

October 15, 2019

VIA ELECTRONIC MAIL

IWVGA Board, PAC and TAC Members
IWVGA Water Resources Manager
c/o Clerk of the IWVGA Board

Re: *Meadowbrook Comments – GSP Draft Sustainability Goal Language*

Dear Mr. Johnson, Board and PAC/TAC Members:

On behalf of our client, Meadowbrook Dairy, we offer the following preliminary comments on the document that was distributed at the October 3, 2019 PAC and TAC meetings, entitled, “Draft GSP Text Section 4.2 Sustainability Goal” (“Draft Sustainability Goal”). Because only partial and incomplete portions of GSP-related materials have been provided to the PAC, TAC and public to date, we reserve the right to comment further as the Groundwater Authority releases more complete information.

California Water Code Section 10723.2 requires Groundwater Sustainability Agencies to consider the interests of all beneficial uses and users of groundwater, specifically including “holders of overlying groundwater rights including agricultural users, including farmers, ranchers and dairy professionals.” The federal government, including the military and managers of federal lands, is also included in that list. The Draft Sustainability Goal, however, centers almost exclusively on the Navy’s interests, and fails to consider the interests of other beneficial users and uses of groundwater. Not a single reference is made to agricultural users.

Instead, the Draft Sustainability Goal and related Groundwater Authority staff materials suggest an intention to eliminate agricultural users entirely from the basin. At the October 3rd PAC and TAC meetings, a document was distributed to the PAC and TAC entitled, “Introduction to Sustainable Yield Allocation Chart.” Strangely, the identity of the author was not revealed at that meeting. The document, without citation to any supporting legal authority, proposes to allocate nearly the entire Groundwater Authority estimated annual basin recharge to the Navy, and relegate all agricultural water users including Meadowbrook to an unidentified and unquantified

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“Pool” that would require them to cease pumping once depleted. The allocation chart is based upon other unrevealed though highly questionable and untenable legal theories and factual assumptions. See Meadowbrook’s August 6, 2019 letter addressing similar issues in Model Scenario 6, and related concerns.

We emphasize that while Water Code Section 10726.2 authorizes a GSA to acquire real and personal property rights by grant, purchase, lease, contract, etc., or to provide for a program of *voluntary* fallowing of agricultural lands, it does *not* authorize a GSA to force agricultural fallowing or to take property rights without due process and just compensation.

Meadowbrook reiterates its longstanding objection to a Sustainability Goal and a GSP that proposes eradicating Meadowbrook from the Indian Wells Valley.

The Draft Sustainability Goal is also inconsistent with SGMA, DWR Regulations and DWR’s Sustainable Management Criteria Draft Best Management Practices document (“SMC BMP”). California Code of Regulations, Title 23 (“DWR Regulations”) Section 354.24, provides:

“Each Agency shall establish in its Plan a sustainability goal for the basin that culminates in the absence of undesirable results within 20 years of the applicable statutory deadline. The Plan shall include a description of the sustainability goal, including information from the basin setting used to establish the sustainability goal, a discussion of the measures that will be implemented to ensure that the basin will be operated within its sustainable yield, and an explanation of how the sustainability goal is likely to be achieved within 20 years of Plan implementation and is likely to be maintained through the planning and implementation horizon.”

A basin’s “sustainable yield” is intrinsically tied to avoiding specifically defined undesirable results. (Water Code § 10721(w) and (x).) Undesirable results must be established based upon specific, numerically defined sustainable management criteria. (DWR Regulations, §§ 354.22 to 354.30.) In a section entitled, “Role of Sustainable Yield Estimates in SGMA” in DWR’s SMC BMP, it states: “SGMA does not incorporate sustainable yield estimates directly into sustainable management criteria. *Basin-wide pumping within the sustainable yield estimate is neither a measure of, nor proof of, sustainability. Sustainability under SGMA is only demonstrated by avoiding undesirable results for the six sustainability indicators.*” (Emphasis added.)

The SMC BMP continues to state that “most of the sustainability goal can only be finalized after minimum thresholds and undesirable results have been defined, projects and management actions have been identified, and projected impact of those projects and management actions on groundwater conditions have been evaluated. Therefore, completion of the sustainability goal will likely be one of the final components of the GSP development.”

The development of the GSP for the Indian Wells Valley is inconsistent with these statutory, regulatory and best management practices provisions. The sustainable management criteria have not yet been established, or substantively discussed or vetted publicly by the TAC, PAC or the Board. Instead, the recently proposed minimum thresholds, interim milestones, and measurable objectives for many of the sustainability indicators presented by the Water Resources Manager at the October 3, 2019 PAC and TAC meetings generally reflect plotted points on a Model Scenario 6.2 model run that:

(1) is based upon numerous modeling assumptions that have never been released to the public despite many PAC-, TAC- and public member requests for that information;

(2) includes predetermined, hard-wired, vague and objectionable projects and management actions that have not been publicly approved by the Groundwater Authority and are based upon unsubstantiated legal theories (see Meadowbrook’s August 6, 2019 letter);

(3) is not based upon best available information and science; and

(4) does not address whether or how a set of defined projects and management actions will result in avoiding specifically defined undesirable results.

The development of sustainable management criteria for the Indian Wells Valley GSP requires significantly greater transparency, detail and data. DWR “may independently evaluate the appropriateness of model results relied upon by the Agency, and use that evaluation in the Department’s assessment of the Plan.” (Cal. Code Regs., tit. 23, § 352.4.) As indicated in this and prior letters, Meadowbrook objects to a GSP based principally upon Model Scenario 6, which proposes eradicating Meadowbrook.

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Meadowbrook appreciates the opportunity to provide comments on the Draft Sustainability Goal. We look forward to receiving more complete GSP materials for review and evaluation.

Sincerely,

A handwritten signature in blue ink, appearing to read "Derek Hoffman", with a stylized flourish at the end.

Derek R. Hoffman, Attorney for
GRESHAM SAVAGE
NOLAN & TILDEN,
A Professional Corporation

DRH

cc: E. Teasdale
Client