June 3, 2020

Re: Recommendations for DWR and SWRCB Action Regarding the East Kaweah GSA Groundwater Sustainability Plan

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 East Kaweah GSA area have the most to gain and the most to lose from SGMA implementation in the region. Communities like Tooleville, Tonyville, El
Rancho and Plainview 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 and pay increased electricity costs 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 East Kaweah GSA has not adequately done so in this GSP; as described below, the current GSP allows 85% of wells to go dry in the subbasin and puts domestic wells at risk of contamination from many unmonitored drinking water contaminations, with little funding allocated to help address drinking water impacts.

The Department of Water Resources (DWR) and the State Water Resources Control Board (SWRCB) must evaluate 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.”

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. 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. 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 users and users of groundwater in the subbasin, that they encourage the participation of a diverse variety of stakeholders, and that they “consider the interests of” an enumerated list of all types of beneficial users, including disadvantaged communities on domestic wells and community water systems.

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1 Water Code § 106.3(a)
2 Water Code § 106.3(b)
3 Attached as Exhibit B.
4 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.”].
systems.\(^5\) 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.\(^6\) 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.\(^7\) DWR and the SWRCB must evaluate GSPs in accordance with all of these and other relevant legal obligations.

Unfortunately, the East Kaweah 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 noted above, we reviewed the East Kaweah 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 a disparate impact on protected classes unless significantly modified, and does not comply with the Human Right to Water statute.\(^8\)

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\(^5\) Water Code § 10723.2.
\(^6\) 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. (f) [unlawful to discriminate through public or private land use practices, decisions or authorizations].
\(^7\) Gov. Code § 12900 et seq.
\(^8\) 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. As discussed below, the GSP lacks required information and analyses, including among other things an analysis of the significance and reasonableness of sustainable management criteria and a complete description of the water budget. Therefore, the GSP fails to “include[] the information required by [SGMA] and [its accompanying regulations],” and is thus inadequate.9 These inadequacies prevent DWR from being able to determine that the GSP will likely achieve its sustainability goal.10 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 East Kaweah GSA and DWR must ensure that the GSP does not cause disparate impacts on protected groups, and must prioritize drinking water as an essential pillar of their groundwater sustainability plan. The GSP does not comply with these requirements.

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.11 In addition, the state’s Fair

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9 23 CCR § 355.4(a)(2).
10 Water Code § 10733(a); 23 CCR § 355.4(b).
11 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
Employment and Housing Act guarantees all Californians the right to hold and enjoy housing without discrimination based on race, color, or national origin.\textsuperscript{12}

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 disproportionately on private wells because adequate public services were not developed in those communities.”\textsuperscript{13} 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.\textsuperscript{14} Similarly, communities of color in the Central Valley are disproportionately impacted by groundwater contamination.\textsuperscript{15}

Consistent with these studies, this GSP will cause disproportionate negative impacts on communities of color reliant on small water systems and domestic wells. There are at least 114 disadvantaged unincorporated communities (DUCs) within Tulare County, many of which will be impacted by this GSP.\textsuperscript{16} Approximately 82\% of the population of Tulare DUCs are people of color, significantly higher than the approximately 58\% of the population of the County overall who are people of color. As an example, according to the most recent American Communities Survey data, Tooleville is 96.9\% Hispanic or Latino.\textsuperscript{17}

As discussed below, the GSP’s determinations and policy decisions will result in many more dry wells, and will not prevent increased drinking water contamination from groundwater activities, particularly for disadvantaged communities reliant on small water systems and domestic wells. This will cause severe harm to residents’ health and daily lives, as well as potentially permanent impacts on residents’ finances and living situations. Additionally, the GSP contains no concrete 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

\textsuperscript{12} Gov. Code § 12900 et seq.


\textsuperscript{14} \textit{Id.} at p. 6.


\textsuperscript{17} Data available at https://data.census.gov/cedsci/, accessed on June 1, 2020.
color, the GSP is likely to cause disparate impacts on protected 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.\(^{18}\) “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.”\(^{19}\) “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.”\(^{20}\) 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.\(^{21}\)

If a GSP is unlikely to achieve its sustainability goal, DWR cannot approve the plan.\(^{22}\) 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.\(^{23}\) Likewise, a plan that cannot achieve sustainable groundwater management has failed to set a valid sustainability goal, in violation of SGMA.\(^{24}\) 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.\(^{25}\)

In addition to defining undesirable results, GSPs must quantify benchmarks for groundwater conditions, or “minimum thresholds,” that may cause undesirable results if exceeded.\(^{26}\) 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.”\(^{27}\) A GSP’s determination of when an undesirable result will occur must be based on analysis of when

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18 Water Code § 10733(a).
19 Water Code § 10721(u).
20 Water Code § 10721(v).
21 Water Code § 10721(x).
22 Water Code § 10733(a).
23 Water Code § 10721(v).
24 Water Code § 10721(u).
25 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.”).
26 23 CCR 354.28(a).
27 23 CCR 354.28(b)(2).
adverse impacts become “significant” and “unreasonable.”²⁸

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.²⁹ Failure to consider the interests of a category or categories of beneficial users is itself grounds for DWR to decline to approve a plan.³⁰ 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.³¹

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.³² 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.³³

²⁸ 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.”].

²⁹ Water Code § 10723.2.

³⁰ Water Code § 10723.2; 23 CCR 355.4(b) [“The Department shall evaluate a Plan … to determine whether the Plan … complies with the Act ….”].

³¹ 23 CCR 355.4(b)(4).

