

NOTICE AND AGENDA

Regular Meeting of the Board of Trustees
SANTA YNEZ RIVER WATER CONSERVATION DISTRICT, IMPROVEMENT DISTRICT NO.1
will be held at **3:00 P.M., Tuesday, August 15, 2023**
In-Person - 1070 Faraday Street, Santa Ynez, CA - Conference Room

PUBLIC PARTICIPATION OPTION VIA TELECONFERENCE

TELECONFERENCE PHONE NUMBER: 1-669-900-9128

MEETING ID: 929 0039 9487#

PARTICIPANT ID No.: 180175#

MEETING PASSCODE: 180175#

*** Please Note ***

The above teleconference option for public participation is being offered as a convenience only and may limit or otherwise prevent your access to and participation in the meeting due to disruption or unavailability of the teleconference line. If any such disruption of unavailability occurs for any reason the meeting will not be suspended, terminated, or continued. Therefore in-person attendance of the meeting is strongly encouraged.

Additional Notice Regarding Public Participation: For those who may not attend the meeting in-person or via teleconference but wish to provide public comment on an Agenda Item, please submit any and all comments and written materials to the District via electronic mail at general@syrwd.org. All submittals should indicate “**August 15, 2023 Board Meeting**” in the subject line. Materials received by the District during and prior to the meeting will become part of the post-meeting Board packet materials available to the public and posted on the District’s website. In the interest of clear reception and efficient administration of the meeting, all persons participating via teleconference are respectfully requested to mute their voices after dialing-in and at all times unless speaking.

1. **CALL TO ORDER AND ROLL CALL**
2. **PLEDGE OF ALLEGIANCE**
3. **REPORT BY THE SECRETARY TO THE BOARD REGARDING COMPLIANCE WITH THE REQUIREMENTS FOR POSTING OF THE NOTICE AND AGENDA**
4. **ADDITIONS OR CORRECTIONS, IF ANY, TO THE AGENDA**
5. **PUBLIC COMMENT** - Any member of the public may address the Board relating to any non-Agenda matter within the District’s jurisdiction. The total time for all public participation shall not exceed fifteen (15) minutes and the time allotted for each individual shall not exceed three (3) minutes. The District is not responsible for the content or accuracy of statements made by members of the public. No action will be taken by the Board on any public comment item.
6. **CONSIDERATION OF THE MINUTES OF THE REGULAR MEETING OF JULY 18, 2023**
7. **CONSENT AGENDA** - All items listed on the Consent Agenda are considered to be routine and will be approved or rejected in a single motion without separate discussion. Any item placed on the Consent Agenda can be removed and placed on the Regular Agenda for discussion and possible action upon the request of any Trustee.
CA-1. Water Supply and Production Report
CA-2. Central Coast Water Authority Update
8. **MANAGER REPORTS - STATUS, DISCUSSION, AND POSSIBLE BOARD ACTION ON THE FOLLOWING SUBJECTS:**
 - A. **DISTRICT ADMINISTRATION**
 1. Financial Report on Administrative Matters
 - a) Presentation of Monthly Financial Statements – Revenues and Expenses
 - b) Approval of Accounts Payable

9. **REPORT, DISCUSSION, AND POSSIBLE BOARD ACTION ON THE FOLLOWING SUBJECTS:**
 - A. **STATE WATER PROJECT SUPPLIES**
 1. Central Coast Water Authority (CCWA) Surplus Water Transfer Program
 - B. **SUSTAINABLE GROUNDWATER MANAGEMENT ACT**
 1. Eastern Management Area (EMA) Update
 - C. **PROPOSED DRINKING WATER REGULATION – HEXAVALENT CHROMIUM**
 1. Proposed Maximum Contaminant Level (MCL) Issued by the State Water Resources Control Board for Hexavalent Chromium
10. **REPORTS BY THE BOARD MEMBERS OR STAFF, QUESTIONS OF STAFF, STATUS REPORTS, ANNOUNCEMENTS, COMMITTEE REPORTS, AND OTHER MATTERS AND/OR COMMUNICATIONS NOT REQUIRING BOARD ACTION**
11. **CORRESPONDENCE: GENERAL MANAGER RECOMMENDS FILING OF VARIOUS ITEMS**
12. **REQUESTS FOR ITEMS TO BE INCLUDED ON THE NEXT REGULAR MEETING AGENDA:** Any member of the Board of Trustees may request to place an item on the Agenda for the next regular meeting. Any member of the public may submit a written request to the General Manager of the District to place an item on a future meeting Agenda, provided that the General Manager and the Board of Trustees retain sole discretion to determine which items to include on meeting Agendas.
13. **NEXT MEETING OF THE BOARD OF TRUSTEES:** The next Regular Meeting of the Board of Trustees is scheduled for **September 19, 2023 at 3:00 p.m.**

14. CLOSED SESSION:

To accommodate the teleconferencing component of this meeting, the public access line will be closed for up to sixty (60) minutes while the Board of Trustees conducts closed session. Upon conclusion of the closed session, the public teleconference line will be reopened for the remaining Agenda Items.

The Board will hold a closed session to discuss the following items:

A. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

[Subdivision (d)(1) of Section 54956.9 of the Government Code – 2 Cases]

1. Name of Case: Adjudicatory proceedings pending before the State Water Resources Control Board regarding Permit 15878 issued on Application 22423 to the City of Solvang, Petitions for Change, and Related Protests
2. Name of Case: Central Coast Water Authority, et al. v. Santa Barbara County Flood Control and Water Conservation District, et al., Santa Barbara County Superior Court Case No. 21CV02432

B. CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION

[Subdivision (d)(2) of Section 54956.9 of the Government Code – Significant Exposure to Litigation Against the Agency – One Matter]

C. CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION

[Subdivision (d)(4) of Section 54956.9 of the Government Code – Potential Initiation of Litigation By the Agency – One Matter]

15. RECONVENE INTO OPEN SESSION

[Sections 54957.1 and 54957.7 of the Government Code]

16. ADJOURNMENT

This Agenda was posted at 3622 Sagunto Street, Santa Ynez, California, and notice was delivered in accordance with Government Code Section 54950 et seq., specifically Section 54956. This Agenda contains a brief general description of each item to be considered. The Board reserves the right to change the order in which items are heard. Copies of any staff reports or other written documentation relating to each item of business on the Agenda are on file with the District and available for public inspection during normal business hours at 3622 Sagunto Street, Santa Ynez. Such written materials will also be made available on the District's website, subject to staff's ability to post the documents before the regularly scheduled meeting. Questions concerning any of the Agenda items may be directed to the District's General Manager at (805) 688-6015. If a court challenge is brought against any of the Board's decisions related to the Agenda items above, the challenge may be limited to those issues raised by the challenger or someone else during the public meeting or in written correspondence to the District prior to or during the public meeting. In compliance with the Americans with Disabilities Act, any individual needing special assistance to review Agenda materials or participate in this meeting may contact the District Secretary at (805) 688-6015. Notification 72 hours prior to the meeting will best enable the District to make reasonable arrangements to ensure accessibility to this meeting.

SANTA YNEZ RIVER WATER CONSERVATION DISTRICT,
IMPROVEMENT DISTRICT NO.1
JULY 18, 2023 REGULAR MEETING MINUTES

A Regular Meeting of the Board of Trustees of the Santa Ynez River Water Conservation District, Improvement District No.1, was held at 3:00 p.m. on Tuesday, July 18, 2023, in-person at 1070 Faraday Street and via teleconference.

| | | |
|-------------------|---|--|
| Trustees Present: | Jeff Clay Nick Urton | Brad Joos |
| Trustees Absent: | Michael Burchardi | Jeff Holzer |
| Others Present: | Paeter Garcia Karen King Gary Kvistad Howard Erenberg Ken Switzer | Mary Robel Eric Tambini Jeff Dinkin Richard Shawcroft |

1. CALL TO ORDER AND ROLL CALL:

President Clay called the meeting to order at 3:00 p.m., he stated that this was a Regular Meeting of the Board of Trustees. Ms. Robel conducted roll call and reported that three Trustees were present, and that Trustees Burchardi and Holzer were absent.

2. PLEDGE OF ALLEGIANCE:

President Clay led the Pledge of Allegiance.

3. REPORT BY THE SECRETARY TO THE BOARD REGARDING COMPLIANCE WITH THE REQUIREMENTS FOR POSTING OF THE NOTICE AND AGENDA:

Ms. Robel presented the affidavit of posting the Agenda, along with a true copy of the Agenda for this meeting. She reported that the Agenda was posted in accordance with the California Government Code commencing at Section 54953, as well as District Resolution No. 340.

4. ADDITIONS OR CORRECTIONS, IF ANY, TO THE AGENDA:

There were no additions or corrections to the Agenda.

5. PUBLIC COMMENT:

President Clay welcomed members of the public present at the meeting and participating remotely and offered time for members of the public to speak and address the Board on matters not on the agenda. There was no public comment. Mr. Garcia reported that no written comments were submitted to the District for the meeting.

6. CONSIDERATION OF THE MINUTES OF THE REGULAR MEETING OF JUNE 20, 2023:

The Regular Meeting Minutes from June 20, 2023 were presented for consideration.

President Clay asked if there were any changes or additions to the Regular Meeting Minutes of June 20, 2023. There were no changes or additions requested.

It was **MOVED** by Trustee Joos, seconded by Trustee Urton, and carried by a 3-0-0 voice vote, with Trustees Burchardi and Holzer absent, to approve the June 20, 2023 Regular Meeting Minutes as presented.

1 7. CONSENT AGENDA:

2 The Consent Agenda Report was provided in the Board Packet.

3
4 Mr. Garcia reviewed the Consent Agenda materials for the month of June.

5
6 It was MOVED by Trustee Joos, seconded by Trustee Urton, and carried by a 3-0-0 voice vote,
7 with Trustees Burchardi and Holzer absent, to approve the Consent Agenda as presented.

8
9 8. MANAGER REPORTS - STATUS, DISCUSSION, AND POSSIBLE BOARD ACTION ON THE FOLLOWING
10 SUBJECTS:

11 A. DISTRICT ADMINISTRATION

12 1. Financial Report on Administrative Matters

13 a) Presentation of Monthly Financial Statements – Revenues and Expenses

14 Ms. Robel announced that the Financial Statements were provided to the Board in
15 the handout materials and posted on the District’s website in the Board packet
16 materials for any member of the public wishing to follow along or receive a copy.

17
18 Ms. Robel reviewed the Statement of Revenues and Expenses for the month of June.
19 She highlighted various line-items related to revenue and expense transactions that
20 occurred during the month and also referenced the Fiscal-Year-to-Date Statement of
21 Revenues and Expenses that provides a budget to actual snapshot from July through
22 June. Ms. Robel stated that District revenues exceeded expenses by \$517,163.51 for
23 the month of June and the year-to-date net income was \$3,477,295.59. Ms. Robel
24 reported that the June monthly report represents the unaudited close of the Fiscal
25 Year 2022/2023. She indicated that the year-end net balance will be adjusted as
26 invoices from vendors and consultants continue to be submitted for work that was
27 completed prior to June 30th. She also announced that the annual audit field work
28 conducted by Bartlett, Pringle, Wolf, LLP will commence in late August or early
29 September.

30
31 b) Approval of Accounts Payable

32 Ms. Robel announced that the Warrant List was provided to the Board in the handout
33 materials and posted on the District’s website in the Board packet materials for any
34 member of the public wishing to follow along or receive a copy.

35
36 The Board reviewed the Warrant List which covered warrants 25259 through 25312
37 in the amount of \$590,091.69.

38
39 It was MOVED by Trustee Urton, seconded by Trustee Joos, and carried by a 3-0-0
40 voice vote, with Trustees Burchardi and Holzer absent, to approve the Warrant List
41 for June 21, 2023 through July 18, 2023.

42
43 2. Employee Benefits

44 a) Resolution No. 837: A Resolution of the Board of Trustees of the Santa Ynez River
45 Water Conservation District, Improvement District No.1 Authorizing Basic Life
46 Insurance and Accidental Death and Dismemberment Policy for District Employees
47 The Board packet included a copy of Draft Resolution No. 837.

48
49 Mr. Garcia explained that the Board adopted the FY 2023/2024 Budget at the June
50 meeting which included an enhanced employee benefits package for current and
51 future District employees. One of the enhanced benefits is basic life and accidental
52 death and dismemberment insurance. He reported that the addition of this benefit
53 will make the District’s overall employee benefits more comparable to industry
54 standard and what is being provided by other water agencies in the region. Mr.

1 Garcia stated that the benefit will go into effect August 1, 2023 and will be
2 administered by ACWA Joint Powers Insurance Authority with coverage through
3 the Standard Insurance Company. He explained that the benefit amount shall be
4 based on a predetermined formula of 1.5 times the employee's annual earnings from
5 the District, up to a maximum insurance coverage of \$150,000. Mr. Garcia presented
6 and recommended approval of Resolution No. 837 to formally add basic life and
7 accidental death and dismemberment insurance to the District's benefit package.
8

9 No public comment was provided.
10

11 It was MOVED by Trustee Joos, seconded by Trustee Urton, to adopt Resolution No.
12 837, Authorizing Basic Life and Accidental Death and Dismemberment Insurance for
13 District Employees.
14

15 The Motion carried and Resolution No. 837 was adopted by the following 3-0-0 roll
16 call vote:
17

| | | |
|----|---------------------------|----------------|
| 18 | AYES, Trustees: | Jeff Clay |
| 19 | | Brad Joos |
| 20 | | Nick Urton |
| 21 | | |
| 22 | NOES, Trustees: | None |
| 23 | ABSTAIN, Trustees: | None |
| 24 | ABSENT, Trustees: | Mike Burchardi |
| 25 | | Jeff Holzer |
| 26 | | |

27 3. Personnel Policy Manual

- 28 a) Resolution No. 838: A Resolution of the Board of Trustees of the Santa Ynez River
29 Water Conservation District, Improvement District No.1 Amending the District's
30 Personnel Policy Manual
31

32 The Board packet included a July 13, 2023 Memorandum from Stradling Yocca
33 Carlson & Rauth and a copy of Draft Resolution No. 838.
34

35 Mr. Garcia introduced Mr. Jeff Dinkin of Stradling Yocca Carlson & Rauth, the
36 District's employment legal counsel, to present this item.
37

38 Mr. Dinkin explained that he conducted an annual review of the District's Personnel
39 Policy Manual, and based upon his assessment of existing policies, changes in the law,
40 and discussion with management, four revisions to the Personnel Policy Manual are
41 being proposed to the Board. He reviewed the suggested revisions to Section 3.4 - Sick
42 Leave, Section 3.5.b - California Family Rights Act Leave, Section 3.10 - Family
43 Bereavement Leave, and Section 3.22 - Life Insurance. Discussion ensued regarding
44 the proposed amendments to the Manual and Mr. Dinkin answered questions from
45 the Board.
46

47 No public comment was provided.
48

49 It was MOVED by Trustee Clay, seconded by Trustee Urton, to adopt Resolution No.
50 838, a Resolution of the Board of Trustees of the Santa Ynez River Water
51 Conservation District, Improvement No.1 Amending the District's Personnel Policy
52 Manual.

1 The Motion carried and Resolution No. 838 was adopted by the following 3-0-0 roll
2 call vote:
3

4 AYES, Trustees: Jeff Clay
5 Brad Joos
6 Nick Urton
7

8 NOES, Trustees: None
9 ABSTAIN, Trustees: None
10 ABSENT, Trustees: Mike Burchardi
11 Jeff Holzer
12

13 4. 2022 Consumer Confidence Report – Annual Water Quality Report Required by Federal
14 and State Regulations to Protect Drinking Water

15 The Board packet included the 2022 Consumer Confidence Report/Annual Water
16 Quality Report.
17

18 Mr. Garcia stated that the Annual Water Quality Report was prepared by Eric Tambini,
19 Water Resources Manager.
20

21 Mr. Tambini explained that the District is required by state and federal drinking water
22 regulations to prepare and distribute a Consumer Confidence Report, also known as the
23 Annual Water Quality Report. He stated that certain content must be included in the
24 report and water agencies are required to make the report available to all of their
25 customers on an annual basis by July 1st. Mr. Tambini noted that the report includes
26 information based on the 2022 calendar year with regard to the District's sources of
27 water, the levels of any contaminants detected in the water, compliance with other
28 drinking water regulations, and other educational information. He reported that the
29 District met and exceeded all applicable water quality standards for the 2022 reporting
30 period. Mr. Tambini stated that the Consumer Confidence Report was submitted to the
31 California Division of Drinking Water, posted on the District's website, noticed on the
32 customer water bills, sent electronically to all customers with email accounts, and made
33 available at the District office in accordance with the State requirements.
34

35 Mr. Shawcroft provided public comment to the Board.
36

37 9. REPORT, DISCUSSION, AND POSSIBLE BOARD ACTION ON THE FOLLOWING SUBJECTS:

38 A. WATER SUPPLY PROJECT CONDITIONS

39 1. Cachuma Project Update

40 The Board packet included United States Bureau of Reclamation, Santa Barbara County
41 Public Works Department, and Cachuma Project Member Units correspondence related
42 to the Cachuma Project Water Year 2023-2024 Allocation.
43

44 Mr. Garcia reported that Cachuma reservoir is reported to be at 99.7% capacity (192,388
45 AF) as of July 10, 2023. He stated that spill conditions have ceased as of June 30, 2023.
46 Mr. Garcia indicated that a letter dated June 30, 2023 was sent on behalf of the Cachuma
47 Member Units to the U.S. Bureau of Reclamation (USBR) requesting a mid-year 100%
48 allocation (25,714 AF) of Cachuma Project supplies for WY 2023-2024. He stated that a
49 response from USBR was received on July 10th approving the 100% allocation request,
50 which translates to 2,651 AF for the District.

1 2. State Water Project Update

2 The Board packet included the Department of Water Resources (DWR) Current and
3 Historical Statewide Reservoir Conditions.
4

5 Mr. Garcia reviewed the DWR current and historical reservoir conditions. He reminded
6 the Board that the 2023 SWP Table A allocation has been increased to 100% for the first
7 time since 2006. He also discussed the Lake Oroville water supply, record snowpack,
8 spill conditions, and potential for flooding in some areas of the state.
9

10 **B. SUSTAINABLE GROUNDWATER MANAGEMENT ACT**

11 1. Eastern Management Area (EMA) Update

12 The Board packet included a June 22, 2023 Notice and Agenda for the EMA GSA Regular
13 Meeting, GSI Water Solutions Expanded Scope and Cost for Review of New and
14 Replacement Well Applications, Draft EMA GSA Resolution No 2023-002, EMA GSA
15 Well Registration and Reporting Form, and Notice of the July 27, 2023 Regular
16 Committee Meeting.
17

18 Mr. Garcia noted that Trustee Joos continues to attend all meetings of the EMA GSA as
19 the District's primary SGMA representative, and that Trustee Burchardi is also attending
20 as the District's alternate member. He stated that the EMA GSA last met on June 22, 2023
21 and summarized the topics discussed at the meeting. Mr. Garcia reported that the EMA
22 Committee approved several documents including an expanded scope of work and cost
23 proposal from GSI for technical review in connection with requests for written
24 verifications for new and replacement well applications, a revised Deposit and
25 Reimbursement Agreement for well verifications, and a Well Registration and Reporting
26 Form for the Eastern Management Area. He explained that the EMA GSA soon will be
27 working to establish an EMA-wide well registration, metering, and production reporting
28 system to better monitor and measure the actual amount of groundwater being produced
29 throughout the EMA. He stated that the next regular meeting of the EMA GSA is
30 scheduled for July 27, 2023.
31

32 **C. PROPOSED DRINKING WATER REGULATION - HEXAVALENT CHROMIUM**

33 1. Proposed Maximum Contaminant Level (MCL) Issued by the State Water Resources
34 Control Board for Hexavalent Chromium
35

36 The Board packet included various correspondence and materials related to the State
37 Water Resources Control Board (SWRCB) Proposed Maximum Contaminant Level for
38 Hexavalent Chromium, including Notice of Proposed Rulemaking, Notice of Public
39 Hearing on August 2, 2023, Proposed Regulation Text, SWRCB Initial Statement of
40 Reasons for the Regulation, and excerpts of the SWRCB Draft Environmental Impact
41 Report.
42

43 Mr. Garcia reported that the SWRCB has issued a Notice of Proposed Rulemaking and
44 Draft Environmental Impact Report regarding a proposed Maximum Contaminant Level
45 (MCL) for Hexavalent Chromium (Cr6) of 10 parts per billion (ppb). He indicated that
46 the SWRCB is scheduled to conduct a public hearing on August 2, 2023 and that the
47 public comment period for the proposed regulation and CEQA document will close on
48 August 4, 2023. Mr. Garcia stated that after the public comment period closes the
49 SWRCB will have an opportunity to prepare responses to comments; however, at this
50 time a date certain has not been announced for when a final proposed regulation and
51 final EIR will be issued. Mr. Garcia also provided a historical recap of the SWRCB's
52 actions related to the proposed Cr6 MCL.

