

Appendix H

Comments on the Plan



State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
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GAVIN NEWSOM, Governor
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November 19, 2019

Via Mail and Electronic Mail

Jim Stilwell
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Subject: Comments on the Farmers Water District Groundwater Sustainability Plan

Dear Mr. Stilwell:

The California Department of Fish and Wildlife (Department) Central Region is providing comments on the Farmers Water District Draft Groundwater Sustainability Plan (GSP) prepared by Farmers Water District as Groundwater Sustainability Agency (GSA) pursuant to the Sustainable Groundwater Management Act (SGMA), for the Farmer's Water District 3.5-square mile area at the southern end of the Delta-Mendota Subbasin (GSP area). As trustee agency for the State's fish and wildlife resources, the Department has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of such species (Fish & G. Code §§ 711.7 and 1802).

Development and implementation of Groundwater Sustainability Plans under SGMA represents a new era of California groundwater management. The Department has an interest in the sustainable management of groundwater, as many sensitive ecosystems and species depend on groundwater and interconnected surface waters. SGMA and its implementing regulations afford ecosystems and species specific statutory and regulatory consideration, including the following as pertinent to Groundwater Sustainability Plans:

- Groundwater Sustainability Plans must identify and consider impacts to groundwater dependent ecosystems (GDEs) pursuant to 23 California Code of Regulations (CCR) § 354.16(g) and Water Code § 10727.4(l); and
- Groundwater Sustainability Agencies must consider all beneficial uses and users of groundwater, including environmental users of groundwater pursuant to Water Code § 10723.2 (e); and Groundwater Sustainability Plans must identify and consider potential effects on all beneficial uses and users of groundwater pursuant to 23 CCR §§ 354.10(a), 354.26(b)(3), 354.28(b)(4), 354.34(b)(2), and 354.34(f)(3); and

- Groundwater Sustainability Plans must establish sustainable management criteria that avoid undesirable results within 20 years of the applicable statutory deadline, including depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the surface water pursuant to 23 CCR § 354.22 *et seq.* and Water Code §§ 10721(x)(6) and 10727.2(b), and describe monitoring networks that can identify adverse impacts to beneficial uses of interconnected surface waters pursuant to 23 CCR § 354.34(c)(6)(D); and
- Groundwater Sustainability Plans must account for groundwater extraction for all Water Use Sectors including managed wetlands, managed recharge, and native vegetation pursuant to 23 CCR §§ 351(a) and 354.18(b)(3).

Furthermore, the Public Trust Doctrine imposes a related but distinct obligation to consider how groundwater management affects public trust resources, including navigable surface waters and fisheries. Groundwater hydrologically connected to navigable surface waters and surface waters tributary to navigable surface waters are also subject to the Public Trust Doctrine to the extent that groundwater extractions or diversions affect or may affect public trust uses (*Environmental Law Foundation v. State Water Resources Control Board* (2018), 26 Cal. App. 5th 844). Accordingly, groundwater plans should consider potential impacts to and appropriate protections for navigable interconnected surface waters and their tributaries, and interconnected surface waters that support fisheries, including the level of groundwater contribution to those waters.

Accordingly, the Department values SGMA groundwater planning that carefully considers and protects groundwater dependent ecosystems and fish and wildlife beneficial uses and users of groundwater and interconnected surface waters.

COMMENT OVERVIEW

The Department supports ecosystem preservation in compliance with SGMA and its implementing regulations based on Department expertise and best available information and science. The Department recommends that the GSP provide additional information and analysis that considers all environmental beneficial uses and users of groundwater in its sustainability management criteria and better characterize and consider surface water-groundwater interactions. The Department is providing comments and recommendations below.

GSP COMMENTS AND RECOMMENDATIONS

1. **Comment #1. Water Quality.** Chapter 3 Basin Setting. Section 3.1 Hydrogeologic Conceptual Model, Subsection 3.1.4 Groundwater Quality.

Section 3.2 Current and Historic Groundwater Conditions, Subsection 3.2.5
Groundwater Quality (pages 25 and 32 to 33).

