



Mr. Craig Altare
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California Department of Water Resources
901 P Street, Room 213
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Subject: Responses to Comments Received by DWR Regarding the Mid-Kaweah Groundwater Sustainability Plan

Dear Mr. Altare:

The Mid-Kaweah Groundwater Sustainability Agency (MKGSA) reviewed the nine comment letters submitted to the California Department of Water Resources (DWR) on the Mid-Kaweah Groundwater Sustainability Plan (GSP). The letters reflect the important concerns of the commenting organizations, and MKGSA is committed to working with these organizations on their respective concerns. Some comments do not fully evaluate GSP content, misinterpret SGMA regulations, or advocate for actions that are beyond the requirements of SGMA. In response to these comments, MKGSA has prepared this letter to provide DWR supplemental information about the GSP development process and assist DWR in locating portions of the GSP that demonstrate how the GSP is substantially compliant with SGMA.

The MKGSA GSP was developed in an open and public process, where input from a diverse stakeholder group was solicited and considered. The MKGSA established an Advisory Committee that frequently met under the provisions of a publicly noticed Brown Act meeting format to discuss and develop many of the key elements of the MKGSA GSP. This Advisory Committee represented the beneficial users of the region including agriculture, urban, disadvantaged communities, and the environment. The Advisory Committee's role in developing the GSP was integral in establishing what was locally important and undesirable to the constituents of the MKGSA.

This process resulted in a GSP that we believe:

- Substantially complies with SGMA regulations,
- Balances the diverse interests of stakeholders that participated in the GSP development process, and
- Reflects the preferred local approach to attaining and maintaining groundwater sustainability.

However, MKGSA also recognizes that our GSP is a planning document that must adaptively change and continue to improve through the development of data and regulatorily required updates. To that end, we have retained a team of hydrogeologists (Montgomery & Associates), engineers (Provost & Pritchard), communication/outreach specialists (Stantec), and legal counsel (Valerie Kincaid of O’Laughlin & Paris LLP) to help us refine the GSP and adaptively implement the proposed sustainability management actions and projects over the next two to five years. Starting with the comments provided to DWR, MKGSA has already begun prioritizing activities to refine the GSP and developing early implementation efforts.

Rather than respond to comments individually, MKGSA provides responses that address important themes or issues that commonly appear in the comment letters.

Environmental Groundwater Users

Some comments question whether the GSA adequately addressed the needs of environmental groundwater users when developing the sustainability goal, sustainable management criteria (SMC), and monitoring networks. These comments typically focus on groundwater dependent ecosystems (GDEs) and interconnected surface waters (ISWs). We believe these comments advocate for analyses and actions that are not required by SGMA and are not consistent with the prevailing hydrologic conditions in the Subbasin. To ensure that environmental groundwater users were represented in GSP development, the MKGSA Advisory Committee included representation from the environmental community, namely the Sequoia Riverlands Trust, a local non-profit organization committed to preservation of the natural and agricultural legacy of the region, and an active member of the local Sierra Club chapter.

The MKGSA GSP adequately considered environmental groundwater users and properly evaluated GDEs and ISWs within the MKGSA. Specifically, the GSP presents an analysis that demonstrates that groundwater levels in the principal aquifers are most likely hydraulically disconnected from both surface water bodies and the perched groundwater zones that may support GDEs (Section 2.5 of GSP). GDEs and ISWs may potentially exist within the Subbasin based upon current conditions, but none are within the MKGSA. However, to further assess the needs of environmental beneficial users, over the next two years, MKGSA will refine the analysis of ISWs and GDEs to consider spatial and temporal variability of groundwater levels, which will improve our evaluation of the potential connection between groundwater and surface water that may support GDEs.

Policy Evaluation (Endangered Species Act, Human Right to Water, and Public Trust Doctrine)

Some comments advocate for strict compliance with general legal doctrines that are beyond the requirements of SGMA, including the Endangered Species Act (ESA), Human Right to Water, and the Public Trust Doctrine.

MKGSA is committed to complying with the ESA, the Human Right to Water, and the Public Trust Doctrine. Such compliance is demonstrated in the consideration of groundwater beneficial users, including domestic wells, community systems, and disadvantaged communities, as well as environmental beneficial uses, for example, in Sections 1.5.2, 1.5.3, 1.5.7, and 3.2.3. These doctrines require evaluation and balancing of beneficial uses, as was done in the GSP. DWR has similarly recognized that the GSP is not the document through which all other related doctrines must be enforced. For example, as noted by DWR Senior Counsel Erick Soderlund at his July 16 presentation at the Law Seminars International SGMA symposium, “SMGA is not all laws ... I don’t think we’re trying to have SGMA bleed into every other law on the books, whether it is endangered species or water quality.”

The GSP was developed to be substantially compliant with SGMA. In accordance with SGMA, the GSP evaluates the impact of sustainable management criteria on all beneficial uses of water, which includes evaluating the Human Right to Water and compliance with other legal doctrines. It is our understanding that DWR is currently developing guidance on how a GSP should consider the Human Right to Water; the MKGSA will evaluate that guidance when it is available. It is through its compliance with SGMA that the MKGSA is also compliant with these other legal doctrines.

