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May 15, 2020

**Re: Recommendations for DWR and SWRCB Action Regarding the Westside Subbasin GSP**

Dear Department of Water Resources and State Water Resources Control Board,

Leadership Counsel for Justice and Accountability works with low-income communities of color in the San Joaquin Valley and the Eastern Coachella Valley. We have been engaged in the Sustainable Groundwater Management Act (SGMA) implementation process because most of the communities we work with are wholly dependent on groundwater for their drinking water supplies, and many have already experienced groundwater supply and quality issues. The communities where we work have not been adequately included in decision-making about their precious water resources, and their needs are not prioritized in such decisions.

Disadvantaged communities in the Westside Subbasin have the most to gain and the most to lose from SGMA implementation in the region. Communities like Cantua Creek and El Porvenir are

majority Latino and depend on small community water systems and/or domestic wells for their drinking water supply. Because residents in disadvantaged communities do not typically have the financial means to dig deeper wells or to install, operate and maintain drinking water treatment infrastructure, they are more likely to be severely impacted by lowering groundwater levels and groundwater contamination.

As a particularly vulnerable group, the critical drinking water needs of disadvantaged communities and low-income households must be considered and protected by the Groundwater Sustainability Plan (GSP). The Westlands Groundwater Sustainability Agency (GSA) has not adequately done so in this GSP. As described below, the GSP is likely to cause 43% of domestic wells to go dry in the subbasin[1] and puts domestic wells at risk of contamination from many unmonitored drinking water contaminations, with no clear plan to prevent and mitigate drinking water impacts.

The Department of Water Resources (DWR) and the State Water Resources Control Board (SWRCB) must evalue GSPs according to the Human Right to Water, and ensure that the GSPs comply with SGMA, the GSP regulations, and state and federal civil rights law, among other laws and regulations. In 2012, California recognized the Human Right to Water, codifying "the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes."[2] Under the Human Right to Water law, DWR and the State Water Resources Control Board must consider the Human Right to Water on review of GSPs.[3] In order to comply with this obligation, the Department and Board must ensure that GSPs do not cause or allow further drinking water crises that interfere with residents' access to an adequate supply of safe drinking water. In coordination with the Community Water Center and Self-Help Enterprises, we have developed a Human Right to Water Scorecard that contains elements necessary for state review of GSPs to comply with the Human Right to Water.[4] We urge DWR and the SWRCB to use this scorecard in evaluating this GSP.

Additionally, SGMA requires GSAs to include disadvantaged communities in decision-making, and create GSPs in a transparent and inclusive way. DWR and the SWRCB must ensure that GSPs do not cause "significant and unreasonable impacts" to the beneficial uses and users of groundwater in the subbasin, that they encourage the participation of a diverse variety of stakeholders,[5] and that they "consider the interests of" an enumerated list of all types of

[1] Focused Technical Review, page 4, Attached as Exhibit A.
[2] Water Code § 106.3(a)
[3] Water Code § 106.3(b)
[4] Attached as Exhibit B.
[5] Water Code § 10727.8(a) ["The groundwater sustainability agency shall encourage the active involvement of diverse social, cultural, and economic elements of the population within the groundwater basin prior to and during the development and implementation of the groundwater sustainability plan."].

beneficial users, including disadvantaged communities on domestic wells and community water systems.[6] Furthermore, state law provides that no person shall, on the basis of race, national origin, ethnic group identification, and other protected classes, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state.[7] The state's Fair Employment and Housing Act guarantees all Californians the right to hold and enjoy housing without discrimination based on race, color, or national origin.[8] DWR and the SWRCB must evaluate GSPs in accordance with all of these and other relevant legal obligations.

Unfortunately, the Westlands GSA did not take advantage of the opportunity to protect the drinking water resources relied upon by disadvantaged communities or low-income households, or avoid disparate impacts, and the GSP is incomplete and does not comply with SGMA and other applicable state laws as a result. As noted above, we reviewed the Westlands GSP according to our Human Right to Water Scorecard. Our review shows that the GSP does not contain all of the information required under SGMA, does not adequately evaluate "significant" and "unreasonable" impacts to beneficial uses including the drinking water needs of disadvantaged communities, will create disparate impacts on protected classes unless significantly modified, and does not comply with the Human Right to Water statute.

For the reasons discussed in these comments, and in prior written and oral comments provided to the GSA, DWR must not approve the GSP.[9]

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[6] Water Code § 10723.2.

[7] Gov. Code § 11135 ["No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state."]; Gov. Code § 65008 [Any discriminatory action taken "pursuant to this title by any city, county, city and county, or other local governmental agency in this state is null and void if it denies to any individual or group of individuals the enjoyment of residence, land ownership, tenancy, or any other land use in this state…"]; Government Code §§ 12955, subd. (l) [unlawful to discriminate through public or private land use practices, decisions or authorizations].

[8] Gov. Code § 12900 et seq.

[9] Attached as exhibits are certain documents, studies and analysis supporting these comments, which we request be incorporated into the record.

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### A. The GSP Does Not Comply with SGMA Because It Lacks Required Information

The GSP must contain all of the elements set forth in the GSP regulations. However, this GSP omits critical data and information to comply with the GSP regulations. Omitted data includes information regarding the water budget, groundwater contamination, and the drinking water impacts of its proposed groundwater management policies. Therefore, the GSP fails to "include[] the information required by [SGMA] and [its accompanying regulations]," and is thus inadequate.[10] These inadequacies prevent DWR from being able to determine that the GSP will likely achieve its sustainability goal.[11] Given these deficiencies, we ask DWR not to approve the plan.

### B. DWR Cannot Approve The GSP Because It Will Cause Disproportionate And Disparate Negative Impacts On Protected Classes.

The Westlands GSA must ensure that the GSP does not cause a disparate impact on protected groups, and must prioritize drinking water as an essential pillar of their groundwater sustainability plan. The GSP does not comply with this responsibility.

State law provides that no person shall, on the basis of race, national origin, ethnic group identification, and other protected classes, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by any state agency.[12] In addition, the state's Fair Employment and Housing Act guarantees all Californians the right to hold and enjoy housing without discrimination based on race, color, or national origin.[13]

The GSP will have disparate impacts on protected classes, including negative and discriminatory impacts on the basis of race, color, ancestry, national origin, and ethnic group identification. "Low-income communities and communities of color in the Central Valley rely

[10] 23 CCR § 355.4(a)(2).
[11] Water Code § 10733(a); 23 CCR § 355.4(b).
[12] Gov. Code § 11135 ["No person in the State of California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, or sexual orientation, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state."]; Gov. Code § 65008 [Any discriminatory action taken "pursuant to this title by any city, county, city and county, or other local governmental agency in this state is null and void if it denies to any individual or group of individuals the enjoyment of residence, land ownership, tenancy, or any other land use in this state…"]; Government Code §§ 12955, subd. (l) [unlawful to discriminate through public or private land use practices, decisions or authorizations].
[13] Gov. Code § 12900 et seq.

disproportionately on private wells because adequate public services were not developed in those communities."[14]As a result, "low-income households, people of color, and communities already burdened with environmental pollution suffered the most severe impacts [from drought]" and dry wells.[15] Similarly, communities of color in the Central Valley are disproportionately impacted by groundwater contamination.[16]

Consistent with these studies, this GSP will cause disproportionate negative impacts on communities of color reliant on small water systems and domestic wells. Westlands Water District spans portions of Fresno and Kings Counties, and contains within its boundaries multiple disadvantaged communities. Fresno County contains at least 93 disadvantaged unincorporated communities (DUCs),[17] and Kings County contains at least another 24 DUCs.[18] Approximately 50% of Fresno County's total population are people of color, compared to 67% of people living in Fresno County DUCs.[19] Similarly, approximately 58% of Kings County's total population are people of color, compared to 74% of people living in Kings County DUCs.[20] As an example, Cantua Creek, a DUC within Westland's boundaries in Fresno County is approximately 98.9% Hispanic or Latino according to the most recent American Communities Survey data.[21]

As discussed below, the GSP's determinations and policy decisions have not considered impacts on beneficial users, and will not prevent increased drinking water contamination from groundwater management activities, particularly for disadvantaged communities reliant on small water systems and domestic wells. This is likely to cause severe harm to residents' health and daily lives, as well as permanent impacts on residents' finances and living situations. Additionally, the GSP contains no measures to mitigate these impacts. Therefore, because the GSP is likely to have significant negative impacts on households reliant on small water systems and domestic wells, and because the people reliant on small water systems and domestic wells are disproportionately people of color, the GSP is likely to cause disparate impacts on protected

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[14] Feinstein et al., "Drought and Equity in California," p. 21 (January 2019), available at https://pacinst.org/wp-content/uploads/2017/01/PI_DroughtAndEquityInCA_Jan_2017.pdf.