³² California Gov. Code § 54954.1

³³ 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.” 34 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.” 35 GSAs thus must engage “diverse social, cultural, and economic elements of the population within the basin.” 36 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. 37

The East Kaweah GSA has a stakeholder engagement plan, has conducted a series of public workshops for soliciting public input into the plan, and has worked with local community-based organizations to specifically solicit feedback from disadvantaged communities in the GSA area. Community-based organizations have helped the GSA reach out to residents of local disadvantaged communities for feedback and, in spaces where residents cannot be present, have helped represent the needs and interests of disadvantaged communities on an ongoing basis throughout the GSP development process. Leadership Counsel, Self-Help Enterprises and the Community Water Center have participated in Technical Advisory Committee meetings, Advisory Committee meetings, at GSA board meetings, and at public workshops to provide recommendations and input on the plan to protect drinking water resources for domestic well users and disadvantaged communities. The GSA has also gathered input from these three local community-based organizations in in-person meetings with GSA staff and consultants regarding our common concerns. This engagement has been a step in the right direction towards inclusive and transparent decision-making.

The GSA also worked with our organization and Self-Help Enterprises to host workshops that would be at accessible times and places for residents, and provided translated materials and interpretation services at these workshops.

The resulting GSP, however, lacks policies and projects responsive to the needs and concerns voiced by community residents and community-based organizations. While we would like to acknowledge that the East Kaweah GSA has now included a potential Drinking Water Well Protection Program under its wellhead management action in the GSP, we want to highlight that the GSA has not yet taken steps to adopt it, and its sustainable management criteria will still

34 Water Code § 10723.2.
35 23 CCR 354.10(d).
37 23 CCR 355.4(b)(4).
allow widespread drinking water well impacts and drinking water contamination issues in disadvantaged communities.\textsuperscript{38}

Furthermore, the GSA has created hostility during board meetings when LCJA employees have provided feedback regarding impacts to drinking water. During a board meeting, one instance, GSA board members made strong and unprofessional verbal comments when we challenged that drinking water impacts were not addressed by the final GSP. In response, some members stated that our views were “myopic” and should be redirected to “Sacramento.” These and other instances during other meetings have made the environment unwelcoming and do not reflect how a public agency should respond to comments from the public.

In general, the GSP only includes very general information on what stakeholder input the GSA has received, mostly input from an online survey that is referenced in their “Communication and Engagement Plan,” and only vaguely discusses how the GSA used this input to shape the GSP. The GSP includes responses to stakeholder input through Appendix 1-D. However, the GSP did not incorporate critical feedback from disadvantaged community residents and representatives into the final GSP. Therefore, the final GSP did not incorporate feedback from all types of beneficial users, especially ones related to critical drinking water impacts and mitigation.

The GSA did not provide interpretation services or translated materials at its board and advisory committee meetings, or Kaweah subbasin coordination meetings. Notice of board meetings is over email and only in English, which is not accessible for residents without email and who do not speak English. The GSA advisory committee included a disadvantaged community representative, but the GSA board did not include representation from DACs.

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. **Notice:**\textsuperscript{39} Ensure that the GSA provided clear notice to the public about GSA meetings to develop the GSP (including board meetings, workshops and Kaweah subbasin coordination meetings), 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.\textsuperscript{40}

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\textsuperscript{38} East Kaweah GSA Final GSP, p. 5-35, published January 2020

\textsuperscript{39} Government Code § 54954(a).

\textsuperscript{40} 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
2. **Translation of materials:** Ensure that the GSA translated materials at all meetings and workshops (including board meetings, workshops and Kaweah subbasin coordination meetings) 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.

3. **Interpretation:** Ensure that the GSA provided interpretation services at board meetings, committee meetings, Kaweah subbasin coordination meetings and workshops for all languages spoken by at least 5 percent of the public served by the agency, to allow those who do not speak English or are unable to effectively communicate in English to effectively participate.

4. **DAC representation on GSA board:** Ensure that the GSA developed the GSP with a Board that contained representatives from DACs.

5. **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. DWR regulations also require that the historical water budget “start[] with the most recent available information.” In order to meet 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.”

The final GSP is incomplete and does not meet these requirements. The GSP must include further details on how small water system demand was calculated into the water budget. Small water system demand was reported to be estimated from data in previously published reports. Very little specific information is provided in the GSP on the methods and assumptions used to estimate the small water system demand. No maps are provided showing the location of the small water systems. The annual demand from small water systems is shown to increase throughout the water budget period, but it is not possible to determine if the values are reasonable from the information provided in the GSP. Additional detailed information is

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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.”

41 Government Code sec. 7296.2.
42 Government Code sec. 7296.2.
43 23 CCR § 354.18.
44 23 CCR 354.18(c)(2)(B).
necessary for the public to be able to evaluate the accuracy and appropriateness of the small water system demand incorporated in the GSP.

The GSP must clarify how the GSA calculated rural domestic pumping. Rural domestic water demand and consumptive use was estimated using an assumed demand rate of 2 AFY per dwelling and the density of rural domestic dwellings. The GSP reports that the density of these dwellings has not changed significantly over time and, therefore, rural domestic pumpage has not changed over time. The method and data used to determine the density of these dwellings is not reported and cannot be evaluated. No maps are provided in the GSP showing the locations of these rural domestic users. Rural domestic pumping for the EKGSA area is reported in Section 2.5.3.3 to be 3,400 AFY. The rural domestic pumping for the entire subbasin reported in Appendix 2-A is 2,272 AFY. Since the EK GSA area is only a portion of the entire subbasin, the rural domestic pumping in the EK GSA should be less than the rural domestic pumping reported for the entire subbasin but the GSP instead reports that EK GSA rural domestic pumpage is greater than rural domestic pumpage for the entire subbasin.

The GSP must specify what fraction of pumping it assumes returns to groundwater. Page 99 of Appendix 2-1 states that “Similar to the rural small water system analysis above, a 70 percent portion of the pumped rural domestic water is assumed to return to groundwater via septic system percolation and irrigation return flows (Dziegielewski and Kiefer, 2010). Throughout the Subbasin, an annual total pumpage for rural users was 2,272 AF/WY on average, 30 percent of which returned to groundwater.” The assumed fraction of total rural domestic pumping that returns to groundwater and the calculation of net rural domestic pumping reported in Appendix 2-A is inconsistent. It is unclear if the assumed fraction of pumping that returns to groundwater is 30% or 70%.

