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NOCONA SOBOLESKI, CLERK OF COURT
SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KINGS


JULIENNE DESANTOS DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KINGS

)	CASE NO.: 24CU0198
KINGS COUNTY FARM BUREAU, HELEN)	
SULLIVAN and JULIE MARTELLA,)	PRELIMINARY INJUNCTION
)	
Plaintiffs/Petitioners)	
)	
vs.)	
)	
CALIFORNIA STATE WATER RESOURCES)	
CONTROL BOARD and DOES 1-10, inclusive)	
)	
Defendants/Respondents)	

A. BACKGROUND & PROCEDURAL POSTURE OF CASE:

In 2014, the California Legislature passed the Sustainable Groundwater Management Act (hereafter "SGMA"). [Water Code §§ 10720 - 10738]. In enacting this legislation, the intent of the Legislature included "to provide for the sustainable management of groundwater basins¹" and "to manage groundwater basins through the actions of local governmental agencies to the greatest extent feasible, while minimizing state intervention to only when necessary to ensure that local agencies manage groundwater in a sustainable manner."² The Department of Water Resources ["DWR"] was mandated³ to adopt regulations for evaluating groundwater sustainability plans [GSP's], the implementation of GSP's, and coordination agreements. These regulations are codified in Title 23 California Code of Regulations ["CCR"] §§350 to 358.4. The GSP regulations

¹ Water Code § 10720.1(a).
² Water Code § 10720.1(h).
³ Water Code § 10733.2

1 provide three options for determining the status of a GSP: approved, incomplete or inadequate.
2 23 CCR §§ 355.2(e)(1), (2) and (3).

3 In compliance with SGMA, the Tulare Lake Subbasin ["TLS"] formed five separate
4 Groundwater Sustainability Agency's ["GSA's"] to sustainably manage local groundwater
5 resources. These are: 1) South Fork Kings GSA, 2) Mid-Kings River GSA, 3) El Rico GSA, 4) Tri-
6 County Water Authority, and 5) Southwest Kings GSA. TLS is a critically overdrafted high-priority
7 basin.

8 On January 29, 2020, the GSA's submitted a 2020 GSP to DWR for evaluation. DWR, after
9 consultation with the SWB, had two years to determine whether the GSP was approved,
10 incomplete or inadequate. [WC 10733.4(d) and 23 CCR §355.2(d), 355.2(e)(1), (2) or (3)].

11 On January 28, 2022, DWR determined the DSP was **incomplete** relying on an 18-page
12 Staff Report from SWB. TLS was directed by DWR to address the deficiencies in the 2020 GSP
13 within 180 days by July 27, 2022. DWR identified three deficiencies related to groundwater levels,
14 subsidence and degraded water quality. These are more fully set forth in DWR's statement of
15 findings (3 pages) and a staff report (18 pages) included in Exhibit 9 of Plaintiffs Request for
16 Judicial Notice ("RJN") filed on July 10, 2024. The TLS created an addendum to the 2020 GSP and
17 timely submitted it on July 27, 2022. On March 2, 2023, DWR determined the 2022 GSP was
18 **inadequate** based on a 28-page staff report from SWB. DWR again focused on the same three
19 deficiencies as described in Exhibit 11 of Plaintiffs RJN filed July 10, 2024. In addition to these
20 grounds, DWR "also finds that: 1. The Department developed its GSP Regulations consistent with
21 and intending to further the state policy regarding the human right to water (Water Code 106.3)
22 through implementation of SGMA and the Regulations, primarily by achieving sustainable
23 groundwater management in a basin." There appears to be no detail on whether or how the TLS
24 GSP was inadequate in this regard.

25 If DWR determines the GSP is inadequate, the State Water Resources Control Board
26 ["SWB"] may seek to designate the basin as "probationary" and take certain actions. [Water Code
27 10735.2(a), 10735.8].

28 On October 12, 2023, SWB announced it would hold a public hearing on April 16, 2024 to
determine whether TLS should be considered probationary under SGMA. Prior to this hearing, a
Notice⁴ was given. SWB issued a Draft Staff Report⁵ in October 2023. Two public workshops were

⁴ Notice of Opportunity to Provide Feedback, Public Staff Workshops, and Public Board Hearing for the Proposed Designation of Tulare Lake Subbasin as a Probationary Basin, Exhibit 12 to Plaintiff's July 10, 2024 RJN.

⁵ Exhibit 13 to Plaintiff's July 10, 2024 RJN.

1 held on November 3 & 8, 2023. A Final Staff Report was issued by SWB⁶ making the
2 recommendation TLS should be designated probationary.

3 At the April 16, 2024, public hearing the Board adopted Resolution 2024-0012
4 ["Resolution"] designating the Tulare Lake subbasin as probationary under SGMA. The designation
5 is based on Water Code 10735.2(a)(3). There are no statutory or regulatory deadlines for setting a
6 date when a subbasin will be designated as probationary after the public hearing has been held.
7 Plaintiffs argue the July 15, 2024 deadline was discretionary and arbitrary. The Court agrees. They
8 also argue, SWB has not identified any urgency or losses that would occur to require a 90-day
9 deadline. This Court wonders why extractors were only given 90 days to comply with their new
10 obligations, and research the onerous requirements of these obligations: all occurring within the
11 peak of an irrigation season?

12 SGMA provides SWB with the authority to adopt regulations through a normal regulatory
13 process consistent with the provisions of the Administrative Procedures Act. Wat. Code
14 §10736(d)(2). However, since the implementation of SGMA, SWB has not adopted any regulations
15 that govern the process of 1) considering whether to designate a basin as probationary, 2)
16 determining whether any portion of a subbasin should be exempted from probation [the Good
17 Actor mandate under Wat. Code 10735.2(e)⁷], 3) adopting an interim GSP for a probationary basin,
18 4) administering probation once a subbasin is so designated, or 5) exiting probationary status.

19 On May 16, 2024, Plaintiffs/Petitioners (hereafter "Plaintiffs") filed their Petition for Writ of
20 Mandate and Verified Complaint for Declaratory and Injunctive Relief. The Petition seeks a writ
21 directing Respondent to vacate and set aside its adoption of Resolution No. 2024-12 and the
22 designation of the TLS as probationary. They also seek a judgment declaring, *inter alia*, that the
23 Board's adoption of the resolution is void as it is arbitrary, capricious and not supported by
24 evidence; it exceeds the Board's jurisdiction; it is based on a series of underground regulations;
25 and the SWB failed to provide notice to landowners of the probationary hearing.

26 Once a basin is designated "probationary", it triggers numerous reporting⁸ and fee
27 requirements for groundwater extractions as follows⁹:

28 Any person who extracts more than two acre-fee ("A/F") of groundwater per year, or who
extracts groundwater for purposes other than domestic uses, must report all extractions made on

⁶ Exhibit 17 to Plaintiff's July 10, 2024 RJN.

⁷ "The Board shall exclude from probationary status any portion of a basin for which a groundwater sustainability agency demonstrates compliance with the sustainability goal." Wat. Code 10735.2(e).

⁸ Cal. Water Code 5202. Resolution #4a at page 9.

⁹ These are set forth in the Resolution [4(a) and 4(b)] at page 9 and 10.

1 or after July 15, 2024, to the SWB. Extractors must file these reports by December 1, 2024.¹⁰ If an
2 extractor fails to file a report the person will be responsible for any expenses for the SWB
3 investigation.¹¹

4 Any person who extracts more than 500 AF of groundwater must install and use specific
5 meters on all production wells before July 15, 2024¹². To be considered a “meter” under the
6 regulation, it must be: equipped with a totalizer, be attached in a certain location, calibrated to an
7 accuracy of within + five percent by volume and can only be calibrated by certain qualified
8 individuals upon installation and at least every five years. It must be installed in a manner to be
9 readily accessible for reading, inspection, testing, repair and replacement. It must be reasonably
10 accessible and available for inspection by an authorized representative of the board upon request.

11 The SWB adopted an emergency regulation on March 19, 2024 which set fees to include a
12 base filing fee of \$300 per well¹³ and \$20/AF fee for volumetric pumping. These fees are payable to
13 SWB through its Water Rights Fund (“WRF”) are in addition to the fees landowners were already
14 paying to their respective GSA’s.

15 Any extractor who fails to file reports by the due date will be assessed a 25% automatic
16 late fee¹⁴. In addition, failure to meet any of the requirements will result in a civil liability of up to
17 \$500 per day pursuant to Water Code 1846.¹⁵

18 SWB began to send notices to landowners in the TLS advising them of the metering and
19 reporting requirements scheduled to begin July 15, 2024. The Compliance Notices are dated May
20 24, 2024 but landowners reported them not being sent until May 30, 2024 (Zack Bickner) or June
21 20, 2024 (Julie Martella). Landowners were confused by the notices not knowing which
22 properties/well they applied to (Bickner) and double calibration requirements. Brand new, factor-
23 calibrated flowmeters must be “calibrated by a qualified individual upon installation” (Zack
24 Bickner). Upon researching the requirements, it became obvious that procuring, installing and
25 calibrating flowmeters would be impossible to accomplish by the July 15, 2024 deadline. The late
26 Compliance Notice exacerbated these problems.

27 On July 10, 2024, Plaintiffs filed an ex parte application for temporary restraining order and
28 for order to show cause (“TRO/OSC”) re: preliminary injunction. Also filed in support thereof were

¹⁰ The Resolution “Modified the extraction reporting deadline for groundwater extraction reports required by Water Code section 5202 from February 1 to December 1 of each year and requires the first report to be submitted by December 1, 2024.” [#5 at page 10]

¹¹ Cal. Water Code 5204.

¹² 23 Cal. Code Regulations 1042.

¹³ 23 CCR 1040(b)(1).

¹⁴ 23 CCR 1040(c), as amended by March 26, 2024 R

¹⁵ 23 CCR 1046.

1 declarations from counsel Valerie Kincaid, Julie Martella, Helen Sullivan, Zach Bickner, Phil Bartel
2 and Request for Judicial Notice of 20 exhibits.

3 On July 10, 2024, SWB filed its opposition to the TRO/OSC re: preliminary injunction. Also
4 filed in support thereof were declarations from counsel Kate Fritz, Natalie Stork, and Sarah Sugar.
5 On July 30, 2024, SWB filed its supplemental opposition to the TRO/OSC as well as declarations
6 from Samuel Boland-Brien, Dr. Kristin Dobbin, Maricela Mares-Alatorre, Dr. Nataly Escobedo and
7 Sarah Paulson as well as a Request for Judicial Notice of 12 exhibits.