[15] *Id. at p. 6.*

[16] *See* Balazs et al., "Social Disparities in Nitrate Contaminated Drinking Water in California's San Joaquin Valley," Environmental Health Perspectives, 19:9 (September 2011), available at https://ehp.niehs.nih.gov/doi/full/10.1289/ehp.1002878; Balazs et al., "Environmental Justice Implications of Arsenic Contamination in California's San Joaquin Valley," Environmental Health Perspectives, 11:84 (November 2012), available at https://ehjournal.biomedcentral.com/articles/10.1186/1476-069X-11-84.

[17] Flegel et al., "California Unincorporated: Mapping Disadvantaged Communities in the San Joaquin Valley," p. 32 (2013), available at https://www.policylink.org/resources-tools/california-unincorporated-mapping-disadvantaged-communities-in-the-san-joaquin-valley; see also Fresno County Analysis of Disadvantaged Unincorporated Communities SB 244, Public Review Draft, available at https://www.co.fresno.ca.us/home/showdocument?id=40317 [cited as evidence of disparate impact, not as an endorsement of the adequacy of the draft].

[18] Flegel et al., supra, at p. 36.

[19] Id. at pp. 25, 30.

[20] Id.

[21] Data available at https://data.census.gov/cedsci/, accessed on May 14, 2020.

classes.

### C. The GSP Does Not Adequately Evaluate Whether Adverse Impacts Are "Significant And Unreasonable" Or Consider Beneficial Uses And Users.

Under SGMA, DWR must find that a GSP is likely to achieve its sustainability goal before DWR may approve the plan.[22] "'Sustainability goal' means the existence and implementation of one or more groundwater sustainability plans that achieve sustainable groundwater management by identifying and causing the implementation of measures targeted to ensure that the applicable basin is operated within its sustainable yield."[23] "'Sustainable groundwater management' means the management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results."[24] An "undesirable result" occurs when a GSP allows a "significant and unreasonable" adverse impact to one of six sustainability indicators, including groundwater levels, groundwater storage, groundwater quality, and land subsidence.[25]

If a GSP is unlikely to achieve its sustainability goal, DWR cannot approve the plan.[26] DWR must also independently determine whether or not the GSP is likely to avoid "significant and unreasonable" adverse impacts with regard to each sustainability indicator, and if not then DWR cannot approve the plan. If a GSP will allow an undesirable result even if implemented effectively, then the GSP cannot achieve sustainable groundwater management.[27] Likewise, a plan that cannot achieve sustainable groundwater management has failed to set a valid sustainability goal, in violation of SGMA.[28] If a GSP does not contain a valid sustainability goal, DWR cannot determine that the GSP is "likely to achieve the sustainability goal for the basin," and DWR cannot approve it.[29]

In addition to defining undesirable results, GSPs must quantify benchmarks for groundwater conditions, or "minimum thresholds," that may cause undesirable results if exceeded.[30] GSPs must include "an explanation of how the Agency has determined that basin conditions at each minimum threshold will avoid undesirable results for each of the sustainability indicators."[31] A GSP's determination of when an undesirable result will occur must be based on analysis of when

[22] Water Code § 10733(a).
[23] Water Code § 10721(u).
[24] Water Code § 10721(v).
[25] Water Code § 10721(x).
[26] Water Code § 10733(a).
[27] Water Code § 10721(v).
[28] Water Code § 10721(u).
[29] Water Code § 10733(a); *see also* 23 CCR 354.24 ("Each Agency shall establish in its Plan a sustainability goal for the basin that culminates in the absence of undesirable results within 20 years of the applicable statutory deadline.").
[30] 23 CCR 354.28(a).
[31] 23 CCR 354.28(b)(2).

adverse impacts become "significant" and "unreasonable."[32]

In all of its actions, a GSA must "consider the interests of" all categories of beneficial users, including express requirements to consider disadvantaged communities on domestic wells and community water systems.[33] Failure to consider the interests of a category or categories of beneficial users is itself grounds for DWR to decline to approve a plan.[34] DWR regulations also establish that a failure to consider all beneficial uses and users of groundwater undermines the likelihood that a basin will reach its sustainability goal.[35]

We note that an impact on drinking water that persists for even a relatively short period of time (e.g., months or years rather than decades) may have permanent and irreversible impacts on households and communities. A household is not habitable without access to an adequate supply of safe drinking water, and once families begin to leave uninhabitable dwellings after wells have failed, community cohesion is irreparably harmed. These impacts are inconsistent with the very concept of sustainable groundwater management.

As explained below, the GSA has not based its policy determinations on an analysis of what impacts are "significant" and "unreasonable," and has not considered the interests of disadvantaged communities or low-income households reliant on small water systems or domestic wells.

### D. DWR Cannot Approve The GSP Because It Was Developed With Inadequate Transparency, Accessibility, Consideration Of Public Input And Representation.

As public agencies, GSAs are subject to the requirements of the Brown Act, which requires transparency of public agencies through notice of meetings and prior posting of agendas, posting of meeting minutes after meetings, and public access to meeting materials upon request by a member of the public.[36] GSAs are also subject to the requirements of the Bilingual Services Act, which requires a public agency to provide interpretation and translate materials into all languages for which there is a "substantial" number of people who it serves who speak that language.[37]

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[32] Water Code § 10721(x); 23 CCR 354.28(b); *see also* Cal. Dep't Water Res., *Draft Best Management Practices for the Sustainable Management of Groundwater* 6 (Nov. 2017) ["GSAs must consider and document the conditions at which each of the six sustainability indicators become significant and unreasonable in their basin, including the reasons for justifying each particular threshold selected."]; *id.* 8 ["The GSP must include an analysis and written interpretation of the information, data, and rationale used to set the minimum threshold."].
[33] Water Code § 10723.2.
[34] Water Code § 10723.2; 23 CCR 355.4(b) ["The Department shall evaluate a Plan … to determine whether the Plan … complies with the Act …."].
[35] 23 CCR 355.4(b)(4).
[36] CA Gov. Code § 54954.1
[37] Bilingual Services Act, Gov. Code, §§ 7293, 7295.

In addition, GSAs must also adhere to the specific public participation and inclusivity requirements laid out in SGMA. As discussed above, SGMA requires that a GSA "shall consider the interests of all beneficial uses and users of groundwater," which expressly includes "[h]olders of overlying rights" and "[d]isadvantaged communities, including, but not limited to, those served by private domestic wells or small community water systems."[38] The emergency regulations similarly require that a GSP summarize and identify "opportunities for public engagement and a discussion of how public input and response will be used."[39] The GSA thus must engage "diverse social, cultural, and economic elements of the population within the basin."[40] The regulations recognize that failure to engage adequately with a diverse cross-section of the public undermines the likelihood that a GSP will avoid undesirable results and meet its sustainability goal.[41]

Throughout the GSP development process, opportunities for public input were often limited to Westland GSA board meetings and workshops that were held during business hours that are not accessible to community members with 9am-5pm jobs. Notice of meetings and workshops was done mainly through email correspondence only in English, and materials at workshops and meetings were not translated. The GSA did not actively collaborate with our organization or residents to do outreach and public engagement, but became more receptive to our recommendations towards the end of the GSP development process. Westlands GSA did come to one Cantua Creek community meeting to share the GSP. However, active community participation should have taken place during the entire GSP creation process, not just towards the end after critical GSP policy decisions had already been made.

Furthermore, meetings largely served the function of presenting information and updates on decisions that were already made, instead of being spaces to solicit feedback in shaping the GSP. GSA staff mainly presented information on decisions that were already made, and only solicited feedback on a limited number of topics that were only beneficial to irrigators. These topics included the types of recharge that irrigators could pay to do, what kinds of credits irrigators would get for doing recharge, and allocation schemes for irrigators. Larger issues such as the sustainable management criteria, water quality issues, and drinking water protection were not discussed at all, or briefly discussed as items that had already been decided.