Important details on future land use changes are lacking from the water budget section. Based on the GSP, current land use was determined using the 2014 DWR land use survey data. Urban land is reported to be 4.5% the total area in the EK GSA. Historical changes in land use area are not reported and it cannot be determined based on the information provided in the GSP if land use changes, including changes in urban areas, were incorporated into the water budget.

The GSP should present the water budget results for subareas of the subbasin to allow for assessment of the spatial variability in the water budget components, and provide information more useful for the evaluation of the impacts on areas such as DACs and community water systems. Section 2.5 presents annual water budget components for water years 1997-2017 for the EK GSA area and Appendix 2-A presents the same information for the subbasin. Components related to urban and rural domestic water use are lumped into two components (wastewater
inflow and M&I pumpage). The relative contribution of rural domestic and small water system users to these components cannot be evaluated at this scale.

The GSP does not include any discussion of the uncertainty in the data used for the model and its affect on the water budget results. The GSP should include an uncertainty analysis to identify the plausible range in water budget results and an indication of the magnitude of the effects these inherent uncertainties may have on the water budget results.

A discussion of how a groundwater allocation scheme will impact each GSA or the rural domestic and small water system users should be added to the GSP so that the public may be able understand and evaluate the implications of the sustainable yield evaluation. The GSP includes minimal discussion of the sustainable yield of the subbasin or the EK GSA area, but does note that the subbasin is in overdraft. A Water Accounting Framework is included, which provides each GSA with a groundwater supply that is the beginning of a potential groundwater allocation, but there is no discussion of how the allocation will impact each GSA or the rural domestic and small water system users.

A discussion on the details of climate change impacts on the future water budget should be added so that the public may be able understand and evaluate the climate change assessment and its implication for domestic well users, DACs, and community water systems. The GSP assesses the effect of climate change on the water budget by updating the model to incorporate projected changes in evapotranspiration, precipitation, streamflow, and imported water due to climate change. The adjustments to these data sets were made based on guidance and climate change data provided by DWR. The GSP includes limited discussion of the effects of these changes on the EK GSA water budget and there is no discussion of the impacts to specific areas such as areas of rural domestic development or small community water systems. It is noted that both agricultural and M&I demand will increase by 26%, but no information is provided on how these projected demand increases will be met or reduced to meet sustainability goals.

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,\(^{45}\) and must be based on an analysis of what are “significant”

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\(^{45}\) Water Code § 10723.2.
and “unreasonable” impacts. These policy decisions must also avoid disparate impacts on protected groups pursuant to state and federal law. As discussed below, the GSP does not meet these requirements.

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.” GSAs must also describe the “processes and criteria relied upon to define undesirable results.” 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 for groundwater levels are inadequate because significant and unreasonable impacts will occur without triggering an undesirable result. The GSP states that “undesirable results occur when one third of the representative monitoring sites in all three GSA jurisdictions exceed their respective minimum threshold water level elevations.” Violating one-third of the minimum thresholds of the entire subbasin’s representative monitoring wells would have unreasonably severe impacts on domestic well users, particularly given that reaching the minimum thresholds in the East Kaweah GSA alone would impact 85% of domestic wells in the East Kaweah GSA area. The GSP acknowledges the serious financial impact of having to drill deeper wells, and the impact of hitting bedrock in the east of the subbasin, but the undesirable result for groundwater levels does not prevent either of these impacts, or acknowledge that deeper wells will mean higher energy costs for residents. Furthermore, the vast majority of impacts the GSA would allow to go dry before triggering plan failure would be overwhelmingly upon domestic well users and disadvantaged communities, causing a disparate impact in violation of state law. In order to comply with SGMA and avoid these disparate impacts, the GSA must change the undesirable result to prevent widespread drinking water impacts to protected groups in the GSA area.

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46 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.”].
49 23 CCR § 354.26.
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.” 50

The GSP sets measurable objectives for groundwater levels at Spring 2017 levels. In our meeting with GSA staff on August 29th, 2019, GSA staff stated that no wells currently in use will be impacted if the GSA maintains Spring 2017 levels. The GSA did a preliminary analysis of how many wells would go dry at the measurable objective, and concluded that 12% of domestic wells would go dry. 51 However, this analysis was not done until after the sustainable management criteria were already determined, so therefore the GSA did not consider impacts to beneficial users.

It is also unclear whether restricting threshold areas to Spring 2017 levels will achieve the sustainable yield for the GSA area.

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.” 52 SGMA requires GSAs to analyze both the significance and reasonableness of proposed minimum thresholds, 53 and minimum thresholds must have the purpose of avoiding “significant and unreasonable” impacts on beneficial users. 54 The GSA’s determination of what is “significant and unreasonable” must consider the impacts on all types of beneficial users, including disadvantaged communities. 55 For groundwater levels specifically, GSAs must place minimum thresholds for each monitoring site at the level “that may lead to undesirable results.” 56 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.” 57

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50 23 CCR § 354.30(a)
51 East Kaweah GSA Final GSP, p. 3-24, published January 2020
52 23 CCR § 354.28.
54 23 CCR § 354.26.
55 Water Code § 10723.2.
56 23 CCR § 354.28.
57 23 CCR § 354.28.
The East Kaweah GSA’s approach to setting minimum thresholds does not consider the significance or reasonableness of impacts on beneficial users, especially disadvantaged communities. The GSA set “threshold areas,” and then set minimum thresholds for each threshold region related to an assumed trajectory of decreasing water levels over the next 20 years, without regard to well depths or other potential impacts. The “glidepath” and the threshold regions were based on a “business as usual” scenario designed to continue allowing pumping in certain areas and diminish the plan’s financial impact on agricultural water users. Based on our Focused Technical Review, the proposed minimum thresholds will either fully or partially dewater more than 85% of the domestic wells in the GSA area.\textsuperscript{58} Based on the GSA’s own analysis, approximately one-third of all wells may go dry at the proposed minimum thresholds, one-half of which are domestic wells.\textsuperscript{59}

Despite requests in written and oral comments, the GSA has not modified its minimum thresholds to avoid these impacts. The GSA lists a potential Drinking Water Well Protection Program as a potential management action, and states that it intends to develop a more complete well canvass of the area to assist in creating this program, but has not adopted the program. The GSA has based its decisions about minimum thresholds primarily on the impact of groundwater management on the agricultural industry, at the expense of the water needs of 85% of the GSA area’s domestic well users, without committing to a program to mitigate such impacts.