1 He stated that the federal MCL for total Chromium remains at 100 ppb and that the State
2 standard is currently 50 ppb. Mr. Garcia explained that, if adopted, California's
3 proposed 10 ppb standard would be the strictest Cr6 regulation in the world. He noted
4 that District staff will resume preparations for the new state standard, including the
5 engagement of consulting experts to review treatment options/technologies, planning
6 and construction of treatment facilities, capital and annual operating costs, and financing
7 alternatives. He stated that once a final regulation is adopted, the District will have a
8 three-year period to achieve compliance with the new MCL. Mr. Garcia indicated that
9 he has been participating in working group discussions with the Association of
10 California Water Agencies (ACWA), and that ACWA and various other statewide and
11 individual organizations are expected to submit comment letters in opposition to the
12 proposed regulation.

13
14 **10. REPORTS BY THE BOARD MEMBERS OR STAFF, QUESTIONS OF STAFF, STATUS REPORTS,**
15 **ANNOUNCEMENTS, COMMITTEE REPORTS, AND OTHER MATTERS AND/OR COMMUNICATIONS**
16 **NOT REQUIRING BOARD ACTION:**

17 Mr. Garcia reported that he and Trustee Burchardi attended the July 12, 2023 Los Olivos
18 Community Services District Board meeting.

19
20 The Board packet included information regarding the "Old Santa Ynez Days" event that took
21 place on June 24, 2023. Mr. Garcia reported that ID No.1 hosted a booth and participated in the
22 community event to provide information to the public regarding water supply issues and
23 District operations.

24
25 The Board packet included the July 2023 Family Farm Alliance Monthly Briefing.

26
27 **11. CORRESPONDENCE: GENERAL MANAGER RECOMMENDS FILING OF VARIOUS ITEMS:**
28 The Correspondence List was received by the Board.

29
30 **12. REQUESTS FOR ITEMS TO BE INCLUDED ON THE NEXT REGULAR MEETING AGENDA:**
31 There were no requests from the Board.

32
33 **13. NEXT MEETING OF THE BOARD OF TRUSTEES:**
34 President Clay stated that the next Regular Meeting of the Board of Trustees is scheduled for
35 August 15, 2023 at 3:00 p.m.

36
37 **14. CLOSED SESSION:**
38 The Board adjourned to closed session at 4:36 p.m.

39
40 **A. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION**

41 [Subdivision (d)(1) of Section 54956.9 of the Government Code - 2 Cases]

- 42 1. Name of Case: Adjudicatory proceedings pending before the State Water Resources
43 Control Board regarding Permit 15878 issued on Application 22423 to the City of
44 Solvang, Petitions for Change, and Related Protests
- 45
46 2. Name of Case: Central Coast Water Authority, et al. v. Santa Barbara County Flood
47 Control and Water Conservation District, et al., Santa Barbara County Superior Court
48 Case No. 21CV02432

49
50 **B. CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION**

51 [Subdivision (d)(2) of Section 54956.9 of the Government Code - Significant Exposure to
52 Litigation Against the Agency - One Matter]

53
54 **C. CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION**

1 [Subdivision (d)(4) of Section 54956.9 of the Government Code - Potential Initiation of
2 Litigation By the Agency - One Matter]
3

4 **D. PUBLIC EMPLOYEE PERFORMANCE EVALUATION:** Title - General Manager
5 [Section 54957 of the Government Code]
6

7 **E. CONFERENCE WITH LABOR NEGOTIATOR:** Jeff Dinkin - Stradling, Yocca, Carlson & Rauth;
8 Unrepresented Employee - General Manager [Section 54957.6 of the Government Code]
9

10 **15. RECONVENE INTO OPEN SESSION**

11 [Sections 54957.1 and 54957.7 of the Government Code]
12

13 **A. Report on Closed Session Agenda Items 14.A - 14.C**
14

15 The public participation phone line was re-opened and the Board reconvened to open session at
16 approximately 6:10 p.m.
17

18 Mr. Garcia announced that the Board met in closed session concerning Agenda Items 14.A.1,
19 14.A.2, 14.B, and 14.C and that there was no reportable action from the closed session.
20

21 **B. Report on Closed Session Agenda Items 14.D and 14.E.**
22

23 Mr. Gary Kvistad, District Legal Counsel, reported that the Board met in closed session with
24 Jeff Dinkin, the District's Employment Legal Counsel, and completed the performance
25 evaluation of the General Manager. He explained that the Board also discussed a cost-of-
26 living adjustment and compensation adjustment for the General Manager. Mr. Kvistad
27 reported that following the Board discussion there was a meet and confer with the General
28 Manager, with Mr. Dinkin acting as the Board representative, and the following occurred:
29

30 Consideration of General Manager Cost-of-Living Adjustment (COLA) Increase. The Board
31 determined to approve a 7.0% cost-of-living adjustment (COLA) increase effective the first
32 pay period beginning July 1, 2023, which is the same COLA increase that all other District
33 employees received pursuant to the Final Budget for Fiscal Year 2023/2024 that was
34 approved by the Board in June 2023.
35

36 Consideration of General Manager Compensation Adjustment. The Board determined to
37 grant the General Manager three additional weeks of administrative leave, with the option
38 of cashing out one of the weeks by December 31, 2023, and a second week by June 30, 2024
39 if not used.
40

41 It was **MOVED** by Trustee Urton, seconded by Trustee Joos, and carried by a unanimous 3-
42 0-0 voice vote, with Trustees Burchardi and Holzer absent, to approve a 7.0% cost-of-living
43 adjustment for the General Manager's salary effective the pay period beginning July 1, 2023,
44 and to provide three additional weeks of administrative leave to the General Manager, with
45 the option of cashing out one of the weeks by December 31, 2023, and a second week by
46 June 30, 2024 if not used.
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16. ADJOURNMENT:

Being no further business, it was **MOVED** by Trustee Urton, seconded by Trustee Joos, and carried by a 3-0-0 voice vote, with Trustees Burchardi and Holzer absent, to adjourn the meeting at approximately 6:13 p.m.

RESPECTFULLY SUBMITTED,

Mary Robel, Secretary to the Board

ATTEST: _____
Jeff Clay, President

MINUTES PREPARED BY:

Karen King, Board Administrative Assistant



BOARD OF TRUSTEES
SANTA YNEZ RIVER WATER CONSERVATION DISTRICT,
IMPROVEMENT DISTRICT NO.1
August 15, 2023

Consent Agenda Report

CA-1. Water Supply and Production Report. Total water production in **July 2023 (489 AF)** was approximately 144 AF higher than total production in June 2023 (345 AF), 25 AF below the most recent 3-year running average (2020-2022) for the month of **July (514 AF)**, and 88 AF less than the most recent 10-year running average (2013-2022) for the month of **July (577 AF)**. Notably, total production in July 2023 was the lowest July production over the last 10 years, which have ranged from 506 AF (2020) to 787 AF (2013) for the month. Generally speaking, the District's overall demands and total production have been trending well below historic levels for domestic, rural residential, and agricultural water deliveries due to water conservation, changing water use patterns, and private well installations.

For the month of **July 2023, 0 AF** were produced from the Santa Ynez Upland wells, and **0 AF** were produced from the 4.0 and 6.0 cfs well fields in the Santa Ynez River alluvium. As reflected in the Monthly Water Deliveries Report from the Central Coast Water Authority (CCWA), the District took approximately **489 AF** of SWP supplies for the month, all of which have been allocated as Exchange Deliveries with the South Coast Cachuma Member Units. Direct diversions to the County Park and USBR were **2.66 AF**.

The USBR Daily Operations Report for Lake Cachuma in **July** (ending July 31, 2023) recorded the end of month reservoir elevation at **751.60'** with the end of month storage of **188,977 AF**. USBR recorded total precipitation at the lake of **0.00 inches** for the month. No SWP deliveries were made to the reservoir for South Coast entities. Reported reservoir evaporation in **July** was **2,019.3 AF**.

Based on the updated maximum storage capacity of 192,978 AF (previously 193,305 AF), as of **August 10, 2023** Cachuma reservoir was reported at **96.9%** of capacity, with then-current storage of **187,071 AF** (Santa Barbara County Flood Control District, Rainfall and Reservoir Summary). At a point when reservoir storage exceeds 100,000 AF, the Cachuma Member Units typically have received a full allocation. Conversely, a 20% pro-rata reduction from the full allocation is scheduled to occur in Water Years beginning at less than 100,000 AF, where incremental reductions may occur (and previously have occurred) at other lower storage levels. For the federal WY 2021-2022 (October 1, 2021 through September 30, 2022), USBR issued a 70% allocation, equal to 18,000 AF. ID No.1's 10.31% share of that allocation was 1,855 AF. In the Fall of 2022 when reservoir conditions were low, the Cachuma Member Units initially requested an approximate 15% Cachuma Project allocation for federal WY 2022-2023. By letter dated September 30, 2022, USBR issued an initial 0% allocation for WY 2022-2023. **Based on extraordinary rain conditions that filled and spilled the reservoir early this year, in February 2023 USBR issued a revised 100% Project allocation for WY 2022-2023.** ID No.1's share of that allocation is 2,651 AF. **By letter dated June 30, 2023 the Cachuma Member Units submitted a joint request for another 100% Cachuma allocation for WY 2023-2024. On July 10, 2023 USBR approved that request, which translates to another 2,651 AF for ID No.1.**

Water releases for the protection of fish and aquatic habitat are made from Cachuma reservoir to the lower Santa Ynez River pursuant to the 2000 Biological Opinion issued by the National Marine Fisheries Service (NMFS) and the 2019 Water Rights Order (WR 2019-0148) issued by the State Water Resources Control Board (SWRCB). These releases are made to Hilton Creek and to the stilling basin portion of the outlet works at the base of Bradbury Dam. The water releases required under the NMFS 2000 Biological Opinion to avoid jeopardy to steelhead and adverse impacts to its critical habitat are summarized as follows:

NMFS 2000 Biological Opinion

- *When Reservoir Spills and the Spill Amount Exceeds 20,000 AF:*
 - 10 cfs at Hwy 154 Bridge during spill year(s) exceeding 20,000 AF
 - 1.5 cfs at Alisal Bridge when spill amount exceeds 20,000 AF and if steelhead are present at Alisal Reach
 - 1.5 cfs at Alisal Bridge in the year immediately following a spill that exceeded 20,000 AF and if steelhead are present at Alisal Reach

- *When Reservoir Does Not Spill or When Reservoir Spills Less Than 20,000 AF:*
 - 5 cfs at Hwy 154 when Reservoir does not spill and Reservoir storage is above 120,000 AF, or when Reservoir spill is less than 20,000 AF
 - 2.5 cfs at Hwy 154 in all years when Reservoir storage is below 120,000 AF but greater than 30,000 AF
 - 1.5 cfs at Alisal Bridge if the Reservoir spilled in the preceding year and the spill amount exceeded 20,000 AF and if steelhead are present at Alisal Reach
 - 30 AF per month to "refresh the stilling basin and long pool" when Reservoir storage is less than 30,000 AF

The water releases required under the SWRCB Water Rights Order 2019-0148 for the protection of fish and other public trust resources in the lower Santa Ynez River and to prevent the waste and unreasonable use of water are summarized as follows:

SWRCB Order WR 2019-0148

- *During Below Normal, Dry, and Critical Dry water years (October 1 – September 30), releases shall be made in accordance with the requirements of the NMFS 2000 Biological Opinion as set forth above.*

- *During Above Normal and Wet water years, the following minimum flow requirements must be maintained at Hwy 154 and Alisal Bridges:*
 - 48 cfs from February 15 to April 14 for spawning
 - 20 cfs from February 15 to June 1 for incubation and rearing
 - 25 cfs from June 2 to June 9 for emigration, with ramping to 10 cfs by June 30
 - 10 cfs from June 30 to October 1 for rearing and maintenance of resident fish
 - 5 cfs from October 1 to February 15 for resident fish

- *For purposes of SWRCB Order WR 2019-0148, water year classifications are as follows:*
 - Wet is when Cachuma Reservoir inflow is greater than 117,842 AF;
 - Above Normal is when Reservoir inflow is less than or equal to 117,842 AF or greater than 33,707 AF;
 - Below Normal is when Reservoir inflow is less than or equal to 33,707 AF or greater than 15,366 AF;
 - Dry is when Reservoir inflow is less than or equal to 15,366 AF or greater than 4,550 AF
 - Critical Dry is when Reservoir inflow is less than or equal to 4,550 AF

As of the end of **December 2022**, a total of approximately **49,653.3 AF** of Cachuma Project water had been released under regulatory requirements for the protection of fish and fish habitat below Bradbury Dam since the year after the 2011 spill. **For the months of January through July 2023, water releases for fishery requirements, spill conditions, and other operational purposes have been made from the Cachuma Project. Reclamation has indicated that it will provide an accounting of those releases.**

CA-2. State Water Project (SWP) and Central Coast Water Authority (CCWA) Updates.

In 2022, the SWP Table A allocation for SWP Contractors was only 5 percent, which translated to 35 AF for ID No.1's share of Table A supplies through CCWA. As previously reported, by Notice to the SWP Contractors dated December 1, 2022, the California Department of Water Resources (DWR) issued an initial 2023 SWP Table A Allocation of 5 percent, along with a provisional allocation of additional SWP supplies to certain Contractors to ensure the needs for human health and safety. **In response to this year's extraordinary rain events and resulting increases in Lake Oroville storage, DWR incrementally increased the 2023 SWP Table A allocation to 30 percent (January 26, 2023), then 35 percent (February 22, 2023), then 75 percent (March 24, 2023), and then 100 percent (April 20, 2023) for the first time since 2006.** For ID No.1, the increase to 100 percent translates to a current 2023 Table A allocation of 2,200 AF. Of that amount, 700 AF is available to ID No.1 and the remaining 1,500 AF is contracted to the City of Solvang.

As reflected in the July 27, 2023 meeting agenda for the CCWA Board of Directors, CCWA remains engaged in a variety of matters relating to the SWP, including but not limited to: SWP supplies and related SWP operations; a 2023 CCWA Surplus Water Transfer Program, along with potential water transfer, exchange, and banking opportunities; and various administrative matters. CCWA and its member agencies also remain engaged in their pending litigation against the Santa Barbara County Flood Control and Water Conservation District to maintain CCWA sovereignty over important decisions pertaining to SWP supplies. The next regular meeting of the CCWA Board of Directors is currently scheduled for August 24, 2023.