It further appears that the GSA did not incorporate resident feedback into the plan. At several workshops and at the Cantua Creek community meeting, residents from Cantua Creek and El Porvenir requested that the GSA protect their new drinking water wells from going dry and from

[38] Water Code § 10723.2.
[39] 23 CCR 354.10(d).
[40] Guidance Document for Groundwater Sustainability Plan; Stakeholder Communication and Engagement, p. 1.
[41] 23 CCR 355.4(b)(4).

contamination, and that the GSA implement a program to mitigate any impacts that may occur. At numerous board meetings and in written comments, our organization asked for the plan to be improved by including all of the elements that we list in each of the sections of this letter, but neither ours nor residents' requests were incorporated into the GSP.

We also note that the GSA is starting to organize an Advisory Committee of stakeholders to promote stakeholder engagement in GSP implementation, but there was no Advisory Committee during GSP formation, and there was no DAC representative on the GSA board.

The public engagement process for this GSP was therefore inadequate. At a minimum, an adequate process must include the following elements, which were not present here:

1. **Description of DAC engagement:** Ensure that the GSP specifically identifies how DAC beneficial users were engaged in the planning process.
2. **Notice:**[42] Ensure that the GSA provided clear notice to the public about GSA meetings to develop the GSP, posted in ways that all stakeholders were made aware of the meetings, and translated into all languages spoken by at least 5 percent of the public served by the agency, who do not speak English or are unable to effectively communicate in English.[43]
3. **Translation of materials:**[44] Ensure that the GSA translated materials into all languages spoken by at least 5 percent of the public served by the agency, who do not speak English or are unable to effectively communicate in English.
4. **Interpretation:**[45] Ensure that the GSA provided interpretation services at board meetings, committee meetings and workshops into all languages spoken by at least 5 percent of the public served by the agency, who do not speak English or are unable to effectively communicate in English.
5. **Creation of an Advisory Committee with DAC representation:** Ensure that the GSA developed the GSP with an advisory committee that contained representatives from DACs.
6. **DAC representation on GSA board:** Ensure that the GSA developed the GSP with a board that contained at least one representative from DACs.

[42] Government Code § 54954(a).
[43] Government Code sec. 7296.2: Dymally-Alatorre Bilingual Services Act, stating that local agencies providing services to the public must provide translated materials and interpretation when it serves a substantial number of non-English-speaking people. The law defines a "substantial number of non-English-speaking people" as "members of a group who either do not speak English, or who are unable to effectively communicate in English because it is not their native language, and who comprise 5 percent or more of the people served by the statewide or any local office or facility of a state agency." This is because "effective maintenance and development of a free and democratic society depends on the right and ability of its citizens and residents to communicate with their government and the right and ability of the government to communicate with them."
[44] Government Code sec. 7296.2.
[45] Government Code sec. 7296.2.

7. **Public Comment Period:** Ensure that the GSA provided a robust public comment period of at least 60 days, with opportunity for the public to discuss comments and proposed agency responses with staff and the GSA before GSP approval.
8. **Incorporation of stakeholder input:** Ensure that the GSP explicitly describes how stakeholder input was incorporated into the GSP process and decisions, including sustainable management criteria and all projects and management actions.

### E. The Water Budget is Inadequate

Water budgets must contain an accounting and assessment of the total annual volume of groundwater and surface water entering and leaving the basin, including historical, current and projected water budget conditions, and the change in the volume of water stored.[46] DWR regulations also require that the historical water budget "start[] with the most recent available information."[47] In order to have any chance of meeting a GSA's sustainability goal, a GSA must accurately estimate current and future groundwater usage. A GSP's sustainable yield must also be "calculated over a base period representative of long-term conditions in the basin."[48]

The water budget is not fully transparent, impeding the public's ability to access the validity of the historical, current, and proposed water budgets and the water budget has many inconsistencies. Table 2-9 reports the inflows and outflows of the land surface water budget, and includes columns for 'Imported Surface Water' and 'Utilized Surface Water.' A footnote describes the 'Utilized Surface Water" as surface water imports not utilized by the model that are rejected and not included in the water budget. As a result, the total imported surface water volumes shown in Table 2-9, Table 2-10, and discussed in the text are not in agreement. Additionally, there is no explanation as to why a portion of the surface water imports are rejected and how that impacts the water budget. These issues must be addressed in order to comply with SGMA.

Also, projected water demand must utilize the most recent land use, evapotranspiration, and crop coefficient information as the baseline condition for estimating future water demand, and this projected water demand information must also be applied as the baseline condition used to evaluate future scenarios of water demand uncertainty associated with projected changes in local land use planning, population growth, and climate.[49] The GSP does not include a description of how some municipal and industrial users are accounted for in the projected water budgets. In Section 2.1 of the GSP, Westlands GSA states that there are approximately 38 active domestic wells in the subbasin, which pump up to 78 acre-feet per year, nine public water systems, and eight disadvantaged communities, two of which are in the process of having new wells installed.

[46] 23 CCR § 354.18.
[47] 23 CCR 354.18(c)(2)(B).
[48] Water Code § 10721(w).
[49] 23 CCR § 354.18.(c)(3)(B)

[50] Additionally, the GSP states that there are solar electricity generation facilities in the Subbasin, which typically require a water supply for solar panel washing or cooling. Without showing how these water users are included in the water budget, the GSP is not in compliance with the requirements of SGMA.

Furthermore, the projected water budget does not show that groundwater sustainability will be achieved by 2040. In Section 2.1.3.4, the GSP reports that there has been a trend of increasing acres of nut trees and fallowed land and trends of land use changes are shown on Figure 2-9.[51] As part of Westlands Water District's settlement in 2015, large portions of agricultural land will be retired. Table 2-3 shows a large increase in fallow/non-agricultural land between 2000 and 2015, suggesting that this may have already happened, although the GSP states that fallowing was due to drought conditions.[52] Furthermore, the GSP states that land use and population are expected to remain relatively static over the projected water budget period.[53] As it is currently written, it is unclear what land use distribution was used for the projected water budget and how the assumption that land use and population will remain constant in the future is justified. Last, the projected groundwater budget results presented in Figures 2-15, 2-17, and 2-19 show continued declines in groundwater storage for the periods 2020-2040 and 2020-2070.

The water budget is central to establishing effective policies for sustainable groundwater management in the GSA area. Since the GSP's water budget is inadequate, DWR cannot approve this GSP.

### F. The GSP's Sustainable Management Criteria for Groundwater Levels Are Not Adequate

The sustainable management criteria for groundwater levels must be made after considering the interests of all beneficial user groups, including disadvantaged communities reliant on domestic wells and community water systems,[54] and must be based on an analysis of what are "significant" and "unreasonable" impacts.[55] These policy decisions must also avoid disparate impacts on protected groups pursuant to state and federal law.[56] As discussed below, the GSP does not meet these requirements.

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[50] Westside Subbasin GSP pg. 2-2, 2-18 and 2-26, adopted January 2020.
[51] Westside Subbasin GSP pg. 2-7, adopted January 2020.
[52] Westside Subbasin GSP pg. 2-8, adopted January 2020.
[53] Westside Subbasin GSP pg. 2-48, adopted January 2020.
[54] Water Code § 10723.2.
[55] Water Code § 10721(x); 23 CCR 354.28(b); *see also* Cal. Dep't Water Res., *Draft Best Management Practices for the Sustainable Management of Groundwater* 6 (Nov. 2017) ["GSAs must consider and document the conditions at which each of the six sustainability indicators become significant and unreasonable in their basin, including the reasons for justifying each particular threshold selected."]; *id.* 8 ["The GSP must include an analysis and written interpretation of the information, data, and rationale used to set the minimum threshold."].
[56] Gov. Code § 11135; Gov. Code § 65008; Government Code §§ 12955, subd. (l).

### *a.* The Undesirable Result for Groundwater Levels are Inadequate

Undesirable results are the point at which groundwater conditions cause "significant and unreasonable" impacts on beneficial users. The SGMA regulations require GSAs to justify their undesirable results by including the "[p]otential effects on the beneficial uses and users of groundwater."[57] GSAs must also describe the "processes and criteria relied upon to define undesirable results."[58] These determinations must be made based on an analysis of when decreasing groundwater levels will cause results that are either "significant" or "unreasonable" in light of the context of the basin and the real-world circumstances on the ground. The undesirable results determination does not comply with these requirements because it is unsupported by analysis, it is too vague, and it does not show how the GSA considered the interests of beneficial users in shaping its conclusions.