8 On August 13, 2024, Plaintiffs filed its Reply and RJN in support of its reply to SWB's
9 opposition. This RJN contains 7 exhibits relating to the Tule and Kaweah subbasins, the other two
10 subbasins being evaluated by SWB for a probationary designation. Exhibit 1 and 4 include a SWB
11 "Notice of Opportunity to Provide Feedback, Public Staff Workshops, and Public Board Hearing for
12 the Proposed Designation of [Tule/Kaweah] Subbasin as a Probationary Basin." The notice
13 advises of a public board hearing, provides internet links to SWB's Draft Staff Report (summary
14 and full report), information on public staff workshops and information about "SGMA and State
15 Intervention," "Inadequate Groundwater Sustainability Plan and State Intervention Trigger," and
16 "Effects of a Probationary Designation." This notice is virtually identical to the notice issued for
17 Plaintiffs (Ex. 12). The Court finds it interesting that on March 2, 2023, DWR determined the GSP's
18 submitted by all three subbasins (TLS, Tule and Kaweah) were "inadequate." Exhibits 3 and 6 are
19 the Draft Staff Reports issued by SWB for the Tule and Kaweah subbasins, respectively on March
20 2024 and May 2024.

21 **Harms¹⁶:** The emergency relief was requested because the harms landowners will suffer from
22 the SWB's actions are real and imminent and a TRO staying a July 15, 2024 metering deadline and
23 extraction fee accrual is imperative on the following grounds:

- 24 1. SWB improperly designated the TLS as probationary under the SGMA on April 16, 2024;
- 25 2. SWB unlawfully followed underground regulations in making the TLS probationary;
- 26 3. SWB waited until May 30, 2024 (and in some cases as late as June 20, 2024) to send written
27 notices to landowners in the TLS notifying them of their new obligations under the
28 probationary designation to install and calibrate flowmeters on their wells by July 15, 2024;
4. Compliant flowmeters cannot be procured on such short notice;
5. Installing and calibrating flowmeters on the large scale required b SWB will require wells to
be taken out of service in the middle of the irrigation season when many growers are
transitioning from surface water to groundwater;

¹⁶ These harms are detailed in the declarations of Martella, Sullivan, Bickner and Bartel as described in section D – Balance of Harms.

6. The installation and calibration of flowmeters will take months or longer;
7. A significant \$20 per acre foot groundwater extraction fee that was unlawfully adopted will begin accruing July 15, 2024.

Plaintiff argued if a TRO and PI are in place, SWB will suffer no credible, legitimate harm because the five groundwater sustainability agencies of the TLS will continue to manage groundwater resources as required under SGMA¹⁷. In addition, SWB cannot extract fees until April 1, 2025.

In its TRO/OSC, Plaintiffs asked, and the court ordered¹⁸ after the hearing on July 15, 2024, the SWB and its agents, servants, partners, and employees, and all persons acting on its behalf or in concert with such persons are restrained and enjoined from enforcing SWB Resolution No 2024-0012, "Designating the Tulare Lake Groundwater Subbasin as Probationary Under the Sustainable Groundwater Management" by:

1. Requiring any person within the TLS who extracted more than 500 acre-feet from the TLS during the period of October 1, 2022 through September 30, 2023, and any person who anticipates extracting more than 500 acre-fee during the period of October 1, 2023 and September 30, 2024, to install and use meters that meet the requirements of California Code of Regulations, title 23, section 1042 on each of their production wells within the TLS before July 15, 2024, and
2. Requiring any person who extracts more than two acre-feet of groundwater per year from the TLS or who extracts groundwater from the TLS for purposes other than domestic uses to report their extractions made on or after July 15, 2024, to the SWB pursuant to Water Code section 5202 and pay to the SWB the associated fee imposed pursuant to Title 23, California Code of Regulations, section 1040, et seq.; and
3. Requiring groundwater¹⁹ extractions reports from the TLS to be submitted by December 1, 2024.

At the hearing on July 15, 2024, the Court declined to further order the SWB, et al to be restrained and enjoined from "taking any actions or imposing any requirements stemming from its designation of the TLS as probationary under Water Code section 10735.6(a)."

The Court set a briefing schedule and set another hearing to occur on August 20, 2024. At the August 20, 2024 hearing the Court provided counsel with questions they could answer. After

¹⁷ WC 10720.1(h).

¹⁸ Notice of Entry of Order to Show Cause regarding Preliminary Injunction and Temporary Restraining Order was filed with the Court on July 16, 2024.

¹⁹ The latter two hearings were already scheduled for that date.

1 the hearing the Court continued the Restraining Order and set the matter for Ruling on Preliminary
2 Injunction, Demurrer and Case Management Conference on September 13, 2024.

3 **B. JURISDICTION OF THIS COURT:**

4 **1. EXHAUSTION OF ADMINISTRATIVE REMEDIES:**

5 Plaintiffs allege the Probationary Designation was a final action of the SWB and is immediately
6 reviewable by this Court pursuant to Water Code §1126(b). (Petition, ¶¶ 44-45). In addition,
7 Plaintiffs have argued there is no administrative remedy to exhaust, there is no administrative
8 process and if it did exist, it was inadequate or non-existent. The Court agrees with these
9 arguments.

10 SWB has argued the remedies available are included in the Resolution. It “allows the Board to
11 consider alternative compliance pathways to the meter requirement on an individual basis and
12 further provides for amendment of the resolution’s reporting and metering requirements after
13 provision of at least 30 days’ notice.” (Opp. pg 8:17; Stork Decl. ¶¶ 5, 7.

14 SWB argued in its opposition an administrative remedy is provided by statute, relief must be
15 sought from the administrative body and this remedy exhausted before the Courts will act” citing
16 *Campbell v. Regents (University of California* [2005] 35 Cal. 4th 311, 322 and *Abelleira v. District*
17 *Court of Appeal* [1941] 17 Cal. 2d 280, 292 and therefore the Court has no jurisdiction.

18 SWB counsel argues the court has no jurisdiction to hear this TRO/OSC matter since TLS has
19 not exhausted its administrative remedies. They cite to the case of *Abelleira v. District Court of*
20 *Appeal* (1941) 17 Cal.2d 280, 292. In that case the administrative remedy was contained within
21 the Unemployment Insurance act which included “provision for one original determination and
22 two appeals, fulfilling every requisite of due process of law.”

23 The plaintiffs in this case do not have such a process. The statutes relied upon, to wit, Water
24 Code §§ 5202 and 10735.2 do not provide Plaintiffs with an administrative remedy or process to
25 follow and exhaust. SWB claims within the Resolution itself the available remedy is the
26 “alternative compliance pathway.”

27 The following is taken from the SWB Resolution No 2024-0012 at page 10-11²⁰:

28 4. “Adopts the following requirements and exclusions regarding reporting and metering of
groundwater extractions:”

4c. “For individuals required to report who do not already have meters installed, the SWB
will consider **alternative compliance pathways** to the metering requirement, taking into

²⁰ For ease of reference, it appears to this Court TLS had two alleged alternative “remedies” set forth in the Resolution – alternative compliance pathways as set forth in 4c as well as resolution amendment, as set forth in 8.

1 account the reliability and accuracy of alternative measurement techniques and whether
2 auditable information is used.” (emphasis added).

3 “The Board delegates authority to approve alternative compliance pathways to the
4 Executive Director or the Executive Directors’ delegee pursuant to Water Code section 7.”
5 8. “Delegates to the Executive Director the authority to amend the reporting and metering
6 requirements of this probationary designation after the provision of at least 30 days public
7 notice.”

8 This portion of the Resolution leaves more questions than answers. It is not transparent.
9 The name and contact information of the Executive Director or his/her delegee is not listed. There
10 is no process to follow; nor does it give the right to appeal any decisions.

11 Through SWB counsel arguments and their pleadings, the focus of any remedy for TLS
12 extractors was on “alternative compliance pathways” without any discussion about resolution
13 amendment set forth in #8.

14 Sarah Sugar, Senior Environmental Scientist with SWB attended a meeting on May 10,
15 2024 with representatives from all five TLS GSA’s with topics to include effects of the Resolution.
16 (Sugar Decl. ¶14). On June 28, 2024, Plaintiff’s counsel notified SWB of the difficulties her clients
17 were having and was seeking an extension of the July 15, 2024 deadline to October 15, 2024,
18 which the Court found to be a reasonable request and compromise. She advised of the late notice,
19 the confusion created by the metering and calibration requirements, the problems in securing
20 meters and how such installation would impact their irrigation season. A portion of the July 2,
21 2024 response from SWB counsel Margaret Tides was, “our client noted that the Tulare Lake
22 probationary resolution provides for approval of alternative compliance pathways to the metering
23 requirement and that landowners can get more information or submit proposed alternatives by
24 contacting SGMA@waterboards.ca.gov.” Fritz’s declaration contains the same information and
25 email chain. (Exh. 2, Kincaid decl; Ex. 1 Fritz Decl.). Ms. Kincaid did in fact send an email to the
26 SGMA email as well as to the Caroline Hackett, Water Resources Engineer.

27 SWB’s own Resolution provides it with the authority to extend the metering requirements.
28 SWB had knowledge there were many questions as early as May 2024 and again in late June 2024
and could have extended the requirements. SWB failed to consider this and remained indifferent
to Plaintiffs’ struggles, some of which they created.

The doctrine requiring exhaustion of administrative remedies is subject to exceptions.
(*Public Employment Relations Board v. Superior Court* (1993) 13 Cal. App. 4th 1816, 1827.
Plaintiffs argue that the purported “administrative remedy” does not qualify as such or that,
alternatively, it is inadequate, and may be excused. They argue “[n]o administrative process

1 exists” and thus exhaustion need not be demonstrated. (Reply at p. 7.) The court agrees. The
2 exhaustion requirement is “not applicable where an effective administrative remedy is wholly
3 lacking.” (*SJCBC, LLC v. Horwedel* (2011) 20 Cal.App.4th 339, 348 [citing 3 Witkin, Cal. Procedure
4 (5th ed. 2008) Actions, §336, p. 436; *Rosenfield v. Malcolm* (1967) 65 Cal.2d 559, 566 [doctrine
5 inapplicable where agency had supervisory authority but there were no procedures for an
6 appeal]; *Henry George School of Social Science of San Diego v. San Diego Unified School
7 Dist.* (1960) 183 Cal.App.2d 82 [same, where there was no remedy or procedure authorized that
8 could have been pursued]; *Martino v. Concord Community Hosp. Dist.* (1965) 233 Cal.App.2d
9 51 [same, where an appeal to executive committee was possible but there were no procedures for
10 a hearing or determination of the appeal]).

