

Appendix C – Public Process, Tribal Consultation, and Engagement; Draft Staff Report Comments

State intervention under SGMA is a public process. The State Water Board encourages public participation in its decision-making process regarding the Tulare Lake subbasin. Public participation can help shape the staff recommendations, help the State Water Board decide whether to place the Tulare Lake subbasin on probation, and help identify improvements to the GSP to better manage groundwater in the subbasin.

California Native American Tribes

Meaningful engagement and consultation with California Native American Tribes are fundamental to the mission of the Water Boards. Guided by the Governor’s Executive Order B-10-11, the [CalEPA Tribal Consultation Policy](#) and the [CalEPA Tribal Consultation Protocol](#), and the [State Water Board’s Tribal Consultation Policy](#), the SGMA probationary hearing process includes significant tribal engagement and consultation. The State Water Board mailed and emailed a formal letter with notification of consultation opportunity dated October 13, 2023, to six California Native American tribes that are on the list provided by the California Native American Heritage Commission with cultural and traditional affiliation with the Tulare Lake subbasin. State Water Board staff telephoned the six tribes on October 30, 2023, to follow up on the invitation to consult on the Tulare Lake GSP. State Water Board staff also presented on the probationary hearing notice, Draft Staff Report, and the opportunity to consult at the Department of Water Resources’ SGMA Tribal Advisory Group meeting on November 1, 2023. The State Water Board received one request to consult from the Santa Rosa Rancheria Tachi Yokut Tribe and no other tribes requested government-to-government consultation on the potential probationary determination.

The Santa Rosa Rancheria Tachi Yokut Tribe (Tachi Yokut Tribe) consulted with the State Water Board and the Department of Water Resources on March 12, 2024, regarding groundwater management in the Tulare Lake Subbasin. The Tachi Yokut Tribe shared concerns regarding groundwater quantity, groundwater quality, and subsidence issues affecting their beneficial uses and tribal reserved water rights, including drinking water and agricultural activities. The Tachi Yokut Tribe’s concerns with groundwater quantity and quality included ensuring there was adequate clean and affordable water for tribal uses as well as the neighboring community. The Tachi Yokut Tribe has a water treatment plant and provides water for a neighboring, off-Reservation school complex, a fire station, and community firefighting capabilities and noted that, as groundwater quality degrades, their water treatment costs increase. The Tachi Yokut Tribe shared

that it only has limited access to surface water, with seasonality, high variability, and bureaucratic obstacles contributing to inconsistent deliveries. Impacts to groundwater therefore have the potential to significantly impact public health for both Tribal members as well as the neighboring community served by the Tachi Yokut Tribe's drinking water distribution system. The Tachi Yokut Tribe has also developed a farming operation to provide economic development and employment opportunities for Tribal members and the neighboring community, and the unreliability of surface sources mean that impacts to groundwater pose risks to this enterprise as well. The Tachi Yokut Tribe's tribal reserved water rights have not been quantified and therefore the Tribe expressed concerns that the GSP may not adequately protect the Tribe's beneficial uses.

The Tachi Yokut Tribe's concerns with subsidence included impacts to levees and other infrastructure within the Subbasin, which then would require reconstruction that can affect tribal cultural resources. The Tachi Yokut Tribe expressed concerns with the California Environmental Quality Act (CEQA) exemptions allowed pursuant to the Governor's Executive Order N-7-22 or N-3-23.¹ Due to these CEQA exemptions, projects are being implemented without proper tribal consultation and noticing, evaluation of tribal cultural resource impacts, tribal cultural monitoring, or the development of impact mitigation plans. The Tachi Yokut Tribe also expressed concerns that projects implemented with CEQA exemptions have caused impacts to tribal cultural resources, human remains, and cultural sites. The Tachi Yokut Tribe shared the example of groundwater recharge projects implemented,² which in some cases disturbed or inundated Tachi Yokut Tribal burial grounds and exposed human remains.

Finally, as it relates to groundwater quality, the Tachi Yokut Tribe expressed concerns with water quality impacts of water moving between subbasins and emphasized the need for coordinating groundwater management among neighboring basins. The Tachi Yokut Tribe also shared recommendations for stronger well construction standards, especially for wells being installed in the C-zone aquifer, to prevent migration of poor-quality water from the A-zone.