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,\textsuperscript{60} measurable objectives and minimum thresholds,\textsuperscript{61} 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 energy 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:**\textsuperscript{62} The GSA must analyze “when significant and unreasonable effects ... are caused by groundwater conditions occurring throughout the

\textsuperscript{58} Focused Technical Review, East Kaweah GSA Administrative Draft Groundwater Sustainability Plan (GSP), p. 2, published July 2019
\textsuperscript{59} East Kaweah GSA Final GSP, p. 3-21, published January 31st, 2020
\textsuperscript{60} 23 CCR § 354.26(c)
\textsuperscript{61} 23 CCR § 354.28(b)(4)
\textsuperscript{62} Water Code § 10723.2
taking into account the beneficial users of groundwater and the basin’s specific circumstances.\textsuperscript{63} Therefore the GSP must explicitly state how the GSAs 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:**\textsuperscript{64} 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.

4. **Implement DAC and drinking water user input into sustainable management criteria:**\textsuperscript{65} 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:**\textsuperscript{66} Ensure that the measurable objectives and minimum thresholds for groundwater levels are established in such a way that prevents a disparate 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.\textsuperscript{67} 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

\textsuperscript{63} 23 CCR § 354.26.
\textsuperscript{64} 23 CCR § 354.38(e)(3)
\textsuperscript{65} 23 CCR § 354.10(d); DWR Guidance Document for Groundwater Sustainability Plans: Stakeholder Communication and Engagement, p.1.
\textsuperscript{66} Gov. Code § 11135; Gov. Code § 65008; Government Code §§ 12955, subd. (l).
groundwater.\textsuperscript{68} A groundwater market is also likely to cause geographic concentrations of pumping that increases 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,\textsuperscript{69} based on a determination of what is a “significant and unreasonable” impact on all beneficial users, including domestic well users and disadvantaged communities.\textsuperscript{70} The GSA’s undesirable results allow for significant and unreasonable impacts to drinking water users, are not based on an evaluation of whether impacts to all beneficial users are significant and unreasonable, and leave domestic well users outside of urban areas unprotected from drinking water contamination.

\textbf{a. The “Contaminants of Concern” Being Monitored For Groundwater Quality Sustainable Management Criteria Are Inadequate}

Under this GSP the GSA will not monitor all drinking water contaminants for compliance with sustainable management criteria, so new contaminants and spreading contaminants will likely go unchecked. The GSP has listed the following contaminants as contaminants of concern (COC) which will be tested for quarterly for all public supply wells: 1,2,3-Trichloropropane (1,2,3 TCP), 1,2-Dibromo-3-chloropropane (DBCP), Arsenic, Hexavalent Chromium, Nitrate, Perchlorate, Sodium, Chloride, and Total Dissolved Solids (TDS).\textsuperscript{71} The GSP states that “the development and monitoring schedule of the aforementioned water quality COC list will be an iterative process. Over time, COCs that were historically a cause for concern within the basin may dissipate, while other COCs may emerge. The GSA plans to annually assess, based on updates to data and research made publicly available, the applicability of the COC list and add or remove COCs as needed to sufficiently protect beneficial uses in the area.”\textsuperscript{72} While this process of adding COCs based on new data will allow the GSA to track contaminants that are known to


\textsuperscript{69} Water Code § 10721(w)(4); 23 CCR § 354.28(c)(4).

\textsuperscript{70} Water Code §§ 10727.2(d)(2); 10721(x)(4)

\textsuperscript{71} East Kaweah GSA Final GSP, p. 4-15, published January 31st, 2020.

\textsuperscript{72} East Kaweah GSA Final GSP, p. 3-30, published January 31st, 2020.
have emerged, it will not catch these contaminants in time to avoid groundwater quality impacts from its management activities and pumping patterns. Instead, in order to protect drinking water the GSA must start with monitoring all drinking water contaminants for compliance with sustainable management criteria, as well as contaminants that are known to increase due to groundwater management activities.

Further, the GSP does not protect domestic wells from increased groundwater contamination from drinking water contaminants. The monitoring network for groundwater quality does not monitor for any primary drinking water contaminants outside of municipal water systems. Based on Table 4-2, only 10 wells will be used as representative monitoring wells, and all of these wells are municipal wells. While some agricultural/irrigation wells will also be used as representative monitoring wells, those wells will only test for the three agricultural contaminants, and not for drinking water contaminants.

Furthermore, the GSA’s representative monitoring network are all located in the southern portion of the GSA area, and effectively consist of only six locations. As shown in the Focused Technical Review attached, this leaves 40% of the domestic wells in the GSA area unmonitored and unprotected from groundwater quality impacts. This policy decision has not considered the interests of this beneficial user type, and will cause a disparate impact on protected groups pursuant to state civil rights law.

a. 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.” GSAs must also describe the “processes and criteria relied upon to define undesirable results.” The undesirable result cannot have a disparate impact on protected groups pursuant to state civil rights law.

The GSP defines the undesirable result for water quality degradation as the point at which “due to the impacts of East Kaweah GSA’s projects or management actions on groundwater flow, concentrations of constituents of concern increase beyond the baseline concentration to significantly impact the beneficial uses and users of Kaweah Subbasin groundwater.”