— BUREAU OF —
RECLAMATION

Historical Archive and Report Database

Lake Cachuma Daily Operations

Run Date: 8/10/2023

July 2023

| DAY | STORAGE ACRE-FEET | | | COMPUTED* INFLOW AF. | CCWA INFLOW AF. | PRECIP ON | | RELEASE - AF. | | | EVAPORATION | | PRECIP INCHES |
|----------------|-------------------|----------------|---------------|-------------------------|--------------------|----------------|----------------|---------------|----------------|------------|----------------|--------------|------------------|
| | ELEV | IN LAKE | CHANGE | | | RES. SURF. AF. | TUNNEL | HILTON CREEK | OUTLET | SPILLWAY | AF. | INCH | |
| | 753.26 | 194,116 | | | | | | | | | | | |
| 1 | 753.23 | 194,022 | -94 | 153.0 | 0.0 | 0.0 | 77.1 | 13.9 | 89.0 | 0.0 | 67.4 | 0.320 | 0.00 |
| 2 | 753.18 | 193,866 | -156 | 92.0 | 0.0 | 0.0 | 76.3 | 13.9 | 90.0 | 0.0 | 67.3 | 0.320 | 0.00 |
| 3 | 753.15 | 193,773 | -93 | 148.0 | 0.0 | 0.0 | 76.8 | 13.9 | 89.0 | 0.0 | 61.0 | 0.290 | 0.00 |
| 4 | 753.10 | 193,617 | -156 | 79.0 | 0.0 | 0.0 | 62.4 | 13.9 | 89.0 | 0.0 | 69.4 | 0.330 | 0.00 |
| 5 | 753.05 | 193,461 | -156 | 75.0 | 0.0 | 0.0 | 63.3 | 13.9 | 89.0 | 0.0 | 65.1 | 0.310 | 0.00 |
| 6 | 753.00 | 193,305 | -156 | 67.0 | 0.0 | 0.0 | 65.2 | 13.9 | 89.0 | 0.0 | 54.6 | 0.260 | 0.00 |
| 7 | 752.95 | 193,149 | -156 | 63.0 | 0.0 | 0.0 | 63.8 | 13.9 | 89.0 | 0.0 | 52.5 | 0.250 | 0.00 |
| 8 | 752.90 | 192,993 | -156 | 52.0 | 0.0 | 0.0 | 52.5 | 13.9 | 89.0 | 0.0 | 52.4 | 0.250 | 0.00 |
| 9 | 752.86 | 192,868 | -125 | 65.0 | 0.0 | 0.0 | 50.6 | 14.0 | 90.0 | 0.0 | 35.6 | 0.170 | 0.00 |
| 10 | 752.80 | 192,681 | -187 | 37.0 | 0.0 | 0.0 | 51.6 | 13.9 | 89.0 | 0.0 | 69.1 | 0.330 | 0.00 |
| 11 | 752.76 | 192,556 | -125 | 100.0 | 0.0 | 0.0 | 61.1 | 13.9 | 89.0 | 0.0 | 60.7 | 0.290 | 0.00 |
| 12 | 752.70 | 192,369 | -187 | 56.0 | 0.0 | 0.0 | 60.4 | 13.9 | 89.0 | 0.0 | 79.5 | 0.380 | 0.00 |
| 13 | 752.65 | 192,213 | -156 | 81.0 | 0.0 | 0.0 | 63.0 | 13.9 | 89.0 | 0.0 | 71.1 | 0.340 | 0.00 |
| 14 | 752.60 | 192,058 | -155 | 87.0 | 0.0 | 0.0 | 65.9 | 14.0 | 89.0 | 0.0 | 73.1 | 0.350 | 0.00 |
| 15 | 752.53 | 191,842 | -216 | 27.0 | 0.0 | 0.0 | 69.3 | 13.8 | 89.0 | 0.0 | 71.0 | 0.340 | 0.00 |
| 16 | 752.48 | 191,688 | -154 | 71.0 | 0.0 | 0.0 | 51.0 | 14.0 | 89.0 | 0.0 | 70.9 | 0.340 | 0.00 |
| 17 | 752.44 | 191,565 | -123 | 85.0 | 0.0 | 0.0 | 40.3 | 13.9 | 89.0 | 0.0 | 64.7 | 0.310 | 0.00 |
| 18 | 752.39 | 191,410 | -155 | 55.0 | 0.0 | 0.0 | 45.2 | 13.9 | 88.0 | 0.0 | 62.5 | 0.300 | 0.00 |
| 19 | 752.33 | 191,226 | -184 | 39.0 | 0.0 | 0.0 | 45.4 | 13.9 | 89.0 | 0.0 | 75.0 | 0.360 | 0.00 |
| 20 | 752.28 | 191,072 | -154 | 66.0 | 0.0 | 0.0 | 45.9 | 13.9 | 89.0 | 0.0 | 70.8 | 0.340 | 0.00 |
| 21 | 752.22 | 190,887 | -185 | 24.0 | 0.0 | 0.0 | 46.2 | 13.9 | 89.0 | 0.0 | 60.3 | 0.290 | 0.00 |
| 22 | 752.16 | 190,702 | -185 | 43.0 | 0.0 | 0.0 | 60.5 | 13.9 | 89.0 | 0.0 | 64.5 | 0.310 | 0.00 |
| 23 | 752.10 | 190,517 | -185 | 53.0 | 0.0 | 0.0 | 64.7 | 13.9 | 89.0 | 0.0 | 70.6 | 0.340 | 0.00 |
| 24 | 752.04 | 190,332 | -185 | 53.0 | 0.0 | 0.0 | 65.5 | 13.9 | 90.0 | 0.0 | 68.5 | 0.330 | 0.00 |
| 25 | 751.98 | 190,147 | -185 | 46.0 | 0.0 | 0.0 | 64.2 | 13.8 | 87.0 | 0.0 | 66.4 | 0.320 | 0.00 |
| 26 | 751.91 | 189,931 | -216 | 24.0 | 0.0 | 0.0 | 66.3 | 13.8 | 89.0 | 0.0 | 70.5 | 0.340 | 0.00 |
| 27 | 751.78 | 189,531 | -400 | -172.0 | 0.0 | 0.0 | 62.8 | 13.9 | 89.0 | 0.0 | 62.1 | 0.300 | 0.00 |
| 28 | 751.78 | 189,531 | 0 | 234.0 | 0.0 | 0.0 | 62.8 | 13.9 | 89.0 | 0.0 | 68.3 | 0.330 | 0.00 |
| 29 | 751.72 | 189,346 | -185 | 42.0 | 0.0 | 0.0 | 67.1 | 13.8 | 78.0 | 0.0 | 68.3 | 0.330 | 0.00 |
| 30 | 751.66 | 189,161 | -185 | 38.0 | 0.0 | 0.0 | 64.9 | 13.9 | 78.0 | 0.0 | 66.2 | 0.320 | 0.00 |
| 31 | 751.60 | 188,977 | -184 | 31.0 | 0.0 | 0.0 | 64.8 | 13.8 | 76.0 | 0.0 | 59.9 | 0.290 | 0.00 |
| TOTALS | | | -5,139 | 1,914.0 | 0.0 | 0.0 | 1,876.9 | 430.7 | 2,724.0 | 0.0 | 2,019.3 | 9.680 | 0.00 |
| AVERAGE | | 191,639 | | | | | | | | | | | |

Comments: *Computed inflow is the sum of change in storage, releases and evaporation minus precip on the reservoir surface and ccwa inflow.
Indicated outlet release includes leakage from outlet valves and spillway gates.
Data based on a 24 hour period ending 0800.



Santa Barbara County - Flood Control District

130 East Victoria Street, Santa Barbara CA 93101 - 805.568.3440 - www.countyofsb.org/pwd

Rainfall and Reservoir Summary

Updated 8am: 8/10/2023

Water Year: 2023

Storm Number: 27

Notes: Daily rainfall amounts are recorded as of 8am for the previous 24 hours. Rainfall units are expressed in inches. All data on this page are from automated sensors, are preliminary, and subject to verification.

*Each Water Year (WY) runs from Sept 1 through Aug 31 and is designated by the calendar year in which it ends
County Real-Time Rainfall and Reservoir Website link: > <http://www.countyofsb.org/hydrology>

| Rainfall | ID | 24 hrs | Storm 1day(s) | Month | Year* | % to Date | % of Year* | AI |
|--------------------------------|-----|--------|------------------|-------|-------|-----------|------------|------|
| Buellton (Fire Stn) | 233 | 0.00 | 0.00 | 0.00 | 29.39 | 179% | 179% | |
| Cachuma Dam (USBR) | 332 | 0.00 | 0.00 | 0.00 | 38.49 | 197% | 197% | |
| Carpinteria (Fire Stn) | 208 | 0.25 | 0.25 | 0.26 | 28.99 | 171% | 170% | |
| Cuyama (Fire Stn) | 436 | 0.00 | 0.00 | 0.00 | 13.99 | 186% | 185% | |
| Figueroa Mtn. (USFS Stn) | 421 | 0.00 | 0.00 | 0.00 | 42.64 | 202% | 202% | 11.4 |
| Gibraltar Dam (City Facility) | 230 | 0.03 | 0.03 | 0.03 | 61.41 | 236% | 236% | 11.8 |
| Goleta (Fire Stn-Los Cameros) | 440 | 0.05 | 0.05 | 0.05 | 30.46 | 168% | 167% | |
| Lompoc (City Hall) | 439 | 0.00 | 0.00 | 0.00 | 34.20 | 237% | 237% | 11.2 |
| Los Alamos (Fire Stn) | 204 | 0.00 | 0.00 | 0.00 | 32.32 | 213% | 213% | |
| San Marcos Pass (USFS Stn) | 212 | 0.00 | 0.00 | 0.00 | 80.22 | 239% | 239% | |
| Santa Barbara (County Bldg) | 234 | 0.07 | 0.07 | 0.07 | 36.48 | 200% | 200% | |
| Santa Maria (City Pub. Works) | 380 | 0.00 | 0.00 | 0.01 | 25.59 | 194% | 194% | |
| Santa Ynez (Fire Stn /Airport) | 218 | 0.00 | 0.00 | 0.00 | 33.06 | 212% | 212% | |
| Sisquoc (Fire Stn) | 256 | 0.00 | 0.00 | 0.00 | 25.65 | 172% | 172% | |

County-wide percentage of "Normal-to-Date" rainfall : **201%**

County-wide percentage of "Normal Water-Year" rainfall : **200%**

County-wide percentage of "Normal Water-Year" rainfall calculated assuming no more rain through Aug. 31, 2023 (End of WY2023).

AI (Antecedent Index / Soil Wetness)

6.0 and below = Wet (min. = 2.5)
6.1 - 9.0 = Moderate
9.1 and above = Dry (max. = 12.5)

Reservoirs

Reservoir Elevations referenced to NGVD-29.

**Cachuma is full and subject to spilling at elevation 750 ft. However, the lake is surcharged to 753 ft. for fish release water. (Cachuma water storage based on Dec 2021 capacity revision)

| Click on Site for Real-Time Readings | Spillway | Current | Max. | Current | Current | Storage | Storage |
|---|---------------|---------------|--------------------|--------------------|-----------------|----------------------|------------------------|
| | Elev. (ft) | Elev. (ft) | Storage (ac-ft) | Storage (ac-ft) | Capacity (%) | Change Mo.(ac-ft) | Change Year*(ac-ft) |
| <u>Gibraltar Reservoir</u> | 1,400.00 | 1,395.62 | 4,693 | 3,753 | 80.0% | -468 | 2,453 |
| <u>Cachuma Reservoir</u> | 753.** | 751.09 | 192,978 | 187,071 | 96.9% | -1,384 | 116,401 |
| <u>Jameson Reservoir</u> | 2,224.00 | 2,223.66 | 4,848 | 4,806 | 99.1% | -8 | 1,980 |
| <u>Twitchell Reservoir</u> | 651.50 | 607.00 | 194,971 | 73,023 | 37.5% | -7,461 | 73,023 |

[Previous Rainfall and Reservoir Summaries](#)

CIMIS Daily Report

Rendered in ENGLISH Units.

Saturday, July 1, 2023 - Monday, July 31, 2023

Printed on Tuesday, August 1, 2023

Santa Ynez - Central Coast Valleys - Station 64

| Date | ETo (in) | Precip (in) | Sol Rad (Ly/day) | Avg Vap Pres (mBars) | Max Air Temp (°F) | Min Air Temp (°F) | Avg Air Temp (°F) | Max Rel Hum (%) | Min Rel Hum (%) | Avg Rel Hum (%) | Dew Point (°F) | Avg Wind Speed (mph) | Wind Run (miles) | Avg Soil Temp (°F) |
|-----------|----------|-------------|------------------|----------------------|-------------------|-------------------|-------------------|-----------------|-----------------|-----------------|----------------|----------------------|------------------|--------------------|
| 7/1/2023 | 0.25 R | 0.00 | 724 | 15.3 | 97.6 | 52.3 | 70.6 | 96 | 32 | 60 | 56.0 | 1.8 R | 42.1 R | 75.9 |
| 7/2/2023 | 0.24 R | 0.00 | 708 | 15.6 | 92.1 | 52.8 | 69.1 | 96 | 37 | 64 | 56.6 | 2.0 R | 47.0 R | 76.7 |
| 7/3/2023 | 0.25 | 0.00 | 734 | 15.0 | 92.2 | 54.3 | 68.1 | 96 | 26 | 64 | 55.3 | 2.4 R | 56.5 R | 77.3 |
| 7/4/2023 | 0.24 | 0.00 | 730 | 14.0 | 85.7 | 49.0 | 63.9 | 96 | 42 | 69 | 53.5 | 2.3 R | 55.8 R | 77.7 |
| 7/5/2023 | 0.21 R | 0.00 | 671 | 13.6 | 83.3 | 49.9 | 62.3 | 93 | 42 | 71 | 52.8 | 2.0 R | 48.5 R | 77.8 |
| 7/6/2023 | 0.19 | 0.00 | 623 | 13.6 | 80.4 | 52.8 | 61.5 | 91 | 43 | 73 | 52.7 | 2.2 R | 52.1 R | 77.6 |
| 7/7/2023 | 0.19 R | 0.00 | 638 | 13.9 | 76.4 | 56.0 | 62.2 | 87 | 51 | 73 | 53.3 | 2.3 R | 55.8 R | 77.3 |
| 7/8/2023 | 0.20 | 0.00 | 657 | 13.4 | 77.7 | 54.5 | 61.8 | 90 | 46 | 71 | 52.3 | 2.4 Y | 58.7 Y | 77.3 |
| 7/9/2023 | 0.19 | 0.00 | 640 | 12.8 | 77.1 | 51.4 | 60.8 | 89 | 45 | 71 | 51.2 | 2.1 R | 51.6 R | 77.2 |
| 7/10/2023 | 0.23 R | 0.00 | 0 R | 12.7 | - S | 52.4 | 53.4 Y | 92 | 36 | 91 Y | 50.8 Y | 1.0 I | 23.8 I | 77.2 |
| 7/11/2023 | 0.26 R | 0.00 | 753 R | 12.3 | 94.6 | 49.4 | 68.3 | 98 | 16 | 52 | 50.0 | 2.2 R | 53.6 R | 77.5 |
| 7/12/2023 | 0.26 R | 0.00 | 751 R | 11.5 Y | 95.2 | 43.7 Y | 68.8 | 95 | 12 | 48 Y | 48.1 Y | 2.2 Y | 53.2 Y | 77.9 |
| 7/13/2023 | 0.26 R | 0.00 | 723 | 13.6 | 96.9 | 51.2 | 70.7 | 98 | 25 | 53 | 52.7 | 2.4 Y | 56.6 Y | 78.3 |
| 7/14/2023 | 0.25 R | 0.00 | 746 R | 14.0 | 89.5 | 45.7 Y | 66.3 | 94 | 37 | 64 | 53.6 | 2.5 Y | 59.6 Y | 78.7 |
| 7/15/2023 | 0.25 R | 0.00 | 713 | 15.3 | 96.0 | 53.2 | 71.3 | 96 | 33 | 58 | 56.0 | 2.0 R | 47.6 R | 78.8 |
| 7/16/2023 | 0.25 R | 0.00 | 688 | 15.9 | 98.1 | 54.1 | 74.0 | 92 | 30 | 55 | 57.0 | 2.0 R | 47.1 R | 79.3 |
| 7/17/2023 | 0.23 R | 0.00 | 618 | 16.6 | 96.5 | 57.3 | 74.6 | 88 | 34 | 57 | 58.2 | 1.8 R | 42.4 R | 79.8 |
| 7/18/2023 | 0.25 R | 0.00 | 693 | 15.9 | 99.2 Y | 57.0 | 75.1 Y | 90 | 23 | 53 Y | 57.0 Y | 2.0 Y | 46.9 Y | 80.3 |
| 7/19/2023 | 0.25 | 0.00 | 704 | 15.5 | 91.0 | 54.8 | 69.7 | 93 | 37 | 62 | 56.3 | 2.5 Y | 59.6 Y | 80.7 |
| 7/20/2023 | 0.24 | 0.00 | 703 | 14.8 | 94.1 | 54.2 | 67.7 | 94 | 33 | 64 | 55.1 | 2.6 Y | 62.7 Y | 80.7 |
| 7/21/2023 | 0.25 R | 0.00 | 695 | 15.2 | 97.5 | 53.0 | 71.1 | 96 | 26 | 58 | 55.8 | 2.4 Y | 57.3 Y | 80.7 |
| 7/22/2023 | 0.25 R | 0.00 | 704 | 15.3 | 95.3 | 50.0 | 72.1 | 96 | 33 | 57 | 56.1 | 2.4 Y | 56.8 Y | 80.8 |
| 7/23/2023 | 0.24 | 0.00 | 654 | 16.5 | 93.7 | 58.6 | 73.8 | 89 | 33 | 58 | 58.1 | 2.4 Y | 57.9 Y | 81.1 |
| 7/24/2023 | 0.25 | 0.00 | 681 | 16.0 | 97.5 | 55.6 | 74.3 | 93 | 29 | 55 | 57.2 | 2.4 Y | 57.1 Y | 81.4 |
| 7/25/2023 | 0.26 R | 0.00 | 688 | 15.7 | 102.0 Y | 53.9 | 74.8 Y | 92 | 27 | 53 Y | 56.7 Y | 2.5 Y | 60.2 Y | 81.7 |
| 7/26/2023 | 0.25 | 0.00 | 703 | 15.3 | 93.1 | 55.3 | 70.2 | 93 | 32 | 61 | 56.0 | 2.4 Y | 56.9 Y | 82.0 |
| 7/27/2023 | 0.24 R | 0.00 | 682 | 14.8 | 92.5 | 54.2 | 68.7 | 96 | 33 | 62 | 55.1 | 2.2 Y | 53.3 Y | 82.0 |
| 7/28/2023 | 0.24 R | 0.00 | 674 | 14.1 | 95.8 | 49.9 | 69.8 | 94 | 30 | 57 | 53.7 | 2.2 Y | 52.5 Y | 81.9 |
| 7/29/2023 | 0.23 | 0.00 | 659 | 14.4 | 96.3 | 50.4 | 70.1 | 93 | 28 | 58 | 54.4 | 2.0 Y | 49.0 Y | 81.8 |
| 7/30/2023 | 0.24 R | 0.00 | 674 | 14.1 | 96.9 | 50.6 | 70.7 | 93 | 26 | 55 | 53.8 | 2.2 Y | 52.4 Y | 81.7 |
| 7/31/2023 | 0.23 | 0.00 | 659 | 14.8 | 93.1 | 50.6 | 68.8 | 93 | 37 | 62 | 55.1 | 2.2 Y | 53.3 Y | 81.7 |
| Tots/Avgs | 7.37 | 0.00 | 667 | 14.6 | 92.2 | 52.5 | 68.5 | 93 | 33 | 62 | 54.5 | 2.2 | 52.5 | 79.4 |

| Flag Legend | | |
|------------------------------------|----------------------------|-----------------------------|
| A - Historical Average | I - Ignore | R - Far out of normal range |
| C or N - Not Collected | M - Missing Data | S - Not in service |
| H - Hourly Missing or Flagged Data | Q - Related Sensor Missing | Y - Moderately out of range |
| Conversion Factors | | |
| Ly/day/2.065=W/sq.m | inches * 25.4 = mm | (F-32) * 5/9 = c |
| mph * 0.447 = m/s | mBars * 0.1 = kPa | miles * 1.60934 = km |



CENTRAL COAST WATER AUTHORITY
MEMORANDUM

TO: Ray Stokes, Executive Director
Dessi Mladenova, Controller August 10, 2023

FROM: Christine Forsyth, Administrative Assistant

SUBJECT: Monthly Water Deliveries

According to the CCWA revenue meters at each turnout, the following deliveries were made during the month of July 2023:

| <u>Project Participant</u> | <u>Delivery Amount (acre-feet)</u> |
|----------------------------|------------------------------------|
| Chorro | 172.66 |
| López..... | 197.09 |
| Shandon..... | 0.00 |
| Guadalupe..... | 58.11 |
| Santa Maria..... | 572.14 |
| Golden State Water Co..... | 0.00 |
| Vandenberg..... | 262.12 |
| Buellton | 34.16 |
| Solvang | 91.50 |
| Santa Ynez ID#1 | 490.53 |
| Bradbury..... | 0.00 |
| TOTAL | 1,878.31 |

In order to reconcile these deliveries with the DWR revenue meter, which read 1,871 acre-feet, the following delivery amounts should be used for billing purposes:

| <u>Project Participant</u> | <u>Delivery Amount (acre-feet)</u> |
|-----------------------------|------------------------------------|
| Chorro | 172 |
| López | 196 |
| Shandon..... | 0 |
| Guadalupe..... | 58 |
| Santa Maria | 536* |
| Golden State Water Co | 34* |
| Vandenberg | 261 |
| Buellton | 34 |
| Solvang | 91 |
| Santa Ynez ID#1 | 489 |
| Bradbury | 0 |
| TOTAL | 1,871 |

*Golden State Water Company delivered 34 acre-feet into its system through the Santa Maria turnout. This delivery is recorded by providing a credit of 34 acre-feet to the City of Santa Maria and a charge in the same amount to the Golden State Water Company.

Notes: Santa Ynez ID#1 water usage is divided into 0 acre-feet of Table A water and 489 acre-feet of exchange water.