11 Here, the Board’s purported process of exhaustion, *i.e.*, the Board’s willingness to
12 “consider alternative compliance pathways to the metering requirement,” (see Resolution 2024-
13 0012 at ¶4(c)) is not adequately set forth within the Resolution nor has the Board presented any
14 evidence in its Opposition or Supplemental Opposition to demonstrate the existence or details of
15 any actual procedure for obtaining such approval. The Resolution states that the Board delegates
16 authority to approve alternative compliance pathways to the Executive Director or the Director’s
17 delegee but does not explain any actual process for seeking such approval. (*Ibid.*) The declaration
18 of Board staff member Natalie Stork, filed in support of the Opposition, does not describe any
19 administrative processes. (Stork Decl. ¶5.) The declaration of Mr. Boland-Brien merely recites
20 that landowners “may reach out to staff via the SGMA email inbox or via phone” to “provide the
21 details of their situation” and seek approval of an alternative compliance mechanism. (Boland-
22 Brien Decl. ¶9.) His declaration states that he will assess whether an individual qualifies, but he is
23 not the Executive Director and has not stated he is the Executive Director’s delegee for this
24 purpose, as set forth in the Resolution. In short, the Board makes no adequate showing that there
25 exists an administrative remedy that must be exhausted before judicial intervention in this case.

26 Sarah Sugar “declares” she is Senior Environmental Scientist with SWB. After the TLS
27 probationary hearing on April 16, 2024 SWB continued outreach efforts to help groundwater
28 pumpers understand the reporting and metering requirements. On May 10, 2024 she attended a
meeting between representative of the five TLS GSA’s discussing the effects of the probationary
designation on pumpers and pointing out the Resolution provided that persons subject to the
metering requirement who do not already have meters may propose alternative compliance
pathways. She states, “The State Water Board emailed notice of the new requirements to its TLS
email list on May 24, 2024.” This was Ex. 3 to her declaration. “It mailed notice to its list of known
pumpers on May 31, 2024,...followed up with a second mailing of the same notice on June 20,

1 2024 in an attempt to reach pumpers who had not already been reached through the email or first
2 mailing.” The Board sent a final notice to known pumpers on July 9, 2024. A copy of the final
3 notice is Ex. 4 to her declaration. Board staff continued to respond to requests for meeting from
4 interested parties to provide information regarding the probationary designation. As of July 9,
5 2024, SWB had not received any proposals for alternative compliance pathways from any person
6 in the TLS. Other than the May 10, 2024 meeting she attended, the remainder of Ms. Sugar’s
7 statements about the notices, and meetings are lacking in information about the basis of her
8 information. The Court has been provided with scant information about who these notices went
9 to. If there is a “list of known pumpers” containing emails or mailing addresses why was that not
10 included?

11 Additionally, even assuming the “process” at issue here actually constitutes an administrative
12 remedy, the doctrine requiring exhaustion of administrative remedies is subject to a number of
13 exceptions. (*Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment*
14 *Relations Bd. (Coachella Valley)* (2005) 35 Cal.4th 1072, 1080 [citation omitted].) Perhaps most
15 applicable here is the “inadequate remedy” exception. Specifically, a party is not required to
16 exhaust the available administrative remedies when those administrative procedures are the very
17 source of the asserted injury. (*KCSFV I, LLC v. Florin County Water Dist. (KCSFV)* (2021) 64
18 Cal.App.5th 1015, 1037.) Under this exception, a party is excused from exhausting the
19 administrative remedies “where the challenge is to the constitutionality of the administrative
20 agency itself or the agency’s procedure.” (*Ibid.* [citation omitted] [emphasis in original].) A
21 remedy is not adequate unless it “establishes clearly defined machinery for the submission,
22 evaluation and resolution of complaints by aggrieved parties.” (*Plantier v. Ramona Municipal*
23 *Water Dist.* (2019) 7 Cal.5th 372, 384 [citing *Rosenfield, supra*, 65 Cal.2d at p. 566]; see also *City of*
24 *Coachella v. Riverside County Airport Land Use Com.* (1989) 210 Cal.App.3d 1277, 1287 [a public
25 hearing process did not provide an adequate remedy because the agency was not required to “do
26 anything in response to submissions or testimony received by it incident to those hearings”]; *City of*
27 *Oakland v. Oakland Police & Fire Retirement System* (2014) 224 Cal.App.4th 210, 237 [a public
28 hearing process without “clearly defined procedures” for the conduct of the hearing and “no
standards for decision making” was determined to be inadequate as a remedy].)

Here, the court reiterates its reasoning above that no clearly defined procedures have been set
forth by the Board either in the Resolution at issue or the opposing papers. The Boland-Brien
declaration does not even purport to state that the Board is required to do anything in response to
requests for approval of alternative compliance pathways that it may receive. Nor does the Board
present authority that “reaching out” via email or phone to discuss potential approval for an

1 exception constitutes an adequate administrative remedy that must be exhausted before the
2 court has jurisdiction to address a plaintiff's claims.

3 In sum, the administrative exhaustion doctrine does not preclude this court from exercising its
4 jurisdiction to hear the instant matter.

5 **2. Execution of Statute by public official for public benefit:**

6 A judge may not grant an injunction to prevent the execution of a statute by public officials for
7 the public benefit. Cal. Civ. Code §3423(d) and Cal. Code Civ. Proc. §526(b)(4). This prohibition
8 against enjoining the execution of a public statute is subject to four judicially recognized
9 exceptions: "(1) where the statute is unconstitutional and there is a showing of irreparable injury;
10 (2) where the statute is valid but is enforced in an unconstitutional manner; ;(3) where the statute
11 is valid but as construed, does not apply to the plaintiff; and (4) where the public official's action
12 exceeds his or her authority (Citation)". Alfaro v Terhune (2002) 98 Cal. App. 4th 492, 501. Conover
13 v. Hall (1974) 11 Cal.3d 842, 850. Jamison v. Department of Transportation, (2016) 4 Cal. App. 5th
14 356, 363.

15 This prohibition does not apply in this case as Plaintiffs claim the statute is applied
16 unconstitutionally and the public officials action exceeds the official's powers. As discussed
17 below, the Court agrees with Plaintiffs contentions.

18 **C. PRELIMINARY INJUNCTIONS – LEGAL STANDARD:** "The general purpose of a
19 preliminary injunction is to preserve the status quo pending a determination on the merits of the
20 action." (*Tulare Lake Canal Co. v. Stratford Public Utility Dist.* (2023) 92 Cal. App. 5th 380, 396). "In
21 deciding whether to issue a preliminary injunction, a trial court must evaluate two interrelated
22 factors: (i) the likelihood that the party seeking the injunction will ultimately prevail on the merits
23 of its claim, and (ii) the balance of harm presented, i.e., the comparative consequences of the
24 issuance and nonissuance of the injunction." [*Common Cause v. Board of Supervisors* (1989) 49
25 Cal. 3d 432, 441-442]; *White v. Davis* (2003) 30 Cal.4th 528, 554. The greater the moving party's
26 showing on one of these interrelated factors, "the less must be shown on the other to support an
27 injunction." (*Butt v. State of California* (1992) 4 Cal. 4th 668, 677-678; *King v. Meese* (1987) 43 Cal.
28 3d 1217, 1227-1228; *Right Site Coalition v. Los Angeles Unified School Dist.* (2008) 160
Cal.App.4th 336, 338-339). A party is not required to wait until it has suffered actual harm before
applying for an injunction. Rather, it "may seek injunctive relief against the threatened
infringement of [its] rights." (*Maria P. v. Riles* (1987) 43 Cal. 3d 1281, 1292.).

D. MERITS OF PLAINTIFFS CLAIMS:

The Court finds four specific causes of action that are clear violations of the law. They are
examined below:

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1. GOOD ACTOR DETERMINATION – SECOND CAUSE OF ACTION:

Water Code § 10735.2(e) states: the SWB “shall exclude from probationary status any portion of a basin for which a groundwater sustainability agency demonstrates compliance with the sustainability goal.” The Court finds this section an affirmative mandate, not an optional duty.

The Probationary Resolution was based in part on two staff reports from SWB: the TLS Probationary Hearing Draft Staff report dated October 2023²¹ as well as TLS Probationary Hearing Final Staff Report dated March 2024.²² In each report, SWB recognize their duty at pages 126 and 121, respectively: “The State Water Board must exclude from probation any portions of the basin for which a GSA demonstrates compliance with the sustainability goal.”

SWB found no GSA would qualify for this “good actor” exemption. SWB stated in each report, “Staff believe no GSA’s in the subbasin have demonstrated compliance with the sustainability goal. All five GSA’s have adopted and are implementing the same GSP, which DWR has determined to be inadequate. Staff recommends the State Water Board, not exclude any portions of the subbasin from the probationary designation.”

SWB’s reasons as follows²³:

“As defined by SGMA, the 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.” WC 10721(u).

“In other words, having and implementing a plan is a key part of the sustainability goal. For a GSA to comply with the sustainability goal of the basin, and make a case for a “good actor” exemption, the GSA needs to be implementing a GSP capable of achieving sustainable ground water management. The only plan covering the Tulare Lake subbasin is inadequate for the reasons described in DWR’s inadequate determination and the Final Staff Report. Therefore, no GSA’s implementing the plan would qualify for the exemption: GSA’s cannot qualify for the good actor exemption with plans that do not meet SGMA’s requirements.”

The probationary designation was based on these staff recommendations. Resolution #27 at page 4.

SGMA requires groundwater basins to achieve the sustainability goal by January 1, 2040. “By January 31, 2020, all basins designated as high or medium priority basins by the department that have been designated in Bulletin 118²⁴....as basins that are subject to critical conditions of

²¹ Exhibit 13 of Plaintiffs RJN filed July 10, 2024.

²² Exhibit 17 of Plaintiffs RJN filed July 10, 2024.

²³ Exhibit 17, pages 126-127.

²⁴ WC 10721(c).

1 overdraft shall be managed under a groundwater sustainably plan..." WC §10720.7(a)(1). TLS
2 submitted their 2020 GSP to DWR for review on January 29, 2020. "A groundwater sustainability
3 plan shall be developed and implemented for each medium or high priority basin by a groundwater
4 sustainability agency to meet the sustainability goal established pursuant to this part." WC
5 10727(a). "A groundwater sustainability plan shall include all of the following: (b)(1) Measurable
6 objectives, as well as interim milestones in increments of five years, to achieve the sustainability
7 goal in the basin within 20 years of the implementation of the plan. WC 10727.2. This section also
8 makes reference to the "20-year sustainability timeframe." WC 10727.2(3)(A).

