CALIFORNIA
Water Boards

EDMUND G. BROWN JR.
GOVERNOR

MATTHEW RODRIQUEZ
SECRETARY FOR
ENVIRONMENTAL PROTECTION

State Water Resources Control Board

December 15, 2015

Mr. Wade Horton
Director of Public Works
San Luis Obispo County
County Government Center, Room 206
San Luis Obispo, CA 93408

Dear Mr. Horton:

Thank you for your November 17, 2015 letter. We appreciate the opportunity to learn more about the Paso Robles Basin Water District formation efforts, and the steps that are being taken toward locally-driven groundwater sustainability for the basin. Your letter requests clarification on the potential role of the State Water Resources Control Board (State Water Board) in implementing the Sustainable Groundwater Management Act (SGMA) and includes a number of questions in the following four general areas: groundwater management, fees, de minimis user exemptions, and the effect of an adjudication on state and local roles in managing the basin.

As a general management principle, the State Water Board does not intend to intervene in any groundwater basin unless local management efforts are unsuccessful. State intervention can only occur if local authorities fail to adequately manage the basin under the following circumstances: 1) a local agency or group of local agencies fails to develop a groundwater sustainability agency (GSA); 2) a GSA fails to develop a groundwater sustainability plan, or; 3) the Department of Water Resources (DWR), in consultation with the State Water Board, finds that a sustainability plan is inadequate or is not being implemented adequately.

The State Water Board is committed to providing technical and managerial assistance to support local groundwater management efforts, and would much prefer to see local efforts succeed in achieving sustainable groundwater management before state-developed management approaches are necessary. If intervention does occur, the State Water Board's goal will be to return the basin to local management as soon as local authorities can demonstrate their capability and willingness to manage the basin sustainably.

Responses to your specific question are provided below:

1. **State Intervention - Metering and Groundwater Management**

Your letter seeks confirmation of statements made by State Water Board staff regarding state intervention and metering requirements, and whether state intervention would focus solely on demand management or if implementation of a physical solution would be considered. The need for metering is dependent on local conditions and the level of intervention required in the basin. The State Water Board may intervene if one or more GSAs are not formed to cover the

entire basin, leading to "unmanaged areas." Groundwater extractors in unmanaged areas must report extraction data directly to the State Water Board, which can then begin the process of designating the basin as probationary and developing an interim groundwater management plan (Interim Plan). Meters will likely be required to verify extraction volumes, and will become increasingly important as additional intervention actions are needed.

If the State Water Board must develop an Interim Plan to directly manage the basin's groundwater resources, the State Water Board will need to develop a water budget, and would likely need to meter existing extractions in order to assess how local extractions compare to that budget and to manage demand. Metering of extractions will be necessary to verify compliance with pumping restrictions, will be at the pumper's expense, and will include associated reporting and extraction fees.

We expect that most Interim Plans will not initially focus on physical solutions for the basin. Physical solutions are typically projects that help increase water supply, and can include stormwater capture, desalination, reservoir construction, and other approaches. While the Water Code allows for physical solutions to be included in an Interim Plan (Cal. Wat. Code, § 10735.8, subd. (c)), these sorts of projects would most likely be proposed and paid for by the local community. Generally, local agencies and their community members will be in a better position than the State Water Board to decide whether to proceed with any particular project and to structure a financing plan. Accordingly, the State Water Board expects to focus on demand management (i.e., pumping reductions) to reduce water use to meet a sustainability goal.

2. **State Intervention – Fees**

Your letter posed the following questions with respect to state intervention and associated fees: what fees would be likely under State intervention and how would costs for individual landowners compare to costs for local management by a Groundwater Sustainability Agency (GSA)? How would fees be collected, and would State Fees be subject to a Proposition 218 vote?

State oversight fees will be based on recovering costs incurred in administering state intervention activities. Intervention activities can include, but are not limited to, investigations, facilitation, monitoring, enforcement, and administrative costs – in essence, all of the same activities as a locally-developed SGMA plan. However, state intervention will also include a number of additional actions, which could lead to higher costs. Notably, a GSA's preparation and adoption of a groundwater sustainability plan is exempt from the California Environmental Quality Act (CEQA; Water Code section 10728.6) while Board-developed interim plans are not. State costs associated with CEQA compliance will be recovered through fees. Costs for Board hearings related to designation of probationary basins and adoption of interim plans would also need to be recovered.

Possible billing methods for these and other state intervention costs are still being determined. One possible approach is to bill each parcel owner directly through the State Board of Equalization, with the fee included as an item on each landowner's tax bill. The State Water Board's cost recovery program will consist of state imposed regulatory fees, which are not subject to Proposition 218.

3. **De Minimis Extractors and SGMA**

De minimis extractors are exempted from local metering programs under Water Code section 10725.8, subdivision (e), and are exempt from local regulatory fees under Water Code section 10730, subdivision (a) unless the GSA regulates minimis users as part of the local sustainability plan.

De minimis exemptions to metering programs and fees do not apply under certain circumstances of state intervention. Water Code section 5202 exempts de minimis users from requirements to report groundwater extractions to the State Water Board – unless the basin is designated as a probationary basin and the State Water Board has determined that de minimis users need to be incorporated as part of a state-developed management approach. Once the basin is designated as probationary, it is up to the State Water Board to determine whether regulation of de minimis extractors is an important component of basin management; if needed, the State Water Board can require reporting and associated fees from de minimis extractors.

In addition to fees for filing extraction reports, de minimis extractors would likely be required to pay a share of the costs incurred in connection with investigations, facilitation, monitoring, hearings, enforcement, and administrative costs for state intervention.

4. **Groundwater Adjudications and SGMA**

Adjudicated areas that are not specifically exempted in Water Code section 10720.8, and all future groundwater adjudications, are subject to SGMA. Water Code section 10720.8, subdivision (e) provides that where an adjudication action has determined the rights to extract groundwater for only a portion of a basin, only the area where extraction rights have been determined would be excluded from the requirements of SGMA.

In recent legislation regarding groundwater adjudications, the Legislature has made clear that any future adjudication effort cannot circumvent SGMA, and should be managed to avoid interference with SGMA efforts. The relationship between adjudicated basins and SGMA can be summarized as follows: SGMA applies if a basin is adjudicated in the future, SGMA applies during an adjudication action, and a pending adjudication does not prevent the state from intervening if SGMA deadlines and requirements are not met. In limited circumstances, after the conclusion of a comprehensive adjudication, SGMA may be enforced by a court rather than the State Water Board; however, the basin would still need to comply with all of SGMA's requirements.

Regardless of a water user's basis of right, using groundwater in a manner that exacerbates overdraft of the basin is both unsustainable and unreasonable. Groundwater users in overdrafted basins must work together to manage the basin sustainably, or state intervention will bring the basin to a sustainable condition until such time as basin water users can themselves sustainably manage the basin for this and future generations.

Sincerely,

Thomas Howard
Executive Director

cc: See next page.

cc: The Honorable Katcho Achadjian
California State Assembly

The Honorable William W. Monning
California State Senate

Mr. David Gutierrez
Department of Water Resources