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MEMORANDUM

TO: **Justin Jenson**

FROM: **Morgan S. Biggerstaff**
Jennifer T. Buckman

CC: **Daniel Klauser**

DATE: **November 5, 2025**

RE: **Comments on Draft Demand Management Actions Program**

Tehama County Flood Control and Water Conservation District (District) is the Groundwater Sustainability Agency (GSA) for the various groundwater subbasins in Tehama County and is responsible for implementing management actions to achieve sustainability with the subbasins pursuant to the Sustainable Groundwater Management Act (SGMA). At the District's request, BKS reviewed the Groundwater Sustainability Plan (GSP) for the Corning, Red Bluff, Antelope and Los Molinos Subbasins as well as the approval letters, staff reports and recommended corrective actions issued by the Department of Water Resources (DWR) and the GSA's three sets of draft demand management program documents.

Based on its review of these materials, BKS provides the following comments and recommendations related to the draft demand management program documents.

ANALYSIS

I. Produce a Robust Technical Report and Administrative Record to Support Implementation of Demand Management Actions

The GSA's demand management actions include a number of policy decisions, including how to allocate groundwater within the various subbasins. To maximize the chances that these decisions will be upheld in the event of any legal challenge, the policy decisions should be supported by findings based on substantial evidence in the record of proceedings before the agency. (Code Civ. Proc., § 1094.5.) If landowners or other affected parties were to challenge these demand management actions, the GSA would need to

defend them based on one of the following three types of supporting information: (1) facts, (2) inferences based on facts, or (3) expert opinions predicated upon facts. This means the GSA and its experts must "show their work" so BKS can, in turn, show it to the court if necessary.

Therefore, BKS recommends the GSA's SGMA consultant produce a technical report or memorandum that explains the basis for the different elements of the demand management program including how and why the Thiessen polygon method is an appropriate basis for groundwater allocation in the subbasins and how the safe yield calculation can be properly allocated among the polygons. Similarly, it will be important to provide a reasoned explanation for the policy choice to treat contiguous Assessor Parcel Numbers under one ownership that fall within multiple Combined Safe Yield areas as if they all fall under the most restrictive Combined Safe Yield Area. Because this default rule has the potential to impair a grower's ability to grow certain types of crop, it may be appropriate to include a variance procedure so application of the rule does not create unintended disparities.

BKS also recommends the GSA and its SGMA consultant produce a technical analysis that explains how and why the triggers and incremental stages in Management Action Number 1 were chosen.

II. Utilize a Rate Consultant and Produce a Fee Study Supporting Adoption of GSA Fees

BKS recommends the GSA utilize a rate consultant to develop appropriate GSA fee structures, since Propositions 218 and 26 are frequent sources of legal challenge to fees imposed by public agencies. To be defensible, subbasin-specific projects and demand management actions paid for with GSA fees should be paid by those who will benefit from the measures. This could mean subbasin-specific pumping fees or acreage fees, as appropriate.

For example, Corning and Red Bluff Subbasins are in overdraft but Antelope and Los Molinos are not. Corning Subbasin has only one identified principal aquifer whereas the others have upper and lower aquifers. These distinctions suggest that subbasin-specific fees or charges may be appropriate to address differences in local conditions.

In contrast, a countywide fee to cover GSA administrative and operational costs could be utilized for broadly applicable SGMA monitoring and management actions such as grower education.

III. Overdraft Conditions in the Subbasins Could Require Implementation of Management Action Numbers 1 or 2 Prior to 2031

DWR may take issue with the GSA delaying implementation of Management Action Numbers 1 and 2 for five years after their adoption. Under SGMA, groundwater conditions (not the calendar) should drive implementation of additional management actions. As noted in the DWR staff reports approving the GSPs, DWR could disapprove the GSP in future evaluations if the GSA has not "adequately responded to comments that raise credible technical or policy issues with the Plan." (23 CCR § 355.4(b)(10).) To address this concern, BKS has proposed targeted revisions that clarify the GSA intends to delay implementation of Management Action Numbers 1 and 2 until January 1, 2031 "unless conditions change such that earlier implementation in a Subbasin must be considered."

IV. Additional Miscellaneous Recommendations

- DWR staff asked the GSA to provide evidence in future reports that Red Bluff, Los Molinos and Antelope Subbasins have two principal aquifers (see the Recommend Corrective Actions for those GSPs). Technical information should be developed to respond to this request.
- Groundwater users may not have an incentive to engage in the demand management activities that require installation of a meter if the GSA is not going to pay for the meter. The GSA should consider whether it is willing to advance these costs in order to assist the overall program.

BKS is happy to discuss any follow-up questions you may have regarding these recommendations.

Morgan S. Biggerstaff