The GSP's definition of undesirable results for groundwater levels is inadequate because it would allow significant and unreasonable impacts to beneficial users to occur without triggering an undesirable result, and it is clear that the GSA has not considered these impacts in shaping its undesirable results. The GSP states that "[c]hronic lowering of groundwater levels in the Subbasin cause significant and unreasonable declines if they are sufficient in magnitude to lower the rate of production of pre-existing groundwater wells below that necessary to meet the minimum required to support beneficial use(s) where alternative means of obtaining sufficient water resources are not technically or financially feasible."[59] However, the GSP states that an undesirable result for groundwater levels will only be triggered when 25% of the groundwater elevations measured in the SGMA monitoring network are below their minimum threshold for two consecutive years.[60] It is not clear what impact this could have on beneficial users in the area, and the GSA has not done this analysis. According to the Focused Technical Review that we commissioned, up to 43% of domestic wells around the representative monitoring wells would go dry from the water levels reaching the minimum thresholds across the subbasin.[61] It is unclear how many domestic and small community wells would go dry before the undesirable result would be triggered, or what the impact would be on the new wells being drilled in Cantua Creek and El Porvenir, which serve hundreds of residents living in the two disadvantaged communities.

[57] 23 CCR § 354.26.
[58] 23 CCR § 354.26.
[59] Westside Subbasin GSP, pg. 3-19, adopted January 2020.
[60] Westside Subbasin GSP pg. 3-36 and 3-37, adopted January 2020.
[61] Focused Technical Review, page 4, Attached as Exhibit A.

### b. The Measurable Objectives for Groundwater Levels are Inadequate

The SGMA regulations require GSAs to set measurable objectives that "achieve the sustainability goal for the basin within 20 years of Plan implementation and...continue to sustainably manage the groundwater basin over the planning and implementation horizon."[62]

The Westlands GSP explains its methodology for establishing measurable objectives in the following way:

> The methodology for estimating measurable objectives at each well in the GSP monitoring network involved a multi-step process. The initial step was to utilize the numerical model to identify a recent period which experienced sustainable groundwater levels in comparison to the projected water budget period. This evaluation identified 2017 as a year that represented long-term sustainable groundwater levels. The next step was to select a measurable objective groundwater level for each well in the monitoring network by adjusting the measured 2016 (water budget year) water levels by the relative amount of water level change the numerical model simulated between 2016 and 2017 water levels. The relative amount of change was added to the measured 2016 groundwater level to produce an equivalent 2017 groundwater level/measurable objective.[63]

The GSP includes the measurable objectives in Appendix 3-A , and Tables 3-2 and 3-3. The Tables only show a baseline at 2015, not 2016 as mentioned in the description of the measurable objective methodology, so it is unclear what data was used to establish the measurable objectives. Most measurable objectives are specified at groundwater elevations greater than the 2015 baseline; however, four wells have measurable objectives set to more than 70 feet below the 2015 baseline conditions (ranging from 71 feet to 129 feet lower than 2015 conditions). Figure 2A shows that, at the measurable objectives, water levels would have dropped by an average of approximately 37 feet. Our attached Focused Technical Review also identifies other discrepancies in the data presented regarding the measurable objectives.

The GSA has not evaluated how this groundwater elevation will affect domestic well users and disadvantaged communities, whose critical drinking water resources will be impacted by a decline in groundwater levels. The GSA cannot therefore have considered the interests of this beneficial user group in determining its measurable objectives, and is likely to have a disparate impact on a protected group if it pursues this course of action.

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[62] 23 CCR § 354.30(a)
[63] Westside Subbasin GSP pg. 3-6, adopted January 2020.

### *c.* The Minimum Thresholds for Groundwater Levels are Inadequate

The groundwater levels sustainable management criteria set by a GSA must be the point that, "if exceeded, may cause undesirable results."[64] SGMA requires GSAs to analyze both the significance and reasonableness of proposed minimum thresholds,[65] and minimum thresholds must have the purpose of avoiding "significant and unreasonable" impacts on beneficial users.[66] The GSA's determination of what is "significant and unreasonable" must consider the impacts on all types of beneficial users, including disadvantaged communities.[67] For groundwater levels specifically, GSAs must place minimum thresholds for each monitoring site at the level "that may lead to undesirable results."[68] Under DWR regulations, the GSA must provide a description of "the information and criteria relied upon to establish minimum thresholds," an explanation of how the proposed minimum thresholds will "avoid undesirable results," and "how minimum thresholds may affect the interests of beneficial uses and users of groundwater."[69]

The Westlands GSA's approach to setting minimum thresholds does not comply with these requirements. The GSP establishes the minimum thresholds according to the following methodology:

> The development of minimum thresholds for chronic lowering of groundwater levels included a review of the magnitude of historical groundwater level declines during extended drought periods. The magnitude of the groundwater level declines over the 2020 through 2040 period were superimposed on historic groundwater level lows to establish the minimum thresholds. The minimum thresholds for chronic lowering of groundwater levels are based on documented screen intervals of key wells located both in the upper and lower aquifers in the Subbasin.[70]

Westlands did not conduct an analysis of what the impacts would be to beneficial users from setting these minimum thresholds.

We commissioned a Focused Technical Review to evaluate the impact of the minimum thresholds on drinking water wells in the subbasin. Our report shows that approximately 43% of drinking water wells within a 1.5 radius from indicator wells would be dewatered at the

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[64] 23 CCR § 354.28.
[65] Water Code § 10721(x); 23 CCR 354.26(a). (b), 354.28(b); see also Cal. Dep't Water Res., *Draft Best Management Practices for the Sustainable Management of Groundwater* 6, 8 (Nov. 2017).
[66] 23 CCR § 354.26.
[67] Water Code § 10723.2.
[68] 23 CCR § 354.28.
[69] 23 CCR § 354.28.
[70] Westside Subbasin GSP pg. 3-19, Tables 3-7 and 3-8, adopted January 2020.

minimum thresholds.[71] It is unclear what the impact of reaching these minimum thresholds could have on the new community water system wells for Cantua Creek and El Porvenir, and Westlands has not included this analysis in the GSP. According to our Focused Technical Review, there is large variability between minimum thresholds. On average, minimum thresholds in the 75 representative monitoring wells are approximately 92 feet lower than 2017 levels. This makes it very hard to foresee what impact the groundwater levels minimum thresholds will have on more vulnerable groundwater users in the region.

The GSP does not set forth the "information and criteria" by which the GSA arrived at these minimum thresholds, and has not based these minimum thresholds on a consideration of the significance and reasonableness of impacts to all categories of beneficial users.

The groundwater levels sustainable management criteria for this GSP are therefore inadequate. At a minimum, adequate groundwater levels sustainable management criteria must include the following elements, which are not present here:

1. **Evaluate the drinking water impact:** Ensure that the GSP includes an analysis of how many drinking water wells (municipal wells, community water system wells, and domestic wells) might go fully or partially dry if groundwater levels reach the undesirable results,[72] measurable objectives and minimum thresholds,[73] including a map of wells that will go fully and partially dry at the measurable objectives and minimum thresholds. Ensure that the GSP includes estimates of the increased pumping costs from additional lift needed to pump water from lower elevations if the undesirable results, measurable objectives and minimum thresholds were to be reached.
2. **Avoid significant and unreasonable impacts to drinking water users in creating sustainable management criteria:**[74] The GSA must analyze "when significant and unreasonable effects ... are caused by groundwater conditions occurring throughout the basin," taking into account the beneficial users of groundwater and the basin's specific circumstances.[75] Therefore the GSP must explicitly state how the GSA considered drinking water impacts in shaping undesirable results, measurable objectives and minimum thresholds for groundwater levels; for example, the GSP could state how its well impact analysis supported setting stricter measurable objectives and minimum thresholds near at-risk communities.
3. **Incorporate new drinking water data into sustainable management criteria:**[76] Ensure that the GSP includes a description of how data gaps and uncertainties of its drinking

[71] Focused Technical Review, Figure 3, Exhibit A.
[72] 23 CCR § 354.26(c)
[73] 23 CCR § 354.28(b)(4)
[74] Water Code § 10723.2
[75] 23 CCR § 354.26.
[76] 23 CCR § 354.38(e)(3)

water well impact assessment will be addressed and serve to reassess the sustainable management criteria, projects and management actions in accordance with new data.

