



P.O. Box 3283 Fremont, CA 94539  
tel (510) 490-1690  
[www.earthlawcenter.org](http://www.earthlawcenter.org)

December 18, 2013

Eric Oppenheimer  
State Water Resources Control Board  
1001 I Street  
Sacramento, CA 95814

**VIA ELECTRONIC MAIL:** [eric.oppenheimer@waterboards.ca.gov](mailto:eric.oppenheimer@waterboards.ca.gov)

**Re:** Comments on SWRCB Groundwater Workplan Concept Paper - Discussion Draft

Dear Eric:

Earth Law Center (ELC), a California 501(c)(3) environmental organization, welcomes the opportunity to submit these comments on the SWRCB's "Groundwater Workplan Concept Paper - Discussion Draft" (Workplan). As an overarching comment, we urge the SWRCB, in reviewing the comments herein and those presented by additional NGO colleagues (including Klamath Riverkeeper, whose comments are incorporated by reference), to focus on the health of the state's groundwater basins overall as a program mission. Currently, the Workplan focuses instead on the state's most "vulnerable and high-use" basins. These are important priorities to be sure, but they cannot be the exclusive focus if we are to prevent other, unattended-to basins from following quickly in their stead.

The need for heightened attention to groundwater is particularly important now, when the impacts of lax groundwater management in California have never been more acute. For example, the United States Geologic Survey (USGS) released in late November a report showing that that "extensive groundwater pumping from San Joaquin Valley aquifers is increasing the rate of land subsidence, or sinking."<sup>1</sup> Further, "[t]his large-scale and rapid subsidence has the potential to cause serious damage to the water delivery infrastructure," such as the state and federal water systems and local irrigation canals. In a Delta Stewardship Council release on the USGS report, Chair Phil Isenberg "reinforce[d] the urgency of understanding and better managing California's groundwater basins," stating that the "amount and widespread nature of the subsidence found by the USGS is truly alarming and shows that cutbacks in surface water deliveries because of drought or environmental concerns cannot sustainably be replaced or exceeded by continual groundwater extractions.... Historically the state has treated groundwater management as a local issue; however, the USGS report shows that those local jurisdictions must do a better job quickly."<sup>2</sup>

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<sup>1</sup> USGS, "Land Subsidence along the Delta-Mendota Canal in the Northern Part of the San Joaquin Valley, California, 2003-10" (Nov. 21, 2013) available at: <http://pubs.usgs.gov/sir/2013/5142>.

<sup>2</sup> Delta Stewardship Council, "Statement of Phil Isenberg" (Nov. 21, 2013), available at: <http://deltacouncil.ca.gov/sites/default/files/documents/files/13-1121%20Isenberg%20Statement%20the%20USGS%20Subsidence%20Report.pdf>.

The Workplan reflects these recent, urgent findings, noting on page 2 that “[t]he greatest challenge for groundwater quantity is overdraft leading to subsidence and the permanent loss of storage capacity.” The Workplan accordingly calls for “an *integrated approach* to groundwater management . . . to ensure that appropriate action occurs at all levels of government.” (Emphasis added.) We agree. Unfortunately, the Workplan fails to follow up on these findings, most particularly with respect to integrating groundwater and surface water management. As intimated in the November Delta Stewardship Council release, a noteworthy amount of the recent increases in groundwater extraction relates to necessary surface water cutbacks. This pattern will only increase with additional dry winters without swift, decisive action. Even more direct connections are seen in Northern California, where groundwater extraction continues to drain down directly integrated rivers and streams (such as the Scott River), endangering the status of imperiled fish species. To be effective, then, **the Workplan must include a commitment to and clear path toward an integrated, holistic regulatory program that recognizes the interactions between surface water flows and groundwater extraction, and that actively protects instream flows from groundwater withdrawals.**