9 Two GSA's within TLS requested the "good actor" exclusion from the probationary
10 designation under WC 10735.2(e) as referenced at page 126 of the March 2024 Final Staff Report:

11 "Southwest Kings GSA based its request on claims that, within its boundaries:

- 12 • Groundwater levels are relatively stable.
- 13 • Subsidence rates are low and do not affect critical infrastructure within the subbasin
- 14 • There are five domestic wells and one Disadvantaged Community
- 15 • There are few agricultural wells due to surface water imports

16 TCWA GSA based its request on claims that:

- 17 • TCWA GSA has adopted a dry well mitigation plan and has dedicated \$1 million
18 towards dry well mitigation from penalty fees levied for those who have pumped above
19 their allocations
- 20 • TCWA GSA has established a well registration and metering program and allocations
21 for its pumpers
- 22 • Subsidence rates are minimal and groundwater levels stable within TCWA GSA's
23 portion of the subbasin
- 24 • Wells are deep and scarce, and no DAC's are present within TCWA GSA's portion of the
25 subbasin."

26 SWB argues the Staff Report is simply summarizing existing law or alternatively is the only
27 legally tenable interpretation of Water Code 10735.2. (Opp. Pg 15-16; Supp. Opp. P. 10) This
28 Court finds SWB ignored their mandate by not commenting, analyzing or considering the merits of
these claims. SWB did not evaluate whether any GSA's were managing groundwater sustainably
and qualified for the exemption. SWB's interpretation of this portion of SGMA appears to be
incorrect and unlawful and cannot serve as the basis for a probationary decision pursuant to WC
10735.2. SWB's interpretation of the Good Actor Regulation would mean that no GSA would
qualify if it is part of a subbasin determined to be inadequate by DWR.

1 Plaintiffs argue SWB provides no citation, facts or evidence supporting the “Good Actor
2 Determination”. SWB’s position is based on a flawed legal interpretation rather than an in-depth
3 analysis. Their interpretation renders the “good actor” exclusion a nullity. ‘An interpretation that
4 renders statutory language a nullity is obviously to be avoided.’ (*Williams v. Superior Court* (1993)
5 Cal.4th 337, 357) SWB took the position that GSA’s must ask for an exclusion and failed to
6 consider the possibility that any GSA should be excluded; thereby failing to perform their mandate.
7 Plaintiffs ask to set aside the Probationary Designation on this basis alone. Plaintiffs’ arguments
8 are well taken and the Court believes they likely will prevail on the merits of this claim.

9 **2. FIFTH CAUSE OF ACTION AND TRO/OSC– NOTICE INJURIES:**

10 The Court recognizes two notice injuries – the failure to comply with the probationary
11 hearing notice and the failure to timely provide notice of new metering, calibration and reporting
12 requirements, as referred to as the “compliance notice.”

13 Plaintiffs allege in their petition (§ 237) SWB failed to comply with WC 10736(b)(3)(B)
14 requiring SWB to provide sixty (60) days’ notice of the **probationary hearing** to (a) all persons
15 known to the Board who extract or who propose to extract water from the basin, and (b) all
16 persons who have made written or electronic mail request to the Board for special notice of
17 hearing. Plaintiffs argue not all landowners in TLS received notice of the April 16, 2024
18 probationary hearing and SWB has failed to provide a list of notices it sent, how it compiled the
19 list, how many notices were sent, or other information that would support satisfaction of its notice
20 requirement (§§ 239, 240).

21 At the request of SWB the Court does take judicial notice of KCFB’s monthly publication
22 “FarmLife” from September 2023 through July 2024 which purports to be the “Official Monthly
23 Publication of the Kings County Farm Bureau.” (RJN in support of supp. opp. filed July 30, 2024)
24 Plaintiffs Julie Martella and Helen Sullivan are listed as Directors of KCFB and its Executive
25 Director, Dusty Ference, has contributions in several of these publications. The Court does agree
26 KCFB has repeatedly published information related to the Board’s activities related to the TLS
27 probationary designation and the metering, reporting and calibration requirements. Although
28 these documents are hearsay, the Court does agree hearsay exceptions such as party admissions
(Evid. Code 1220) and adoptive admissions (Evid. Code 1222) may be applicable and asks the
Court to find the contents admissible against Plaintiffs. Exhibits 11 and 12 are regulatory
documents from two GSA’s within TLS (Tri-County Authority and Mid-Kings River) consisting of well
meter policies. The Court has no information who read, received or viewed the KCFB website
containing FarmLife. Even if the Court had this information, it would not be sufficient to make a
conclusion that all affected pumpers received notice of the probationary hearing or the metering,

1 reporting and calibration requirements. The well meter policies do not shed any information on the
2 notice requirement.

3 SWB argues Plaintiffs misstates the law and SWB complied with these requirements as set
4 forth in Boland-Brien Declaration. Boland-Brien's declaration is allegedly based on "personal
5 knowledge" and he states, "During the intervention process in the TLS, the Board complied with
6 the noticing requirements of Water Code section 10736 as described in the final staff report."
7 (¶10) However, Boland-Brien failed to provide the location within the final staff report where this
8 information is contained. However, the Court notes at pages C-2 and C-3 ("Hearing Notice")
9 states the notice was "emailed" to "Kings County, Tulare County, Kern County, City of Hanford,
10 City of Corcoran, and City of Lemoore. The notice was mailed to approximately 2,000 parcel
11 owners identified by the SWB as persons who extract or propose to extract groundwater from the
12 subbasin based on publicly available well information. The owner/extractor mailing list includes
13 all public water systems (community, non-community non transient, transient) and state small
14 water systems in the subbasin; and the Santa Rosa Rancheria Tachi Yokut Tribe." In addition,
15 there is a reference to the "SWB's groundwater management email list" at page C-3.

16 The Court also notes at page 20, "The State Water Board is performing public outreach and
17 engagement during the state intervention process for Tulare Lake Subbasin. As part of this effort,
18 the State Water Board contacted California Native American Tribes, drinking water systems, cities
19 and counties, and approximately 2,000 parcel owners in the basin to make them aware of the
20 process." There are references to an online public workshop on November 3, 2023, and an in-
21 person public workshop in Hanford on November 8, 2023, where information was shared about
22 the state intervention process. At page 28 of the report, the notice requirements of WC 10736 are
23 listed.

24 SWB included declarations from Stork and Sugar. Natalie Stork, "declares" she is a
25 Supervising Engineering Geologist for SWB and was directly involved in the TLS probationary
26 hearing on April 16, 2024. Sarah Sugar "declares" she is Senior Environmental Scientist with
27 SWB. She was directly involved in preparations for the TLS probationary hearing that took place on
28 April 16, 2024, and helped to organize pre and post hearing meetings between SWB staff and
GSA's from TLS. She states SWB issued on October 12, 2023 notice of a probationary hearing for
the TLS which included the draft Staff Report's Executive Summary recommending TLS to be
probationary, the recommendation to require metering, information on how to attend staff
workshops. Those documents were Ex. 1 & 2 of her declaration. She states, "The State Water
Board emailed notice of the new requirements to its TLS email list on May 24, 2024." This was Ex.
3 to her declaration. "It mailed notice to its list of known pumpers on May 31, 2024,...followed up

1 with a second mailing of the same notice on June 20, 2024 in an attempt to reach pumpers who
2 had not already been reached through the email or first mailing.” The Board sent a final notice to
3 known pumpers on July 9, 2024. A copy of the final notice is Ex. 4 to her declaration. Ms. Stork’s
4 declaration confirms that notices were sent late to extractors and corroborates the experiences of
Martella, Sullivan and Bickner.

5 All three declarations lack information about the basis of the declarant’s information. If
6 there is a “list of known pumpers” or “email list” or “mailing list” containing emails or mailing
7 addresses why was that not included? SWB has failed to set forth any competent evidence, i.e.
8 someone with personal knowledge as to the persons and dates when the notices were sent,
9 posted, or emailed. The declarations of Boland-Brien, Stork, and Sugar are conclusory and are
10 insufficient for this Court to conclude the notice provisions of WC 10736 were complied with. If
such lists exist, why were they not included as an exhibit to a declaration?

11 Plaintiffs allege through the declarations of Martella, Sullivan, Bickner and Bartel in their
12 OSC/TRO pleadings, that approximately 45 days after SWB adopted its Probationary Designation,
13 compliance notices were sent to landowners in the TLS advising them of the metering, calibration
14 and reporting requirements scheduled to begin on July 15, 2024. The notices are dated May 24,
15 2024 but some were not sent until May 30, 2024 while others were not sent until June 20, 2024.
16 Some of these compliance notices arrived 19 days before the July 15th deadline. The late notices
17 of the metering, reporting and calibration requirements exacerbated the injury. The compliance
18 notices were confusing. Landowners received notices for some of their properties, but not others.
19 There was a double calibration requirement that caused confusion. This requirement was likely
20 impossible to satisfy. The installation of these meters is timely, costly, possibly unnecessary and
21 due to the imposed July 15, 2024 deadline would occur in the peak of irrigation season, causing
significant labor and financial disruption in business operations. For an extractor, 90 days’ notice
is not a reasonable period of time.

22 Plaintiffs’ arguments on their notice injuries are well taken and the Court believes they
23 likely will prevail on the merits of these claims.

24 **3. SIXTH CAUSE OF ACTION – UNLAWFUL REGULATIONS**

25 **UNLAWFUL REGULATIONS – LEGAL STANDARD:**

26 “Regulation” means every rule, regulation, order, or standard of general application or the
27 amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any
28 state agency to implement, interpret, or make specific the law enforced or administered by it, or to
govern its procedure.” GC 11342.600

1 An "underground regulation" means any guideline, criterion, bulletin, manual, instruction,
2 order, standard of general application, or other rule, including a rule governing a state agency
3 procedure, that is a regulation as defined in Section 11342.600 of the Government Code, but has
4 not been adopted as a regulation and filed with the Secretary of State pursuant to the APA and is
5 not subject to an express statutory exemption from adoption pursuant to the APA. Title 1 CCR §
6 250

7 "[N]o state agency shall issue, utilize, enforce, or attempt to enforce...a regulation without
8 complying with the APA's notice and comment provisions." (*Malaga County Water Dist. V. Central*
9 *Valley Regional Water Quality Control Bd.* (2020) 58 Cal. App.5th 418, 434 [internal quotations
10 omitted], citing Gov. Code 11340.5.) This prohibition applies to the SWB's authority under SGMA
11 to establish "procedures for adopting a [probationary determination." [Wat.Code 10736(d)(2)].