4. **Implement DAC and drinking water user input into sustainable management criteria:**[77] Ensure that the GSP discusses how stakeholder input from DAC community members was considered in the development of undesirable results, measurable objectives and minimum thresholds. For example, the GSP could state how they took the results of the well impact assessment to the public through meetings, workshops, or Advisory Committees, and together with stakeholders decided how to change sustainable management criteria to protect drinking water, or other programs to implement to mitigate these impacts.
5. **Avoid disparate impact:**[78] Ensure that the measurable objectives and minimum thresholds for groundwater levels are established in such a way that prevents a disproportionately negative impact on communities of color in the GSP area. For example, the GSP should ensure that the same minimum threshold methodology across the GSP area will not lead to disproportionately more wells going dry for residents of color than for white residents.

## G. The GSP Fails to Adequately Address Groundwater Quality Through its Sustainable Management Criteria for Groundwater Quality

GSA activities and policies could cause increased contamination in many ways. For example, the proposed timeline for implementation of demand reduction may allow for continued pumping which may create an increase in naturally occurring contaminants and/or migration of contaminant plumes.[79] Recharge projects could also have severe impacts on groundwater quality by facilitating water percolation on land contaminated with years of pesticide, herbicide, fungicide, and fertilizer application and/or by releasing natural contaminants like uranium into groundwater.[80] A groundwater market is likely to cause geographic concentrations of pumping

[77] 23 CCR § 354.10(d); DWR Guidance Document for Groundwater Sustainability Plans: Stakeholder Communication and Engagement, p.1.
[78] Gov. Code § 11135; Gov. Code § 65008; Government Code §§ 12955, subd. (l).
[79] *See* Smith et al., Overpumping Leads to California Groundwater Arsenic Threat, 9 Nature Communications 2089 (2018), available at https://www.nature.com/articles/s41467-018-04475-3.
[80] See Fakhreddine et al., Protecting Groundwater Quality In California, Management Considerations For Avoiding Naturally Occurring And Emerging Contaminants (2019), available at https://www.edf.org/sites/default/files/documents/groundwater-contaminants-report.pdf ["Recharging water, even clean water, into a previously uncontaminated aquifer can potentially alter the existing geochemistry and hydrology and subsequently cause the release of geogenic contaminants from soils and sediments."]; Jurgens, Bryant C., et al. "Effects Of Groundwater Development On Uranium: Central Valley, California, USA," Groundwater 48.6 p. 913 (2010), available at https://ngwa.onlinelibrary.wiley.com/doi/abs/10.1111/j.1745-6584.2009.00635.x; "Groundwater Quality In The Sustainable Groundwater Management Act (SGMA): Scientific Factsheet on Arsenic, Uranium, and Chromium," available at

that increase the likelihood of contaminant plume migration, putting drinking water resources at risk.

SGMA charged GSAs with the responsibility to protect water quality from further degradation due to groundwater management practices, and requires GSAs to establish sustainable management criteria to prevent degraded groundwater quality,[81] based on a determination of what is a "significant and unreasonable" impact on all beneficial users, including domestic well users and disadvantaged communities.[82] This GSP only monitors and regulates one contaminant of concern despite its express knowledge that many other more harmful drinking water contaminants exist in its GSP area, which could be impacted by groundwater usage and activities. It also fails to clearly define its undesirable results, minimum thresholds or measurable objectives for groundwater quality, so the public and DWR cannot evaluate their impact on beneficial users in the GSP area.

### a. The "Contaminant of Concern" for Groundwater Quality Is Inadequate

Westlands GSA has not shown how it has considered the interests of beneficial users including domestic well owners and disadvantaged communities in shaping groundwater quality sustainable management criteria.[83] Instead of fully incorporating protection of all drinking water quality standards into the GSP, the Westlands GSA limits its constituents of concern to Total Dissolved Solids, a secondary drinking water contaminant that is far less harmful to human health than many others that the GSP identifies as existing in the area. The GSA states that TDS "is a proxy for other naturally-occurring contaminants,"[84] but the GSP acknowledges in the Basin Setting chapter that the subbasin contains plumes of other contaminants such as boron, selenium, arsenic, sulfate, and nitrates, the latter of which the GSA acknowledges is a particular threat to domestic wells in the Upper Aquifer.[85] The locations, concentration and spread of these contaminant plumes will not be monitored. Furthermore, these contaminants are not all naturally-occurring, so even if TDS were a proxy for naturally-occurring contaminants, it would not show the trends or locations of all harmful contaminants. The GSP's Basin Setting also omits data about a key groundwater contamination site, which also must be taken into account when establishing sustainable management criteria for groundwater quality. The Westlands GSA

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https://d3n8a8pro7vhmx.cloudfront.net/communitywatercenter/pages/293/attachments/original/1559328800/Groundwater_Quality_in_SGMA_Scientific_factsheet_on_arsenic__uranium__and_chromium.pdf?1559328800.

[81] Water Code § 10721(w)(4); 23 CCR § 354.28(c)(4).

[82] Water Code §§ 10727.2(d)(2); 10721(x)(4)

[83] Water Code sec. 10723.2.

[84] Westside Subbasin GSP pg. 2-38, adopted January 2020

[85] Westside Subbasin GSP pg. 2-37, adopted January 2020: ["Due to the presence of oxidation and reduction conditions, nitrate is likely not a constituent of concern in both the Upper and Lower Aquifers. However, since the Subbasin predominantly includes agricultural land uses, the potential for nitrate to occur in the Upper Aquifer is possible should oxidation and reduction conditions vary in the Subbasin and near the vicinity of domestic wells. As a result, both nitrate and salinity in the form of TDS are the constituents of interest for the GSP monitoring program."]

subbasin contains Lemoore Naval Air Station, which according to the State Water Resources Control Board's website GeoTracker, has cleanup sites associated with fuel and gasoline contamination.[86] Additionally, Cantua Creek's new groundwater well will need to be treated for manganese, a contaminant that the GSA does not plan to monitor. Contamination could increase or spread due to groundwater activities and groundwater pumping, further endangering drinking water resources in the area.

Without monitoring The GSA therefore will not be able to detect increases or expansion of harmful drinking water contaminants from its groundwater management activities. The resulting impact from the proposed sustainable management criteria will likely lead to disparate impacts on protected groups, in conflict with state and federal law.

### *b. The Undesirable Result for Groundwater Quality is Inadequate*

Undesirable results are the point at which "significant and unreasonable" impacts on beneficial users caused by degraded groundwater quality. The SGMA regulations require GSAs to justify their undesirable results by including the "[p]otential effects on the beneficial uses and users of groundwater."[87] GSAs must also describe the "processes and criteria relied upon to define undesirable results."[88] The undesirable result cannot have a disparate impact on protected groups pursuant to state civil rights law.

The undesirable result for salinity will only be triggered after 25 percent of wells are above the MT for the same constituent, based on the average of the most recent three-year period.[89] This is an unreasonably lax contamination threshold. By the time 20 percent of representative wells show increases in salinity for three consecutive years, it is more than likely that a high percentage of vulnerable drinking water users will be experiencing severe, long-term drinking water contamination problems before the undesirable result is triggered. Furthermore, the GSP does not identify the potential management actions to be implemented if undesirable results occur.

The groundwater quality sustainable management criteria for this GSP are therefore inadequate. At a minimum, adequate groundwater quality sustainable management criteria must include the following elements, which are not present here:

1. **Ensure that the GSP sets measurable objectives and minimum thresholds at all representative monitoring wells for all of the following contaminants:[90]**
    a. Contaminants with primary drinking water standards,

[86] https://geotracker.waterboards.ca.gov/
[87] 23 CCR § 354.26.
[88] 23 CCR § 354.26.
[89] Westside Subbasin GSP pg. 3-38, adopted January 2020.
[90] 23 CCR § 354.34(b)(2) and (f)(3)

b. PFOs/PFOAs and chrome-6, which are contaminants known to be very harmful to human health, AND
c. Contaminants like uranium, arsenic and nitrate which are known to increase due to groundwater management practices.