The Workplan next lists on page 2 five “key elements” of groundwater management. The first such element is “[s]ustainable thresholds for water level drawdown and water quality for impacted, vulnerable, and high-use basins.” Again, integrated management calls for looking at both surface water flows and groundwater extraction holistically. Accordingly, **we urge that surface water diversions, both in and affecting these basins, be integrated in the development of a holistic and assertive groundwater management strategy.**<sup>3</sup>

Another listed “key element” of groundwater management is “[g]overnance structures . . . needed to prevent impacts before they occur.” Once more, we agree with the recommendation, but question the ability of the Workplan to achieve it. Specifically, achievement is significantly limited by the Workplan’s focus on conducting groundwater management in “vulnerable and high-use basins” (*e.g.*, page 6), rather than as well in basins whose status is slightly less threatened but whose health could be preserved with surgical application of Workplan tools. We also question the ability of the Workplan to achieve this recommendation in light of the lack of differentiation between the Workplan and the just-released draft California Water Action Plan’s recommendation in this area. The proposed Water Action Plan would in fact postpone meaningful action on groundwater until “a basin is *at risk of permanent damage*” by overdrafting.<sup>4</sup> By that point (*i.e.*, the cusp of permanent aquifer damage), groundwater pumping and use patterns have already been cemented into place and will be that much harder to change. Action *before* such significant damage has been done to natural systems is necessary to ensure change occurs in a timely manner. Therefore, **the Workplan must propose strategies that will prevent impacts from arising well before “permanent damage” is about to occur, rather than delay until responses become far more difficult and less effective.**

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<sup>3</sup> For one example of the increasingly convoluted machinations of groundwater/surface water interactions, *see* Lois Henry, “How Water from Kern Grows Sprawl in Madera,” *The Bakersfield California* (Dec. 14, 2013), available at: <http://www.bakersfieldcalifornian.com/columnists/lois-henry/x429884005/LOIS-HENRY-How-water-from-Kern-grows-sprawl-in-Madera>.

<sup>4</sup> California Natural Resources Agency *et al.*, “California Water Action Plan: Public Review Draft,” p. 6 (Oct. 31, 2013), available at: [http://resources.ca.gov/docs/Final\\_Water\\_Action\\_Plan.pdf](http://resources.ca.gov/docs/Final_Water_Action_Plan.pdf) (emphasis added).

Similarly on page 2, the Workplan states that the Water Boards “will focus attention and assistance on high-use basins where thresholds are being exceeded.” **We urge the Boards to provide a more defined measure of oversight with respect to a representative sample of other (non high-use, non-exceedance) basins, to avoid their otherwise inevitable slide toward degradation.**

An additional listed “key element” of groundwater management is “[o]versight and enforcement in basins where ongoing management efforts *are not protecting groundwater*” (emphasis added). First, a clear definition of when enforcement will be conducted is essential in the Workplan: that is, what does the term “not protecting groundwater” mean? Will enforcement only be taken when a basin is “at risk of permanent damage”? Or, as we recommend, will enforcement be undertaken when management plan or permit requirements are violated, a strategy that we believe will send clearer, more consistent messages to users? **The level and process of enforcement needs to be defined in the Workplan so that the public may comment appropriately. We urge that enforcement occur well in advance of impacts demonstrated by groundwater basin damage.**

Next, page 4 of the Workplan includes a table and bullets categorized under “Sustainable Management.” Notably absent from this discussion is the potential for utilizing “waste and unreasonable use”<sup>5</sup> actions to halt groundwater overdraft. The Water Board has current authority in the Constitution and in statute to take such action, and indeed has adopted detailed regulations describing the process that might be used to advance this effort.<sup>6</sup> Yet, this important tool fails to appear as a strategy under existing “sustainable management” authority as described on page 4, or under “Governance and Management” on page 7. The only place it appears is under Enforcement on page 10.