12 The purpose of the Administrative Procedures Act ("APA") is to ensure State agencies are
13 transparent in their actions, to provide due process, notice and an opportunity to be heard, to
14 prevent confusion and most importantly to be provided with the ability to challenge rules that are
15 unfair, undisclosed, and unlawful. "Proceedings to adopt regulations, including notice thereof,
16 shall, as a minimum requirement, comply with all applicable requirements established by the
17 Legislature (Government Code 11340, et seq, hereafter "GC")." 23 CCR § 649.1.

18 The APA requires state agencies to comply with APA when adopting regulations. "[I]t is in the
19 public interest to establish an Office of Administrative Law which shall be charged with the orderly
20 review of adopted regulations...." GC 11340.1(a). Some of the legislative findings and declarations
21 included under GC 11340 are as follows:

- 22 (a) "There has been an unprecedented growth in the number of administrative regulations in
23 recent years."
24 (b) "The language of many regulations is frequently unclear and unnecessarily complex, even
25 when the complicated and technical nature of the subject matter is taken into account.
26 The language is often confusing to the persons who must comply with the regulations."
27 (d) "The imposition of prescriptive standards upon private persons and entities through
28 regulations where the establishment of performance standards could reasonably be expected
to produce the same result has placed an unnecessary burden on California citizens and
discouraged innovation, research, and development of improved means of achieving desirable
social goals."
(e) "There exists no central office in state government with the power and duty to review
regulations to ensure that they are written in a comprehensible manner, are authorized by
statute, and are consistent with other law."

1 (g). “The complexity and lack of clarity in many regulations put small businesses, which do not
2 have the resources to hire experts to assist them, at a distinct disadvantage.”²⁵”

3 SWB is mandated to comply with APA. “The board shall adopt rules for the conduct of its
4 affairs in conformity, as nearly as practicable, with the provisions of Chapter 3.5 (commencing
5 with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.” WC §185.

6 The legislative findings and declarations for the APA and its requirements set forth below
7 are relevant to plaintiffs in this case. This Court has great concern why regulations were not
8 adopted to avoid the harms, confusion and issues outlined in this case. The Court believes these
9 harms, confusion and issues are directly attributable to SWB’s failure to adopt regulations
10 pursuant to GC 11346 et seq.

11 Regulations have two identifying characteristics: (1) they “apply generally,” even if not
12 universally, and (2) they “implement, interpret, or make specific the law enforced or administered
13 by the agency, or govern the agency’s procedure.” Malaga, supra, 58 Cal.App.5th at 434; *Tidewater
14 Marine Western, Inc. V. Bradshaw* (1996) 14 Cal.4th 557, 571 [“rule need not... apply
15 universally...so long as it declares how a certain class of cases will be decided”].)

16 To be deemed an underground regulation, which would be invalid because it was not
17 adopted in substantial compliance with the procedures of the APA, the agency must intend it to
18 apply generally rather than in a specific case and the agency must adopt it to implement, interpret
19 or make specific the law enforced by the agency. Modesto City Schools v. Education Audits
20 Appeal Pasel 123 Cal. App. 4th 1365

21 Regulations subject to the APA have two principal identifying characteristics. First the
22 agency must intend its rule to apply generally rather than in a specific case, but the rule need not
23 apply universally, and second, rule must “implement, interpret or make specific” the law enforced
24 or administered by the agency or govern the agency’s procedure. The first is a test of the generality
25 of the agency’s promulgation and the second is a test of the conformity of the interpretation with
26 the statute interpreted. *Paleski v. State Dept. of Health Service*, 144 Cal. App. 4th 713; *California
27 Grocers Assn v. Dept of Alcohol Beverage Control*, 219 Cal. App 4th 1065; *Savient
28 Pharmaceuticals, Inc. v. Dept of Health Services*, 146 Cal. App. 4th 1457.

Any regulation that substantially fails to comply with these requirements may be judicially
declared invalid [*Morning Star Co. V. State Board of Equalization* (2006) 38 Cal 4th 324. *Naturist
Action Com v. Department of Parks and Recreation* (App. 4 Dist. 2009) 175 Cal. App. 4th 1244.
(2009)

²⁵ It appears to the Court that a GSA is similar to a business.

1 If an agency policy is interpretive of some governing statute or regulation, a court should
2 not necessarily reject the agency's interpretation just because the agency failed to follow the APA
3 in adopting that interpretation; rather the court must consider independently how the governing
4 statute or regulation should be interpreted. *Alvarado v. Dart Container Corp of California* (2018) 4
5 Cal 5th 542

6 Plaintiffs allege in its sixth cause of action that SWB's Staff Report includes seven unlawful
7 regulations, as that term is defined under Government Code 11342.600. It sets forth rules and
8 standards of general application and applied and relied on these rules and standards in support of
9 its Probationary Designation. These regulations have been applied generally across all
10 stakeholders in the TLS and also applied in two other subbasins being considered for probation
11 (Tule and Kaweah).

12 These regulations were not adopted pursuant to the APA in violation of GC 11346. The
13 public was deprived participation in developing and/or challenging the regulations. Plaintiff
14 argues the rules and regulations were developed without public disclosure, with no transparency,
15 and then applied these rules to punish the very same people who were left out of the process. To
16 comply with the APA requirements for adoption of a regulation, SWB must give the public notice of
17 its proposed regulatory action (GC 11346.4, GC 11346.5), issue a complete text of the proposed
18 regulation with a statement of the reasons for it in plain, straightforward language [GC 11346.2(a),
19 (b)], give interested parties an opportunity to comment on the proposed regulation which includes
20 the opportunity to present statements, arguments or contentions in writing (GC 11346.8), allow
21 public discussion²⁶ (GC 11346.45) respond in writing to public comments [GC 11346.8(a), GC
22 11346.9], the economic impact of the regulation or the potential for adverse economic impact on
23 California business enterprises of individuals [GC 11346.3, GC 11346.36] and forward a file of all
24 materials on which the agency relied in the regulatory process to the Office of Administrative Law,
25 [GC 11347.3(b)] which reviews the regulation for consistency with the law, clarity and necessity
26 [GC 11349.1, GC 11349.3]. Prior to placing a basin on probation, the SWB is mandated to give
27 notice and hold a hearing. WC 10735.2(a).

28 Six of the seven underground regulations are discussed below and include the following:

A. SWB INTERVENTION REGULATION (¶253 and 254 of Petition): Plaintiffs contend
this regulation is contained at pages 12 -13 of the March 2024 Final Staff Report. State
intervention is "additional to local management" intended to be temporary and is a two-step

²⁶ "In order to increase public participation and improve the quality of regulations, state agencies proposing to adopt regulations shall, prior to publication of the notice required by section 11346.5, involve parties who would be subject to the proposed regulations, when the proposed regulations involve complex proposals or large number of proposals that cannot easily be reviewed during the comment period." (GC 11346.45)

1 process. In the first step “SWB determines, through a public process, whether to place the basin
2 on probation.” “In the second step, through a public process, SWB may implement an interim
3 plan for the basin which can only happen if deficiencies are not fixed after at least one year of the
4 basin being on probation. In determining whether to put a basin on probation, the SWB analyzes
5 whether deficiencies identified by DWR were sufficiently addressed prior to the probationary
6 hearing.” As part of its analysis, SWB considers the impacts of basin noncompliance on
7 vulnerable communities, including communities of color as reflected in SWB Resolution 2021-
8 0050 (Condemning Racism, Xenophobia, Bigotry, and Racial Injustice and Strengthening
9 Commitment to Racial Equity, Diversity, Inclusion, Access and Anti-Racism).

10 Plaintiffs contend and the Court agrees this regulation is applied generally to each GSA
11 and all landowners in the TLS. It is also applied generally to the Tule Subbasin (Ex. 3, pages 13-14,
12 28-32) and Kaweah Subbasin (Ex. 6. Pg. 12, 26-31)

13 Plaintiffs allege the Intervention Regulation requires SWB intervention to be temporary,
14 and concurrent with, or in addition to, local GSA management. (Petition ¶1254) The Water Code
15 does not create concurrent jurisdiction between the SWB and local management by GSA’s during
16 SWB intervention. The Board’s interpretation of SGMA as requiring concurrent and temporary
17 jurisdiction is an example of SWB interpreting, or making specific the law enforced or administer
18 by it, and governing its procedure, (GC 11342.600).

19 Resolution 2021-0050 was adopted by SWB on November 16, 2021, which was after TLS
20 submitted its first GSP to DWR on January 9, 2020 and obviously had no notice of it. In addition,
21 DWR did not make its incomplete or inadequate findings based on this alleged noncompliance.
22 The issues of racism, xenophobia, bigotry and racial injustice are important; however, these
23 issues were not part of the SGMA legislation and the adoption of this resolution by SWB appear to
24 be an example of overreach.

25 Plaintiffs allege the Intervention Regulation sets forth other actions by SWB during the
26 probationary period. The Staff Report indicates SWB “would collect data on groundwater
27 extractions, collect fees from certain groundwater users, and may conduct additional
28 investigations.” There are no SGMA provisions tying the process of state intervention with these
actions.

Plaintiffs contend if a public process were provided, the public would have input and demand
clarity on the following issues: (a) the characterization that intervention is in addition to rather than
in place of local management; extractors would be responsible for payment to both its GSA and
meter and extraction fees, among others. (b) what is meant by a temporary process, (c) how each
of the two steps would be carried out by the SWB, (d) how to avoid either step and the process for

1 exiting intervention, (e) the mechanism and standards the SWB uses to evaluate whether DWR
2 deficiencies are addressed, (f) the authority, standards, and mechanism the SWB relies upon to
3 deter “non-compliance” on communities of color, (g) the process and time a GSA has to remedy
4 deficiencies; and (h) the manner and use of data collection and the authority under which it would
5 conduct “additional investigations.” This Court had many of these similar questions.

6 The public asked SWB for clarification and information on this regulation. It was not adopted
7 in a lawful and transparent manner as required by the APA. SWB had over 10 years to adopt
8 regulations for state intervention but failed to do so. As to this unlawful regulation, the plaintiffs
9 will prevail on the merits of their claim.