2. **Ensure that the GSP triggers a violation of a minimum threshold after *one* test shows that there has been an increase in contamination since January 1st, 2015**. Once the minimum threshold is reached, the GSA must start the evaluation of whether groundwater management activities or groundwater pumping have caused the increase, or whether the increase was caused by other factors such as natural fluctuation, testing inaccuracy, or activities outside the purview of the GSA. If the increase was caused by groundwater management activities or groundwater pumping, the GSA must immediately stop increasing the contamination and remediate.
3. **Immediately remediate any contamination caused by groundwater conditions since 2015:** The GSA must immediately remediate any increased contamination caused by groundwater management policies or activities (including lack of adequate regulation of pumping) since 2015. The GSA must begin remediation immediately upon establishing causation. The GSA must remediate contamination within two years, or as soon as technologically and hydrologically possible, whichever is faster. Design and implementation of remediation measures must be done in partnership with all groundwater users, primarily disadvantaged communities. The GSA must also clearly identify funding sources for remediation, and identify a timeline for procuring those funds.
4. **Strive to remediate existing drinking water contamination:** Ensure that the GSA will strive to remediate drinking water contaminants that exceeded the MCL before 2015 wherever feasible, through projects, management actions and policies.
5. **Evaluate the drinking water impact:** Ensure that the GSP includes an analysis of how drinking water wells (municipal wells, community water system wells, and domestic wells) are likely to be be affected by the undesirable results,[91] measurable objectives and minimum thresholds.[92]
6. **Implement DAC and drinking water user input into sustainable management criteria:[93]** Ensure that the GSP discusses how stakeholder input from DAC community members was considered in the development of undesirable results, measurable objectives and measurable objectives.

[91] 23 CCR § 354.26(c)
[92] 23 CCR § 354.28(b)(4)
[93] 23 CCR § 354.10(d); DWR Guidance Document for Groundwater Sustainability Plans: Stakeholder Communication and Engagement, p.1.

7. **Incorporate new drinking water data into sustainable management criteria:**[94] Ensure that the GSP includes a description of how data gaps and uncertainties of its drinking water well impact assessment will be addressed and serve to reassess the sustainable management criteria, projects and management actions in accordance with new data.
8. **Avoid disparate impact:**[95] Ensure that the minimum thresholds for groundwater quality are established in such a way that prevents a disproportionately negative impact on communities of color in the GSP area. For example, the GSP should ensure that the same minimum threshold methodology across the GSP area will not lead to disproportionately more wells going dry for residents of color than for white residents.

## H. The Monitoring Network is Inadequate With Respect to Groundwater Levels and Groundwater Quality

GSAs must monitor impacts to groundwater for drinking water beneficial users,[96] including disadvantaged communities on domestic wells,[97] and must avoid disparate impacts on protected groups pursuant to state law.[98]

As discussed below, the insufficiency of the representative monitoring network renders the GSP inadequate.

### *a.* Groundwater Level Monitoring

The SGMA regulations state that monitoring networks must include a "sufficient density of monitoring wells to collect representative measurements through depth-discrete perforated intervals to characterize the groundwater table or potentiometric surface for each principal aquifer."[99] The GSA must also make decisions about the monitoring network in a way that considers the interests of all beneficial users.[100]

Accordinging to our attached Focused Technical Review, the monitoring network does not comply with the density requirement because it contains gaps near Calflax and Huron, in the Upper Aquifer in the northern portion of the subbasin along the northern and western boundary, and in the lower aquifer in the southern portion of the subbasin along the western boundary.[101] The GSP's monitoring network for groundwater levels thus did not ensure that representative

[94] 23 CCR § 354.38(e)(3)
[95] Gov. Code § 11135; Gov. Code § 65008; Government Code §§ 12955, subd. (l).
[96] 23 CCR § 354.34
[97] Water Code § 10723.2.
[98] Gov. Code § 11135; Gov. Code § 65008; Government Code §§ 12955, subd. (l).
[99] 23 CCR § 354.34(c)(1)(A)
[100] 23 CCR § 354.34(b)(2)
[101] Focused Technical Review, p. 4-5, attached as Exhibit A.

monitoring wells detect impacts to all beneficial users of groundwater, including domestic well users, small water systems, and DACs.

The groundwater levels monitoring network for this GSP is therefore inadequate. At a minimum, an adequate groundwater levels monitoring network must include the following elements, which are not present here:

1. **Ensure accurate detection of impacts on drinking water users and DACs:**[102] Ensure that the groundwater level monitoring network includes *representative* monitoring wells *in or near DACs*, and placed in a way that detects impacts to the *vast majority* of drinking water users in the GSP area. If new monitoring wells are required, ensure that the GSP contains a concrete plan to fund and construct new representative monitoring wells within the first year of GSP implementation to ensure that vulnerable communities' drinking water resources are monitored. The plan to improve the monitoring network should include testing of domestic wells in the interim as wells are constructed.
2. **Clearly show representative monitoring well locations in relation to DACs:**[103] Ensure that the representative monitoring wells (RMWs) for groundwater levels are presented on maps and in tables that identify which set of minimum thresholds and measurable objectives will be applied to which RMWs, and that these maps clearly identify the locations of DACs, small water systems and other sensitive users.
3. **Identify and address other drinking water data gaps:**[104] Ensure that the GSP clearly identifies any other gaps in data regarding impacts to drinking water users, and that the GSP contains a clear plan to fill data gaps regarding impacts to drinking water users. The GSP explains how it will fill some monitoring data gaps, but does not ensure that these gaps will capture impacts on all drinking water users, particularly disadvantaged communities.

### *b.* Groundwater Quality Monitoring

SGMA regulations require that GSPs create a groundwater quality monitoring network that will "collect sufficient spatial and temporal data from each applicable principal aquifer to determine groundwater quality trends for water quality indicators, as determined by the Agency, to address known water quality issues."[105]

Currently, the proposed groundwater quality network will only monitor for TDS. This decision was made despite documentation of boron, selenium, arsenic, and sulfate in some locations that may exceed drinking water standards.[106] Only monitoring for TDS, a constituent far less harmful

[102] 23 CCR § 354.34(b)(2) and (f)(3)
[103] 23 CCR § 354.34(b)(2) and (f)(3)
[104] 23 CCR § 354.38(e)(3)
[105] 23 CCR § 354.34(c)(4)
[106] Westside Subbasin GSP pg. 3-58 to 3-59,adopted January 2020

to human health than others identified in the GSP and that has more impact on agricultural production than human health, is a clear prioritization of agricultural water users over drinking water users. The proposed monitoring network for groundwater quality does not fulfill SGMA requirements as it does not collect sufficient data of contaminants of concern in the basin.

Tables 3-22 and 3-23 indicate that the water quality monitoring network will be sampled annually.[107] Sampling water for constituents of concern only once or twice a year is not enough to catch drinking water contamination within a reasonable amount of time, and could leave drinking water users with no recourse for contaminated water for years.

The groundwater quality monitoring network for this GSP is therefore inadequate. At a minimum, an adequate groundwater quality monitoring network must include the following elements, which are not present here:

1. **Ensure that the GSP plans to measure the following contaminants at all representative monitoring wells:[108]**
    a. Contaminants of concern with primary drinking water standards
    b. PFOs/PFOAs and chrome-6, which are contaminants known to be very harmful to human health
    c. Contaminants like uranium, arsenic and nitrate which are known to increase due to groundwater management practices
2. **Clearly describe how the GSA will monitor for drinking water impacts:** Ensure that the GSP includes a description of how the GSA(s) will monitor groundwater contamination that could affect drinking water in the GSA area. Ensure that the representative monitoring wells (RMWs) for groundwater quality are presented on maps and in tables, and that the maps of RMWs clearly identify the locations of DACs, small water systems and other sensitive users.
3. **Ensure accurate detection of impacts on drinking water users and DACs:[109]** Ensure that the groundwater level monitoring network includes *representative* monitoring wells *in or near DACs*, and placed in a way that detects impacts to the *vast majority* of drinking water users in the GSP area. If new monitoring wells are required, ensure that the GSP contains a concrete plan to fund and construct new representative monitoring wells within the first year of GSP implementation to ensure that vulnerable communities' drinking water resources are monitored.. The plan to improve the monitoring network should include testing of domestic wells in the interim as wells are constructed.
4. **Identify baseline contaminant levels at all monitoring wells:** Ensure that the GSP identifies the current contaminant levels, minimum thresholds and measurable objectives

[107] Westside Subbasin GSP pg. 3-58, adopted January 2020
[108] 23 CCR § 354.34(b)(2) and (f)(3)
[109] 23 CCR § 354.34(b)(2) and (f)(3)

at each RMW, so that it is clear to the public how the contamination could change at each RMW site.