The exchange water is allocated as follows

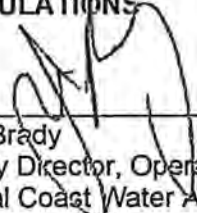
| <u>Project Participant</u> | <u>Exchange Amount (acre-feet)</u> |
|----------------------------|------------------------------------|
| Goleta | 176 |
| Santa Barbara | 117 |
| Montecito | 117 |
| Carpinteria | 79 |
| TOTAL | 489 |

Bradbury Deliveries into Lake Cachuma are allocated as follows:

| <u>Project Participant</u> | <u>Delivery Amount (acre-feet)</u> |
|----------------------------|------------------------------------|
| Carpinteria | 0 |
| Goleta | 0 |
| La Cumbre | 0 |
| Montecito | 0 |
| Morehart | 0 |
| Santa Barbara | 0 |
| Raytheon | 0 |
| TOTAL | 0 |

cc: Tom Bunosky, GWD
Mike Babb, Golden State WC
Rebecca Bjork, City of Santa Barbara
Janet Gingras, COMB
Craig Kesler, San Luis Obispo County
Paeter Garcia, Santa Ynez RWCD ID#1
Shad Springer, City of Santa Maria
City of Guadalupe
Robert MacDonald, Carpinteria Valley WD
Mike Alvarado, La Cumbre Mutual WC
Pernell Rush, Vandenberg SFB
Nick Turner, Montecito WD
Jose Acosta, City of Solvang
Rose Hess, City of Buellton

**REVIEW AND APPROVAL OF
DELIVERY RECORDS AND ASSOCIATED
CALCULATIONS**



John Brady
Deputy Director, Operations and Engineering
Central Coast Water Authority

A Meeting of the

**BOARD OF DIRECTORS
OF THE
CENTRAL COAST WATER AUTHORITY**

will be held at 9:00 a.m., on Thursday, July 27, 2023
at 255 Industrial Way, Buellton, California 93427

Members of the public may participate by video call or telephone via
URL: <https://meetings.ringcentral.com/j/1452566282>
or by dialing (623)404-9000 and entering access Code/Meeting ID: 145 256 6282 #

Please note: public participation by video call or telephone is for convenience only and is not required by law. If technical interruptions to the video call/telephone occur, the chair has the discretion to continue the meeting and participants are invited to take advantage of the other participation options above.

Public Comment on agenda items may occur via video call or telephonically, or by submission to the Board Secretary via email at lfw@ccwa.com no later than 8:00 a.m. on the day of the meeting. In your email, please specify (1) the meeting date and agenda item (number and title) on which you are providing a comment and (2) that you would like your comment read into the record during the meeting. If you would like your comment read into the record during the meeting (as either general public comment or on a specific agenda item), please limit your comments to no more than 250 words.

Every effort will be made to read comments into the record, but some comments may not be read due to time limitations. Please also note that if you submit a written comment and do not specify that you would like this comment read into the record during the meeting, your comment will be forwarded to Board members for their consideration.

Pursuant to Government Code section 54957.5, non-exempt public records that relate to open session agenda items and are distributed to a majority of the Board less than seventy-two (72) hours prior to the meeting will be available on the CCWA internet web site, accessible at <https://www.ccwa.com>.



Eric Friedman
Chairman

Jeff Clay
Vice Chairman

Ray A. Stokes
Executive Director

Brownstein Hyatt
Farber Schreck
General Counsel

Member Agencies

City of Buellton

Carpinteria Valley
Water District

City of Guadalupe

City of Santa Barbara

City of Santa Maria

Goleta Water District

Montecito Water District

Santa Ynez River Water
Conservation District,
Improvement District #1

Associate Member

La Cumbre Mutual
Water Company

255 Industrial Way
Buellton, CA 93427
(805) 688-2292
Fax (805) 686-4700
www.ccwa.com

I. Call to Order and Roll Call

II. Closed Session

- A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION Initiation of litigation pursuant to Government Code section 54956.9(d) (4): 1 case
- B. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION Government Code section 54956.9(d) (1)
Name of case: Central Coast Water Authority, et al. v. Santa Barbara County Flood Control and Water Conservation District, et al. (Case No. 21CV02432)

III. Return to Open Session

IV. Public Comment – (Any member of the public may address the Board relating to any matter within the Board's jurisdiction. Individual Speakers may be limited to five minutes; all speakers to a total of fifteen minutes.)

V. Election of Officers and Committee Appointments

Staff Recommendation: Take nominations from Board.
[Motion: Elect Chairperson]
[Motion: Elect Vice Chairperson]
[Motion: Elect Treasurer]
[Motion: Elect Secretary]

VI. Consent Calendar

- * A. Minutes of the May 25, 2023 Regular Meeting
 - * B. Bills
 - * C. Controller's Report
 - * D. Operations Report
- Staff Recommendation:* Approve the Consent Calendar

* Indicates attachment of document to original agenda packet.
& Additional materials related to this item may be posted prior to the meeting.

Continued

#50952_1

VII. Executive Director's Report

- A. Water Supply Situation Report
Staff Recommendation: Informational item only.
- *B. Surplus Water Transfer Program – Resolution 23-06 To Approve Surplus Water Transfer Program
Staff Recommendation: Approve Resolution 23-06.
- *C. Ernst & Young Audit Report on the 2023 Statement of Charges
Staff Recommendation: Accept report.
- D. DWR Calendar Year 2024 Statement of Charges
Staff Recommendation: Informational item only.
- *E. FY 2022/23 Fourth Quarter Investment Report
Staff Recommendation: Accept report.
- *F. 2023 Update to the Local Guidelines for Implementing the California Environmental Quality Act (CEQA) – Resolution 23-07 Repealing Resolution No. 15-01 and Adopting the Amended Local Guidelines for Implementing the California Environmental Quality Act (Public Resources Code §§ 21000, et seq.);
Staff Recommendation:
 - 1. Approve Resolution No. 23-07 and
 - 2. Determine that the Board's adoption of Resolution No. 23-07 is exempt from CEQA for the reasons set forth in the Staff Report and the Resolution.
- *G. Approval of Contract with The Widroe Group, Inc. for CCWA Staff Recruitment Services – Anticipated Expense \$51,800
Staff Recommendation: Approve retention of The Widroe Group, Inc. to provide recruitment services for the vacant CCWA Operations Manager and Safety Officer positions and authorize the Executive Director to execute the necessary contracts.
- H. State Water Contractors Report
Staff Recommendation: Informational item only.
- *I. Legislative Report
Staff Recommendation: Informational item only.

VIII. Reports from Board Members for Information Only

IX. Items for Next Regular Meeting Agenda

- X. **Date of Next Regular Meeting: September 28, 2023**
Consider canceling August 24, 2023 Meeting

XI. Adjournment

2023 State Water Project Table A Allocation Increased to 100 Percent

Dismiss

(/increase-in-state-water-project-2023-allocation-to-100-percent)



Central Coast Water Authority

(<https://www.ccwa.com/>)

[Contact Us \(/contact-us\)](/contact-us)

Go!

THIS ITEM APPEARS ON

[BOARD MEETINGS \(/BOARD-MEETINGS\)](/board-meetings)

AUG
24
2023

Board Meeting

will be held at 9:00 a.m., on Thursday, August 24, 2023

at 255 Industrial Way, Buellton, California 93427

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255 INDUSTRIAL WAY, BUELLTON CA 93427
TELEPHONE (805) 688-2292

[EMPLOYEE PORTAL \(HTTPS://CCWAPORTAL.SPECIALDISTRICT.ORG/#/\)](https://ccwaportal.specialdistrict.org/#/)

[PRIVACY POLICY \(/PRIVACY-POLICY\)](/privacy-policy)

[TRANSPARENCY \(TRANSPARENCY.HTML\)](transparency.html)

POWERED BY STREAMLINE ([HTTP://WWW.GETSTREAMLINE.COM/](http://www.getstreamline.com/)) | SIGN IN ([HTTPS://WWW.CCWA.COM/USERS/SIGN_IN?DESTINATION=%2F2023-08-24-BOARD-MEETING](https://www.ccwa.com/users/sign_in?destination=%2F2023-08-24-board-meeting))



CENTRAL COAST WATER AUTHORITY

July 27, 2023

MEMORANDUM

July 24, 2023

TO: CCWA Board of Directors
FROM: Ray A. Stokes, Executive Director
SUBJECT: Surplus Water Transfer Program

SUMMARY

For many years, CCWA has administered and managed the Supplemental Water Purchase Program whereby individual CCWA Participants have elected to fund CCWA's efforts to identify opportunities for CCWA Participants to purchase supplemental water supplies, especially when State Water Project supplies are not available in sufficient quantities to satisfy the needs of the CCWA Participants.

In light of the historic wet year and 100% allocation of State Water Project (SWP) supplies in water year 2022-23, following many years of extreme drought, many CCWA Participants have surplus water supplies—SWP water that is surplus to their 2023 demands or that they cannot physically take delivery of in 2023 due to delivery, storage or other constraints. Additionally, DWR's current projections indicate that San Luis Reservoir could possibly fill again later this fall and into the first part of calendar year 2024. If those projections come true, CCWA could incur significant losses, both from a water and dollar standpoint, which could be mitigated through a transfer or exchange to another SWP Contractor. Based on these projections, staff has determined that individual CCWA Participants may wish to take advantage of the water management tools provided by the Water Management Amendment of the State Water Contract and transfer or exchange some or all of their State Water Project allocation. Accordingly, staff has developed the proposed Surplus Water Transfer Program to assist CCWA Participants which elect to participate in the program in identifying potential transfer and/or exchange opportunities.

RECOMMENDATION

Staff recommends that the Board of Directors:

1. Approve and adopt Resolution No. 23-06: A Resolution of The Board of The Directors of The Central Coast Water Authority Approving The Surplus Water Transfer Program; and
2. Determine that the Board's adoption of Resolution No. 23-06 is exempt from CEQA for the reasons set forth in this Staff Report and the Resolution.

DISCUSSION

Purpose and General Terms:

CCWA Members and other CCWA Participants manage a diverse portfolio of water supplies to serve their customers. The Water Management Amendment of the State Water Contract

provides CCWA Participants greater flexibility to manage their water supplies in a changing environment by permitting transfers and exchanges of SWP water which in turn improves water supply reliability.

As envisioned by the Water Management Amendment, from time to time, individual CCWA Participants may determine that their available SWP supplies, together with other supplies available to them, exceed their demands in any given year. For example, in years of high precipitation, the SWP is capable of delivering to CCWA more water than may be needed by each CCWA Participant. Additionally, in some years, water that is available for delivery to one or more CCWA Participants, but is not delivered in that year, may be lost due to delivery, storage, and other constraints within the SWP or in local facilities. In 2023, CCWA faces two constraints: (1) there may not be sufficient capacity in the SWP to store CCWA's SWP allocation for future years, and (2) delivery to CCWA's Participants on the South Coast may not be possible if Cachuma is full and spilling.

Staff proposes that CCWA adopt the Surplus Water Transfer Program, which is based on CCWA's long-standing and successful Supplemental Water Purchase Program, to utilize the management tools made available by the Water Management Amendment to maximize the beneficial use of water, avoid losses, and improve water supply reliability. The program would assist CCWA Participants which elect to participate in the program ("Participating Contractors") in identifying potential transfer and/or exchange opportunities.

The proposed Surplus Water Transfer Program Participation Agreement provides the terms and conditions of participation in the administrative program. The Participation Agreement includes many of the same terms and conditions as are included in the Participation Agreement for the Supplemental Water Purchase Program.

The terms and conditions of any specific transfer or exchange of surplus water would be governed by a separate contract between CCWA and one or more Participating Contractors referred to as a "Transfer Agreement." Additionally, any proposed transfer or exchange of a Participating Contractor's available SWP supply would require CCWA's and Santa Barbara County Flood Control and Water Conservation District's compliance with Article 57(g) of the State Water Contract, requiring specific findings with respect to each transfer and exchange, and approval by the Department of Water Resources.

Voluntary Participation:

Participation in the program is voluntary. To provide maximum flexibility, CCWA Participants may participate in the program annually or on a long-term basis (year to year).

Nothing in the program or the Participation Agreement obligates any CCWA Participant to transfer or exchange water.

Costs and Liability:

To reduce the legal costs associated with drafting and executing program participation documents every year a CCWA Participant notifies CCWA of its interest in the transfer or exchange SWP water, staff proposes a program that will continue year to year.

Neither CCWA nor any CCWA Participant that is not also a Participating Contractor would be responsible for any costs or liability associated with the Surplus Water Transfer Program or the Participation Agreement.

All program costs will be shared among all Participating Contractors in any given year, pro rata. The annual costs of participating in the Surplus Water Transfer Program—primarily the legal fees associated with administration of the program—are anticipated to be insignificant. In some years there may be no costs whatsoever.

ENVIRONMENTAL REVIEW

CEQA Guidelines Section 15061(b)(3) provides a "common sense" exemption to environmental review that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to review.

The Board's approval of the Surplus Water Transfer Program does not have a potential for causing a significant effect on the environment. It is an administrative program.

When a specific transfer or exchange opportunity is presented, CCWA will evaluate whether, and if so to what extent, compliance with CEQA is required. Each transfer or exchange opportunity will be presented to the Board for its consideration.

Attachment:

Resolution No. 23-06: A Resolution of The Board of Directors of The Central Coast Water Authority Approving The Surplus Water Transfer Program

RESOLUTION NO. 23-06

**A RESOLUTION OF THE BOARD OF DIRECTORS OF
THE CENTRAL COAST WATER AUTHORITY APPROVING
THE SURPLUS WATER TRANSFER PROGRAM**

RECITALS

- A. In 1963, the Santa Barbara County Flood Control and Water Conservation District ("**District**") and the Department of Water Resources ("**DWR**"), acting on behalf of the State of California, executed that certain agreement dated February 26, 1963 for the supply and delivery of State Water Project ("**SWP**") water ("**State Water Contract**"). The State Water Contract has been amended on numerous occasions, including by the Water Management Amendment dated April 22, 2021 (the "**Water Management Amendment**").
- B. On November 12, 1991, the District and Central Coast Water Authority ("**CCWA**") entered into the Transfer of Financial Responsibility Agreement whereby the District transferred to CCWA and CCWA accepted and assumed responsibility for the District's obligations pursuant to the State Water Contract.
- C. CCWA entered into a series of "Water Supply Agreements" with various cities, water districts, and other water supply retailers who purchase and deliver water to their customers, and other end users, in Santa Barbara County (each a "**CCWA Participant**" and collectively, the "**CCWA Participants**").
- D. From time to time, such as in years of high precipitation, the SWP is capable of delivering to CCWA more water than is needed by each CCWA Participant. Additionally, in some years, water that is available for delivery to one or more CCWA Participants, but is not delivered in that year, may be lost due to delivery, storage, and other constraints within the SWP and local facilities.
- E. The Water Management Amendment provides CCWA Participants with flexibility to manage their water supplies in a changing environment by permitting transfers and exchanges of SWP water which in turn improves water supply reliability.
- F. CCWA has determined that it should create a program (the "**Surplus Water Transfer Program**"), on behalf of CCWA Participants that elect to participate in the program (each a "**Participating Contractor**"), to utilize the water management tools provided in the Water Management Amendment to transfer or exchange water that may be available to each Participating Contractor under its Water Supply Agreement that is surplus to the needs of the Participating Contractor.
- G. For this purpose, CCWA has prepared and proposes to enter into the Surplus Water Transfer Program Participation Agreement ("**Agreement**") attached hereto as **Exhibit A** with any Participating Contractor that determines to participate in the Surplus Water Transfer Program and to share in the expenses pertaining thereto in accordance with the terms and conditions of the Agreement.
- H. Under the Agreement, CCWA would identify opportunities for Participating Contractors to transfer or exchange their surplus SWP water to other parties that contract with DWR for SWP water ("**Transfer Opportunity**").

- I. To proceed with a Transfer Opportunity, each interested Participating Contractor would enter into an agreement with CCWA to transfer or exchange a particular quantity of SWP water on the terms and conditions stated therein ("**Transfer Agreement**"), including numerous conditions precedent to the effectiveness of CCWA's approval of the Transfer Agreement, such as CCWA's receipt of payment and certification of certain matters required by Article 57(g) of the State Water Contract.
- J. Each Transfer Agreement would be subject to the terms and conditions of the State Water Contract, as amended by the Water Management Amendment, and shall be carried out consistent with CCWA Resolution No. 2021-01, adopted on February 17, 2021, under which a "proposed transfer outside of the County of Santa Barbara shall be subject to a right of first refusal of all [CCWA] Participants on a pro rata basis to take delivery of such SWP Water on the same terms and conditions."
- K. Each Transfer Agreement would require DWR's approval, which is anticipated in the form of a Change in Point of Delivery Agreement ("**DWR Agreement**").
- L. For so long as the District remains the contracting party to the State Water Contract for Santa Barbara County, it is anticipated that DWR will require the District's execution of the DWR Agreement, on behalf of CCWA. To obtain the District's execution of the DWR Agreement, it is anticipated that the District will require CCWA to indemnify the District from all liabilities associated with the DWR Agreement, as provided in an Assignment, Assumption, Indemnification and Release Agreement ("**SBCFCWCD Agreement**").
- M. Compliance with the California Environmental Quality Act ("**CEQA**") for each Transfer Opportunity will occur on a project-specific basis.
- N. The CCWA Board of Directors has considered, agrees with, and incorporates herein all of the findings made by the Executive Director in the Staff Report accompanying this Resolution, including but not limited to, the determinations that the Agreement is exempt from CEQA, including pursuant to the "common sense" exemption to environmental review under Section 15061 subdivision (b)(3) of Title 14 of the California Code of Regulations, because the Parties' actions pursuant to the Agreement do not have the potential for causing a significant effect on the environment, and because CEQA compliance for each Transfer Opportunity will occur on a project-specific basis.

NOW, THEREFORE, BE IT RESOLVED as follows:

SECTION 1

The above recitals are true and correct and are incorporated herein as though set forth in full.

SECTION 2

Based on the findings set forth herein, the Board of Directors approves the Surplus Water Transfer Program and the Agreement and authorizes the Executive Director to execute the Agreement on behalf of CCWA.

SECTION 3

The Board of Directors authorizes the Executive Director to do and cause to be done any and all acts and things necessary or proper for carrying out the Surplus Water Transfer Program, including but not limited to making such non-substantive modifications to the Agreement as may be required prior to executing the Agreement with any Participating Contractor.

The Board of Directors further authorizes the Executive Director to prepare all agreements necessary to effectuate the Surplus Water Transfer Program with respect to any Transfer Opportunity, including any Transfer Agreement, DWR Agreement, and SBCFCWCD Agreement, and to bring those agreements back to the Board of Directors for its consideration and related CEQA findings.

I certify that the foregoing resolution was duly and regularly introduced and adopted by the Board of Directors of the Central Coast Water Authority at a special meeting held on July 27, 2023.

Eric Friedman, Chairman

APPROVED AS TO FORM:
Brownstein Hyatt Farber Schreck LLP

Attest:

Elizabeth Watkins
Secretary to the Board of Directors

Stephanie Osler Hastings

| | VOTING PERCENTAGE | AYE | NAY | ABSTAIN | ABSENT |
|--|-------------------|-------|-------|---------|--------|
| City of Buellton | 2.21% | _____ | _____ | _____ | _____ |
| Carpinteria Valley Water District | 7.64% | _____ | _____ | _____ | _____ |
| Goleta Water District | 17.20% | _____ | _____ | _____ | _____ |
| City of Guadalupe | 1.15% | _____ | _____ | _____ | _____ |
| Montecito Water District | 9.50% | _____ | _____ | _____ | _____ |
| City of Santa Barbara | 11.47% | _____ | _____ | _____ | _____ |
| City of Santa Maria | 43.19% | _____ | _____ | _____ | _____ |
| Santa Ynez River Water Conservation District, Improvement District No. 1 | 7.64% | _____ | _____ | _____ | _____ |

Exhibit:

- A. Surplus Water Transfer Program Participation Agreement

NOTICE AND AGENDA OF SPECIAL MEETING

**GROUNDWATER SUSTAINABILITY AGENCY
FOR THE EASTERN MANAGEMENT AREA
IN THE SANTA YNEZ RIVER GROUNDWATER BASIN**

**HELD AT
SANTA YNEZ COMMUNITY SERVICES DISTRICT
1070 FARADAY STREET, SANTA YNEZ, CALIFORNIA
6:30 P.M., THURSDAY, AUGUST 10, 2023**

Optional remote public participation is available via Telephone or ZOOM

To access the meeting via telephone, please dial: 1-669-900-6833 or 1-669-444-9171
or via the Web at: <http://join.zoom.us>

“Join a Meeting” - **Meeting ID: 865 8512 4456 Meeting Passcode: 622635**

***** Please Note *****

The above teleconference option for public participation is being offered as a convenience only and may limit or otherwise prevent your access to and participation in the meeting due to disruption or unavailability of the teleconference line. If any such disruption of unavailability occurs for any reason the meeting will not be suspended, terminated, or continued. Therefore in-person attendance of the meeting is strongly encouraged.