10 **B. SWB PROBATIONARY DESIGNATION REGULATION (¶268 - 281 of Petition):**

11 “Plaintiff contends SWB has developed a set of rules and standards for the probationary
12 process that go beyond the existing rules of law and amount to an underground regulation. SWB’s
13 probationary process includes issuing a draft staff report, taking comments on the draft staff
14 report, finalizing the draft staff report, including staff recommendations on probation in the final
15 staff report, allowing staff to present its staff report and recommendations at a one-day hearing,
16 and allowing GSA’s less than an hour to present information and evidence related to the Staff
17 Report (Probationary Designation Regulation).” [(¶271)]

18 Plaintiff contends and the Court agrees this regulation is applied generally to each GSA and all
19 landowners in the TLS. It is also applied generally to the Tule Subbasin (Ex. 3, pages 13-14, 28-32)
20 and Kaweah Subbasin (Ex. 6. Pg. 12, 26-31). Obviously SWB has developed a process for these
21 subbasins that are similarly situated, and they are currently being generally applied. As to this
22 unlawful regulation, the plaintiffs will prevail on the merits of their claim.

23 **C. GOOD ACTOR REGULATION (¶282 - (¶299 of Petition)**

24 This regulation is set forth more fully in the discussion above under the Second Cause of
25 Action. Plaintiff contends and the Court agrees this regulation is applied generally to each GSA
26 and all landowners in the TLS. It is also applied generally to the Tule Subbasin (Ex 3, pg. 13 & 21)
27 and Kaweah Subbasin (Ex. 6, pg. 11 – These recommendations are to “designate the entire
28 subbasin probationary” “Not exclude any portions of the subbasin from the probationary status,”
pg. 20, 115). As to this unlawful regulation, the plaintiffs will prevail on the merits of their claim.

D. PROBATION EXIT REGULATION: (¶300 - (¶312 of Petition)

This regulation is set forth more fully in the discussion below under the Fourth Cause of Action.
Plaintiff contends that in order to exit probation, GSAs must adopt revised GSP(s) that resolve any
deficiencies, submit the revised GSP to the SWB for review, and the SWB will review the new GSP.
This is set forth in Exhibit 17, page 56 of the March 2024 Final Staff Report. This regulation is

1 applied generally to each GSA and all landowners in the TLS. It is also applied generally to the Tule
2 Subbasin (Ex 3, pg. 59, March 2024 Staff Report) and Kaweah Subbasin (Exh. 6, pg. 56, May 2024
3 Staff Report. The description of the probation exit regulation is exactly the same in the staff
4 reports of all three subbasins. As to this unlawful regulation, the plaintiffs will prevail on the
5 merits of their claim.

6 **E. CONTINUED MANAGEMENT REGULATION (¶1313 - ¶1324 of Petition)**

7 Plaintiff contends that SWB developed a set of rules and standards requiring GSA's to
8 continue their management in addition to state intervention. SGMA provides no legal authority for
9 this. This regulation is set forth in Exhibit 17, on page 13 of the March 2024 Final Staff Report:
10 "State intervention is additional to local management and intended to be temporary."
11 "Importantly, the GSA retains its authorities and responsibilities and must continue to implement
12 its GSP regardless of if the basin is in probation." The concern expressed by plaintiffs during
13 several hearings were the additional harms of having probation fees in addition to GSA fees. This
14 regulation is applied generally to each GSA and all landowners in the TLS. It is also applied
15 generally to the Tule Subbasin (Ex. 3, pg. 28, May 2024 Staff Report – "GSAs retain authorities and
16 responsibilities and must continue to implement their plans." and the Kaweah Subbasin (Ex 6, pg.
17 26, March 2024 Staff Report, "GSAs retain authorities and responsibilities and must continue to
18 implement their plans.") The description of the continued management regulation is exactly the
19 same in the staff reports of all three subbasins. As to this unlawful regulation, the plaintiffs will
20 prevail on the merits of their claim.

21 **F. WELL MITIGATION REGULATION (¶1325 - ¶1336 of Petition)**

22 Plaintiff contends that SWB developed a set of rules and standards that require well mitigation
23 when there are undesirable results. Existing law does not require well mitigation, but the Staff
24 Report states that well mitigation is required to offset the continuing decline in water levels. This
25 is set forth in Exhibit 17, page A-4, March 2024 Final Staff Report. To correct Deficiency GL-4, the
26 action to correct this deficiency is to "establish accessible, comprehensive, and appropriately
27 funded well impact mitigation programs that mitigate impacts to wells affected by lowering of
28 groundwater levels and degradation of water supply." This regulation is applied generally to each
GSA and all landowners in the TLS. It is also applied generally to the Tule Subbasin (Ex. 3, pg. A-4,
March 2024 Staff Report, Deficiency GL-8, "the well mitigation framework provided in the GSPs
lacks necessary detail." The Potential Action for GL-8 is to "establish accessible, comprehensive,
and appropriately funded well impact mitigation programs that mitigate impacts to wells affected
by lowering of groundwater levels and degradation of water supply") and the Kaweah Subbasin (Ex
6, pg. 26, March 2024 Staff Report, Deficiency GL-4, "The 2022 Coordination Agreement's

1 discussion of the Mitigation Program Framework lacks specific details” with the exact same
2 recommended “Potential Action” as set forth for the TLS and Tule subbasin. As to this unlawful
3 regulation, the plaintiffs will prevail on the merits of their claim.)

4 **SWB’s Adoptive Admissions:** There were several references in Appendix C of the
5 Probationary Hearing Final Staff Report dated March 2024²⁷ to the Board’s need to adopt
6 regulations in the future, not having regulations in place or the Board’s “Frequently Asked
7 Questions” document. These references set forth below:

- 8 • **“Board Processes:** “Many commenters made broader points regarding clarity around
9 State Water Board processes, including how to exit the Board’s oversight or how to request
10 a “good actor” exclusion under Water Code 10735.2, subdivision (e).

11 The State Water Board is developing a Frequently Asked Questions document to provide
12 more context and guidance for GSAs on some Board processes under Chapter 11, the
13 chapter of the SGMA statute which covers the Board’s state intervention authorities. **To
14 lay out more specific rules for state intervention the SWB would have to develop and
15 adopt regulations regarding the adoption of a probationary designation or an interim
16 plan (WC 10735.8 subd. (d). The Board may develop regulations in the future.”
17 (emphasis added). [Page C-9]**

- 18 • **“Exiting Chapter 11:** The State Water Resources Control Board received several
19 comments regarding the process of exiting State Water Board oversight (i.e., “Chapter 11”)
20 before the probationary hearing.

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

25 **The State Water Board’s forthcoming Frequently Asked Questions document will
26 address questions regarding processes for exiting Chapter 11.** State Water Board staff
27 also discussed this question at the Board’s December 19, 2023, Board Meeting, and a
28 recording is available on the State Water Board’s website.” **(Emphasis added). [Pages C-
9 to C-10]**

- **“Probationary Hearing Format:** Some commenters requested clarity on the structure of
the hearing and the role of GSA’s at the hearing.

Other than specifying that the procedures for quasi-legislative action apply, the SGMA
statute does not address the structure of probationary hearings and **to date the State**

²⁷ Exhibit 17 to Plaintiffs request for judicial notice, pages C-9 – C-11.

1 **Water Board has not developed regulations regarding the state intervention process.”**

2 **(Emphasis added) [Page C-10]**

- 3
- 4 • **“Good Actor” Exemption: Criteria:** Several comments requested more information on
5 how a GSS would qualify for an exclusion from probation under Water Code section
6 10735.2, subdivision (e) (the “good actor” exemption). One comment letter requested the
7 State Water Board develop a process for evaluating “subsets of a subbasin in their
8 potential to achieve their sustainability goal while acknowledging that the GSP is being
9 revised.”

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

14 Staff has edited Section 4.2 of the Final Staff Report to describe the statutory requirement
15 in more detail. **The State Water Board’s forthcoming Frequently Asked Questions**
16 **document will address questions regarding the “good actor” exemption. (Emphasis**
17 **added) [Pages C-10 to C-11]**

18 This Court finds these references so incredibly dispositive to the issue whether
19 underground regulations exist. First, the fact the references are included in the appendix (a
20 publicly shared document) indicates SWB found them to be important, otherwise if they were
21 irrelevant, they would not have been included. Second, the reference to “the board may develop
22 regulations in the future” in reference to “Board Process” is a clear recognition by SWB it needs to
23 adopt regulations in this area. If SWB needs to publish a “frequently asked questions” document,
24 many or numerous people have the same unanswered questions and the actions of the state
25 agency are not clear and transparent. Clearly the actions of this state agency have not been
26 transparent, are only known to the SWB, and there has been no review, analysis or ability to
27 challenge their conduct. These are all things that would occur if they complied with the APA.
28 Oftentimes, evidence that is lacking before a Court is a clear indication of what should have been
done or presented.

24 4. **FOURTH CAUSE OF ACTION – SWB EXCEEDING ITS AUTHORITY**

25 Plaintiffs have argued SWB’s probationary designation exceeds the SWB’s authority. The
26 Court believes plaintiffs will prevail on the merits under the following points raised.

27 **Submission of Amended GSP’s:** If a subbasin amends a GSP, SGMA and DWR
28 regulations require the subbasin to submit the GSP to DWR for evaluation. Water Code 10728.4,
10733, 23 CCR 355.10(a) and (b). There are specific rules for submission of an amended GSP

1 while a subbasin is in probation. 23 CCR 355.2(d). The GSP must be submitted to DWR which will
2 review the GSP after consultation with the SWB. "If the Board has jurisdiction over the basin or a
3 portion of the basin pursuant to WC 10735.2, the Department after consultation with the Board,
4 may proceed with an evaluation of the Plan."

5 SWB unlawfully requires GSA's to submit the amended GSP to the State Water Board staff.
6 This is reflected in Exhibit 17, the March 2024 Final Staff Report at page 56: "After GSAs have
7 adopted a revised plan (or plans) that resolve the deficiencies, they can seek to exit probationary
8 status by submitting the plan (or plans) to the State Water Board. If the State Water Board
9 determines that deficiencies were addressed, the Board may resolve to have the GSA (or GSAs)
10 exit probation. If deficiencies are not addressed after a year, the State Water Board can take steps
11 to manage groundwater more directly by developing and adopting, after notice and a hearing, an
12 interim plan for the basin." This is reflected within the Resolution itself at ¶ 7e, page 10 (Exhibit
13 18): "Directs State Water Board staff to continue to provide technical feedback to the Tulare Lake
14 Subbasin GSAs regarding the GSAs' efforts to resolve the deficiencies in the GSP and to
15 periodically update the State Water Board regarding the GSAs' progress made towards resolving
16 the deficiencies, including whether, if the GSAs propose actions to correct the GSP's deficiencies
17 (other than the potential actions identified by the State Water Board), those actions meet SGMA's
18 standards." It is also reflected at slide 12 in Exhibit 16: "STEPS to Exit State Intervention, STEP 1:
19 GSA(s) revise plan; STEP 2: Board staff review submitted plan(s) – timelines; STEP 3 Board
20 decides; Side note: "Good Actor" exemptions." This procedure unlawfully expands the Board's
21 authority and is directly contrary to DWR's regulations.