The Mendota Pool Group, a United States Bureau of Reclamation (USBR) project established in 1999, exchanges freshwater from the Central Valley Project for more saline groundwater that is pumped into the Mendota Pool and Fresno Slough. Fresno Slough crosses through the Department's Mendota Wildlife Area (WA), which is located approximately two miles south of the GSP area. Mendota WA Level 2 and Level 4 allocations from the Central Valley Project freshwater surface water supply are included in the groundwater exchange, and since 2002, monitoring of supply water to the Mendota WA has shown significantly increased salinity levels during periods of increased groundwater pumping. Page 33 of the GSP describes a recorded increase in groundwater salinity since 2001 at a site within the GSP area. The Department has previously recommended and requested that the groundwater pumping cease during the fall flood up season from mid-August through October, to allow fresh surface water to be delivered to Mendota WA inlets.

2. Comment #2. Subsidence. Chapter 3 Basin Setting. Section 3.2 Current and Historic Groundwater Conditions, Subsection 3.2.7 Subsidence (pages 33 to 35).

Local subsidence is well documented, and the Mendota WA has experienced substantial subsidence issues for decades, to the north and to the south. This subsidence has impacted water deliveries.

- a. *Issue.* Subsidence has resulted in lowering of the Mendota Pool Dam elevation an associated lowered water level. This resulted in the inability to back water uphill in the Fresno Slough to the Mendota WA water inlets. This adverse impact was later compounded when California Department of Water Resources (CDWR), Division of Safety of Dams determined that the water levels at the Mendota Pool had to be lowered further to maintain the integrity of the dam. Because of these two incidents, Mendota WA's ability to flood using gravity flow and have impacted the lift pump sites. During the recent historic drought, neighboring landowners to the south pumped groundwater, and additional subsidence along the southern portion of the Mendota WA has been observed. As a result, water flows backwards within the Mendota WA, affecting the habitat management operations.

Within the GSP, a majority of land subsidence is attributed to the extraction of water in aquifers beneath the Corcoran Clay outside of the GSP area, and the GSP acknowledges that minimal amounts of subsidence are occurring at shallower depths above the Corcoran Clay.

Within the Basin Setting (Chapter 3), the GSP provides a description of the geologic materials encountered beneath the ground surface and provides a number of geologic cross sections depicting the hydrogeologic framework. Within these cross sections, the GSP identifies a number of confining layers (A and C clay layers) above the Corcoran Clay. The GSP describes that these clays act as semi-confining layers and uses these clay members to divide the sediments within the upper aquifer into a shallow and deep zone. These clay layers act as confining beds and restrict the movement of groundwater.

The lowering of groundwater levels within the upper aquifer provides the potential to create groundwater-level-induced stresses that can promote subsidence. The GSP provides records for Yearout Extensometer station located in the GSP area, and indicates that from 2003 to 2013 (Historic/Current Water Budget Period), total inelastic compaction of the upper aquifer was approximately 0.08 feet; however, when considering the total available record as provided on Figure 3-32, total compaction between the years of 1999 to 2017 is approximately 0.30 feet. Additional historic extensometer data for the Yearout Extensometer station as provided by the USGS online database (https://www.usgs.gov/centers/ca-water-ls/science/extensometers-and-compaction?qt-science_center_objects=0#qt-science_center_objects) indicate that between the years of 1966 and 1983, approximately 0.30 feet of compaction in the upper aquifer was recorded. The GSP describes groundwater levels within the upper aquifer currently as being stable; however, compaction within the upper aquifer is occurring and increased during drought conditions, as shown on Figure 3-32. When pumping induces a groundwater level drop below critical head, preconsolidation stresses are surpassed and compaction of fine-grained materials occurs, resulting in subsidence.

- b. *Recommendations:* To avoid additional “significant and unreasonable” conditions within the Mendota WA, the Department recommends that the GSP and neighboring GSPs include Mendota WA as a “subsidence management area” with a zero feet subsidence criterion that no longer impinges on the Department’s ability to deliver surface water supplies to and within the Mendota WA to meet the needs of environmental beneficial users.