AGENDA OF SPECIAL MEETING

1. Call to Order and Roll Call
2. Additions or Deletions to the Agenda
3. Public Comment (Any member of the public may address the Committee relating to any non-agenda matter within the Committee’s jurisdiction. The total time for all public comment shall not exceed fifteen minutes and the time allotted for each individual shall not exceed five minutes. No action will be taken by the Committee at this meeting on any public comment item.)
4. Review and approve sending DWR a joint GSA response to SWRCB staff comments on the CMA, WMA and EMA GSPs.
5. Next EMA GSA Regular Meeting, Thursday, August 24, 2023, 6:30 PM at the Santa Ynez Community Services District Community Room, 1070 Faraday Street, Santa Ynez, CA
6. EMA GSA Committee reports and requests for future agenda items
7. Adjournment

[This agenda was posted 24 hours prior to the scheduled regular meeting at 3669 Sagunto Street, Suite 101, Santa Ynez, California, and SantaYnezWater.org in accordance with Government Code Section 54954. In compliance with the Americans with Disabilities Act, if you need special assistance to review agenda materials or participate in this meeting, please contact the Santa Ynez River Water Conservation District at (805) 693-1156. Advanced notification as far as practicable prior to the meeting will enable the GSA to make reasonable arrangements to ensure accessibility to this meeting.]

STAFF MEMORANDUM

DATE: August 4, 2023

TO: EMA GSA Committee

FROM: EMA GSA Agency Staff Members

SUBJECT: Recommended Response to SWRCB Staff Comments on the Santa Ynez GSPs' Characterization of Santa Ynez River Alluvium Above the Narrows

Introduction:

State Water Resources Control Board ("SWRCB") staff provided the California Department of Water Resources ("DWR") with the attached comment letter, dated April 14, 2023 ("SWRCB Staff Comments"), regarding all three GSPs' characterization of the subsurface water in River Alluvium above the Lompoc Narrows. This Staff Memorandum summarizes the background and the SWRCB Staff Comments. This Staff Memorandum also encloses a recommended legal and technical response from all three GSAs for consideration and approval by the EMA GSA committee. Staff or its designee will transmit the approved response to DWR on behalf of the EMA GSA.

GSP Characterization of Above Narrows Alluvium Subsurface Water

As expressly authorized by SGMA and the SGMA Regulations, the three GSAs investigated whether the subsurface water in the Santa Ynez River Alluvium above the Lompoc Narrows is part of the groundwater or surface water system in the Basin, and concluded in their GSPs that such subsurface water is water flowing in a known and definite channel, and, thus, not "groundwater" (as defined by SGMA [Water Code, § 10721(g)]). Since Above Narrows alluvium subsurface water is not groundwater, the WMA, CMA, and EMA GSAs are not authorized or required to manage pumping of such water under SGMA. The GSPs are extensive and throughout describe this as an area of subsurface underflow of the Santa Ynez River. The comprehensive characterization of the groundwater and surface water systems occurs in the GSPs' Hydrogeologic Conceptual Model sections. Each GSP further included a technical appendix on this specific topic: the Stetson Engineer's December 2021 Technical Memorandum ("2021 Stetson Technical Memorandum"). In addition to other technical information and analyses in the GSPs, the 2021 Stetson Technical Memorandum documents the hydrogeological basis for the GSPs' characterization of such subsurface water as underflow that is part of the surface water system and not groundwater for purposes of SGMA regulation.

Summary of SWRCB Staff Comments:

The SWRCB Staff Comments assert that all GSAs are required to presume in their GSPs that all subsurface water is groundwater and, accordingly, manage extractions of subsurface water from the alluvial aquifer unless and until the State Water Board determines such subsurface water is not groundwater. No information is provided or referenced in the SWRCB Staff Comments that were not already considered as part of the GSPs. The SWRCB Staff Comments do not refer to the 2021 Stetson Technical Memorandum which was included with all GSPs. The comments

further do not explain the history of SWRCB orders and decisions, which consistently treats the subsurface water along the Santa Ynez River as underflow and part of the surface water system.

Proposed Response to SWRCB Staff Comments:

Staff from several of the GSA member agencies asked legal counsel for GSA members and Stetson Engineers to prepare a response to the SWRCB Staff Comments. That response includes the attached cover letter and the 2023 Stetson Engineer's Underflow Report.

The cover letter addresses the legal and technical issues raised by the SWRCB Staff Comments. This includes a discussion of the key legal decisions in *City of Los Angeles v. Pomeroy* and the SWRCB decision in *Garrapata Creek*, and the legal presumption referred to in the comments. It also identifies actions that the GSAs are continuing to take including cooperation with DWR and the SWRCB about subsurface water flow issues.

The 2023 Stetson Engineer's Underflow Report includes a detailed and extensive review of water in the alluvium subsurface including the relevant physical conditions of the alluvial channel. The report includes the following four (4) items:

- A technical analysis that concludes the subsurface water is part of the lower Santa Ynez River and constitutes what the *Garrapata Creek Decision* (based on the *Pomeroy* case) calls "underflow."
- A technical analysis that concludes the subsurface water analyzed under each part of the *Garrapata Creek Decision* four-part test constitutes a "subterranean stream."
- A description of the best available science that the GSAs used to characterize the subsurface water in the alluvium as surface water.
- A review of the longstanding technical and administrative record developed primarily during the public hearings and water rights decisions and orders of the SWRCB, where the SWRCB identifies the Santa Ynez River Alluvium above the Lompoc Narrows as "underflow," a subset of a subterranean stream.

Combined the cover letter and Underflow Report respond to legal and technical issues raised by the SWRCB Staff Comments, and describe the best available science that was considered by the GSAs and which supports the GSPs' conclusion that the subject subsurface water that flows in a known and definite channel, i.e., water that is considered surface water and not "groundwater" as defined by SGMA.

Recommendation:

Staff recommends that the EMA GSA Committee authorize the execution of the attached cover letter for transmittal to DWR along with the enclosed 2023 Stetson Engineer's Underflow Report and associated exhibits and reference documents ("Response").

Recommended Motion: *The EMA GSA Committee approves the Response in substantially the form presented and authorizes its chair or other committee member, if the chair is unavailable, to sign the cover letter transmitting the Response to DWR on behalf of the GSA.*

State Water Resources Control Board

April 14, 2023

Monica Salais
GSP Review Section Manager
Sustainable Groundwater Management
Office
Department of Water Resources
Monica.Reis@water.ca.gov

Shane Edmunds
GSP Review Section Manager
Sustainable Groundwater Management
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SANTA YNEZ RIVER VALLEY GROUNDWATER SUSTAINABILITY PLANS, GROUNDWATER BASIN NO. 3-015

The Santa Ynez River Valley Groundwater Basin is managed by three groundwater sustainability agencies (GSAs) which cover the three management areas (western, central, and eastern) that comprise the basin. Each GSA submitted a groundwater sustainability plan (GSP) for its management area. The GSPs state that the GSAs will not manage the Santa Ynez River Alluvium—a significant portion of the basin—because it is “underflow” of the Santa Ynez River and is subject to management by the State Water Resources Control Board (State Water Board).¹ However, the assertion that all underground water in the Santa Ynez River Alluvium is surface water managed by the State Water Board is not correct, and it appears that it will be necessary to treat this area as an unmanaged area under the Sustainable Groundwater Management Act (SGMA).

¹ E.g., Santa Ynez River Valley Groundwater Basin – Eastern Management Area Groundwater Sustainability Plan, pp. 29-30 (“Water present within the Santa Ynez River Alluvium is considered surface water subject to the jurisdiction of the SWRCB, and, thus, is not managed by the GSAs under SGMA.... The hydraulic continuity of this underflow with the surface flow of the Santa Ynez River is such that diversion from the underflow constitutes diversion of the surface water system.”); Santa Ynez River Valley Groundwater Basin – Western Management Area Groundwater Sustainability Plan, p. ES-3; Santa Ynez River Valley Groundwater Basin – Central Management Area Groundwater Sustainability Plan, p. ES-2.

SGMA does not alter surface water or groundwater rights under common law or any provision of law that determines or grants surface water rights. (Wat. Code, § 10720.5, subd. (b).) Accordingly, the presumptions and principles that guide the distinction between surface water (and underground water flowing in known and definite channels) and groundwater in California law also apply to the determination of whether underground water is subject to SGMA. The similar terminology used in SGMA's definition of "groundwater," which excludes "water that flows in known and definite channels," and Water Code section 1200, which includes "subterranean streams flowing through known and definite channels" with "surface water" for the purpose of identifying water that is subject to the appropriative water rights system, supports this conclusion. (Compare Wat. Code, § 1200 and Wat. Code, § 10721, subd. (g).)

Water under the ground is presumed to be percolating groundwater, and the burden of proving otherwise is on the person asserting that the groundwater is a subterranean stream flowing through known and definite channels. (*City of Los Angeles v. Pomeroy* (1899), 124 Cal. 597, 628 (*Pomeroy*); State Water Resources Control Board Water Rights Decision 1639 at p. 3 (*Garrapata Decision*).) It is not unusual for groundwater to flow underground within a defined subterranean basin, but unless the flow is through known and definite channels the water is properly classified as percolating groundwater. (*Pomeroy*, 124 Cal. at 629, see Hutchins, *The California Law of Water Rights*, at pp. 426-427.)

The State Water Board addressed the interpretation and application of "subterranean streams flowing through known and definite channels" as used in Water Code section 1200 in the *Garrapata Decision*. Relying on the California Supreme Court's decision in *Pomeroy*, the State Water Board identified a four-factor test for determining whether groundwater is properly classified as a subterranean stream flowing in known and definite channels: (1) a subsurface channel must be present; (2) the channel must have relatively impermeable bed and banks; (3) the course of the channel must be known or capable of being determined by reasonable inference; and (4) groundwater must be flowing in the channel. (*Garrapata Decision* at p. 4.)² As noted above, because SGMA's definition of "groundwater" is nearly identical to the language used in Water Code section 1200, it is appropriate to apply both the presumption of percolating groundwater and the four factors from the *Garrapata Decision* to determine whether water beneath the ground is flowing through known and definite channels and thus excluded from SGMA's definition of "groundwater." This means that unless there has been an actual determination that the *Garrapata* factors are present, water that is beneath the ground is

² The First District Court of Appeal held that the *Garrapata* factors are consistent with the language and intent of Water Code section 1200 in *North Gualala Water Co. v. State Water Resources Control Board* (2006) 139 Cal.App.4th 1577, 1606.

presumed to be percolating groundwater and is subject to SGMA, even if the water is moving in a defined subterranean basin.

"Underflow" is not defined in the Water Code: it is an informal clarification of the source of water that is sometimes used in State Water Board permits and licenses authorizing diversion from streams subject to the Board jurisdiction when the diversion occurs through wells. An appropriative water right that identifies "underflow" as a source authorizes the holder to divert the identified water in accordance with the terms of the right, but the issuance of such a right does not authorize the diversion of percolating groundwater or constitute a determination regarding the existence or location of any known and definite subsurface channels unless there is a State Water Board determination or order containing findings that identify subsurface channels pursuant to the Garrapata factors. If a State Water Board determination or order does find sufficient proof that the four factors of the Garrapata test are present and identifies a subterranean stream flowing through known and definite channels, the State Water Board will proceed to manage extractions from the subterranean stream under the appropriative water rights system. But until the State Water Board makes or issues such a determination or order, the presumption of percolating groundwater holds and management under SGMA is necessary. Thus, while it may be appropriate for a GSA to forgo management of wells that are subject to regulation through a Board-issued permit or license, it is not appropriate for a GSA to exclude any other wells, let alone an entire alluvial subbasin, from management under SGMA based on the existence of a discrete number of Board-regulated wells.

Prior to the issuance of the Santa Ynez River GSPs, Division of Water Rights staff conducted an initial review of State Water Board files and notified the Groundwater Program Manager of the Santa Ynez River Water Conservation District in September 2021 by phone of staff's findings: (1) the Board has not made a determination that the Santa Ynez River Valley Basin does contain a subterranean stream, and (2) the State Water Board does not manage groundwater extractions this area, aside from three permits for wells approved without consideration of whether the source was surface water or groundwater. After the Santa Ynez River GSPs were finalized, staff conducted a further review of State Water Board files to determine whether there have been any technical determinations sufficient to overcome the presumption that underground water in areas near the Santa Ynez River is percolating groundwater. The staff review is summarized below.

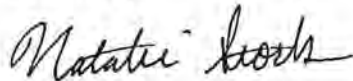
The State Water Board has issued appropriative water rights permits and licenses in the Santa Ynez River watershed that use wells for diversion or identify "Santa Ynez River underflow" as the source of the appropriation but has not made any subterranean

stream designations or determinations in the watershed or for the alluvial basin. For example, Water Right Decision 886 addresses the geology in the Santa Ynez River Basin and refers several times to “underflow” and the presence of impermeable rocks but does not make a determination identifying known and definite channels with impermeable banks, and instead indicates that there are areas of the river (and its alluvium) that are adjacent to water bearing rocks. (See Decision 886 at p. 18 [description of Buellton Subarea].) Water Right Decision 1338 also involved appropriation from “Santa Ynez River Underflow” but does not determine that the entire alluvial basin is a subterranean stream flowing in known and definite channels. A memo written in 1966 regarding one of the water rights considered in Decision 1338 does address identifiable “bed and banks” and can be read as supporting an argument that some water in the alluvium can be characterized as part of an subterranean stream flowing in known and definite channels, however it also misinterprets the geology at depth, meaning that it fails to recognize that the water-bearing Careaga Sands form part of the “bed and banks” of the alluvium. Furthermore, a staff analysis written in 1968 by the same author discusses percolation between streams and groundwater basins in the Santa Ynez River Valley and can be read to support the conclusion that the groundwater is percolating groundwater due to the permeability of the “bed and banks.”

The State Water Board’s Division of Water Rights’ Sacramento Valley Enforcement Unit drafted a memo dated February 6, 2019, addressing a subterranean stream designation for a single well completed in alluvium near Buellton, CA. However, this memo is a staff-level analysis regarding one well, not a State Water Board subterranean stream designation for the entire Santa Ynez Alluvium and is not sufficient to overcome the general presumption that underground water in the Santa Ynez Alluvium is percolating groundwater. Moreover, the current data shows that the Santa Ynez Alluvium is not completely bounded by relatively impermeable bed and banks. There is complex geology in this area and not all margins of the river valley are underlain by the same units that are present in the well log that is the subject of the memo. Recent mapping published by the USGS shows the alluvial deposits are underlain by both the Paso Robles Formation and the Careaga Sandstone in large portions of the river valley. Subterranean streams, as determined by the State Water Board and its predecessor, generally have banks of low or very-low permeability fractured bedrock that confine beds of alluvium and other high permeability materials. Both the Paso Robles and Careaga formations are productive, unconsolidated regional aquifers with generally high permeability, and do not meet the definition or characteristics of a bounding or constraining ‘bank’ of a subterranean stream. Having relatively permeable underlying units negates the possibility of satisfying the bed and banks criterion of the Garrapata four-part test in the Buellton area.

At this time, it is appropriate to continue treating the Santa Ynez River Alluvium as percolating groundwater subject to SGMA, which provides tools to manage groundwater use to avoid the undesirable result of depletions of interconnected surface water that cause significant and unreasonable adverse impacts. If, in the future, the State Water Board finds that water in the basin or a portion of the basin meets the Garrapata factors, State Water Board staff would begin the process of identifying water rights or recording statements of claim to all wells within the areas identified as subterranean streams. Those wells would be required to file annual reports of water diversion and use, and failure to do so could result in future enforcement.

Sincerely,



Natalie Stork
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Office of Research, Planning, and Performance

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August __, 2023

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**RE: SANTA YNEZ VALLEY GROUNDWATER SUSTAINABILITY PLANS,
GROUNDWATER BASIN NO. 3-015**

Dear GSP Review Section Managers Salais and Edmunds:

This letter addresses the April 14, 2023 comments (“SWRCB Staff Comments”) offered by the State Water Resources Control Board (“SWRCB” or “State Water Board”) staff to the California Department of Water Resources (“DWR”) regarding the Santa Ynez River Valley Groundwater Sustainability Plans (“GSPs”) for Groundwater Basin No. 3-015 (“Basin”). Specifically, this letter addresses the comments related to the GSPs’ characterization of subsurface water within the Santa Ynez River Alluvium above the Lompoc Narrows (“Santa Ynez River Alluvium” or “alluvium”) as river underflow and not “groundwater” as defined by the Sustainable Groundwater Management Act, Water Code section 10720, *et seq.* (“SGMA”). The three Groundwater Sustainability Agencies (“GSAs”) for the Basin appreciate the opportunity to provide this response. GSA representatives and technical consultants would also be happy to meet with DWR and SWRCB staff to discuss the issues described in this response, as needed.

I. Executive Summary.

For the reasons described in this letter and in the two enclosed technical reports prepared by Stetson Engineers, the GSAs respectfully disagree with the assertions made by the SWRCB Staff Comments that subsurface water pumped from the alluvial area underlying the Santa Ynez River is percolating groundwater subject to regulation under SGMA. It appears that SWRCB staff did not have before it, or at least did not consider, the best available scientific information which confirms that subsurface water in the lower Santa Ynez River alluvium below Cachuma Dam and

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upstream of the Lompoc Narrows flows through a known and definite channel. This conclusion reached by the GSAs is fully supported in the GSPs by extensive technical analyses and data, geologic reports, well logs, aquifer tests, fieldwork, geologic and hydrogeologic modeling, and other information, including recent Airborne Electromagnetic (AEM) survey results. Among other determinations, these data and analyses show that the conductivity of the alluvium in the lower Santa Ynez River is estimated to be 40 times to 800 times greater than the conductivity of the bed and banks of the river. These significant differences in permeability of the alluvial material as compared with the material comprising the bed and banks of the Santa Ynez River are comparable to and exceed those relied upon by the SWRCB in Decision 1639 ("*Garrapata*") to determine the presence of a subterranean stream. (*Id.* pp. 9-10, 15; see additional discussion below.) Notably, in contrast to the overwhelming scientific data and analyses relied upon by the GSPs, the SWRCB Staff Comments provide virtually no evidence to support their assertions.

The GSAs also respectfully disagree with the legal positions set forth by the SWRCB Staff Comments as they pertain to SGMA and the lower Santa Ynez River. As further set forth below, the processes and conclusions of the GSAs and GSPs in this Basin, particularly those relating to the presence of underflow and a subterranean stream, fully comport with: (1) the letter and spirit of SGMA, the SGMA Regulations, and California water law and policy; (2) more than 10 prior SWRCB water rights orders and decisions confirming that water diverted from the river alluvium is underflow subject to SWRCB jurisdiction; (3) the downstream settlement agreement incorporated into and approved by WRO 2019-0148; and (4) other technical, legal, and historical information related to diversions from the lower Santa Ynez River.