This undesirable result is overly vague, and does not allow for the public to understand when the GSA will decide that groundwater quality impacts are too “significant and unreasonable.” The

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73 East Kaweah GSA Final GSP, p. 4-7, published January 31st, 2020
74 23 CCR § 354.26.
75 23 CCR § 354.26.
GSA mentions the drinking water impacts of degraded groundwater quality, but does not adequately review the potential impacts of this undesirable result on beneficial users, and does not adequately describe the “processes and criteria” it relied upon to set its undesirable result for groundwater quality. It also appears to exclude groundwater quality impacts caused by discharge of contaminants caused by GSA’s projects or management actions, including discharges caused by groundwater recharge. This is not an adequate, accountable or clear measure, and could lead to many drinking water impacts on the most vulnerable groundwater users in the GSA.

**b. The Measurable Objectives for Groundwater Quality are Inadequate**

The SGMA regulations require the GSA to set measurable objectives and interim milestones that “achieve the sustainability goal for the basin within 20 years of Plan implementation and to continue to sustainably manage the groundwater basin over the planning and implementation horizon.” Measurable objectives must be more ambitious than the minimum thresholds, and must be the point at which the GSA has determined that it will not exceed its sustainable yield, and therefore avoid “significant and unreasonable” impacts on beneficial users.

The GSP does not clearly define a measurable objective for groundwater quality, stating the measurable objective as “No unreasonable increase in concentration caused by groundwater pumping and recharge efforts.”77 However, the GSP does not contain this analysis or show concrete data to this effect, so stakeholders cannot effectively evaluate the impact of this minimum threshold on drinking water resources in the GSA area. This standard does not show how it will achieve the sustainability goal, because the measurable objectives are not clearly or concretely defined.

Furthermore, it is not clear how the GSA considered beneficial users’ interests in determining this measurable objective, or how it will do so in the future on a case-by-case basis. The GSP clarifies that this measurable objective will be triggered when “a COC concentration 10-year average reaches 80% of the recognized standard. If a COC concentration has not yet reached 80% of the recognized standard, but a statistically significant rapid rate of degradation towards the recognized standard exists, that may also trigger first action steps.”78 Despite this attempt at clarification, it is still very unclear how exactly the 10-year average will be triggered.

Moreover, use of a 10-year average is inappropriate. It allows significant impacts that can persist for years without triggering the measurable objective. For example, if the concentration of nitrate in a monitored well is at 5 mg/L (measured as N) for eight years, then spikes above the drinking water standard of 10 mg/L to 15 mg/L for two years, the 10-year average is only 5.5 mg/L despite exceedance of the MCL/WQO. It would take another five years of nitrate testing at 15 mg/L (for a total of 7 years of exceedances) for the running annual average to reach 10 mg/L. This does not protect sources of drinking water.

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Because the measurable objective allows significant and unreasonable impacts to those who use the water for domestic purposes, DWR cannot approve the GSP.

c. The Minimum Thresholds for Groundwater Quality Are Inadequate

GSAs must place groundwater quality minimum thresholds for each monitoring site at the level “that may lead to undesirable results.” Under the SGMA regulations, the GSP 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.”

The GSP sets water quality minimum thresholds “based on a 10-year running average for [constituents of concern] COCs at a monitoring location. Minimum thresholds will breakdown to two categories, as follows:

- For wells with 10-year average COC concentrations less than the recognized standard, no increase in concentration beyond the standard
- For wells with 10-year average COC concentrations greater than the recognized standard, no increases beyond 20% to the initial average concentration at GSP implementation.”

The GSA did not define their methodology for determining minimum thresholds for water quality. The GSP states “No long-term (10-yr. running average) increase in concentration beyond recognized Ag or Urban standards for those wells under the threshold. For those wells over the recognized Ag or Urban standards, no long-term increases by 20% in concentration.” The point at which the minimum threshold will be triggered is unclear, and would allow for years of contamination before GSA action is taken to prevent drinking water contamination. In addition to this, there is no language in the GSP that makes clear how it will be determined that actions, or inactions, of the GSA have lead to degraded groundwater quality.

As discussed above, use of a 10-year average is wholly inappropriate. The minimum threshold will allow years of contamination before the standard is reached and action is taken. While the GSA consultant explained to us that a spike in contamination could alert the GSA to a potential contamination problem and cause an analysis of causation and subsequent GSA action to curb contamination, this action is not clearly triggered by the minimum threshold as written in the GSP. Moreover, the GSP makes this trigger even less clear by stating that that “COC concentrations in the range of 75% to 125% of the recognized standard may have challenges in

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79 23 CCR § 354.28.
80 23 CCR § 354.28.
evaluating statistical trends as the allowable error from laboratory analyses may influence the percentage." If the spike in contamination was not large enough to cause the rolling 10-year average to show an MCL violation or a 20% increase in the contaminant and the measures of contaminant concentrations are deemed to have too much error, the GSP allows the GSA to ignore a multi-year spike in contamination resulting from groundwater management activities. This policy allows a community to experience many years of severe drinking water contamination before the GSA corrects groundwater pumping that is pulling a contaminant plume into their drinking water supply, halts recharge or irrigation activities causing uranium discharges or nitrate flushing, or curbs groundwater pumping that is causing an increase in groundwater contamination (e.g., arsenic discharge from clay).

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:**
   a. Contaminants with primary drinking water standards,
   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

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86 23 CCR § 354.34(b)(2) and (f)(3)
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, measurable objectives and minimum thresholds.

6. **Implement DAC and drinking water user input into sustainable management criteria:** 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.

7. **Incorporate new drinking water data into sustainable management criteria:** 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:** 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

The GSA’s monitoring network does not comply with SGMA regulations, and fails to capture drinking water impacts to disadvantaged communities and domestic wells. The GSA have therefore not considered the interests of this beneficial user group and the GSP is likely to cause a disparate impact on protected groups who are dependent on domestic wells in the GSA area.