3. Comment #3. Interconnected Surface Waters. Chapter 3 Basin Setting. Section 3.2 Current and Historic Groundwater Conditions, Subsection 3.2.8 Interconnected Surface Water Systems (page 35).

The interconnected surface water narrative lacks clarity on the status of San Joaquin River groundwater connectivity.

- a. *Issue:* To fall within SGMA's consideration for depletions of interconnected surface water, a surface water system must be "hydraulically connected at any point by a continuous saturated zone to the underlying aquifer and the overlying surface water is not completely depleted" [23 CCR § 351(o)]. This means that even if groundwater elevation is lower than streambed elevation and the river reach is 'losing,' there may still be hydraulic communication between the aquifer and streamflow if there is a saturated layer connecting the two, and pumping from the aquifer may yet cause streamflow depletion (Barlow and Leake 2012). The GSP notes that hydraulic vertical flow gradients in the shallow aquifer near the San Joaquin River have been negative for as long as there is record, meaning that the river reach is losing water to the shallow aquifer. The narrative does not specify that there is streamflow interconnectivity with the shallow groundwater, and instead notes that streamflow is dependent on releases from Friant Dam (page 35). The narrative does acknowledge that the downward vertical gradient decreased and reached almost zero following wet conditions (Figure 3-35), suggesting that there is hydrologic connectivity between surface water and shallow groundwater, because the rate of loss from the river decreased during these wet times. Still, the GSP does not state that the San Joaquin River is a losing, interconnected river. Finally, the interconnected surface water narrative also lacks specific estimations of the quantity and timing of streamflow depletions as specified in 23 CCR § 354.16(f).
- b. *Recommendations:* The Department recommends that the GSP confirm the interconnectivity of the San Joaquin River bordering the GSP area and identify the estimated quantity and timing of streamflow depletions in the subbasin. If this information is not available, identify an expeditious and specific path to estimating these values.

4. Comment #4. Groundwater-Dependent Ecosystems. Chapter 3 Basin Setting. Section 3.2 Current and Historic Groundwater Conditions, Subsection 3.2.9 Identification of Groundwater Dependent Ecosystems (pages 36 to 38), and Figure 3-36.

The GDE identification and impacts sections, pursuant to 23 CCR § 354.16 (g), are based on limited information.

- a. *Issues:* Methods applied to the Natural Communities Commonly Associated with Groundwater (NCCAG) dataset to identify potential GDEs provide a valuable foundation but would benefit from additional analysis.
 - i. Depth to Groundwater: Though no potential GDEs from NCCAG were removed within the GSP area, the process applied to the identification of GDEs in the Delta-Mendota Subbasin is incomplete. The removal of areas with a depth to groundwater greater than 30 feet in Spring 2015 relies on a single-point-in-time baseline hydrology, specifically a point in time that is several years into a historic drought when groundwater levels were trending significantly lower due to reduced surface water availability. Exclusion of potential GDEs in neighboring management areas based on this single groundwater elevation measurement is questionable because it does not consider representative climate conditions (i.e., seasons and a range of water type years).
 - ii. Ecological Conditions and Impacts to GDEs: The GSP summarizes the process used to evaluate GDE health using imagery and assessing GDEs for conservation value based on mapped critical habitat and concluded that future activities will not impact existing GDEs (page 6-37). The GSP justifies this claim by noting that GDEs have persisted through extended dry periods. Importantly, the proposed Sustainable Management Criteria allow for groundwater elevation decreases and increasingly negative surface water vertical gradients even beyond documented historical lows. The assumption that because GDEs have survived past dry spells they will experience no impacts in future dry periods does not consider the proposed Sustainable Management Criteria that allow for increased depth to groundwater. GDEs can survive a finite period of time without groundwater access (Naumburg et al. 2005), but they may be subject to threshold impacts precipitated by new historic lows in groundwater elevation and potential disconnection of surface waters.
- b. *Recommendations:* The Department recommends that the GSP consider the following for information gathering related to GDEs:
 - i. Depth to Groundwater: Develop a hydrologically robust baseline that includes areas with a depth to groundwater greater than 30 feet and relies on multiple, climatically representative years of groundwater elevation and that accounts for the inter-seasonal and inter-annual variability of GDE water demand.