Notwithstanding the above, the GSAs recognize and agree that sustainable groundwater management is a top priority for this Basin and throughout the State, and to that end the GSAs are committed to continuing their examination of underflow and related issues over time as comprehensively as needed to address any specific concerns of DWR and the State Water Board. Additionally, the GSAs fully support ongoing and cooperative interactions with DWR and the State Water Board to ensure that: (1) groundwater/surface water interactions in the lower Santa Ynez River are addressed as needed by the GSPs and GSAs, (2) the State Water Board is alerted about new well permit applications received by the GSAs for proposed pumping in the Santa Ynez River Alluvium such that SWRCB staff remain apprised of potential new or expanded pumping from the alluvial system; (3) robust groundwater monitoring continues, as described in the GSPs; and (4) the GSPs are regularly updated, including at the 5-year update due in 2027, to address the best and most current available information pertaining to the surface and groundwater systems in the Basin.

II. Major Points.

As explained in further detail below, the three groundwater sustainability agencies ("GSAs") managing the Basin, namely the Western Management Area ("WMA") Groundwater Sustainability Agency ("GSA"), the Central Management Area ("CMA") GSA, and the Eastern Management Area ("EMA") GSA, believe that the State Water Board staff did not consider all of

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the technical and other scientific and relevant information available specific to conditions and circumstances in the lower Santa Ynez River (SYR) area. This information includes the following:

- The GSAs attached as an exhibit to each of the three GSPs a December 2021 Technical Memorandum (“2021 Stetson Technical Memorandum”) prepared by Stetson Engineers, Inc. (“Stetson”) that specifically analyzed many of the issues raised in the SWRCB Staff Comments. The 2021 Stetson Technical Memorandum is robust and is based upon the best available hydrogeological and other scientific information collected and available regarding the lower Santa Ynez River (“SYR”) area. Based upon the 2021 Stetson Technical Memorandum and other modeling analyses prepared in accordance with SGMA, the GSAs made reasonable and scientifically supported determinations that wells in the reach of the Santa Ynez River alluvium from Bradbury Dam downstream to the Lompoc Narrows do not pump “groundwater” for purposes of SGMA regulation.¹ It is not clear from the SWRCB Staff Comments whether the State Water Board fully reviewed the 2021 Stetson Technical Memorandum, which supports the GSPs’ characterization of subsurface water within the alluvium in all reaches above the narrows as part of the surface water system and not groundwater as defined by SGMA.
- In order to ensure that the SWRCB Staff Comments are fully addressed to DWR’s satisfaction, on behalf of the GSAs Stetson has prepared a supplemental, even more detailed technical memorandum based upon the best available scientific information regarding the subterranean stream / underflow issues in the lower SYR, specifically including an analysis of the *Garrapata Creek* (SWRCB, Decision 1639 (“*Garrapata*”)) conditions or factors referenced in the SWRCB Staff Comments. This Santa Ynez River Alluvium Underflow and Subterranean Stream Report (August 2023) (“2023 Stetson Underflow Report”) is attached to this letter. This document includes a review of geologic reports, well logs, aquifer tests, the results of new fieldwork, geologic, and hydrogeologic modeling tools, as well as consideration of the most current information about lower SYR hydrogeology, to characterize the groundwater and surface water systems, including the alluvium. The 2023 Stetson Underflow Report provides comprehensive information confirming that water flowing through the Santa Ynez River Alluvium is flowing through a known and definite channel and meets the other “*Garrapata*” factors. The report also explains the bounds of the known and definite channel in the lower Santa Ynez River. We invite DWR and State Water Board staff to review the 2023 Stetson Underflow Report. We would also be happy to meet as needed to discuss

¹ As discussed herein, the GSAs acknowledge that a small number of pumpers in the Buellton Reach of the lower Santa Ynez River may have wells screened below the alluvial zone. The CMA GSA will continue its investigation of any such wells and, to the extent the GSA determines that wells are screened below the alluvial zone and water is being produced from such underlying non-alluvial areas, such pumping will continue to be regulated as percolating groundwater.

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the 2021 and 2023 reports and other scientific information prepared in support of the GSPs. The GSAs are also willing to conduct further monitoring and analysis during GSP implementation to further confirm the reports' conclusions and identify any potential data gaps related to these issues, including as specifically described in Section C.5. below.

- In addition to the hydrogeological and technical information, the 2023 Stetson Underflow Report also discusses the more than ten decisions/permits/licenses that have been issued by the State Water Board over the last 50-plus years determining that pumping from Santa Ynez River Alluvium above the Lompoc Narrows is within the surface water permitting jurisdiction of the State Water Board. Many of these State Water Board decisions expressly identify "underflow" as the source of water. The SWRCB Staff Comments state that use of the term "underflow" is simply an "informal clarification of the source of water that is sometimes in State Water Board permits and licenses." However, as discussed below, the courts have characterized "underflow" as a subset of water flowing in a subterranean stream for over 100 years. Thus, the term "underflow" used in the State Water Board permits and decisions had legal meaning at the time those decisions were issued and continues to have meaning today. Indeed, the *Garrapta* Decision itself uses the term "underflow" to describe water that may exist in a subterranean stream, and recites the test for underflow as defined by the Supreme Court in *City of Los Angeles v. Pomeroy* (1899) 124 Cal. 597, 624 ["*Pomeroy*"].
- The GSAs also believe it necessary to address the point raised by the SWRCB Staff Comments that all subsurface water is legally presumed to be percolating groundwater and that only the State Water Board can make determinations that overcome the presumption. The Comment's position in this regard is tantamount to requiring the GSAs to treat the presumption as a conclusive presumption, unless the SWRCB says otherwise. That position is contrary to law including SGMA, which expressly authorizes and requires GSAs to characterize groundwater and surface water systems in light of best available information and science.
 - First, like most presumptions in the law, the groundwater presumption referenced by the SWRCB Staff Comments is rebuttable. (See generally Evid. Code, section 600(a) ["A presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established[.] **A presumption is not evidence.**"] (emphasis added).) This means that contrary factual evidence can overcome the presumption, which is what the GSAs assert they have done through the presentation of their 2021 and 2023 technical reports. At the same time, as discussed below, the GSAs are committed to fully analyze an airborne electromagnetic (AEM) survey of the basin conducted by a helicopter, modeling and other data that has been collected since the GSPs were

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- adopted, to continue monitoring and to conduct further studies and analysis to more comprehensively identify the “known and definite channel” issue, and to update the GSPs as necessary to discuss the results of these further analyses.
- Second, the point made by the SWRCB Staff Comments that all subsurface water is legally presumed to be percolating groundwater until the State Water Board determines otherwise may have direct application in the context of the State Water Board’s permit and licensing jurisdiction for surface water appropriations under Water Code section 1200 et seq.; however, the Water Code does not universally extend that application throughout all facets of California water management.
 - To the contrary, the Legislature specifically and intentionally defined “groundwater” for purposes of SGMA regulation. (See Water Code § 10721, subd. (g).) This statutory definition is unique to SGMA and mirrors California’s previous groundwater management enactment under AB 3030. (See Water Code, § 10752, subd. (a).) Notably the definition qualifies the term groundwater, it makes no reference to a legal presumption of groundwater, and it contains no requirement for the State Water Board to make threshold legal determinations in characterizing subsurface waters in a basin.
 - Third, the SWRCB Comment’s position that all GSAs must irrefutably presume all subsurface water is groundwater absent a State Water Board *Garrapata* determination to the contrary, would in effect require all GSAs to manage riparian and other diversions of underflow in a manner contrary to law. This would be particularly problematic as the SWRCB has for over 50 years asserted jurisdiction over and issued permits and licenses for appropriative diversions of alluvium “underflow” along the lower Santa Ynez River. In addition, a large number of riparian diverters pump alluvium underflow, which presents no occasion for any future SWRCB *Garrapata* determination to rebut the presumption due to the SWRCB’s lack of permitting jurisdiction over such riparian diversions. Thus, the GSAs would be presuming all subsurface water is groundwater subject to a *Garrapata* determination that may never occur, and thereby be required to assume the legal risk of managing diversions of subsurface waters that do not meet SGMA’s definition of groundwater.
 - Finally, the GSAs disagree with the SWRCB Staff Comment’s suggestion that the alluvium is an unmanaged area. As noted herein, the degree to which the GSPs provide for regulation of this area of the basin is as required by SGMA. Furthermore, replenishment of the alluvium for the benefit of downstream landowners and water rights holders pumping its subsurface flows has been highly managed and regulated by the SWRCB since the

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1950s. For example, as detailed in the SWRCB's most recent Cachuma Project Order, WRO 2019-0148, which resulted from decades of contested proceedings before the SWRCB and expressly considered the needs of fishery resources and downstream pumpers, downstream releases are made from the Cachuma Project's Bradbury Dam to replenish the alluvium for the benefit of those that pump subsurface water from the alluvium.

- SGMA expressly vested the GSAs with the authority and obligation to investigate and characterize the Basin in their respective GSPs, consistent with the best available science. (See e.g., Water Code, § 10725.4 [A GSA may investigate "the need for groundwater management," and its investigation may include "surface waters and surface water rights as well as groundwater and groundwater rights."]; 23 CCR sections 354.14(a) ["Each plan shall include a descriptive hydrogeologic conceptual model of the basin based on technical studies . . . that characterizes the physical components and interaction of the surface water and groundwater systems[.]"]; 354.18(b) [Water Budgets].) The GSAs, accordingly, reviewed the available data, including the State Water Board permits and licenses and hydrogeologic data, performed modeling, and concluded that the best available information and science supports the conclusion that wells producing water from the alluvial area are not pumping percolating groundwater. The SWRCB Staff Comments advance a view of SGMA which suggests that GSAs cannot exercise their statutory authorities and discretion to investigate and characterize surface and groundwater systems in a basin because only the State Water Board can determine that subsurface water is not "groundwater" for purposes of SGMA regulation. That approach is contrary to SGMA and its regulations, and would require SGMA to be amended by the Legislature.

The GSAs have reviewed the suggestion in the SWRCB Staff Comments that, notwithstanding all of the available technical evidence, the GSAs should regulate all wells within the Santa Ynez River Alluvium until more formalized well-by-well Garrapata analyses are undertaken by the State Water Board. We believe this suggestion presents profound legal and regulatory issues that could put the GSAs in legal jeopardy through claims of unlawful, dual regulation of Santa Ynez River Alluvium water producers by those who are otherwise subject to regulation by the State Water Board. For example, most or all producers in the alluvial area (1) submit annual statements of water diversion and use to the State Water Board; (2) as required, pay annual surface water fees to the State Water Board; (3) comply with SB 88 surface water measuring requirements, including at the specific direction of the State Water Board (see, e.g., 2022 letter from State Water Board to local landowner attached as Appendix C to the 2023 Stetson Underflow Report); and (4) are otherwise subject to State Water Board jurisdiction. To determine that the three GSAs have a parallel duty to manage and regulate such pumping and, presumably, also the power to impose curtailments and SGMA well pumping charges on the subject pumpers, would create dual, overlapping regulation and potential for significant litigation

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against the GSAs by riparian pumpers and others. With its careful proscription limiting a GSA's authority to regulate "groundwater" and not allowing GSAs to determine water rights, it seems clear that the Legislature did not intend such dual regulation, nor to expose GSAs to such lawsuits.

III. Detailed Comments.

A. Background.

For background and context, the Santa Ynez River Alluvium at issue is depicted by the yellow highlighted area in Figure 1 of the December 2021 Stetson Technical Memorandum appended to each of the GSPs for the EMA, CMA, and WMA and is also attached to this response. (WMA GSP, Appendix 1d-B; CMA GSP, Appendix 1d-B; and EMA GSP, Appendix K.) The Santa Ynez River Alluvium subsurface water characterized by the GSPs as river "underflow" and "water flowing in a known and definite channel" occurs within the relatively narrow and shallow Santa Ynez River alluvium subsurface channel. As depicted in Figure 1 to the 2021 Stetson Technical Memorandum, that channel extends in a northwesterly direction downstream from Lake Cachuma's Bradbury Dam to a point on the river known as the Lompoc "Narrows," just east of the City of Lompoc and the Lompoc Plain area. Extractions of other subsurface waters within the boundaries of the Basin identified in DWR Bulletin 118², including from the Lompoc Plain and uplands areas, are managed by the GSAs as provided in their respective GSPs. It is only the regulation of pumping of subsurface water within the relatively narrow and shallow Santa Ynez River Alluvium area that is put in question by the SWRCB Staff Comments.

As explained below, the GSAs' collective and unanimous decision to abide by the requirements of SGMA to ensure they regulate only statutorily defined "groundwater" (see Water Code, section 10721, subd. (g)), and not subsurface water flowing in Santa Ynez River Alluvium, was made after conducting a thorough investigation, based on the best available science and other information and expert opinion (Stetson and GSI Consultants), as well as prior State Water Board decisions and determinations related to the Santa Ynez River. That 2021 investigation concluded such subsurface water is within the class of underflow or subsurface water that the Legislature intentionally excluded from the definition of "groundwater" for purposes of SGMA regulation. Thus, consistent with legal standards, the GSPs characterized such subsurface water as part of the surface water system within the basin.³

We appreciate the opportunity to provide and bring to DWR's attention and invite its review of information that is relevant to this very important issue in the Santa Ynez River Valley

² I.e., Lompoc Plain; Lompoc Upland; Santa Rita Upland; Bulleton Upland; Santa Ynez Upland. As was the case with the 2021 Stetson Technical Memorandum, **neither this letter nor the enclosed 2023 Stetson Underflow Report attempts to address the appropriate characterization of such other subsurface water, including water within or downstream of the Lompoc Plain.**

³ According to the State Water Board's Decision 1639 (*Garrapata*), "In *Los Angeles v. Pomeroy*, the court stated it is undisputed that subterranean streams are governed by the same rules that apply to surface streams." (Decision 1639, p. 3, citing *Los Angeles v. Pomeroy* (1899) 124 Cal. 597, 598 [*"Pomeroy"*].)

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Basin. Much of the information provided below may not have been considered by the State Water Board staff in its comment letter. Such information includes the enclosed 2021 Stetson Technical Memorandum, which was relied upon and appended to each of the three GSPs, and 2023 Stetson Underflow Report prepared by Stetson in response to the SWRCB Staff Comments.

B. The Comment's Position: All GSAs and their GSPs Must Presume All Subsurface Water Including River "Underflow" is Percolating Groundwater, Absent a State Water Board Determination to the Contrary under the *Garrapata* Four-Part Test.

In enacting SGMA, with one exception not relevant here, the Legislature made a policy decision to expressly exclude from the definition of "groundwater" to be managed by GSAs "...water that flows in known and definite channels..."⁴ (Water Code, § 10721, subd. (g).) The SWRCB Staff Comments suggest this is the same subsurface water over which the State Water Board has permitting jurisdiction pursuant to Water Code section 1200, defined there as "subterranean streams flowing through known and definite channels." The SWRCB Staff Comments seem to interpret SGMA as requiring GSAs and their GSPs to *irrebuttably presume* that the subsurface waters of the Santa Ynez River Alluvium are "percolating" groundwater, *unless and until* the State Water Board determines that the four-part *Garrapata* test is satisfied and issues a permit or license for each particular well. (SWRCB Staff Comments, pp. 2-3.) The SWRCB Staff Comments imply this position holds true even when a GSA is faced with substantial or overwhelming evidence sufficient to rebut such a presumption, and even in circumstances where the State Water Board has already exercised surface water jurisdiction under Water Code section 1200 et seq. or where State Water Board jurisdiction would otherwise not apply to surface water diversions, e.g., pumping of shallow river underflow for use on riparian lands. (*Id.*)

The SWRCB Staff Comments acknowledge the State Water Board has, in various Santa Ynez River Alluvium proceedings, decisions, and orders, determined the subject alluvium contains "underflow" of the lower Santa Ynez River. However, the Comments downplay those determinations, noting that "underflow" is not defined by the Water Code and referring to underflow as an informal "clarification" of the source of water sometimes used in State Water Board permits and licenses. To the contrary, case law has determined that "[t]o constitute **underflow**, it is essential that the surface and subsurface flows be in contact and that the subsurface flow shall have a definite direction corresponding to the surface flow." (*Pomeroy*, pp. 623-24 (emphasis added); *Verdugo Canyon Water Co. v. Verdugo* (1908) 152 Cal. 655, 662-663.) Thus, by designating "underflow" or the "Santa Ynez River" itself as the source of water in each issued permit or license, the State Water Board necessarily reached a conclusion at the time of issuance of such permits and licenses based upon prevailing legal standards, that the water right

⁴ This is the same class of subsurface water excluded from "groundwater" as defined in the AB 3030 Groundwater Management Plan law. (Water Code, § 10752(a) ["'Groundwater' means all water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water, **but does not include water that flows in know and definite channels.**"] [emphasis added].)

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applies to surface water within its jurisdiction. (See also Water Code, sections 1605, 1610 (Board water rights license issuance requirements)⁵.)

The SWRCB Staff Comments state that State Water Board staff conducted a review of its files to determine whether there have been any technical determinations sufficient to overcome the presumption that underground water in areas near the Santa Ynez River are percolating groundwater. The Comments do not expressly mention that they took into consideration the 2021 Stetson Technical Memorandum appended to the GSPs in support of their characterization of the subsurface alluvium. The Comments contend a 1968 staff analysis (not enclosed therewith) can be read to support the conclusion that the groundwater in the Buellton area is percolating groundwater due to the permeability of the bed and banks, even though the State Water Board has permitted and licensed many wells pumping from that portion of the alluvium.

The SWRCB Staff Comments also refer to a relatively recent (February 6, 2019) memorandum prepared by the State Water Board's Division of Water Rights' Sacramento Valley Enforcement Unit. That State Water Board memorandum applied the *Garrapata* test to a well installed in the Buellton area of the alluvium, and concluded that a permit was required because that well would pump from a subterranean stream flowing in a known and definite channel. The Comments suggest that more recent data conflict with the memorandum's conclusions, but do not include or reference any specific data.

Finally, the SWRCB Staff Comments conclude that the *relatively permeable* underlying units in the Buellton area negate the possibility of satisfying the bed and banks condition of the *Garrapata* four-part test. (SWRCB Staff Comments, p. 4.) The Comments do not point to any information suggesting that the subsurface alluvium flow is not "underflow," which is not subject to the four-part *Garrapata* test mentioned by the Comments. Other than in the Buellton area, there is no contention in the Comments that the *Garrapata* relative impermeability condition is absent elsewhere within the Santa Ynez River Alluvium.

The SWRCB Staff Comments' material points are addressed below.

C. The GSAs Respectfully Disagree with Many of the Technical and Legal Positions in the SWRCB Staff Comments

We respectfully disagree that SGMA requires GSAs to presume all subsurface water is percolating groundwater in the absence of a State Water Board *Garrapata* determination to the contrary. The comments do not take into account relevant provisions of SGMA and other legal authorities, or substantial evidence supporting the GSPs' characterization of the Santa Ynez River Alluvium as not fitting within the definition of "groundwater" as defined in SGMA.