Hearing Notice

The State Water Board issued a probationary hearing notice for the Tulare Lake subbasin on October 12 and 13, 2023, pursuant to Water Code section 10736. The notice includes information about the GSP, public hearing, staff report, public workshops, and public participation opportunities.

The notice was emailed to Kings County, Tulare County, Kern County, City of Hanford, City of Corcoran, and City of Lemoore.

The notice was mailed to approximately 2,000 parcel owners identified by the State Water Board as persons who extract or propose to extract groundwater from the subbasin based on publicly available well information. The owner/extractor mailing list includes all public water systems (community, non-community non transient, transient) and state small water systems in the subbasin; and the Santa Rosa Rancheria Tachi Yokut Tribe. The State Water Board developed an English and Spanish fact sheet flyer and cover letter which were included in the mailings.

Subscribers to the State Water Board's groundwater management email list received an English and Spanish electronic notification. The notice was also emailed to representatives of the five Groundwater Sustainability Agencies (GSAs) and the Department of Water Resources (DWR). The notice, staff report Executive Summary, and flyer are available in English and Spanish on [the State Water Board's Tulare Lake Subbasin webpage](#).

Additional Outreach

In addition to the statutory noticing requirements, the State Water Board performed focused outreach to approximately 50 interested parties and local groups (e.g., churches, the local Rotary Club, libraries) in the subbasin via phone calls, interviews, and email. The State Water Board has contracted with the Consensus Building Institute and Kearns & West to provide outreach and engagement services in the subbasin.

Schools

The State Water Board sent an email transmittal to Pioneer Union School District, Hanford Christian School, Kit Carson School, Central Union School District on October 27, 2023. The transmittal included information about the workshops and requested that the schools distribute the flyer to local families.

Community Based Organizations

The State Water Board has consulted with the Community Water Center, Clean Water Action, Self-Help Enterprises, and the Leadership Counsel for Justice and Accountability on outreach efforts in the subbasin. Through these efforts, the State Water Board has been able to gather community input and distribute information about the public hearing and workshops to the community. Additional local organizations that were contacted include several churches and rotary clubs located in the subbasin.

Workshops

The State Water Board hosted two public workshops to share information about the state intervention process and gather public input. The workshop locations and times, including an evening session, were designed to promote effective engagement and accommodate interested parties who would otherwise be unable to attend.

- November 3, 2023, held remotely via Zoom, 11:00 am to 1:30 pm
- November 8, 2023, in-person in Hanford, CA, 6:00 pm to 8:30 pm

Spanish language interpretation was provided during the workshop presentations and time was allotted for public comments and questions and answers to allow the public to engage with staff. [A video recording of the presentation portion of the November 3rd workshop](#) is posted on the State Water Board website.

Approximately 220 people attended the remote workshop on November 3 and approximately 169 people attended the workshop in Hanford on November 8.

Public Comments

State Water Board staff invited written and verbal public comments on the Draft Staff Report, which included staff's recommendations to the State Water Board regarding a probationary designation. The public comment period was October 12, 2023, to December 11, 2023. At the two workshops, approximately 35 attendees gave verbal comments. The State Water Board also received 36 written comments on the Draft Tulare Lake Staff Report. An additional opportunity for public comment will be provided at the April 2024 hearing.

Staff considered all comments received and has provided compiled responses to relevant common topics below. Some topics in the comment letters are beyond the scope of this staff report and are not addressed herein. Some comment letters suggested changes to the staff report but did not include sufficient evidence to change staff recommendations and are also summarized below.

Other Board Priorities and Additional Considerations

A number of commenters expressed concern with text at the beginning of Section 4.1 of the Draft Staff Report. The text broadly explains why the Board would review any revised GSP as a whole, as changes made to address deficiencies identified by the Board could create new inconsistencies with SGMA or the GSP Regulations. The text also includes a list of State policies, plans, and priorities that the State Water Board would consider in reviewing revised GSPs. Commenters were concerned that the list of policies, plans, and priorities is outside the requirements of SGMA and inappropriately expands the State Water Board's authorities.

State Water Board Staff has edited Section 4.1 of the Final Staff Report to clarify the role of other State Water Board programs and policies. Staff also edited Section 5.3, regarding the State Water Board's obligations under the public trust doctrine to clarify how the public trust doctrine and SGMA interact.