5. **Frequent testing:** Ensure that the groundwater quality monitoring network tests for contaminants of concern frequently, in a way that avoids persistent drinking water contamination. Testing should be done monthly.
6. **Collaboration with other agencies:**[110] Ensure that the GSP explains how the GSA(s) will share data with and collaborate with other groundwater quality regulatory programs, such as ILRP, IRWM, and CV SALTS, and nonregulatory programs such as SB 200, the SWRCB's needs assessment and the GAMA program, in order to build better regional understanding of groundwater quality issues and better respond to groundwater quality impacts caused by groundwater management.

## I. Projects and Management Actions Are Inadequate

The GSA must consider the interests of all beneficial users including domestic well owners and disadvantaged communities[111] and avoid disparate impacts on protected groups.[112] The GSP must also concretely outline how each objective and the overall sustainability goal will be achieved.[113] The projects and management actions set forth in the GSP do not demonstrate a path towards achieving sustainability goals in the plan, and do not adequately account for the needs of low-income households or disadvantaged communities. The projects and management actions set forth in the GSP do not demonstrate a path towards achieving sustainability goals in the plan, and do not adequately account for the needs of disadvantaged communities pertaining to protected groups under state law. This undermines the likelihood that the basin will reach its sustainability goal by 2040, as required by SGMA.[114]

### *a.* The Projects and Management Actions are Inadequate, Do Not Protect Drinking Water for Disadvantaged Communities, and Will Likely Cause Disparate Impacts.

The GSP's chapter on Projects and Management Actions contains projects and management actions including surface water imports, groundwater extraction allocations, ASR, pumping restrictions near the San Luis Canal, and percolation basins. This section relies heavily on supply augmentation which will not be reliable in the face of climate change impacts,[115] and does not

[110] 23 CCR § 354.34(e)
[111] Water Code § 10723.2.
[112] Gov. Code § 11135; Gov. Code § 65008; Government Code §§ 12955, subd. (l).
[113] Water Code § 10727.2(b)(2).
[114] Water Code § 10727.2(b)(1).
[115] IPCC, 2018: Impacts of 1.5ºC Global Warming on Natural and Human Systems. In:*Global Warming of 1.5°C. An IPCC Special Report on the impacts of global warming of 1.5°C above pre-industrial levels and related global greenhouse gas emission pathways, in the context of strengthening the global response to the threat of climate change, sustainable development, and efforts to eradicate poverty*; See also AghaKouchak, A., Cheng, L.,

include measures to protect or mitigate for the drinking water impacts to disadvantaged communities caused by the GSA's policy decisions.

Without proactive policies and projects to mitigate forthcoming disparate impacts, communities and homes belonging to protected groups based on race, national origin and ethnicity will experience a disproportionately negative impact in violation of state civil rights law. The GSP's policies will allow for hundreds of domestic wells to go dry and unlimited drinking water contamination from groundwater management activities. Without a mitigation program and projects to protect drinking water resources, the GSP has not considered the interests of domestic well users or disadvantaged communities, and does not avoid significant and unreasonable impacts on these groups.

### b. Minimum Requirements for Projects and Management Actions

The projects and management actions for this GSP are inadequate. At a minimum, adequate projects and management actions must include the following elements, which are not present here:

1. **Include a Drinking Water Well Impact Mitigation Program:** Ensure that the GSP contains a drinking water protection program to prevent impacts to drinking water users and mitigate the drinking water impacts that occur. Please reference the Framework for a Drinking Water Well Impact Mitigation Program that our organization developed with the Community Water Center and Self-Help Enterprises for more details, a draft of which is attached as part of the Human Right to Water Scorecard in Exhibit B.
2. **Establish a clear and proactive plan for demand reduction.** Demand reduction should be fully implemented by 2025.
3. **Describe the potential drinking water impacts of each project or management action.**
4. **Include management actions to measure groundwater extraction using the most scientifically accurate method.** From our conversations with scholars, it is clear that metering is the most accurate way of measuring groundwater extraction. Metering should be required for all users, particularly large agricultural pumpers.
5. **Ensure that the GSP's projects and management actions will not cause a disparate impact:**[116] Ensure that the GSP's projects and management actions, taken as a whole, prevent a disproportionately negative ("disparate") impact from occurring on communities of color in the GSP area. Projects and management actions may not cause, or fail to prevent, disproportionately more dry wells and contaminated water for residents

Mazdiyasni, O., and Farahmand, A. ( 2014), Global warming and changes in risk of concurrent climate extremes: Insights from the 2014 California drought, *Geophys. Res. Lett.*, 41, 8847– 8852, doi:10.1002/2014GL062308.

[116] Gov. Code § 11135; Gov. Code § 65008; Government Code §§ 12955, subd. (l).

of color than for white residents in the GSP area.

## J. Plan Implementation Section is Inadequate

GSP implementation must continue to consider the interests of all beneficial user groups and engage a diversity of stakeholders. The GSP's plan implementation section is missing key elements of public engagement.

The GSP states that the GSA will be instituting an Advisory Committee with DAC representation and a Technical Advisory Committee, and plans for continued public outreach, including coordination with other entities on DAC engagement, emails, website updates, and public workshops.[117] The GSA must also offer interpretation services and translate materials at public meetings and public workshops.

The plan implementation section for this GSP is therefore inadequate. At a minimum, an adequate plan implementation section must include the following elements, which are not present here:

1. **Description of DAC engagement:** Ensure that the GSP describes how ongoing engagement will be conducted during GSP implementation, including but not limited to engagement regarding: decisions about projects, management actions, modifying sustainable management criteria, changes to monitoring networks, and conducting GSP updates.
2. **Notice:**[118] Ensure that the GSP states that ongoing engagement will include clear notices about GSA meetings and workshops that are posted in ways that all stakeholders were made aware of the meetings, and translated into all languages spoken by at least 5 percent of the public served by the agency, who do not speak English or are unable to effectively communicate in English.[119]
3. **Translation of materials:**[120] Ensure that the GSP states that ongoing engagement will include translation of materials into all languages spoken by at least 5 percent of the public served by the agency, who do not speak English or are unable to effectively communicate in English.
4. **Interpretation:**[121] Ensure that the GSP states that ongoing engagement will include. interpretation services provided at board meetings, committee meetings and workshops

[117] Westside Subbasin GSP pg. 5-3 to 5-4, adopted January 2020.
[118] Government Code § 54954(a).
[119] Government Code sec. 7296.2.
[120] Government Code sec. 7296.2.
[121] Government Code sec. 7296.2.

into all languages spoken by at least 5 percent of the public served by the agency, who do not speak English or are unable to effectively communicate in English.

5. **Accessible workshops:** Ensure that the GSP states that ongoing engagement will include workshops held at accessible times and locations for disadvantaged community residents.
6. **DAC representation on GSA board:** Ensure that the GSP states that ongoing engagement will include Boards containing representatives from DACs.
7. **Partnership with local community based organizations:** Ensure that the GSP states that ongoing engagement will include partnership between GSA and community based organizations and nonprofits.
8. **Engagement on key decisions:** Ensure that the GSP states that ongoing engagement will include strategies to keep the public informed and engaged during and prior to critical decisions about the GSP, including but not limited to the five year GSP review, modification of sustainable management criteria, design and adoption of any projects and management actions, and development and adoption of the programs to assist with impaired wells.
9. **Engagement on financial issues:** Ensure that the GSP states that it will conduct outreach to DACs before approving operating budgets and enacting groundwater fees.

## K. The GSP Does Not Comply With California Water Law.

### a. The GSP Conflicts With Water Code § 106.3.

As noted above, California codified access to an adequate supply of safe and affordable drinking water as a human right in 2012. Water Code § 106.3(a) provides as follows:

> It is hereby declared to be the established policy of the state that every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

It is often incorrectly stated that this section is not binding. This is a misnomer for several reasons. First, § 106.3(b) expressly states in that "[a]ll relevant state agencies, including the department, the state board, and the State Department of Public Health, shall consider this state policy when revising, adopting, or establishing policies, regulations, and grant criteria when those policies, regulations, and criteria are pertinent to the uses of water described in this section." The use of the mandatory "shall" rather than a permissive "may" indicates that the requirement of subsection (b) to consider the Human Right to Water is a mandatory duty of DWR and the SWRCB.