⁵ Furthermore, water rights licensing requirements confirm the State Board will validate the source of water before issuing a license.

https://www.waterboards.ca.gov/waterrights/water_issues/programs/applications/docs/licensing.pdf

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1. *SGMA Authorizes and Directs GSAs To Investigate, Characterize, and Consider Basin Setting Conditions, Including Surface Water and Groundwater Systems, in their GSPs to Determine the Need for SGMA Management Including Extraction Limits.*

Under SGMA, the GSAs are required in their GSP planning efforts to investigate and characterize the environmental setting including the surface and groundwater conditions and systems and their interrelationships. (E.g., SGMA Regulations, §§ 354.12, 354.14(a), 354.18.) The Comments are correct that SGMA does not give GSAs the power to adjudicate or determine or alter water rights; nor have the GSAs done so here. Importantly, SGMA does, however, give GSAs broad powers including broad investigative authority to “determine the need for groundwater management” and investigate “surface waters and surface water rights and groundwater and groundwater rights,” as well as the authority to limit “groundwater” extractions. (Water Code, §§ 10725.4, subds. (a)(1), (b), Water Code, 10726.4, subd. (a)(2).)

Here, the GSAs exercised those relevant authorities and discretion, and after conducting thorough investigations, characterized the alluvium as being part of the surface water system of the basin for purposes of SGMA regulation. The results of that investigation and characterization are based on substantial evidence, including analysis and reasonable inferences and assumptions by qualified professional geologists and engineers based on best available information and science, as provided in the Hydrogeological Conceptual Model (“HCM”) analyses and the 2021 Stetson Technical Memorandum that were incorporated into each of the GSPs. If the GSAs had foregone such investigation and characterization and simply presumed all subsurface water in the Santa Ynez River Alluvium were percolating groundwater⁶ (notwithstanding substantial evidence to the contrary), the GSAs would immediately be subject to lawsuits from non-groundwater pumpers, including riparian pumpers of underflow, who are legally not subject to SGMA management.

2. *As Explained in Stetson’s 2021 Technical Memorandum and 2023 Stetson Underflow Report, Substantial Evidence Supports the GSPs’ Characterization of Subsurface Water Within the River Alluvium as Underflow and Water Flowing in a Known and Definite Channel and Not Groundwater as Defined by SGMA.*

SGMA does not require GSAs and GSPs to adopt a legal presumption that all subsurface water in a basin is percolating groundwater until the State Water Board determines otherwise. Yet if any such presumption exists, it is a rebuttable presumption that may be overcome by substantial evidence. (*North Gualala Water Company v. State Water Resources Control Board* (2006) 139 Cal.App.4th 1577, 1586, 1606 [“*North Gualala*”). This is a question of fact subject to the preponderance of the evidence standard. (Wells A. Hutchins, The California Law of Water

⁶ As explained above, nothing in SGMA or its regulations or guidance materials directs or suggests GSAs should presume all subsurface water is percolating groundwater absent a State Water Board determination to the contrary.

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Rights (1956), p. 427; *Hooker v. Los Angeles* 188 U.S. 314, 317 (1903); Evid. Code, § 115; State Water Board Decision No. 1645 (2002), p. 6 (presumption of percolating groundwater is overcome when the preponderance of the evidence shows that groundwater is flowing in a subterranean stream; proof of the existence of a subterranean stream is shown by evidence that water flows through a known and defined channel; Evid. Code, sections 600 et seq. (legal presumption is not evidence[.]) Indeed, as outlined above SGMA expressly directs GSAs and GSPs to address and determine the scope and interaction of surface and groundwater systems in a basin. (See, e.g., SGMA Regulations, §§ 354.12, 354.14(a), 354.18.) The HCM analyses and other technical analyses and factual evidence supporting the GSPs, including geologic and hydrogeologic modeling, along with Stetson's 2021 Technical Memo, present substantial evidence sufficient to satisfy the GSAs' obligation under SGMA to characterize surface and groundwater systems in a basin. (2021 Stetson Technical Memorandum, pp. 3-8; 2023 Stetson Underflow Report, pp. 1-27.) The GSPs' conclusions in this regard are further bolstered by the enclosed 2023 Stetson Underflow Report.

Stetson's conclusions are in accord with a long line of State Water Board decisions dating back to the 1950s, consistently characterizing alluvium subsurface water in the lower Santa Ynez River as "underflow" subject to its permitting jurisdiction. (2021 Stetson Technical Memorandum, pp. 2-3, 8; 2023 Stetson Underflow Report, pp. 28-36.) In addition to the instances where the State Water Board has issued permits and licenses to appropriators pumping river underflow within the alluvium, the Board has also recognized the existence of various riparian claimants pumping such underflow from the alluvium. (2023 Stetson Underflow Report, Appendix B.) Based on detailed data, modeling and an investigation and characterization of the alluvium by Stetson, contained in its 2021 Technical Memo appended to the GSPs, each of the GSPs concluded that the subsurface flow within the alluvium is not groundwater. (E.g., WMA GSA, p. 2b-37, Appendix 1d-B; CMA GSP, p. 2a-21, Appendix 1d-B; EMA GSP, pp. ES-3, 3-84, Appendix K.) The Comments did not address the 2021 Stetson Technical Memorandum or the other modeling and technical evidence in the GSPs that were relied upon by the GSAs to characterize the subsurface alluvium water as being part of the surface water system for purposes of SGMA regulation.

The SWRCB Staff Comments contend the *Garrapata* test applies to determine whether there is water that flows in a known and definite channel for purposes of SGMA. Nothing in SGMA or the case law finds the *Garrapata* four-part test is controlling or applicable for purpose of the SGMA definition and determinations to be made by the GSAs. However, in considering the Comments, the attached 2021 Stetson Technical Memorandum and 2023 Stetson Underflow Report addresses the physical conditions that need to exist to characterize subsurface water as "underflow"⁷ and a "subterranean stream flowing in a known and definite channel," and conclude, based on substantial evidence, that each of the relevant conditions exist and support

⁷ The underflow test is not the same as the *Garrapata* four-part test for a subterranean stream. (*Garrapata*, p. 7.) As explained in the 2023 Stetson Underflow Report, the subsurface alluvium water meets the test for underflow, but to the extent the subsurface alluvium water is not underflow, the *Garrapata* conditions exist and the alluvium water is still water flowing in a known and definite channel. (2023 Stetson Underflow Report, pp. 18-20.)

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the GSPs' characterization of subsurface alluvium water as being separate from the groundwater system under SGMA.

With one exception, the Comments do not seriously contend that the geologic evidence is insufficient to support the GSPs' characterization of subsurface water within the alluvium as underflow or subterranean stream flow. The one exception is the relatively short reach of the alluvium in the Buellton area of the alluvium ("Buellton Reach"). While not addressing whether subsurface water in the Buellton Reach is underflow (which is not subject to the entire *Garrapata* four-part test), the Comments focus on one physical condition of the four-part *Garrapata* test, that is, "[t]he channel must have **relatively impermeable bed and banks.**" (*Garrapata*, p. 4.)

The question is not whether the bed and banks are completely impermeable⁸ or relatively permeable. Rather the question, not specifically addressed by the SWRCB Staff Comments, is whether the bed and banks are "relatively impermeable [when] **compared to the alluvium filling the channel.**" (*Garrapata*, p. 8; *North Gualala*, pp. 1598-1600 (emphasis supplied).) The 2021 Stetson Technical Memorandum and 2023 Stetson Underflow Report explain why the relatively "impermeable condition" exists in the Buellton area (and throughout the alluvium), based on the best available data as well as modeling prepared for the GSPs. (2021 Stetson Technical Memorandum, pp. 4-6; 2023 Stetson Underflow Report, pp. 13-16 .)

Among other things, the 2021 Stetson Technical Memorandum and 2023 Stetson Underflow Report observe that the confining bed and banks boundary is substantially less permeable to water than the river deposits and younger alluvium. (Stetson Technical Memo, p. 6; 2023 Stetson Underflow Report, pp. 13-16.) Depending on the methodology used the hydraulic conductivity of the alluvium is estimated to be 40 times to 800 times greater than the conductivity of the bed and banks. (*Id.*, p. 27.) These large differences in permeability are comparable to the relative impermeability of the bed and banks at issue and found to constitute a subterranean stream in *Garrapata*. In *Garrapata*, the hydraulic conductivity of the alluvium was approximately 40 times greater than the bed and banks determined to constitute a "relatively impermeable" channel. (*Garrapata*, p. 15.)

As mentioned, Stetson's underflow and subterranean stream conclusions are also supported by a long line of State Water Board decisions and orders. (2021 Stetson Technical Memorandum, pp. 2-3, 8; 2023 Stetson Underflow Report, pp. 28, et seq.). For example, State

⁸ The Court of Appeal in *Gualala* accepted the SWRCB's standard of relative impermeability it advocated for in that case over a more significant boundary to flow as has been urged by appellants in that case. According to Slater, the Court of Appeal agreed with the SWRCB's position that the more appropriate focus should be on whether there is physical coherence of the stream once formed. (Slater, p. 2-42.2. citing *Gualala*, pp. 1599-1600 ["In our view, the Board's position is more consistent with *Pomeroy* and other pre-1913 case law than is [appellants]. These cases focus not on the source of the water gathered in a subterranean stream, but on the physical coherence of the stream *one it is formed*: "Where percolating waters collect or are gathered in a stream running in a defined channel, no distinction exists between waters so running under the surface or upon the surface of land" (emphasis in original).) Accordingly, to the extent the subsurface flow maintained a consistency in its controlled migratory path, some lateral inflow and outflow does not defeat or negate the observed physical coherence. (*Id.*)

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Water Board Decision 1338 directly addressed whether the Board had authority to permit wells that would pump from the alluvium, including a well in the Buellton area. In concluding it had permitting jurisdiction in the Buellton Reach, the State Water Board expressly “found” that the alluvium in that area consisted of “underflow”:

“The Buellton Community Services District (Buellton) diverts water by means of a well which is in the underflow of the Santa Ynez River in the Buellton subarea; in this subarea the river channel deposits lie along the river course and are nearly everywhere flanked by bodies of the younger alluvium.” (Decision 1338, p. 4 [emphasis supplied]; see also, 2023 Stetson Underflow Report, pp. 19-20, 33-34.)

In another example, the enclosed State Water Board memorandum dated February 6, 2019 (attached as Appendix D to the 2023 Stetson Underflow Report) determined that a well installed in the alluvium in the Buellton Reach required a permit from the State Water Board because the *Garrapata* test conditions existed in the Buellton Reach, including the relative impermeability condition. The memorandum concludes:

Flowing Water

*** Water flow levels are maintained by releases made from Lake Cachuma (Santa Barbary County 2011 Groundwater Report). The alluvium within the river valley is bound at depth by the relatively impermeable shale units and the river gradient indicates flow from the well location to the mouth of the river at the Pacific Ocean (Dibblee, 1988). Division staff performed analysis of current and historical photos in the areas adjacent to the subject well and observed two saturated pools north and south of the Santa Ynez River that fluctuate with the level of the river, indicating surface and subsurface connectivity. **Therefore, water flowing within the alluvium meets the criteria of a subterranean stream.** (Appendix D, *supra*, pp. 2-4 [emphasis supplied].)

These are just a few of the prior “underflow” decisions and determinations described in the 2021 Stetson Technical Memorandum and 2023 Stetson Underflow Report. (2021 Stetson Technical Memorandum, pp. 2-3, 8; 2023 Stetson Underflow Report, pp. 28-45.)

3. *The SWRCB Staff Comments Do Not Consider That “Underflow” Is a Legal Subset of Waters Flowing in Known and Definite Channels.*

Also relevant to the issue at hand is the legal nature of “underflow” of the Santa Ynez River as a subset of a subterranean stream flowing in a known and definite channel, which the SWRCB Staff Comments do not take into account. The comments, instead, characterize underflow as merely “an information clarification of the source of water” not defined by the Water Code.⁹

⁹ As explained below, as well as in a report prepared by Joseph L. Sax for the State Water Board regarding its authority over appropriations of subterranean stream flows, “underflow” is a recognized legal term,

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(SWRCB Staff Comments, p. 3.) As mentioned, the State Water Board has on many occasions determined and confirmed that the lower SYR alluvium consists of river underflow, and, in its certified environmental impact report (2011 FEIR) for Water Rights Order 2019-0148 (regarding the Cachuma Project), the State Water Board once again confirmed that the alluvium at issue consists of river “underflow” and identified many landowners riparian to the river and appropriators who pump from “underflow” of the river. (2023 Stetson Underflow Report, pp. 32-33, Appendix B; 2011 Final EIR, Vol. II – Edited Version of 2011 2nd RDEIR, pp. 3.0-2 through 3.0-7, available at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/hearings/cachuma/#feir2011.)

Legal commentators have observed that the term underflow, although “defined in various ways, has been commonly used to refer to subterranean streams.” (See, e.g., Littleworth and Garner, *California Water* (3rd Ed., 2019), p. 77.) State Water Board decisions at times have used the term underflow as a shorthand reference for water beneath the ground in a subterranean stream flowing in known and definite channels. (SWRCB, Decision 1645, p. 13, n. 4.) According to the courts and State Water Board decisions, underflow is legally a subset of a subterranean stream flowing in known and definite channels. (*North Gualala*, p. 1605; *Garrapata*, pp. 6-7, citing *Pomeroy*, pp. 594-595.) While a subterranean stream includes underflow, it is not necessary that subsurface flow be underflow to establish a subterranean stream flowing through a known and definite channel. (*Id.*) The main difference between subsurface flow that is “underflow” and other subsurface flow that is part of a subterranean stream flowing a known and definite channel, is that underflow is in connection with the stream. (*Garrapata*, pp. 4, 7.)

The State Water Board permitting decisions determining and confirming that the subsurface water in the alluvium is “underflow” have already illustrated the existence of a subterranean stream flowing in a known and definite channel. SGMA does not require such determinations to be revisited in further State Water Board proceedings applying the *Garrapata* test before the GSAs can make determinations in characterizing which waters qualify as groundwater subject to regulation under SGMA. Prior State Water Board decisions and orders on the subject are relevant evidence of whether the alluvium subsurface water constitutes underflow as part of a surface water system in a basin. Consistent with its prior 2021 Technical Memorandum, Stetson’s 2023 Stetson Underflow Report further reiterates and provides further geologic and other evidence supporting the conclusion that the subsurface water at issue meets the criteria for underflow and a subterranean stream recognized in *Pomeroy* and *Garrapata*. (2023 Stetson Technical Memorandum, pp. 9-21.)

and there is a substantial body of law, including court cases and State Water Board decisions, that define and classify underflow as a subset of a subterranean stream flowing in a known and definite channel. (Sax, *Review of the Laws Establishing the SWRCB’s Permitting Authority Over Appropriations of Groundwater Classified as Subterranean Streams and the SWRCB’s Implementation of Those Laws*, SWRCB No. 0-076-300-0, Final Report (January 19, 2002) [“Sax Report”], p. 2, fn. 4, p. 46.)

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4. As the State Water Board Lacks Permitting Authority Over Riparian Diversions, Requiring All GSPs to Presume All Underground Water Is Percolating Groundwater Until the Board Determines Otherwise Would, In Effect, Require GSAs To Forever Manage Riparian Pumping of Subsurface Water including River “Underflow.”

The rule proposed by the SWRCB Staff Comments – that all GSAs must presume all subsurface water is percolating groundwater and manage it under SGMA absent a State Water Board *Garrapata* decision to the contrary, would be unworkable and especially problematic due to the fact that most of the pumpers of subsurface water from the alluvium are riparian pumpers who are not subject to the Board’s permitting jurisdiction, and likewise not subject to SGMA regulation. Thus, there would be no occasion to apply *Garrapata* to riparian pumpers of underflow.

The State Water Board’s own files and water rights reporting system contains substantial evidence of many well owners along the Santa Ynez River pumping river underflow from relatively shallow wells installed in the river alluvium, and, in doing so, exercising riparian rights. (E.g., Appendix B and C to 2023 Stetson Underflow Report.) Unlike the exercise of appropriative rights to surface water or subterranean stream flow, no permit is required from the State Water Board to authorize riparian surface stream diversions. (Water Code, § 1201; Sax Report, *supra*, p. 1, fn. 3; Slater, *California Water Law and Policy* (2022), § 3.09.) Riparian rights are not limited to surface water diversions. Riparian parcel owners are also entitled to pump “underflow” and other water flowing in a known and definite channel that abuts, is contiguous to or underlies the riparian’s land, and like surface diversions such pumping for use on riparian parcels is not subject the Water Board’s permitting authority.¹⁰

Accordingly, for the many riparians pumping underflow of the Santa Ynez River, since no permit or license from the State Water Board is required, there may never be any State Water Board proceeding that addresses or determines whether the percolating groundwater presumption is rebutted by application of the *Garrapata* test or other applicable factors. Accordingly, the practical effect of the Comment’s approach would be to require all three GSAs to attempt to manage riparian pumping of river underflow and other subterranean stream water. Such management is squarely outside the scope of the GSAs’ authority to manage “groundwater” as defined for purposes of SGMA, and would likely subject GSAs to takings and/or other types of lawsuits from riparian pumpers of river underflow.

¹⁰ Water Code, §§ 1200, 1201; *Pomeroy, supra*, p. 632; *Peabody v. City of Vallejo* (1935) 2 Cal.2d 351, 375-376; *Santa Margarita v. Vail* (1938) 11 Cal.2d 501, 555-556; *Prather v. Hoberg* (1944) 24 Cal.2d 549, 557-562; *North Gualala*, p. 1592-1592, citing *Hanson v. McCue* (1871) 42 Cal. 303, 308-309; Littleworth & Garner, *supra* pp. 43, 162, n. 3; Joseph P. Sax, *We Don’t Do Groundwater: A Morsel of California Legal History* (1-1-2002), 6 U. Denv. Water L. Review 269, 273.

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5. *The GSAs Are Committed to Taking Further Action Regarding the Appropriate Characterization of Subsurface Water in the Santa Ynez River Alluvium*

Beyond their initial technical analyses and characterization of the alluvium, the GSAs are committed to fully implementing the GSPs' Project and Management Actions including the following actions:

- Perform additional analysis of the AEM data and other data that has been collected since the GSPs were adopted to confirm the boundaries of the underflow channel upstream of the Lompoc Narrows;
- Continue monitoring and conduct further studies and analysis (i.e., perform additional pumping tests) to study the "known and definite channel" issue more comprehensively and to update the GSPs as necessary to discuss the results of these further analyses;
- Update the Well Registration Program for production wells as discussed in the implementation section of the GSPs with well depth, perforations, and GPS location coordinates;
- Install piezometers at the interface of the groundwater aquifers and the underflow deposits to address data gaps on the interconnection of surface and groundwater in the EMA (Alamo Pintado and Zanja de Cota Creeks) and CMA (Santa Rosa Creek);
- Expand the groundwater level monitoring program in the CMA to better understand the extent of flow, if any, between the regional groundwater aquifer (Buellton Aquifer) and river underflow deposits in the Buellton Reach. Groundwater level monitoring wells were identified as a data gap in the CMA GSP.

The GSAs are also willing to continue their ongoing cooperation with the State Water Board and DWR to ensure that: (1) groundwater/surface water interactions in the lower Santa Ynez River are addressed as needed by the GSAs, (2) State Water Board staff are alerted about new well permit applications received by the GSAs for proposed pumping in the underflow, (3) robust groundwater monitoring and reporting continues, and (4) the GSPs are regularly updated to address the latest available information about the underflow and related issues.