GSA Authorities Regarding Groundwater Quality

Several comment letters expressed concern with how the Draft Staff Report characterized the GSAs' obligations regarding groundwater quality degradation. These included comments regarding GSAs' obligations for both managing groundwater quality degradation and monitoring groundwater quality.

SGMA does not attempt to resolve all water quality issues but aims to ensure that operation of a basin within its sustainable yield does not cause undesirable results, including significant and unreasonable degradation of water quality (Wat. Code, § 10721, subd. (x)(4)). SGMA provides GSAs with authorities that may be used to avoid significant and unreasonable water quality degradation. For example, GSAs may acquire, transport, or import surface water or groundwater and may also "transport, reclaim, purify, desalinate, treat, or otherwise manage and control polluted water, wastewater, or other waters for subsequent use" as needed to achieve sustainable groundwater conditions (Wat. Code, § 10726.2, subds. (b), (e)). In addition, a GSA has the authority to regulate groundwater extractions (Wat. Code, § 10726.4, subd. (a)). It is the responsibility of a GSA to ensure that its management of groundwater conditions in the basin and any other action taken by the GSA will not significantly and unreasonably degrade water quality. A GSA's authority does not, however, limit or supersede the authorities of the State Water Resources Control Board (State Water Board), the Regional Water Quality Control Boards (Regional Water Boards), the California Department of Public Health, or county or city governments (Wat. Code, § 10726.8, subds. (e), (f)).

Staff encourages GSAs to utilize data collected by other water quality monitoring programs (SAFER, GAMA, CV-SALTS, ILRP, etc.), if possible, and to coordinate with those programs, but GSAs may need to fill data gaps in the existing water quality monitoring networks in the subbasin in order to meet the GSAs' sustainability goals for water quality.

Staff edited Deficiency GWQ-1c, Potential Action GWQ-1c, and the title of Deficiency GWQ-4d based on comments. See also [the State Water Board's SGMA Water Quality Frequently Asked Questions](#).

Well Mitigation

One comment letter commends the inclusion of the well mitigation program potential action in the Tulare Lake staff report (Potential Action GL-4). Other comment letters state that well mitigation programs are not required by SGMA. Commenters also note it will take time for GSAs in other subbasins to develop them, if they are locally appropriate.

Staff acknowledge that a well mitigation program may not be necessary in every basin. While not explicitly required in SGMA statute or GSP regulations, a well-funded, comprehensive, equitable well mitigation program is most likely needed in critically-overdrafted subbasins subject to SGMA in order to avoid undesirable results by managing impacts to beneficial uses and users of groundwater. A groundwater management plan that allows for significant impacts to drinking water wells would be considered by Board staff to be unreasonable unless mitigation actions are facilitated by the GSAs. The Tulare Lake 2022 GSP allows for significant and unreasonable impacts to well owners and therefore requires the development and implementation of a well-funded, comprehensive, equitable well mitigation program.

The groundwater level sustainable management criteria (SMC) described in the Tulare Lake 2022 GSP allow for the dewatering of a significant number of wells if groundwater levels decline to the minimum thresholds (MTs). Additionally, since the groundwater quality SMC in the 2022 GSP do not explicitly consider the mobilization of contaminants of concern if groundwater levels decline to the MT elevations, it is possible that additional wells could experience groundwater quality degradation. It is also possible for wells to be impacted by subsidence that is allowed under the revised plan.

GSA Projects and Management Actions

Several GSAs described projects and management actions they had undertaken that were not explicitly acknowledged in the Draft Staff Report.

State Water Board staff appreciate the efforts GSAs continue to take in implementing their plans and making progress towards groundwater sustainability. Staff encourage the GSAs to include relevant details in any updated GSP so the State Water Board can evaluate how management criteria, monitoring, and projects and management actions will work in concert to achieve sustainability in the subbasin.

“Good Actor” Exemption: Tulare Lake GSA Requests

Two GSAs, Tri-County Water Authority GSA and Southwest Kings GSA, requested to be excluded from probation under Water Code section 10735.2, subdivision (e). This section of the statute, informally called the “good actor” exemption, directs the State Water Board to “exclude from probationary status any portion of the basin for which a groundwater sustainability agency demonstrates compliance with the sustainability goal.”

