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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. []

CONSIDERATION OF A PROPOSED RESOLUTION TO DESIGNATE THE TULARE LAKE GROUNDWATER SUBBASIN AS PROBATIONARY UNDER THE SUSTAINABLE GROUNDWATER MANAGEMENT ACT (SGMA).

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

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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;

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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

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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.

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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)

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- 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.

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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.

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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.

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- 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 16, 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 16, 2024.
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

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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.

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