERSFIELD

58

Buena-Vista Lake

Kern Lake