- ii. Ecological Conditions and Impacts to GDEs: Clarify how impacts to GDEs will be avoided if/when new historical groundwater elevation lows are experienced. Put in place a GDE monitoring system to capture early signs of potential adverse impacts, such as stressed phreatophytes, that can trigger targeted pumping reductions.
- iii. Include additional references for evaluation: The Department recognizes that NCCAG (Klausmeyer et al. 2018) provided by CDWR is a good starting reference for GDEs; however, the Department recommends that the GSP include additional resources for evaluating GDE locations. The Department recommends consulting other references, including but not limited to the following tools and other resources: the California Department of Fish and Wildlife (CDFW) Vegetation Classification and Mapping Program (VegCAMP) (CDFW 2019A); the CDFW California Natural Diversity Database (CNDDDB) (2019B); the California Native Plant Society (CNPS) Manual of California Vegetation (CNPS 2019A); the CNPS California Protected Areas Database (CNPS 2019B); the U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory (USFWS 2018); the USFWS online mapping tool for listed species critical habitat (USFWS 2019); the U.S. Forest Service CALVEG ecological grouping classification and assessment system (USFS 2019); and other publications by Klausmeyer et al. (2019), Rohde et al. (2018), The Nature Conservancy (TNC) (2014, 2019), and Witham et al. (2014).

5. Comment #5. Sustainable Management Criteria. Chapter 4 Sustainable Management Criteria (starting on page 49).

The Sustainable Management Criteria acknowledge potential harm to environmental beneficial uses and users of groundwater but do not explicitly address how to prevent or mitigate potential negative impacts.

a. *Issues:*

- i. Minimum thresholds (MT) impacts: The GSP acknowledges multiple times that MT may negatively impact environmental users:
 - 1. On page 59: "Groundwater elevations at or below MT levels could affect GDEs to a significant and unreasonable degree".
 - 2. On page 63: "MT values for interconnected surface waters could impact the environmental beneficial uses of groundwater if the vertical gradient is below or near MT values for an extended period

of time along with declining groundwater elevations. A lower groundwater elevation, which can increase the magnitude of the downward vertical gradient, could affect existing GDEs along the SJR”.

3. On page 64: “Lower groundwater levels will result in a reduction in storage for each the Upper and Lower Aquifers. Lower groundwater levels in the Upper Aquifer have a direct relationship to depletion of interconnected surface waters. The Upper Aquifer is unconfined, and lower groundwater levels will increase the rate of depletion for losing reaches and increase the potential disconnect of groundwater from surface water bodies”. See Figure 4-9.

The GSP also mentions it “will not implement projects or management actions in the event of interconnected surface waters undesirable results” (page 66), and instead focuses on undefined coordination with neighboring GSAs and the USBR to mitigate unreasonable impacts on environmental users (page 58). Absent agreed-upon specifics as to how this coordination will work, such as what conditions will trigger mitigation or who will undertake mitigation, the Sustainable Management Criteria provide no actionable protections for environmental beneficial uses and users of groundwater.

- ii. Critically Overdrafted subbasin: The Delta-Mendota Subbasin is designated as ‘Critically Overdrafted,’ meaning “continuation of present water management practices [in the basin] would probably result in significant adverse overdraft-related environmental, social, or economic impacts” (CDWR “Critically Overdrafted”) (CDWR 2019). The GSP identifies minimum groundwater elevations thresholds for representative monitoring wells, each of which serves as a threshold beyond which significant and unreasonable effects (i.e., undesirable results) are expected when exceeded for two consecutive years (page 58). These minimum thresholds suggest that groundwater elevations at representative wells can continue to decrease for the next 20 years, dropping further from historically low drought groundwater elevations, without witnessing undesirable results. However, based on subsidence alone, it appears that undesirable results are already occurring. Therefore, the GSP’s minimum thresholds that allow for continued groundwater table decline, mirroring the historical trends that led to the subbasin’s Critically Overdrafted status, are not protective against undesirable results. Conceptually, there is a disconnect between the subbasin’s ‘Critically Overdrafted’ designation and sustainable

management criteria that allow for continued groundwater level decline.