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87 23 CCR § 354.26(c)
88 23 CCR § 354.28(b)(4)
89 23 CCR § 354.10(d); DWR Guidance Document for Groundwater Sustainability Plans: Stakeholder Communication and Engagement, p.1.
90 23 CCR § 354.38(e)(3)
Moreover, the lack of adequate monitoring will make it impossible for the GSA to monitor drinking water to detect and prevent significant and unreasonable impacts to those users, undermining the likelihood that the basin will achieve sustainable groundwater management.

\[a. \ \textbf{Groundwater Level Monitoring}\]

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.”\(^{92}\) The GSA must also make decisions about the monitoring network in a way that considers the interests of all beneficial users.\(^{93}\)

The GSA’s groundwater levels monitoring wells are unequally distributed throughout the subbasin with major monitoring gaps near disadvantaged communities, including the areas north of Ivanhoe and Woodlake. The network also fails to capture drinking water impacts to domestic wells in unincorporated areas, as it only monitors municipal wells in incorporated areas, and has therefore not considered the interests of this beneficial user group and is likely to cause a disparate impact on the protected groups dependent on domestic wells. The network does not have the spacial density to timely detect and prevent impacts to sources of drinking water and beneficial users.

This monitoring network is not sufficient to protect drinking water resources and comply with the requirements. Such a monitoring network must, at a minimum, contain the following elements:

1. **Ensure accurate detection of impacts on drinking water users and DACs:**\(^{94}\) 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:**\(^{95}\) 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

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\(^{92}\) 23 CCR § 354.34(c)(1)(A)
\(^{93}\) 23 CCR § 354.34(b)(2)
\(^{94}\) 23 CCR § 354.34(b)(2) and (f)(3)
\(^{95}\) 23 CCR § 354.34(b)(2) and (f)(3)
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:** 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.”

The GSP sets minimum thresholds and measurable objectives for groundwater quality for only ten monitoring wells within the GSA area; however, given that several wells are located very near each other, based on the spatial distribution, the network effectively consists of only six locations within the GSA. This represents one well for approximately 31 square miles of groundwater subbasin, or three wells per 100 square miles. This monitoring well density is near the bottom of the established DWR guidance for monitoring well densities of between 0.2 and 10 wells per 100 square miles. Further, these wells are not spaced evenly across the subbasin. All monitoring wells for water quality are located in the southern portion of the subbasin. Thus, no water quality monitoring will be performed near the disadvantaged communities of Ivanhoe or Woodlake, which represents a population of over 11,500 people. In addition, approximately 300 domestic wells are located in the area surrounding and north of Ivanhoe and Woodlake, which represents approximately 40% of the domestic wells in the subbasin. Therefore, the proposed network of water quality monitoring is insufficient to monitor impacts to groundwater for drinking water beneficial users, particularly domestic well users and disadvantaged communities.

The GSP states that “COC concentrations will be with respect to the beneficial use the groundwater well supplies. Thus, public drinking wells will be subject to the municipal minimum threshold standard, and irrigation wells will be subject to the agricultural minimum threshold standards. A compiled list of COCs relevant to the EKGSA and their respective threshold levels is presented in Table 3-6”. Based on the GSP, the intended use of each

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90 23 CCR § 354.38(e)(3)
91 23 CCR § 354.34(c)(4)
92 Focused Technical Review, Exhibit A, pg. 3.
93 Focused Technical Review, Exhibit A, pg. 3.
monitoring well is the only beneficial use that will be evaluated for with respect to water quality thresholds. Thus, even when an agricultural supply well used for water quality monitoring is near drinking water wells, standards associated with drinking water use will not be monitored or considered.

The monitoring wells for water quality shown in Table 4-2 are indicated as municipal, drinking water wells. However, Table 3-6 includes information for only three contaminants of concern applicable to agricultural use. These references and description of the water quality monitoring network and minimum thresholds/measurable objectives are conflicting and do not clearly describe the GSA’s intended plan for monitoring and managing for water quality sustainability for all beneficial users.

Furthermore, the GSA does not plan for sampling that is frequent enough to prevent significant and unreasonable impacts to drinking water users. Sampling for current representative wells will only occur twice a year as stated in Chapter 3: “Sampling will occur concurrent with groundwater level monitoring (Spring and Fall) to evaluate the COC 10-year running average concentrations, trends over time, and relation to its recognized water quality standard. As data is collected for both municipal and agricultural COCs, the minimum threshold trends and percentages can be evaluated and changed, if deemed appropriate by the EKGSA and its stakeholders.” This timeline for sampling and triggering minimum thresholds will allow for extreme delays in addressing drinking water contamination, and may also miss seasonal increases in contamination that impacts drinking water.

The GSA makes it a point to highlight that a more robust data set is needed, as current groundwater quality data is lacking for many parts of the subbasin. However, the GSP takes few steps towards remedying this. The GSP states that the water quality monitoring network needs to be enhanced by adding dedicated monitoring wells to track regional trends and to serve as a warning system for changes in water quality. Currently the GSA is only proposing to build two dedicated monitoring wells and state they will gradually convert existing wells to dedicated monitoring wells. The GSP states that they “aim to obtain data from these regions (within half a mile) through agreement on private wells or through drilling dedicated monitoring wells during the first year(s) of implementation.” According to the GSA, the intent is that over the course of implementation the EKGSA will gradually convert the entire Monitoring Network to dedicated monitoring wells, however, there is no concrete timeline as to when the dedicated wells will be built, nor is it clear how existing wells will be converted to dedicated wells. Similarly, the GSA

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101 East Kaweah GSA Final GSP, p. 4-7 and 4-8, published January 31st, 2020.
has budgeted for seven dedicated wells in the “Plan Implementation” chapter, but no timeline is provided.\textsuperscript{105}

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:**\textsuperscript{106}
   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:**\textsuperscript{107} 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 GSA 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 at least as an interim measure as wells are constructed.

4. **Identify baseline contaminant levels:** Ensure that the GSP identifies the current contaminant levels, minimum thresholds and measurable objectives 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:**\textsuperscript{108} Ensure that the GSP explains how the GSA will share data with and collaborate with other groundwater quality regulatory programs, such

\textsuperscript{105} East Kaweah GSA Final GSP, p. 6-2, published January 31st, 2020.