Moreover, there is nothing in § 106.3 that indicates that either a GSA or a state agency may take an action that conflicts with the human right of all Californians to access safe and affordable drinking water. Rather, the section and its requirements are subject to only three narrow exceptions. First, subsection (c) states that "[t]his section does not expand any obligation of the state to provide water or to require the expenditure of additional resources to develop water infrastructure beyond the obligations that may exist pursuant to subdivision (b)." This exception applies only to the "state," and does not apply to GSAs. Further, it speaks only to the obligation to provide water or to require development of water infrastructure, not to any obligation to manage groundwater resources in a way that protects existing access to drinking water.

Second, subsection (d) states that "[t]his section shall not apply to water supplies for new development." It is silent regarding water supplies for existing households.

Third, subsection (e) states that "[T]he implementation of this section shall not infringe on the rights or responsibilities of any public water system." As a GSA is not a public water system, this exception is not relevant here.

Given that none of the three exceptions contained in § 106.3 apply to the development and implementation of GSPs, they must be consistent with the Human Right to Water, and separately, DWR must consider the human right on review of GSPs. Because the GSP at issue here conflicts with § 106.3 by interfering with access to safe and affordable drinking water, DWR cannot approve it.

### b. The GSP Threatens to Infringe Upon Water Rights

In enacting SGMA, the legislature found and declared that "[f]ailure to manage groundwater to prevent long-term overdraft infringes on groundwater rights."[122] The text of SGMA further notes that "[n]othing in this part, or in any groundwater management plan adopted pursuant to this part, determines or alters surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights."[123] As discussed in detail above, the GSP allows continued overdraft above the safe yield of the basin, such that drinking water wells (especially domestic wells) will continue to go dry, infringing upon the rights of overlying users of groundwater. DWR cannot approve the GSP until it is revised to protect the rights of residents of disadvantaged communities and/or low-income households who hold overlying rights.[124]

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[122] AB 1739 (2014).
[123] Water Code § 10720.5(b).
[124] *See also* Water Code § 10723.2 [The groundwater sustainability agency shall consider the interests of all beneficial uses and users of groundwater… [including] Domestic well owners."].

### c. The GSP Conflicts with the Reasonable And Beneficial Use Doctrine

The "reasonable and beneficial use" doctrine is codified in the California Constitution. It requires that "the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare."[125] The doctrine applies to all water users, regardless of basis of water right, and all water rights and methods of diversion.[126] A determination of reasonableness of a use "cannot be resolved in vacuo isolated from statewide considerations of transcendent importance."[127]

DWR and the Water Board must ensure that GSPs' water allocations are consistent with the reasonable and beneficial use doctrine.[128] In doing so, DWR and the Board must follow the Legislature's directive to prioritize domestic use of water resources over irrigated agriculture[129] and ensure that SGMA implementation furthers the human right to safe and affordable drinking water[130] — both statewide considerations of transcendent importance. In other words, a GSP that allows use of water for irrigation at the expense of use of water for domestic purposes is not consistent with the reasonable and beneficial use doctrine.

The reasonable and beneficial use doctrine applies here given the negative impacts of the GSP on groundwater supply and quality, which are likely to unreasonably interfere with the use of groundwater for drinking water and other domestic uses. As the GSP authorizes waste and unreasonable use, and indeed does not even analyze the reasonable and beneficial use doctrine at all, it conflicts with the reasonable and beneficial use doctrine and the California Constitution. As a result, DWR cannot approve the GSP as presently drafted.

### d. The GSP Conflicts with the Public Trust Doctrine

The public trust doctrine applies to the waters of the State, and establishes that "the state, as trustee, has a duty to preserve this trust property from harmful diversions by water rights

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[125] Cal Const, Art. X § 2; see also Water Code § 100; United States v. State Water Resources Control Bd. (1986) 182 Cal.App.3d 82, 105 ["…superimposed on those basic principles defining water rights is the overriding constitutional limitation that the water be used as reasonably required for the beneficial use to be served."].

[126] Peabody v. Vallejo (1935) 2 Cal.2d 351, 367, 372; Light v. State Water Resources Control Board, (2014) 226 Cal. App. 4th 1463, 1479.

[127] Joslin v. Marin Municipal Water Dist. (1967) 67 Cal.2d 132, 140.

[128] Water Code § 275 ["The department and board shall take all appropriate proceedings or actions before executive, legislative, or judicial agencies to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of water in this state"]; *Light*, 226 Cal.App.4th at 1482-83 [same].

[129] Water Code § 106 ["It is hereby declared to be the established policy of this State that the use of water for domestic purposes is the highest use of water and that the next highest use is for irrigation"]; *United States v. State Water Resources Control Board* (1986) 182 Cal.App.3d 82, 103 .

[130] Water Code § 106.3.

holders" and that thus "no one has a vested right to use water in a manner harmful to the state's waters."[131]

The public trust doctrine has recently been applied to groundwater where there is a hydrological connection between the groundwater and a navigable surface water body.[132] In *Environmental Law Foundation v. State Water Resources Control Board* ("*ELF*"), the court held that the public trust doctrine applies to "the extraction of groundwater that adversely impacts a navigable waterway" and that the government has an affirmative duty to take the public trust into account in the planning and allocation of water resources.[133] Under *ELF*, the Public Trust doctrine imposes an affirmative and independent obligation to consider the public trust that applies to DWR's decisions regarding submitted GSPs, imposing a legal duty on DWR to not only consider the potential adverse impacts of groundwater extractions on navigable waterways but also "to protect public trust uses whenever feasible."[134] The court also specifically held that SGMA does not supplant the requirements of the common law public trust doctrine.[135]

Notably, the public trust doctrine applies to both currently navigable surface water bodies and surface water bodies that were historically navigable at the time of statehood.[136] Further, certain rivers like the San Joaquin River have been declared navigable in statute.[137]

In contrast to these requirements, the GSP does not consider impacts on public trust resources, or attempt to avoid insofar as feasible harm to the public's interest in those resources. DWR cannot approve the GSP without evaluating impacts to public trust resources and protecting public trust uses whenever feasible. Specifically, DWR must (1) identify any public trust resources within the basin; (2) identify any public trust uses within the basin; (3) identify and analyzing potential adverse impacts of groundwater extractions on public trust resources and uses; and (4) determine the feasibility of protecting public trust uses and protect such uses whenever feasible.

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[131] *United States v. State Water Resources Control Bd.* (1986) 182 Cal.App.3d 82, 106; *see also Nat'l Audubon Soc'y v. Superior Court* (1983) 33 Cal.3d 419, 426 ["before state courts and agencies approve water diversions they should consider the effect of such diversions upon interests protected by the public trust, and attempt, so far as feasible, to avoid or minimize any harm to those interests."].
[132] *Environmental Law Foundation v. State Water Resources Control Bd.* (2018) 26 Cal.App.5th 844, 844.
[133] *Id.* at 856-62.
[134] Id. at 865.
[135] *Id.* at 862-870.
[136] *See San Francisco Baykeeper, Inc. v. State Lands Com.* (2015) 242 Cal.App.4th 202, 232 citing *Western Oil & Gas Asso. v. State Lands Com.* (1980) 105 Cal.App.3d 554, 562 ["When California became a state in 1850 it succeeded to sovereign ownership of various tidelands and submerged lands under the terms of common law trust doctrine… ."]; PPL Montana, LLC v. Montana (2012) 565 U.S. 576, 592 ["For state title under the equal-footing doctrine, navigability is determined at the time of statehood...and based on the 'natural and ordinary condition' of the water."] [internal citation omitted].
[137] Harb. & Nav. Code s. 105 [affirmatively declaring the San Joaquin River to be navigable "between its mouth and Sycamore Point."]..

DWR cannot approve the GSP because it fails to protect access to drinking water. We welcome the opportunity to discuss our concerns with the Department of Water Resources and the State Water Resources Control Board. Furthermore, we urge DWR to review this and all other GSPs according to the Human Right to Water Scorecard, as we have done in this letter.[138] We hope to successfully work with GSAs, communities, DWR and the SWRCB to ensure that groundwater management is equitable and sufficiently protective of vital drinking water resources. Going forward, we ask DWR to ensure that GSPs currently being developed adhere to the standards in the Human Right to Water Scorecard, and that these standards are followed during GSP implementation.

Sincerely,

Amanda Monaco and Nataly Escobedo Garcia
Leadership Counsel for Justice and Accountability

[138] Attached as Exhibit B.