- b. *Recommendations:* The Department recommends that the GSP reevaluate Sustainable Management Criteria with the following suggestions:
 - i. Revise sustainable management criteria to prevent undesirable results for environmental beneficial users of groundwater and implement environmental monitoring and identify actionable paths to mitigating potential adverse impacts if detected (see Comment #5bii).
 - ii. Revise sustainable management criteria to reflect a Critically Overdrafted subbasin designation by seeking to improve current groundwater conditions rather than allowing for continued aquifer depletions over the next two decades.

6. Comment #6. Project and Management Actions. Chapter 5 Project and Management Actions to Achieve Sustainability Goal (starting page 75).

The Department appreciates the demand management focus of the targeted pumping reductions mentioned in Section 5. However, the section lacks specifics on when pumping restrictions would be triggered and how they would be implemented. Furthermore, the GSP explicitly states “undesirable results for interconnected surface waters will not trigger implementation of targeted pumping reductions” (page 76), even though the GSP area is a management area specifically identified for interconnected surface waters (ES-10). The Department recommends clarifying the relationship between groundwater pumping in the GSP area and instream flow depletions [23 CCR § 354.16(f)], then determining explicitly if/when instream flow depletions should trigger pumping reductions in the GSP area (or neighboring GSAs) accordingly.

OTHER COMMENTS: Implementation of Future Project Actions Related to SGMA

The Department is also commenting on its subsequent role as Trustee and Responsible Agency when individual project actions related to SGMA are implemented.

SGMA exempts the preparation and adoption of GSPs from the California Environmental Quality Act (CEQA) (WC § 10728.6); however, SGMA specifically states that implementation of project actions taken pursuant to SGMA are not exempt from CEQA (WC § 10728.6). The Department is California’s Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the

State (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). The Department, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species (*Id.*, § 1802). Similarly, for purposes of CEQA, the Department is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

The Department is also a Responsible Agency under CEQA (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381), and the Department expects that it may need to exercise regulatory authority as provided by the Fish and Game Code for implementation of projects related to the GSP that are also subject to CEQA. These projects may be subject to the Department's lake and streambed alteration regulatory authority (i.e., Fish & G. Code, § 1600 *et seq.*). Notification pursuant to Fish and Game Code § 1602 is warranted if a project will (a) substantially divert or obstruct the natural flow of any river, stream, or lake; (b) substantially change or use any material from the bed, bank, or channel of any river, stream, or lake (including the removal of riparian vegetation); and/or (c) deposit debris, waste or other materials that could pass into any river, stream, or lake. Likewise, to the extent that implementation of any project may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish & G. Code, § 2050 *et seq.*), related authorization as provided by the Fish and Game Code will be required. The Department is required to comply with CEQA in its issuance of a Lake or Streambed Alteration Agreement or an Incidental Take Permit.

The implementation of SGMA does not alter or determine surface or groundwater rights (WC § 10720.5). It is the intent of SGMA to respect overlying and other proprietary rights to groundwater, consistent with section 1200 of the Water Code (Section 1(b)(4) of AB 1739). The capture of unallocated stream flows to artificially recharge groundwater aquifers are subject to appropriation and approval by the State Water Resources Control Board (SWRCB) pursuant to Water Code § 1200 *et seq.* The Department, as Trustee Agency, is consulted by SWRCB during the water rights process to provide terms and conditions designed to protect fish and wildlife prior to appropriation of the State's water resources. Certain fish and wildlife are reliant upon aquatic and riparian ecosystems, which in turn are reliant upon adequate flows of water. The Department therefore has a material interest in assuring that adequate water flows within streams for the protection, maintenance and proper stewardship of those resources. The Department provides, as available, biological expertise to review and comment on environmental documents and impacts arising from project activities.