Outreach to Disadvantaged Communities (DACs)

Some of the comments suggest that MKGSA outreach efforts during GSP development were inadequate, especially for DACs. MKGSA invested in significant outreach, going above and beyond the outreach requirements of SGMA. Throughout the entire GSP development process, MKGSA facilitated robust and thorough outreach and engagement, including direct engagement with representatives from DACs. Outreach efforts are documented in the Communication and Engagement Plan (Appendix 1F of the GSP), and subsequent stakeholder engagement is documented in the responses to comments (Appendix 1G of the GSP).

Examples of DAC outreach that were conducted by the MKGSA are listed below:

- Numerous public meetings were held to inform landowners, including DAC landowners, about SGMA, the process, and the outcomes.

- Tulare Irrigation District hosted small-group sessions (12 or less attendees) for all landowners within the District, including DAC landowners. Notices and invitations were sent to all landowners within the District, including those in DACs such as Okieville-Highland-Acres and Waukena.
- Meeting materials were developed in both English and Spanish.
- Various flyers and informational materials were sent to all landowners within the MKGSA, including DAC landowners, informing them on SGMA.
- Formation of the MKGSA Advisory Committee, which included DAC representatives to ensure their concerns were directly represented. MKGSA Advisory Committee meetings were held monthly and more frequently when specific input and guidance was needed. DAC representatives on the Advisory Committee and in the audience actively participated in the process by providing input and feedback. All GSP elements that were developed by the Advisory Committee were voted on by the 11-member board, and unanimous voters were achieved before moving the elements to the MKGSA Board of Directors.

Future Allowable Declines in Groundwater Levels and Impacts to DACs

Some comments expressed concern that levels set for groundwater elevation measurable objectives and minimum thresholds could have adverse impacts on domestic wells. Some of the comments implied that MKGSA did not consider or understand these potential impacts. However, MKGSA’s approach for setting measurable objectives and minimum thresholds for future groundwater levels was directly informed by local preferences and considered the needs of all groundwater users. These levels were established after extensive data evaluation and consideration of the various competing beneficial uses within the MKGSA service area.

In accordance with SMGA, the GSP specifically identifies the impact on domestic wells. For example, Section 5.3.1 of the GSP states that if water levels drop to minimum thresholds, “between 4 and 32 percent of [the area] where most small-system and domestic wells ... are located may experience reduction or loss of production capacity ...” During GSP development, the MKGSA Board of Directors thoroughly considered the suitability and implication of the groundwater minimum thresholds on all groundwater users. Furthermore, the established measurable objectives and minimum thresholds were thoroughly vetted with the MKGSA Advisory Committee before being presented to the MKGSA Board of Directors.

The Board of Directors adopted the proposed minimum thresholds understanding there may be impacts to a limited number of domestic wells. To address these potential impacts, the MKGSA

committed to a mitigation program to assist impacted domestic well owners, as outlined in Section 7.4.8 of the GSP. While some commenters may not agree with this approach, it reflects the outcome of a thoughtful and open process to determine the preferred future groundwater conditions at sustainability.

Comments from the Leadership Counsel include higher estimates of the potential number of impacted domestic or small system wells than estimated by the MKGSA. During the development and discussion of measurable objectives and minimum thresholds by the Advisory Committee, the Leadership Counsel presented a draft study that showed these higher estimated impacts. MKGSA requested the details of the analysis used for the draft study during the GSP development process, but Leadership Counsel was unable to provide them at that time.

The MKGSA understands the important responsibility of setting locally determined measurable objectives and minimum thresholds that will not result in undesirable results. Given the importance of the information provided by Leadership Counsel, MKGSA will evaluate their analysis to better understand the data used and assumptions made. If their analysis differs from the analysis conducted by the MKGSA, these differences will be shared with the MKGSA Advisory Committee to consider whether a revision to the measurable objectives and minimum thresholds is appropriate.

Subsidence

Some comments expressed concern about the minimum thresholds for subsidence rates. While we believe that the proposed SMC for subsidence is justified given the unique conditions in the Subbasin, MKGSA has already started a review and extended analysis of the subsidence sustainability indicator, and plan to refine the GSP based on results of this work. Among other activities, this work includes a contract with Rosemary Knight at Stanford University to incorporate results from a recent SkyTEM survey into our existing groundwater model, including the added capability of simulating subsidence. The updated model will be used to improve MKGSA's understanding of anticipated subsidence under various future groundwater conditions.

MKGSA has also developed a two-year action plan that includes revisiting the subsidence and related groundwater level SMC. MKGSA will review the basis for these SMC and modify them as appropriate within the first two years of GSP implementation.

Future Water Budget, Future Conditions, and Climate Change

Some comments referenced the methodology and completeness of the future water budget. The future water budget methodology used DWR climate change factors and resulted in future water

budget estimates that are in accordance with SGMA requirements and DWR guidance. The presentation of the future water budget in the GSP, however, could be improved. As part of our two-year action plan, MKGSA will revisit the future water budget and provide a revised and complete water budget through 2070.

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