Staff have addressed Tri-County Water Authority GSA and Southwest Kings GSA’s requests in edits to Section 4.2 of the Final Staff Report.

Reporting Deadline

One GSA submitted comments regarding State Water Board staff’s recommendation to modify the groundwater extraction reporting due date from February 1 to December 1. The comments state that the proposed change to the reporting deadline would impose an “additional burden” on landowners (who are subject to the reporting requirements). However, the comments do not describe why the change would be burdensome.

Staff notes that September 30 is the last day of each extraction recording period. The proposed reporting deadline of December 1 allows extraction reporters two months to organize their information and file their extraction reports. Section 4.3 of the Final Staff Report describes the benefits of moving the reporting deadline to December 1.

Metering Requirements

Some comment letters questioned the need to require the installation and use of meters on wells for pumpers who use more than 500 AFY, noting the effectiveness of using evapotranspiration data to determine groundwater consumption.

Understanding where and how much groundwater is being extracted from the subbasin is crucial to monitoring groundwater conditions throughout the basin and successfully reaching sustainability goals required by SGMA. Though there may be indirect methods of measuring groundwater use, such as evapotranspiration data, installing meters on wells is the most accurate method of monitoring groundwater extractions, as described in Section 4.4.1.1 of the Final Staff Report. Three of the five GSAs in the Tulare Lake subbasin (Mid Kings River GSA, Southwest Kings GSA, and Tri-County Water Authority GSA) already require metering for certain wells.

Board staff reiterate their recommendation that all groundwater extractors who extract over 500 AFY of groundwater from the subbasin be required to install meters and that the Board encourage other extractors using less than 500 AFY of groundwater to install meters voluntarily to improve the accuracy of groundwater extraction data in the subbasin. [More information regarding groundwater extraction reporting](#) can be found on the Water Boards SGMA website.

Exemption from Reporting

Several comment letters requested that the State Water Board exempt different types of drinking water systems from reporting and fees. The Final Staff Report includes a new section regarding this request, Section 4.5, discussing reporting exclusions for drinking water systems.

Requests to Delay Probationary Hearing

Some comment letters requested that the State Water Board postpone probation until the Board can perform a complete review of forthcoming GSP revisions. Other comment letters also requested that the State Water Board expedite probation.

The probationary hearing date for Tulare Lake subbasin allows the GSAs more than two years to remedy deficiencies after DWR issued its incomplete determination for the basin in January 2022. State Water Board staff is concerned that continuing to prolong SGMA implementation could cause the basin to miss SGMA's 2040 deadline for sustainability and put beneficial users of groundwater at risk. The State Water Board acknowledges the GSAs' ongoing efforts to improve the GSP and these efforts will be taken into consideration at the April 2024 hearing. At the hearing in April 2024, the State Water Board may adopt a probationary designation or decide to revisit the matter at a future date.

Impacts of Probation on the Local Economy and Confidence in GSAs

Some commenters expressed concern that, if the State Water Board designated the subbasin probationary, groundwater pumpers in the subbasin would lose confidence in the GSAs. Commenters also expressed concerns that pumpers would be less likely to pay fees due to the GSAs if pumpers also had to pay fees to the State Water Board, and that fees paid to the State Water Board would negatively impact the local economy.

State Water Board staff acknowledge these concerns; however, the State Water Board's State Intervention authorities represent an important backstop under SGMA to ensure protection of groundwater and everyone who relies on it if local management is failing. SGMA requires the State Water Board to charge fees to recover the cost of its program and has recently reassessed and reduced its fees for extraction reporting in probationary basins.

If the State Water Board designates the subbasin probationary, staff would continue to work with GSAs to address the deficiencies in order to return the subbasin to full local control. Staff will continue to message out that the GSAs should continue to implement their plans.

Staff also note that SGMA gives the GSAs authorities to collect fees and enforce their own rules, among other powers (Wat. Code, §§ 10725 et seq.).

Standards of GSP Review

Some comment letters noted the importance of State Water Board and DWR applying consistent review standards and criteria when reviewing GSPs.

Both the State Water Board and DWR review all GSPs according to the GSP Regulations (Cal. Code Regs., tit. 23, § 350 et seq.) and the Water Code. The regulatory or statutory basis for each deficiency is described in both Section 4.1 as well as Appendix A of the Draft and Final Staff Reports.