Jim Stilwell, GSA Contact
Farmers Subbasin GSP
November 19, 2019
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CONCLUSION

In conclusion, the GSP needs to address all SGMA statutes and regulations, and the Department recommends that the GSP seriously consider fish and wildlife beneficial uses and interconnected surface waters. The Department recommends that the GSP consider the above comments before submittal to CDWR. The Department appreciates the opportunity to provide comments on the GSP. If you have any further questions, please contact Dr. Andrew Gordus, Staff Toxicologist, at (559) 243-4014 extension 239 or by email at Andy.Gordus@wildlife.ca.gov.

Sincerely,



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Regional Manager, Central Region

Enclosures (Literature Cited)

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November 27, 2019

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Re: NOAA's National Marine Fisheries Service comments on the Farmers Water District's
Draft Groundwater Sustainability Plan for the Delta-Mendota Groundwater Sub-basin

Dear Chairman Stilwell:

NOAA's National Marine Fisheries Service (NMFS) is the federal agency responsible for managing, conserving, and protecting living marine resources in inland, coastal, and offshore waters of the United States. We derive our mandates from numerous statutes, including the Federal Endangered Species Act (ESA). The purpose of the ESA is to conserve threatened and endangered species and their ecosystems.

Within the Delta-Mendota Sub-basin, six separate Groundwater Sustainability Plans (GSPs)¹ will be developed under the guidance of the Delta-Mendota Sub-basin Coordination Committee with the goal of achieving sustainability for the Sub-basin as a whole. This collaborative work will help ensure long-term sustainability for the subbasin. Groundwater management in California is an economically, socially, and ecologically complex process, and NMFS appreciates efforts to date to draft the GSP while ensuring agency and stakeholder involvement.

In September 2019, the Farmers Water District (FWD) GSP Group released their draft Groundwater Sustainability Plan (draft GSP) covering FWD land overlying the Delta-Mendota Groundwater Sub-basin (DM Sub-basin). The California Department of Water Resources (DWR) has designated the DM Sub-basin a "critical" priority for groundwater management, necessitating the development of a GSP by January 31, 2020, as required under California's Sustainable Groundwater Management Act of 2014 (SGMA). Waterways that overlie portions of the DM Sub-basin, including the San Joaquin River, support federally threatened Central Valley (CV) steelhead (*Oncorhynchus mykiss*). These waterways also play a critical role in NMFS' efforts to re-establish threatened CV spring-run Chinook salmon (*O. tshawytscha*) in the San Joaquin River basin. This letter transmits NMFS' comments regarding the FWD's draft Northern & Central Delta-Mendota Region GSP.

Surface water and groundwater are hydraulically linked in the DM Sub-basin, and this linkage is critically important in creating seasonal habitat for CV steelhead and CV spring-run Chinook salmon. Where the groundwater aquifer supplements streamflow, the influx of cold, clean water is critically important for maintaining temperature and flow volume. Pumping water from these

¹ The GSP Groups preparing the coordinated GSPs include: the Aliso Water District GSP Group, Farmers Water District GSP Group, Fresno County GSP Group, Grassland GSP Group, Northern & Central Delta-Mendota Region GSP Group, and San Joaquin River Exchange Contractors GSP Group.



aquifer-stream complexes has the potential to affect salmon and steelhead habitat by lowering groundwater levels and interrupting the hyporheic flow between the aquifer and stream. Given the widespread aquifer depletion documented throughout the San Joaquin valley, NMFS has concerns that groundwater extraction in the DM Sub-basin may compromise CV steelhead and CV Spring-run Chinook salmon instream habitat.

Comments

Chapter 4, page 63: Regarding the undesirable result of streamflow depletion, the draft GSP states.... “undesirable results occur when the vertical gradient exceeds the minimum threshold value for two consecutive years.” This threshold is inconsistent with DWR (2017) guidance requiring streamflow depletion be characterized as the rate or volume of streamflow lost to groundwater, as well as the California Department of Fish and Wildlife (2019) recommendation that GSPs investigate and consider the impact streamflow depletion may have on species and their habitat. The draft GSP does not characterize what correlation exists between groundwater gradient and actual surface water depletion rates (as required by SGMA), nor does it explain what impact exceeding the minimum threshold value of -1.17 foot/foot for two consecutive years may have on groundwater dependent ecosystems and the species that compose them.