22 E. BALANCE OF HARMS:

23 **Plaintiffs harms:** The harms to the Plaintiffs have been and will be substantial if a preliminary
24 injunction is not issued. Plaintiffs' harms are far greater than any harms identified by SWB, which
25 at this point have been minimal. The harms stem from SWB's actions in designating TLS as
26 probationary. These include metering, reporting and calibration requirements. The metering
27 requirements are costly and evidence suggest they could be unnecessary. It includes a double
28 calibration requirement for meters, that appear impossible to comply with, costly and labor
intensive and have a detrimental effect on farm and business operations in the peak irrigation
season. The harms are triggered by the timing of these actions (the July 15, 2024 deadline to occur
in the middle of an irrigation season) which could have been averted if SWB had accepted
Plaintiffs counsel's reasonable request to extend this deadline to October 15, 2024 at a minimum.
The harms include the confusion created by these actions, again which could have been averted if
SWB had complied with APA requirements and had regulations in place to guide extractors. The

1 harms are triggered by the untimely notice to the Plaintiffs of their new compliance requirements.
2 In addition to all of this, Stork at ¶ 9 of her declaration describes other financial costs that
3 Plaintiffs may face: a person failing to file a required report may be required to pay the
4 investigative fees allowed under WC 5204. Extractors may be subject to the penalty provisions of
5 WC 5107 (daily fines for willful misstatements in extraction reports, physical malfunctions or
6 tampering of measure devices and or criminal liability). Extractors could face administrative civil
7 liability for failing to measure groundwater extractions pursuant to WC 1846 and 22 CCR1046
8 (\$500 per day for violating a SWB regulation or order). Many of these harms are fully described
9 below in the declarations of Martella, Sullivan, Bickner, Stork and Bartel:

10 Plaintiff Julie Martella stated she is owner and operator of Martella Farms which operates
11 within the Mid-Kings River GSA jurisdiction and currently has planted 40 acres of walnuts. On June
12 26, 2024, she received a Notice letter from SWB dated May 24, 2024 but postmarked from
13 Sacramento on June 20, 2024 informing her of the probationary designation and directing her to
14 comply with its obligations by July 15, 2024. Exhibit 1 and 2 of her declaration included a copy of
15 the envelope, tracking number and tracking history supporting this information.

16 Plaintiff Helen Sullivan stated she is the owner and operator of Sullivan Farming LLC, since
17 1982 within the Mid-Kings River GSA jurisdiction. She currently has planted 905 acres of walnuts,
18 almonds, alfalfa, sudan grass, pasture and corn. In past years they have annually extracted
19 approx. 2500 acre-feet of groundwater. In early June 2024, she received two Notice letters from
20 SWB, dated May 24, 2024. The letters advised she would be required to track her groundwater
21 extractions starting July 15, 2024 and submit groundwater extraction reports to SWB by December
22 1, 2024. Three of her four groundwater wells are metered. All installations are at least 8 years old.
23 Two of the pumps have been repaired or calibrated within the last two years. One of the pumps
24 still has the original meter. Calibrating meters has cost her between \$1800 to \$2200. The fourth
25 well, on her home parcel, has a pump with a meter, replaced approximately 6 months ago costing
26 \$3000. There are two other smaller wells, occasionally used to supplement large wells but not
27 metered. The SWB website indicated flowmeters must be installed, immediately calibrated (even
28 if already factory calibrated²⁸). The letters were confusing about how to comply with extraction,
measuring and reporting requirements. She did not know whether she would have to calibrate
meters that were repaired or calibrated within the past two years. Since her groundwater
agricultural use is over 500 A/F, she was not sure if her domestic well would fall under the new
SWB requirements. If so, she would have to replace or calibrate a meter that was replaced 6
months ago. Additionally, it was unclear whether her smaller occasional-use wells had to be

²⁸ This has been referred to as the "double calibration" requirement.

1 metered. The Court found Ms. Sullivan’s confusion to be real, logical and reasonable. She would
2 have approx. one month to try to come into compliance which based on all other evidence would
3 have been impossible. Her business operation’s planting decisions are influenced by water
4 availability, and if groundwater pumping is restricted or too costly this will drastically change her
5 cropping pattern. Attached to her declaration is the Notice entitled, “Options for Measuring
6 Groundwater Extraction Volumes.” This document does not appear to provide any answers to the
7 issues she presented. In addition, the late notice of new requirements will affect her financially
8 and may be wasteful.

9 Zack Bickner, a member of KCFB, stated he works for his family’s farming operation, Hansen
10 Bickner Farms which has been farming for four generations within the Mid-Kings River GSA with
11 580 acres of farmland growing almonds, alfalfa, corn, wheat and other crops. There are 5 full time
12 employees, some working approximately 30 years. Their property has 23 wells capable of
13 producing groundwater for irrigation and domestic purposes. This year he anticipates using
14 surface water for irrigation until August, thereafter turning to groundwater for irrigation. In June
15 2024 his family received 4 letters from SWB each dated May 24, 2024 and postmarked in
16 Sacramento on May 30, 2024. Through the letters he learned the SWB designated TLS as
17 probationary on April 16, 2024 and that groundwater extractors must track their extractions
18 starting July 15, 2024 and report extractions to SWB by December 1, 2024. Extractors, such as his
19 farm, pumping more than 500 AC/F must install and use certified flow meters on their wells to
20 comply with these requirements.

21 Bickner expressed his concerns and confusion. The letters included Assessor Parcel Numbers
22 (APN’s) but the numbers did not cover all Hansen Bickner Farms property with wells. In addition,
23 he was not sure if those properties and wells were exempt from these requirements. They
24 anticipate extracting more than 500 acre-feet of groundwater this year so he began looking into
25 compliance options. The Notice Letters stated SWB may approve alternative approaches for
26 tracking these extractions and referred him to a SWB website. The website indicating that persons
27 requesting an “alternative approach” must contact sgma@waterboards.ca.gov “as soon as
28 possible, preferably by June 1, 2024 to ensure adequate time for evaluation of proposed
alternative approaches in advance of the meter installation deadline.²⁹” That June 1, 2024
deadline had already passed by the time they received their letters.

Bickner researched the cost and feasibility to install compliant totalizing flowmeters by July
15, 2024 or calibrate existing ones, conducting online research, contacting well metering suppliers
and installers and speaking to colleagues in the agricultural industry. Their family has four deep

²⁹ Exhibit 6, page 3 of 7 to Bickner Declaration.

1 wells, fourteen shallow wells, and five domestic wells. The shallow and domestic wells do not
2 have meters. Three of the four deep wells are plumbed into filter stations, and the filter stations
3 have meters on them. He concluded their business may need to purchase nearly two dozen
4 meters to be fully compliant with the requirements. He placed an order for several flowmeters
5 with Valley Pump and Irrigation who told him they won't arrive until around July 24, 2024. This was
6 consistent with other information he received including arrival estimates as late as August 2024.
7 The July 24, 2024 was the anticipated arrival time for the flowmeter hardware. They would not be
8 installed on that day and does not know how quickly they can be installed until after their arrival.
9 Their business will need to spend tens of thousands of dollars to purchase new o replacement
10 flowmeters to comply with the new requirements.

11 In Exhibit 7 (page 2) to his declaration, Bickner highlighted the "double calibration"
12 requirement for flowmeters. "It is common for flowmeter sensors to deviate from their factory
13 calibration (drift) upon installation or over time for a variety of reasons including sensor
14 contamination, aging, and fouling. Drift is a phenomenon that is poorly understood and may
15 happen at any time. Therefore, flowmeters **must be calibrated by a qualified individual upon**
16 **installation** and at least once every five years thereafter." (emphasis added). He concluded that
17 even expensive factory calibrated, factory-certified well meters they must purchase and install will
18 require immediate calibration and certification by a third party after installation. He is unaware of
19 any companies or individuals that provide on-site flowmeter calibration and certification. He is
20 only aware of options to have flowmeters calibrated and certified offsite, meaning they are
21 uninstalled, sent to a facility for testing, and reinstalled upon their return, which would be highly
22 disruptive during peak irrigation season.

23 Three of the four deep wells are plumbed into filter stations which have meters on them. The
24 new requirements mean they would have to replumb the system so there is a meter at each well
25 head, not just the final distribution point. They would have to replace a perfectly functioning meter
26 with multiple meters to achieve the same monitoring outcome. This would require taking three
27 wells offline in the process creating inefficiency and disruption to their operations and crop yields.
28 The SWB's July 15, 2024 deadlines for metering requirements and the backlog of meters and
installation means their family would have to take wells offline and out of production during peak
irrigation season. They undertake scheduled well maintenance after the end of irrigation season
during the winter months; however, these requirements would occur during the peak of their
season.

In addition to well meter purchase and installation costs, and unknown immediate post-
installation calibration and recertification costs, their farm is expected to pay SWB \$6900 annuary

1 (23 well heads at \$300) in well head fees for as long as TLS is on probation. Their farm would also
2 be required to pay \$20 per acre foot of water extracted from their wells and he estimated their
3 groundwater usage is approx. 870 to 2320 acre-feet per year and would also have to pay SWB
\$17,400 - \$46,400 annually in groundwater extraction fees during the period of probation.

4 In response to SWB'S probationary designation, Hansen Bickner Farms expects to make
5 defensive planting decisions and anticipates operating cost increases. For example, they may
6 have to forego planting alfalfa, corn, wheat, cotton or other preferred crops in favor of cover crops
7 that use less water even if those other cover crops lose them money. The effect of this all has
them looking at employee headcount and possible layoffs.

8 The SWB letters attached to Bickner's declaration do not appear to provide any answers to the
9 issues he presented. In addition, the late notice of new requirements will significantly affect their
10 business financially and may be wasteful.