Well Data

Some comment letters described the limitations of DWR's Online System of Well Completion Reports (OSWCR) dataset.

Staff utilized OSWCR data when conducting analyses of potential well impacts experienced throughout the basin. OSWCR is recognized as the best available statewide well dataset, and Water Board staff acknowledge the incomplete nature of this dataset. Staff performed a thorough review of the OSWCR data and only used well completion reports that contained adequate information to contribute to the analyses performed.

Staff's use of OSWCR data in the Final Staff Report does not preclude GSAs from augmenting OSWCR with better, local datasets, such as from county well permits or from the GSAs' ongoing well inventory effort, in updating or implementing their GSP.

Fees

Several comments concerned fees, assessment of fees, and their impact to local communities. The State Water Board adopted revised fees at its March 19, 2024, meeting. Newly reassessed fees will be shared through electronic subscription mailing lists (aka: listservs). To stay informed on new fee assessment and other SGMA topics and receive updates, you can [subscribe to the State Water Board's Groundwater Management listserv](#).

Board Processes

Many commenters made broader points regarding clarity around State Water Board processes, including how to exit the Board's oversight or how to request a "good actor" exclusion under Water Code section 10735.2, subdivision (e).

The State Water Board is developing a Frequently Asked Questions document to provide more context and guidance for GSAs on some Board processes under Chapter 11, the chapter of the SGMA statute which covers the Board's state intervention authorities. To lay out more specific rules for state intervention, the State Water Board would have to develop and adopt regulations regarding the adoption of a probationary designation or an interim plan (Wat. Code § 10735.8, subd. (d)). The Board may develop regulations in the future.

Exiting Chapter 11

The State Water Resources Control Board received several comments regarding the process of exiting State Water Board oversight (i.e., "Chapter 11") before the probationary hearing.

Fundamentally, GSAs can exit State Water Board purview by correcting the deficiencies in their GSP and resubmitting the GSP to the State Water Board for review. Staff review takes time, and submission of an updated plan does not necessarily pause or postpone a hearing notice or a scheduled hearing.

The State Water Board's forthcoming Frequently Asked Questions document will address questions regarding processes for exiting Chapter 11. State Water Board staff also discussed this question at the Board's December 19, 2023 Board Meeting. [A video recording of the December 19th informational item](#) is available on the State Water Board's website.

Probationary Hearing Format

Some commenters requested clarity on the structure of the hearing and the role of GSAs at the hearing.

Other than specifying that the procedures for quasi-legislative action apply, the SGMA statute does not address the structure of probationary hearings and to date the State Water Board has not developed regulations regarding the state intervention process.

Board staff released a Tulare Lake probationary hearing agenda on March 15, 2024, to provide clarity on opportunities for participation at the hearing. Staff had previously provided information to the Tulare Lake GSAs regarding their options for participation during the hearing.

The hearing will include a Board staff presentation and a panel presentation by the Tulare Lake GSAs to speak to their concerns and progress they have made in updating the GSP. The hearing may also involve panels of groups with organized comments specific to the Tulare Lake subbasin. Anyone can participate and provide comments at the hearing in-person or virtually (by phone or computer). As with all Board meetings, the Board chair may place a time limit on public comments (e.g., 5 minutes per comment).

Guidance for staff to review material and revised GSPs has been further discussed under paragraph “Exiting Chapter 11” in this section above.

“Good Actor” Exemption: Criteria

Several comments requested more information on how a GSA would qualify for an exclusion from probation under Water Code section 10735.2, subdivision (e) (the “good actor” exemption). One comment letter requested the State Water Board develop a process for evaluating “subsets of a subbasin in their potential to achieve their sustainability goal while acknowledging that the GSP is being revised.”

The criteria for the “good actor” exemption are set in the statutory provisions. SGMA requires the Board to “exclude from probationary status any portion of a basin for which a groundwater sustainability agency demonstrates compliance with the sustainability goal.” (Wat. Code, § 10735.2, subd. (e).)

Staff have edited Section 4.2 of the Final Staff Report to describe the statutory requirement in more detail. The State Water Board’s forthcoming Frequently Asked Questions document will address questions regarding the “good actor” exemption.