While the reasonable use doctrine certainly can be a useful enforcement tool, the Water Board’s waste and unreasonable use authority reaches well beyond the “last ditch” enforcement efforts proposed in the Workplan. In fact, this authority could prove invaluable in promoting greater water use efficiencies that could prevent further, actionable groundwater level drawdowns. This point is addressed in detail in a 2011 SWRCB and Delta Stewardship Council report<sup>7</sup> that examines the “reasonable use doctrine” as it relates to agricultural water use efficiency. The report concludes that “inefficient water use is unreasonable,” that the Reasonable Use Doctrine may be employed to promote a wider use of efficiencies in water use, and that the SWRCB “should convene a Reasonable Water Use Summit with a focus of promoting more efficient agricultural water delivery and use.”<sup>8</sup> Specifically, the recommendations of this Delta Watermaster Report include the following:<sup>9</sup>

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<sup>5</sup> California Constitution Article X, Section 2; Water Code § 275.

<sup>6</sup> See, e.g., 23 CCR §§ 780, 855 *et seq.*, and 4000 *et seq.*

<sup>7</sup> Craig Wilson, Delta Watermaster, “The Reasonable Use Doctrine and Agricultural Water Use Efficiency” (Jan. 2011), available at: [http://www.swrcb.ca.gov/board\\_info/agendas/2011/jan/011911\\_12\\_reasonableusedoctrine\\_v010611.pdf](http://www.swrcb.ca.gov/board_info/agendas/2011/jan/011911_12_reasonableusedoctrine_v010611.pdf) (Delta Watermaster Report).

<sup>8</sup> *Id.*, p. 17; see also DWR, “Draft California Water Plan Update 2013,” Volume 3, Chapter 2, p. 2-10.

<sup>9</sup> Delta Watermaster Report, *supra* n. 7, pp. 14-16.

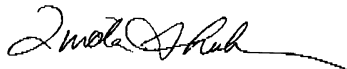
- Create a Reasonable Water Use Unit within the SWRCB’s division of water rights.
- Streamline the procedures for enforcement actions against waste and unreasonable use.
- Conduct one or more adjudicatory proceeding(s) regarding inefficient agricultural water use.
- Employ the reasonable use doctrine to promote more efficient agricultural water use or methods of use.
- Applicable statewide plans should be revised to include provisions regarding the efficient use of water. It is recommended that the Delta Stewardship Council’s Delta Plan, the Delta Protection Commission’s Land Use and Resource Management Plan and the SWRCB’s Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay Delta Plan) all contain provisions supporting the efficient use of water.
- Maximize use of SWRCB bond funds and other funding programs for agricultural efficiency projects.

As discussed in ELC’s DWR “Draft California Water Plan Update 2013” comments and our draft Water Action Plan comments, despite the California Constitution’s clear prohibition on the “waste or unreasonable use or unreasonable method of use of water,” the process for taking action on waste and misuse can be unnecessarily time-consuming under the existing regulatory system. However, the Delta Watermaster’s 2011 appropriate call for a summit on this topic was shut down quickly, and relatively little public action has occurred since then to ferret out waste and unreasonable use statewide. Accordingly, **we urge that the Workplan commit to the development and implementation of a streamlined process for broadly implementing the Constitution and Water Code’s “waste and unreasonable use” provisions for groundwater, including with respect to promoting greater efficiencies (i.e., in addition to using the authority in an enforcement capacity as suggested on page 10).**

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Thank you for your attention to these comments. If you have any questions, please do not hesitate to contact us.

Best regards,



Linda Sheehan  
 Executive Director  
[lsheehan@earthlaw.org](mailto:lsheehan@earthlaw.org)



Grant Wilson  
 Outreach and Policy Coordinator  
[gwilson@earthlaw.org](mailto:gwilson@earthlaw.org)

cc: Caren Trgovcich, Chief Deputy Director, [Caren.Trgovcich@waterboards.ca.gov](mailto:Caren.Trgovcich@waterboards.ca.gov)