11 Phil Bartel stated he is the founder (2011) and owner of Streamline Irrigation servicing clients
12 in Fresno, Tulare and Kings counties including the TLS. He specializes in designing and installing
13 agricultural irrigation systems, to include, installing new flow meters and calibrating existing flow
14 meters on groundwater wells. Flow meters measure the rate of flow and/or the volume of water
15 passing through a pipeline or other conduit. They are used by growers on groundwater wells to
16 roughly track the amount of water being applied to crops to ensure proper and sufficient irrigation.
17 To prepare a well site to install a **new flowmeter**, all groundwater pumping at the well must stop
18 and connected water lines must be drained. Often, the plumbing connected to the well must be
19 removed, reconfigured and replaced. The reconfiguration process can be extremely complex on
20 some well setups. On average, it will take one full workday by a two-person crew. Complex well
21 setups requiring lines being reconfigured can take longer than one day, more simple setups taking
22 less time. The average cost of installing a new flow meter, including labor, is approximately \$5000
23 to \$6000. This time and cost estimate does not include recalibration of new meters before
24 installing them. New flow meters are calibrated by the manufacturer who provide a certification of
25 calibration good for five years. It is not industry practice to recalibrate new meters before
installing them. A customer recently asked to purchase and have installed several flowmeters by
26 July 15, 2024 but he could not fulfill the order and have the installations performed by July 15 due
27 to the amount of time it would take to obtain the meters and install them.

28 His company does offer flowmeter calibration services, however they do not perform the
calibration itself and to his knowledge none of his competitors do. Instead, calibration is
performed by companies capable of conducting accuracy testing in accordance with National

1 Institute of Standards and Technology (NIST). Technoflo Systems is the only company in or around
2 TLS capable of calibrating flow meters consistent with NIST standards and protocol.

3 To calibrate an **existing meter**, all groundwater pumping at the well must stop, the connected
4 lines must be drained, the meter must be removed and sent to the testing company to perform the
5 calibration. It can take four to six weeks, once a request is made, to uninstall the meter, send or
6 deliver it to a third party for calibrating, returning and reinstalling the meter. During this time, the
7 well will be out of service unless another meter is installed or the system is reconfigured to
8 operate without a meter. The cost to calibrate a meter, including labor, is approximately \$1,500.

9 Growers schedule non-emergency work on groundwater wells before or after the irrigation
10 season, not during it. The only work performed on groundwater wells during the irrigation season
11 is emergency pump repair or replacement work. This emergency repair/replacement work is more
12 common when surface water supplies run out and growers have both surface water and
13 groundwater supplies switch to groundwater. He is informed and believes this shift takes place in
14 early to mid-August this year given the hydrology.

15 His opinion is that the “probationary designation and required compliance measures will likely
16 be unachievable for many growers and will cause significant disruption to local farming operations
17 during a critical time of the irrigation season.”

18 **Harms to SWB, SGMA and the Public:** The SWB has not shown what specific, identifiable
19 harm will occur if TLS extractors do not comply with installation of meters that are double
20 calibrated and reporting requirements that won’t start until December 1, 2024. SWB fails to allege
21 what extraction data they currently have, what extraction data is missing, its importance and what
22 extraction data will be gained by the metering and calibration requirements as well as its
23 importance. They do not allege whether this will cause wells to go dry, land subsidence to occur
24 or get worse or water quality to degrade or get worse. These are all deficiencies identified by DWR
25 in 2020, again in 2022 and arguably Plaintiffs have until 2040 to remedy under SGMA. The SWB has
26 not shown how an injunction prohibiting the imposition and collection of wellhead and extraction
27 fees would cause specific, identifiable harm to the public. There has been no nexus shown
28 between these things.

29 Natalie Stork stated she is a Supervising Engineering Geologist for SWB. She helped to
30 supervise the development of the SWB Groundwater Extraction Annual Reporting System (GEARS)
31 which is the reporting system that groundwater extractors (pumpers) use to report groundwater
32 extraction data to the SWB to comply with SGMA. The GEARS platform is operational; however,
33 pumpers will not be able to submit reports of groundwater extraction or certify compliance with
34 the meter requirements for the 2023-2024 water year until after September 30, 2024. The final

1 deadline for filing extraction reports for the 2023-2024 water year is December 1, 2024. She was
2 also directly involved in the TLS probationary hearing on April 16, 2024. Considering her role with
3 SWB and SGMA, it would be a reasonable inference for this Court to make that Ms. Stork has the
4 qualifications and experience to comment on the role of extraction data. Ms. Stork fails to
5 mention what the harms would be to SWB or the public if pumpers are not reporting their
6 extraction data if a preliminary injunction were granted or why “the need for groundwater
7 extraction data in the Subbasin is great.” (Decl. pg. 3:14)

8 The Court recognizes the importance of the Human Right to Water policy that every human
9 being has the right to safe, clean, affordable, and accessible water adequate for human
10 consumption, cooking and sanitary purposes. The Court understands the desire of the SWB to
11 make racial equity, diversity, inclusion and environmental justice a central consideration in water
12 law. The Court also recognizes the duty of the SWB to consider adverse impacts groundwater
13 extraction would have on public trust resources and to protect such resources where feasible.
14 (Resolution ¶¶ 23-25)

15 Dr. Nataly Escobedo Garcia, employed by the Leadership Counsel for Justice &
16 Accountability as a Policy Coordinator - Water Programs, frequently visits her family in the City of
17 Lemoore located within TLS. Her job involves her with SGMA implementation in the San Joaquin
18 Valley because the impact of the harms of excessive groundwater extraction and unsustainable
19 groundwater management on small water systems, community water systems, and domestic
20 wells. She does not work directly with communities within the TLS. Dr. Nataly Escobedo Garcia
21 fails to provide how this Court’s preliminary injunction relating to metering, calibration and
22 reporting of groundwater extractions would specifically affect the interests of her concern. The
23 court was uncertain whether she had any specific information related to the TLS, and its GSP.

24 The Court has considered SWB’s arguments that an injunction would harm domestic water
25 users, drinking water quality, public infrastructure, natural resources or its ability to implement
26 SGMA. Maricela Mares-Alatorre describes the problems that SGMA legislation is attempting to
27 cure; however, she fails to provide reliable and specific information on how this Court’s
28 preliminary injunction would specifically affect the interests of her concern.

29 Sarah Paulson, Environmental Program Manager for the Department of Fish and Wildlife
30 for the Central Region has 20 years of experience in data collection and analysis. CDFW
31 developed its Groundwater Program to ensure fish and wildlife resources reliant on groundwater
32 are addressed in GSPs. She states failure to implement SGMA negatively harms these ecological
33 resources. Ms. Paulson, an expert in data collection and analysis of some sort, fails to state how

1 this Court's preliminary injunction relating to metering, calibration and reporting of groundwater
2 extractions would specifically affect the interests of her concern.

3 Dr. Kristin Dobbin discusses that TLS has one of the sparsest monitoring networks of all
4 GSPs in the Central Valley, highlighting the critical need for improved monitoring systems. This
5 Court had questions about the staleness of her information, the basis of her information, whether
6 it was based on hearsay, whether she has the technical ability to assess monitoring systems to
7 include the currently monitoring systems that are being proposed. Most importantly, she fails to
8 describe how this Court's preliminary injunction relating to metering, calibration and reporting will
9 specifically improve these issues.

10 Samuel Boland-Brien states extraction data will help GSAs address the deficiencies
11 identified by the Board and GSA's. This is a very general statement and the Court, again, was not
12 clear on the basis of her information, whether he had the technical ability to assess the value of
13 "high-resolution information." The Court has been continually asking all parties to explain the
14 importance of the metering and calibration requirements to the issues and deficiencies identified
15 by DWR. To date, I have not received an answer. This Court does not see at all how its decision in
16 this one subbasin will have an impact across the state of California as described by Boland-Brien.
17 This Court's orders only apply to the TLS and none other.

18 In conclusion, SWB has not shown any nexus between the Court's issuance of a
19 preliminary injunction and any harm. They are not likely to prevail on the merits and there is no
20 presumption of harm that arises.

21 **IT IS HEREBY ORDERED:** A Preliminary Injunction shall be issued as follows:


- 22 1. Pending trial, the State Water Board and its agents, servants, partners, and employees, and
23 all persons acting on its behalf or in concert with such persons are restrained and enjoined
24 from enforcing State Water Board Resolution No 2024-0012, "Designating the Tulare Lake
25 Groundwater Subbasin as Probationary Under the Sustainable Groundwater Management"
26 by:
 - 27 a. Requiring any persons within the Tulare Lake Subbasin (as that area has been
28 defined by the California Department of Water Resources) who extracted more
than 500 acre-feet from the Tulare Lake Subbasin (TLS) during the period of
October 1, 2022 through September 30, 2023, and any person who anticipates
extracting more than 500 acre-feet during the period of October 1, 2023 through the
conclusion of the trial in this case, to install and use meters that meet the
requirements of California Code of Regulations, title 23, section 1042 on each of
their production wells within the TLS before July 15, 2024; and

- 1 b. Requiring any person who extracts more than two acre-feet of groundwater per year
2 from the TLS or who extracts groundwater from the TLS for purposes other than
3 domestic uses to report their extractions made on or after July 15, 2024, to the
4 State Water Board pursuant to Water Code section 5202 and pay to the State Water
5 Board the associated fee imposed pursuant to California Code of Regulations, title
6 c. Requiring groundwater extractions reports from the TLS to be submitted by
7 December 1, 2024 or until the conclusion of the trial in this matter.
8 d. Taking any actions or imposing any requirements stemming from its designation of
9 the Tulare Lake Subbasin as probationary under Water Code section 10735.6(a)
10 and 10735.2(a)(3).

11 **IT IS FURTHER ORDERED:** The Court imposes a nominal undertaking of \$1.00 to be
12 posted by Plaintiffs within 10 days of the issuance of this Order. The Court has reviewed the
13 September 4, 2024 response and declarations from Natalie Stork and Margaret Tides addressing
14 this issue. The Court has also reviewed Plaintiff's objection to these filings. These filings are
15 unauthorized and stricken pursuant to CCP 128 and 1005. The September 7, 2024 filings are
16 untimely merit arguments and this Court will consider them for no purpose. Even if the Court
17 allows or considers such filings, Ms. Stork's declaration is conclusory and does not contain
18 sufficient information for this Court to set a bond in the amount of \$7.2 million. This amount is not
19 supported by any evidence in the pleadings filed to date. Nothing contained herein forecloses the
20 court's ability to reconsider the sufficiency of said undertaking as provided for in California Code
21 of Civil Procedure §529(a) upon a properly noticed hearing.

22 Service of this Order by the Clerk of the Court shall constitute Notice of Entry for all
23 purposes.

24 Dated: September 12, 2024

25 
26 _____
27 Kathy Ciuffini, Judge
28 Kings County Superior Court