The mechanism by which stream-dwelling organisms are impacted by groundwater pumping is habitat degradation caused by the draw-down of surface flows (Barlow and Leake 2012), and can occur in both “gaining” and “losing” stream reaches². The impacts can be both physical (*e.g.*, pool volume shrinks as water surface elevation declines) and chemical (*e.g.*, water quality can suffer as pools and riffles lose connectivity). Thus, the appropriate method to determine whether pumping is having “significant and unreasonable adverse impacts” on beneficial uses of surface water is to understand the level of impact (*i.e.*, volume of streamflow depletion) and how habitat quality and functionality change because of that impact. NMFS recommends the draft GSP develop a minimum threshold for streamflow depletion that properly considers impacts to GDE species and habitat. If a lack of information precludes developing those relationships now, we recommend the GSP to elaborate sufficiently as to when, where, and how the required information will be collected during the first few years of GSP implementation.

Appendix D, Technical Memorandum #1, page 5: Technical Memorandum #1 states... “Using GIS, Spring 2015 groundwater elevation contours were overlain on the TNC GDE delineations identified in Farmers Water District to evaluate areas in which the depth to water exceeded 30 feet, demonstrating unsuitable hydrologic conditions for vegetative or wetland GDEs.” This screening standard effectively excludes any areas with a depth to groundwater greater than 30-feet in spring 2015 from GDE consideration. The reasoning for this exclusion appears to concern oak tree rooting depth. However, judging oak rooting conditions based upon spring 2015 groundwater depths may be misleading, since 2015 coincided with the fourth year of California’s historic 2011-2016 drought. Spring groundwater elevations during 2015 were likely well below average, and thus not representative of past or future conditions. Focusing analysis on this time

² Increasing the rate of streamflow depletion in a “losing reach” (*i.e.*, where surface water supplements the underlying groundwater aquifer) can impact groundwater dependent ecosystems, including those that support salmon and steelhead. For instance, accelerating streamflow depletion in a losing reach can alter the timing when instream habitat becomes unsuitable for a given life-stage of fish.

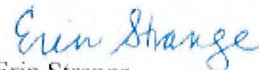
period will likely exclude significantly more area from GDE consideration as compared to using more representative groundwater elevations (i.e., those not associated with a severe drought). We recommend using a normal water year baseline for groundwater elevations. NMFS can provide additional technical assistance if needed.

Appendix D, Technical Memorandum #3, page 2: Why 2013 was chosen as the “current year” water budget is not explained. The water year index for the “true” current year (i.e., 2019) was characterized as “above average” for the San Joaquin watershed, whereas 2013 represents the second year of a historic drought. NMFS recommends that the draft GSP base their current water budget on 2019 conditions, or a recent water year that represents conditions similar to those experienced in 2019.

NMFS appreciates the opportunity to comment on this DM Sub-basin draft GSP. Addressing streamflow depletion through effective groundwater management is essential to recovering listed salmonids within the San Joaquin River and tributaries. NMFS is prepared to engage with the DM Sub-basin GSA, DWR, regulatory agencies and interested stakeholders to craft solutions to groundwater and streamflow issues in the DM Sub-basin.

If you have any questions or concerns regarding this letter, please contact me, at 916-930-3653 or Erin.Strange@noaa.gov.

Sincerely,



Erin Strange
Branch Supervisor
San Joaquin River Branch

References

- Barlow, P.M., and Leake, S.A. 2012. Streamflow depletion by wells—Understanding and managing the effects of groundwater pumping on streamflow: U.S. Geological Survey Circular 1376. 84 pages. Available at: <http://pubs.usgs.gov/circ/1376/>.
- California Department of Fish and Wildlife. 2019. Fish & Wildlife Groundwater Planning Considerations. 38 pp. Available at: <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=170185&inline>
- DWR. 2017. Best Management Practices for the Sustainable Management of Groundwater: Sustainable Management Criteria BMP #6. November 2017. 38 pp. Available at https://water.ca.gov/LegacyFiles/groundwater/sgm/pdfs/BMP_Sustainable_Management_Criteria_2017-11-06.pdf

Cc.