\textsuperscript{106} 23 CCR § 354.34(b)(2) and (f)(3)

\textsuperscript{107} 23 CCR § 354.34(b)(2) and (f)(3)

\textsuperscript{108} 23 CCR § 354.34(e)
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, commit to clear roles, 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\(^\text{109}\) and avoid disparate impacts on protected groups.\(^\text{110}\) The GSP must also concretely outline how each objective and the overall sustainability goal will be achieved.\(^\text{111}\) The projects and management actions set forth in the GSP do not demonstrate a plan for achieving sustainability goals, 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.\(^\text{112}\)

\textit{a. The Projects and Management Actions Are Inadequate, Do Not Protect Drinking Water For Disadvantaged Communities, And Will Likely Cause Disparate Impacts.}

The projects and management actions set forth in the GSP does not demonstrate a path towards achieving sustainability goals in the plan. The GSAs have not demonstrated how they have considered the interests of beneficial users including domestic well owners and disadvantaged communities.\(^\text{113}\) The resulting impact from the proposed sustainable management criteria will likely lead to disparate impacts on protected groups pursuant to state and federal law.\(^\text{114}\)

The GSA has proposed projects that it claims will increase water supply to make up for a projected 60% of the overdraft in the GSA area, but even if this is accurate, it has not yet committed to projects or management actions to address the remainder of the overdraft. Before adoption, the East Kaweah GSA must identify projects and management actions with clear

\(^{109}\) Water Code § 10723.2.


\(^{111}\) Water Code § 10727.2(b)(2).

\(^{112}\) Water Code § 10727.2(b)(1).

\(^{113}\) Water Code sec. 10723.2.

\(^{114}\) 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].

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triggers to reach basin-wide sustainability through a combination of projects and demand reduction to comply with SGMA and prevent disparate impacts on vulnerable water users.

Furthermore, we are concerned that the GSA will not be able to access the surface water which it claims will be used to implement many of its projects. There are many obstacles to obtaining additional surface water, including the impacts of climate change, the difficulty of accessing surface water rights, and competing claims to additional surface water throughout the San Joaquin Valley GSPs.\(^{115}\)

The GSA must clarify how it will obtain additional surface water and immediately begin implementing projects and management actions to reduce groundwater use by the largest users through incentives, fees, allocations, crop conversion and, to the extent necessary, fallowing.

Because the projects and management are inadequate, DWR cannot approve the GSP.

\(b. \) **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 concrete and fully funded 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 implemented immediately.

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**

impact:116 Ensure that the GSP’s projects and management actions, taken as a whole, prevent a disproportionately negative impact 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 of color than for white residents in the GSP area.

J. Plan Implementation Section is Inadequate

GSPs must include a planning and implementation horizon117 and must show how the sustainability goal will be achieved by 2040.118 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 insufficient in regards to public engagement/outreach and does not contain adequate information regarding annual reporting or the potential to make amendments to the GSP. Absent this information, DWR cannot evaluate when and whether the plan is likely to achieve sustainable groundwater management, so DWR cannot approve the plan.119

In the GSP’s plan implementation schedule, the GSA gives an estimated timeline for implementation of projects and management actions laid out in yearly increments.120 However, this schedule does not include projects and management actions that will benefit drinking water users. Without giving more specific details on when projects and management actions will be implemented, the GSA has not shown that it will reach its sustainability goal by 2040, as required by SGMA.

The GSP states that the GSA will begin planning pumping restrictions in 2030. Waiting until 2030 to begin planning on how restrictions will be applied puts the GSA at risk of not meeting subbasin sustainability by 2040. The GSP cannot allow irrigated agriculture and dairies within its boundaries to keep overpumping for another ten years and hope to reach sustainability within the time limits imposed by SGMA.

Moreover, in the annual report outline proposed by the GSA, public outreach is not included in any of the key sections. Public engagement has been a critical component to the SGMA implementation process and must continue to be in the GSP implementation process. Additionally, in the initial GSP implementation budget, there is no budget set aside for public outreach. While the GSP mentions that they will notify stakeholders annually on the GSP’s progress, there is no mention of continued workshops and outreach for implementation activities and management actions. Furthermore, necessary translation, interpretation, and adequate notice

117 Water Code § 10727.2.(c)
118 Water Code § 10727.2(b)(1).
119 Water Code § 10733(a); 23 CCR 355.4(b).
to stakeholders and disadvantaged communities should be provided by the GSA in order to ensure inclusive participation.

Through its GSP, the GSA must establish processes by which it will seek and incorporate feedback from the public on an ongoing basis through direct outreach to disadvantaged communities and public workshops that are held at convenient locations and times and accessible in multiple languages. Additionally, proposed reconsiderations must be publicly noticed and circulated for public review and comment prior to final adoption.

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:** 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.

3. **Translation of materials:** 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:** Ensure that the GSP states that ongoing engagement will include interpretation services provided 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. **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 advisory committee and board:** Ensure that the GSP states that ongoing engagement will include advisory committees and Boards containing representatives from DACs. The GSA should include representatives on the GSA board,

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121 Government Code § 54954(a).
122 Government Code sec. 7296.2.
123 Government Code sec. 7296.2.
124 Government Code sec. 7296.2.
and should include representatives from DACs on all advisory committees such that their voices can be as strong as other beneficial user groups.

7. **Partnership with local community based organizations:** Ensure that the GSP states that ongoing engagement will include partnership between the 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 meaningful outreach to DACs and incorporate feedback before approving operating budgets and enacting groundwater fees.

**K. The Coordination Agreement Is Inadequate**

“If groundwater sustainability agencies develop multiple groundwater sustainability plans for a basin,” they must submit a coordination agreement that “…ensure[s] the coordinated implementation of the groundwater sustainability plans for the entire basin.” A “coordination agreement” is defined by SGMA as “a legal agreement adopted between two or more groundwater sustainability agencies that provides the basis for coordinating multiple agencies or groundwater sustainability plans within a basin pursuant to this part.” The SGMA regulations require coordination agreements to “ensure that the Plans are developed and implemented utilizing the same data and methodologies, and that elements of the Plans necessary to achieve the sustainability goal for the basin are based upon consistent interpretations of the basin setting.”