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July 17, 2022

Via E-mail

Jim Stilwell, Chairman, and Members of the Farmers Water District Board of Directors
4460 W. Shaw Ave. #219
Fresno, CA 93720
jim@bakerfarming.com

Re: Provisional Comments on Proposed Approval of Revised Farmers Water District GSP

Dear Mr. Stilwell and the Board of Directors of Farmers Water District:

On behalf of California Sportfishing Protection Alliance (CSPA) we provide the following comments opposing approval by the Farmers Water District (“Farmers” or “GSA”) of the revised Farmers Water District Groundwater Sustainability Plan for the Farmers portion of the Delta-Mendota Subbasin (“Revised GSP”).

Sometime between July 14 and July 15, 2022, an agenda for a special meeting of the Farmers Water District noticing adoption of a resolution approving an amended GSP was posted for public view. The meeting is scheduled for July 18, 2022 at 9:30 a.m.¹ The agenda makes reference to an amended Farmers Water District Groundwater Sustainability Plan, which Farmers will consider at this meeting. To CSPA’s knowledge, as of the date of this letter, no copy of the amended plan is provided on the Farmers Water District website,² and no link is provided in the agenda to any online source of the plan.

As a result, members of the public do not have any effective opportunity to provide comment on the Revised GSP, and the hearing on July 18 does not provide the public an opportunity to exhaust any “administrative remedies” that may exist. At the outset, SGMA has no statutory exhaustion requirement, and CSPA’s submission of this comment letter should not be construed as an acknowledgement by CSPA that an administrative remedy exists under SGMA. As the courts have held, “[I]f the Legislature has not provided an administrative remedy, or the administrative remedy is not effective, the exhaustion requirement is not applicable.” (*Cal. Correctional Peace Officers Assn. v.*

¹ The agenda is available at https://57e1cf4b-7c1b-46d6-af74-fbc3bd30a327.filesusr.com/ugd/638e4a_71ed244dd90d46e18f64dc7145f3d69e.docx?dn=FWD%20Agenda%20Special%20071822.docx (accessed July 15, 2022).

² <https://www.farmerswd.com>

State Personnel Bd. (1995) 10 Cal.4th 1133, 1151.) In instances where “no forum or administrative remedy is afforded for the issues raised, recourse to the local administrative agency is not required before initiation of court action.” (*Park 'N Fly of San Francisco, Inc. v. City of South San Francisco* (1987) 188 Cal.App.3d 1201, 1209.) “[W]hen an administrative remedy *is provided by statute*, relief must be sought from the administrative body and this remedy exhausted before the courts will act.” (*Abelleira v. Dist. Court of Appeal* (1941) 17 Cal.2d 280, 292, emphasis added.) Moreover, the statutory remedy must be an “effective” one for the exhaustion requirement to apply: an administrative remedy is required to be exhausted “in those instances where the administrative body is required to actually accept, evaluate and resolve disputes or complaints.” (*City of Coachella v. Riverside County Airport Land Use Com.* (1989) 210 Cal.App.3d 1277, 1287.)

Even if exhaustion were required, however, the hearing on July 18 would not be an “effective” administrative remedy that would be required to be exhausted. It is indisputable that a member of the public cannot provide effective comment on agency action about which the public lacks knowledge.

Of course, even if Farmers had posted the Revised GSP at the same time that the meeting agenda was made public, the public would still have had less than two business days to review what would likely be a document that is thousands of pages long, containing highly technical material. This, as well, would not have constituted an effective opportunity to participate in the administrative process.

For these reasons, we urge that the GSA not approve the Revised GSP until members of the public have had adequate opportunity to see and review the plan.

Sincerely,



Nathaniel Kane
Executive Director
Environmental Law Foundation