Coordination agreements must also describe “[h]ow the Agencies have used the same data and methodologies for assumptions described in Water Code Section 10727.6 to prepare coordinated Plans, including the following:”

(A) Groundwater elevation data, supported by the quality, frequency, and spatial distribution of data in the monitoring network and the monitoring objectives as described in Subarticle 4 of Article 5.

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125 Water Code § 10733.4(b)(3).
126 Water Code § 10721(d).
127 23 CCR § 357.4.
(B) A coordinated water budget for the basin, as described in Section 354.18, including groundwater extraction data, surface water supply, total water use, and change in groundwater in storage.

(C) Sustainable yield for the basin, supported by a description of the undesirable results for the basin, and an explanation of how the minimum thresholds and measurable objectives defined by each Plan relate to those undesirable results, based on information described in the basin setting.\footnote{128}{23 CCR § 357.4.}

Finally, “[t]he coordination agreement shall explain how the Plans implemented together, satisfy the requirements of the Act and are in substantial compliance with this Subchapter.”\footnote{129}{23 CCR § 357.4.}

Here, the Kaweah Subbasin Coordination Agreement submitted with the GSP does not comply with these requirements. As an initial matter, the Coordination Agreement is submitted only by GSAs in the subbasin, rather than the entire basin as required by SGMA. Additionally, while the Coordination Agreement does contain a “preliminary” water budget, it fails for the same reasons discussed above with respect to the GSP water budget.

With respect to coordinated implementation of the GSPs, the Coordination Agreement states that “[f]urther discussions among the Parties must occur after adoption of GSPs concerning mutual responsibilities in achieving the Subbasin’s Sustainable Yield by 2040, or as may be otherwise extended by DWR per Water Code §10727.2 (b) (3) once further data is obtained.”\footnote{130}{23 CCR § 357.4.} This despite the estimated safe yield set forth in Appendix 3 and the apportionment of groundwater resources shown in Table 3.1. The GSPs have data and estimates from which specific management actions and projects can be planned and implemented. However, the Coordination Agreement does not commit any of the GSPs to any specific actions or projects to keep any one GSP within their agreed upon apportionment, or which would require the GSPs together to stay within the estimated safe yield for the basin. Putting off the hard conversations regarding mutual responsibilities to achieve sustainable yield is not an adequate explanation of how “the Plans implemented together, satisfy the requirements of” SGMA.

In addition, the Coordination Agreement defines “undesirable results” as occurring “when one-third of the representative monitoring sites in all three GSA jurisdictions combined exceed their respective minimum threshold water level elevations.” As discussed above, this approach allows for regional and localized “hot spots” where falling water tables and/or groundwater

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\textsuperscript{128} 23 CCR § 357.4.
\textsuperscript{129} 23 CCR § 357.4.
\textsuperscript{130} 23 CCR § 357.4.
contamination cause significant and unreasonable impacts on beneficial users, without triggering the undesirable result. This definition does not conform with SGMA’s requirement that the GSAs in the subbasin coordinate to sustainably manage groundwater resource and avoid undesirable results to beneficial users. Local control only goes so far before conflicting with the text and spirit of SGMA and implementing regulations.

In sum, the Coordination Agreement does not explain how the relevant GSPs, implemented together, will result in sustainable groundwater management. As the GSP is not supported by a coordination agreement that meets the relevant statutory and regulatory requirements, the GSP is inadequate.

L. 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 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.” (emphasis added.) 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 communities and 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 the GSP, the GSP must be consistent with the Human Right to Water, and separately, DWR must consider the human right on review of GSP. Because the GSP conflicts with § 106.3 by interfering with access to an adequate supply of 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.”\(^\text{131}\) 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.”\(^\text{132}\) 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.\(^\text{133}\)

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

\(^{131}\) AB 1739 (2014).
\(^{132}\) Water Code § 10720.5(b).
\(^{133}\) 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.”].
reasonable and beneficial use thereof in the interest of the people and for the public welfare.”\textsuperscript{134} The doctrine applies to all water users, regardless of basis of water right, and all water rights and methods of diversion.\textsuperscript{135} A determination of reasonableness of a use “cannot be resolved in vacuo isolated from statewide considerations of transcendent importance.”\textsuperscript{136}

DWR and the Water Board must ensure that GSP’s water allocations are consistent with the reasonable and beneficial use doctrine.\textsuperscript{137} In doing so, DWR and the Board must follow the Legislature’s directive to prioritize domestic use of water resources over irrigated agriculture\textsuperscript{138} and ensure that SGMA implementation furthers the human right to safe and affordable drinking water\textsuperscript{139} — 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.

\textcolor{red}{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 holders” and that thus “no one has a vested right to use water in a manner harmful to the state's waters.”\textsuperscript{140}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{134} 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.”].
\item \textsuperscript{136} Joslin v. Marin Municipal Water Dist. (1967) 67 Cal.2d 132, 140.
\item \textsuperscript{137} 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”]; \textit{Light}, 226 Cal.App.4th at 1482-83 [same].
\item \textsuperscript{138} 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”]; \textit{United States v. State Water Resources Control Board} (1986) 182 Cal.App.3d 82, 103.
\item \textsuperscript{139} Water Code § 106.3.
\item \textsuperscript{140} \textit{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.”].
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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.141 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.142 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.”143 The court also specifically held that SGMA does not supplant the requirements of the common law public trust doctrine.144

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.145

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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DWR cannot approve the GSP because it fails to protect access to drinking water. We welcome the opportunity to further 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.146 We hope to successfully work with the GSA, 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 the GSP adhere to the standards in the

142 *Id.* at 856-62.
143 *Id.* at 865.
144 *Id.* at 862-870.
146 Attached as Exhibit B.
Human Right to Water Scorecard, and that these standards are followed during GSP implementation.

Sincerely,

Blanca Escobedo and Amanda Monaco
Leadership Counsel for Justice and Accountability