IV. Conclusion.

The Legislature made an express law and policy decision to exclude pumpers of subsurface water flowing in known and definite channels, including riparians and appropriators pumping river underflow, from the SGMA definition of "groundwater" extractions to be managed by GSAs. A critical part of that decision was to vest GSAs with the authority and discretion to characterize the surface and groundwater systems in a basin based on substantial evidence and scientific data. That was the state of the law when the GSPs were submitted to DWR and that is the state of the

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law today.¹¹ The GSAs were duty bound to act in accordance with the Legislature's policy decision regarding the scope of a GSA's management authority as embodied in SGMA, and the three Basin GSAs have done so by thoroughly investigating and appropriately characterizing Santa Ynez River Alluvium subsurface waters above the Lompoc Narrows, based on substantial evidence including best available science, as not being "groundwater" as that term of art is defined by SGMA. If the GSAs had not conducted such investigation and characterization and exceeded their management authority under SGMA, they rightly would be criticized and subject to the many pitfalls of regulatory overreach, including costly and protracted litigation that would undermine immediate efforts that are needed to effectively implement the GSPs.

We appreciate the opportunity to provide information to DWR that we believe is relevant to the issue raised, but perhaps was not considered by the SWRCB Staff Comments.

Finally, recognizing the importance of the issues raised in the SWRCB Staff Comments, the GSAs offer to meet with appropriate DWR and SWRCB representatives to further discuss this matter as needed.

Sincerely,

Brett Marymee, EMA Chair

Cynthia Allan, CMA Chair

Chris Brooks, WMA Chair

Enclosures:

- (1) 2021 Stetson Technical Memorandum, as appended to the WMA, CMA and EMA GSPs; and
- (2) 2023 Stetson Underflow Report and Subterranean Stream Report.

¹¹ We are not aware of any authority that requires or permits DWR to give deference to an administrative agency's proposed interpretation of a statute (SGMA) in a staff comment letter.



TECHNICAL MEMORANDUM

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TO: Santa Ynez River Water Conservation District
DATE: December 2021

FROM: Ali Shahroody
Curtis Lawler
JOB NO: 1126-2

RE: Hydrogeological Basis for Characterization of Water within the Santa Ynez River Alluvium Upstream of the Lompoc Narrows as Underflow of the River in a Known and Definite Channel

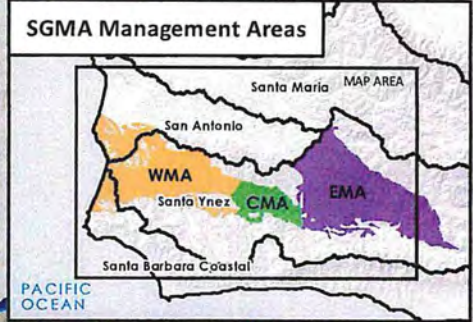
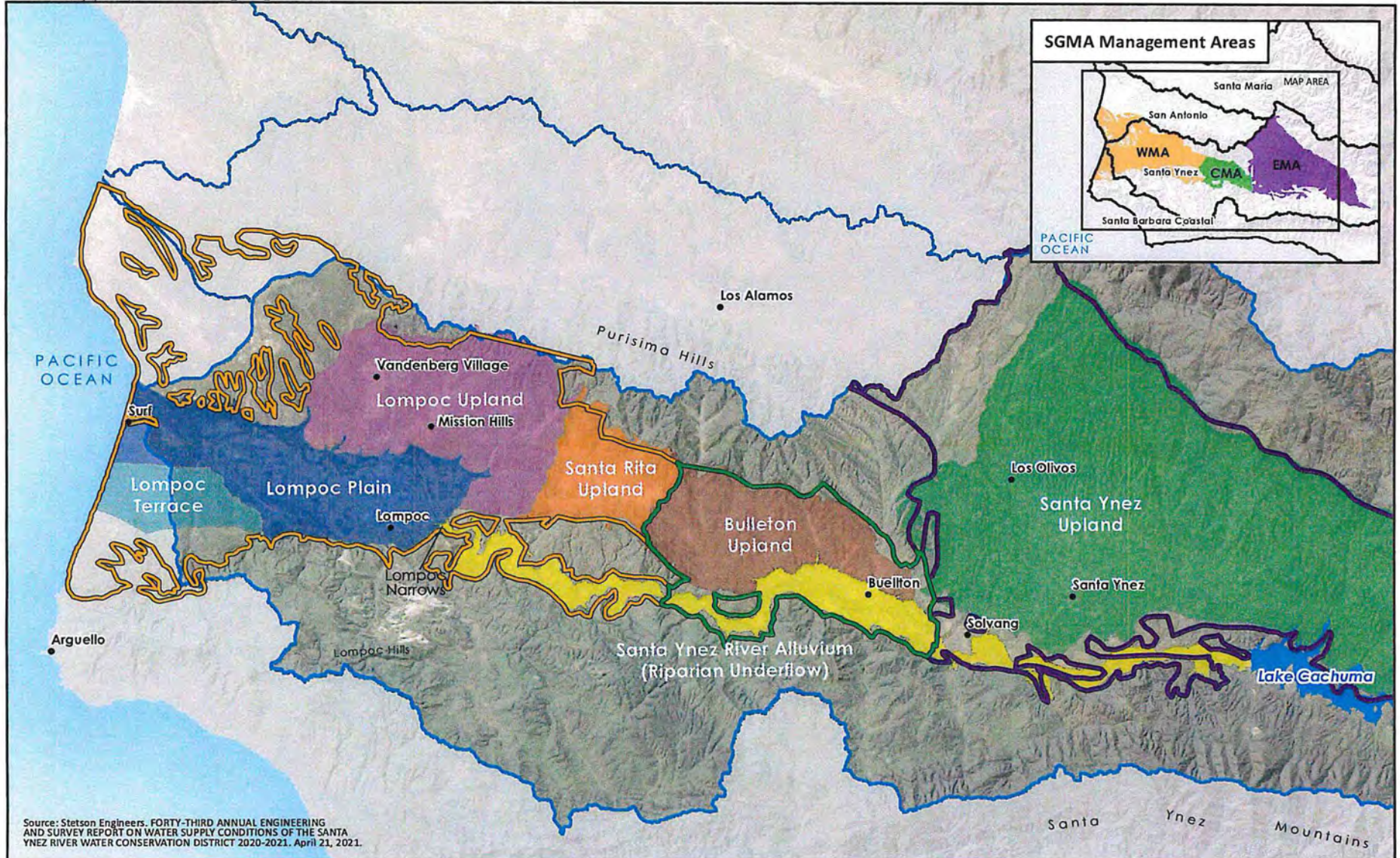
1 INTRODUCTION

This memorandum documents the hydrogeological basis for the characterization of the water within the Santa Ynez River Alluvium as underflow of the river flowing in a known and definite channel. The area of this underflow is located downstream of Lake Cachuma and upstream of the Lompoc Narrows¹ (Figure 1).² The Groundwater Sustainability Plans (“GSPs”) that have been developed for the Western, Central, and Eastern Management Areas of the Santa Ynez River Valley Groundwater Basin, referred to as Bulletin 118 Basin No. 3-015 (“Basin”), appropriately characterize this water as underflow of the river within the jurisdiction of and regulated by the State Water Resources Control Board (“State Board”), and not “groundwater” as defined by the Sustainable Groundwater Management Act (“SGMA”). For purposes of SGMA, “groundwater” is defined as “water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water but does not include water that flows in known and definite channels.” (Wat. Code, § 10721(g), emphasis added.) Water that flows in known and definite channels is regulated by and subject to the jurisdictional authority of the State Board in the same manner as surface water. (See Wat. Code § 1200 et seq.)

Importantly, SGMA does not require Groundwater Sustainability Agencies (“GSAs”) or GSPs to legally establish the distinction between groundwater and surface water in a basin. Instead, GSPs must identify and describe the respective systems, characterize their interrelationship, and explain the basis of those analyses. (See, e.g., SGMA Regulations § 354.18.) In this Basin, the GSPs have reasonably relied upon and utilized the longstanding technical and administrative record that identifies the Santa Ynez River Alluvium above the Lompoc Narrows as a known and definite subsurface channel of the lower Santa Ynez River. In fact, diversion and use of this

¹ This memorandum does not attempt to characterize subsurface water within or downstream of the Lompoc Plain, nor does it make any determination about the particular water rights of any water user.

² This underflow area also corresponds to the Above Narrows Area as defined by the United States Bureau of Reclamation (“Reclamation”) and to Zone A of the Santa Ynez River Water Conservation District.



Source: Stetson Engineers. FORTY-THIRD ANNUAL ENGINEERING AND SURVEY REPORT ON WATER SUPPLY CONDITIONS OF THE SANTA YNEZ RIVER WATER CONSERVATION DISTRICT 2020-2021. April 21, 2021.



-  Santa Ynez River Watershed
-  Central Management Area
-  Western Management Area
-  Eastern Management Area

GROUNDWATER SUBAREAS AND UNDERFLOW LOWER SANTA YNEZ RIVER



FIGURE 1



subsurface water have historically been regulated by the State Board, which has characterized it as underflow of the Santa Ynez River since at least Water Rights Decision 886 in 1958. The State Board further reinforced this characterization of this alluvium in Water Rights Decisions 1338 and 1486 when it considered applications and granted permits to divert underflow of the river: “The Santa Ynez River in the reach between Cachuma Dam and Robinson Bridge, where it enters the Lompoc subarea, flows over recent river channel deposits and the younger alluvium that range in width from a few hundred feet to about one mile and in thickness from 40 to 85 feet. The underflow of the river moves slowly through these deposits.” (State Board Decision 1338, pp. 3-4, emphasis added.)²

State Board Water Rights Order (“WRO”) 73-37, as amended by WRO 89-18 and incorporated in WRO 2019-0148, has also defined the Santa Ynez River “Above Narrows” alluvial deposits as underflow, and states in relevant part that water shall be released “from Lake Cachuma in such amounts and at such times and rates as will be sufficient, together with inflow from downstream tributary sources, to supply downstream diversions of the surface flow under vested prior rights to the extent water would have been available for such diversions from unregulated flow.” (WRO 73-37, Paragraph 5.) Notably, the downstream diversions referenced in these State Board WROs and Water Rights Decisions are made from wells constructed in the underflow of the Santa Ynez River alluvium. As recognized by the State Board and as further discussed below, the geology of the River-channel Deposits and the Younger Alluvium demarcate a known and definite channel through which this subsurface water flows, with older and less permeable formations forming the bed and banks.

2 DESCRIPTION OF THE SUBSURFACE CHANNEL

The geology of the shallow and water bearing sediments of the Santa Ynez River below Lake Cachuma is discussed in United States Geological Survey (“USGS”) Water Supply Papers 1107 and 1467. Along much of the Santa Ynez River below Lake Cachuma, the river overlies River-channel Deposits and the Younger Alluvium. These water-bearing units are located in a river-cut channel through older non-water bearing units of the thick Tertiary aged Monterey Formation (primarily lower permeability clays) and other older units. The River-channel Deposits comprise the materials intermittently transported by the present river. The Younger Alluvium includes quaternary alluvial fill of recent age that extends alongside the Santa Ynez River in the flood plain.

² For certain purposes, such as under the Water Conservation District Law, underflow of the lower Santa Ynez River has been referred to as groundwater. (See, e.g., Wat. Code, § 75500 et seq.)



In addition to the State Board record discussed above, the USGS papers provide substantial evidence that reasonably support several technical conclusions:

1. The Santa Ynez River replenishes the River-channel Deposits and Younger Alluvium.
2. Older impermeable formations along the south side of the river form the underflow channel limits on that side. The older formations rise steeply to the south where more rainfall and runoff typically occurs due to the higher elevations and orographic effects.
3. Older impermeable formations along the north side of the river form underflow channel limits on that side. These formations form a bedrock lip that separates older less permeable formations (Paso Robles and Careaga Sand) from the River-channel Deposits and Younger Alluvium adjacent to the Santa Ynez River. There are some additional permeable depositions to the north along tributaries, however the bottom elevations of those depositions are higher than the top of the river channel basin.
4. In the Buellton area, there is limited hydrologic continuity between the Younger Alluvium and the older less permeable formations (Paso Robles and Careaga Sand) which are exposed to the base of the Younger Alluvium. There are extensive clay zones in the upper portion of the Paso Robles and Careaga Sands in this area. This clayey material restricts the hydrologic continuity of Santa Ynez River underflow to the deeper aquifer (see also, Stetson, 1977; Stetson, 1992).

Figure 1 shows the plan view and width of the River-channel Deposits and the Younger Alluvium in the Santa Ynez River Alluvium subarea. Upstream of the Lompoc Narrows, the subsurface channel of the Santa Ynez River ranges from 0.5 to 1.5 miles in width. Figure 2 shows a cross-section of this geology at the Highway 154 Bridge, which is representative of the subsurface channel of the lower Santa Ynez River above the Lompoc Narrows. Throughout the reach from Lake Cachuma to the Lompoc Narrows, the subsurface channel composed of River-channel Deposits and Younger Alluvium ranges from 25 to 150 feet in thickness and is typically 30 - 80 feet thick (Stetson, 1992).

The permeability of the river gravel deposits along the Santa Ynez River ranges from 100 to 700 feet per day with typical values of about 500 feet per day (USGS, 1951). This permeability of the River-channel Deposits and the Younger Alluvium is further indicative of the direct connectivity between the surface and underflow of the Santa Ynez River. In contrast, the permeability of the clays and shales that form the bed and banks for the majority of the subsurface channel would be expected to be less than 0.01 feet per day based on the hydrogeologic properties of clays and shales (Freeze and Cherry, 1979).

In the Buellton area, between Solvang and the Buellton Bend where the subsurface channel River-channel Deposits and the Younger Alluvium are in contact with the older formations of

Components of Subterranean Flow (aka Surface Flow occurring in Underflow Channel) at Highway 154 Bridge

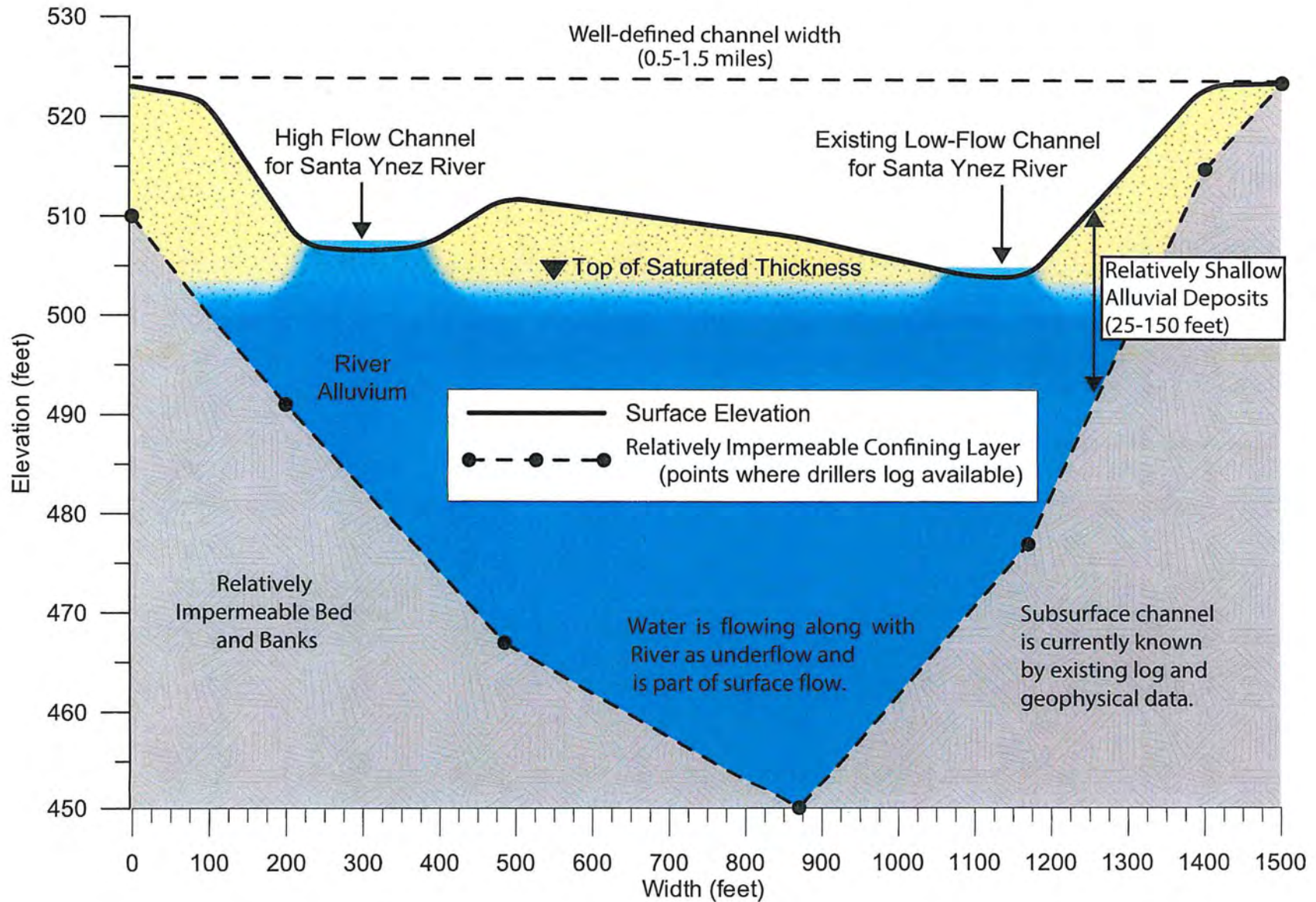


FIGURE 2



Paso Robles and Careaga Sands, the permeability of the bed and banks is estimated to range from 0.1 to 3 feet per day (Stetson, 2020). This permeability is two to three orders of magnitude less than the permeability of the River-channel Deposits and the Younger Alluvium in the subsurface channel and thus relatively impermeable.

3 EVIDENCE OF UNDERFLOW

The direct hydraulic connection between the River-channel Deposits and the Younger Alluvium and the surface flow in the Santa Ynez River upstream of the Lompoc Narrows is evidenced by the high permeability of the river alluvium and responses in water levels of alluvial wells during surface flows. In USGS Water Supply Paper 1107 (USGS, 1951), this area of underflow was described as follows:

The unconsolidated deposits beneath and adjacent to the river transmit a certain amount of underflow which is not measured at the successive gaging stations. Obviously, however, this underflow is an integral part of the water resources of the river valley.

The hydraulic connection between the subsurface channel deposits and the Santa Ynez River is described in USGS Water Supply Paper 1467 as follows (USGS, 1959, emphasis added):

The Santa Ynez River in the reach between Cachuma Dam and Robinson Bridge flows on a body of alluvial deposits that ranges in width from a few hundred feet to more than a mile and in maximum thickness from about 40 to about 185 feet. These deposits, *which are in hydraulic contact with the river*, form a ground-water storage reservoir from which water can be pumped to irrigate the agricultural lands adjacent to the river.

As described above, the hydraulic connection between the water level in the subsurface channel deposits and surface flow is so strong that the water levels in the underflow channel are entirely dependent upon flow in the Santa Ynez River. In fact, the existence of a relatively impermeable subsurface channel and a hydrologic connection between surface and subsurface flows in this area have been relied upon by the State Board, to determine when water is to be released from Bradbury Dam to satisfy downstream water rights.

The Santa Ynez River Valley experienced a prolonged drought from 1947 through 1951, followed by storms in early 1952. Figure 3 shows that over the drought and recovery periods the response of wells to surface flow in the Santa Ynez River is immediate and illustrates the direct connection between subsurface water levels and the surface stream. This quick response in water levels in the underflow is also evident after water rights releases from Bradbury Dam during periods when no storms are occurring.

The hydrograph for well 6N/32W- 9A1 located in the Younger Alluvium about a half mile from the river responds quickly to flow in the river similar to the well located in the River-channel

Response to River Flow

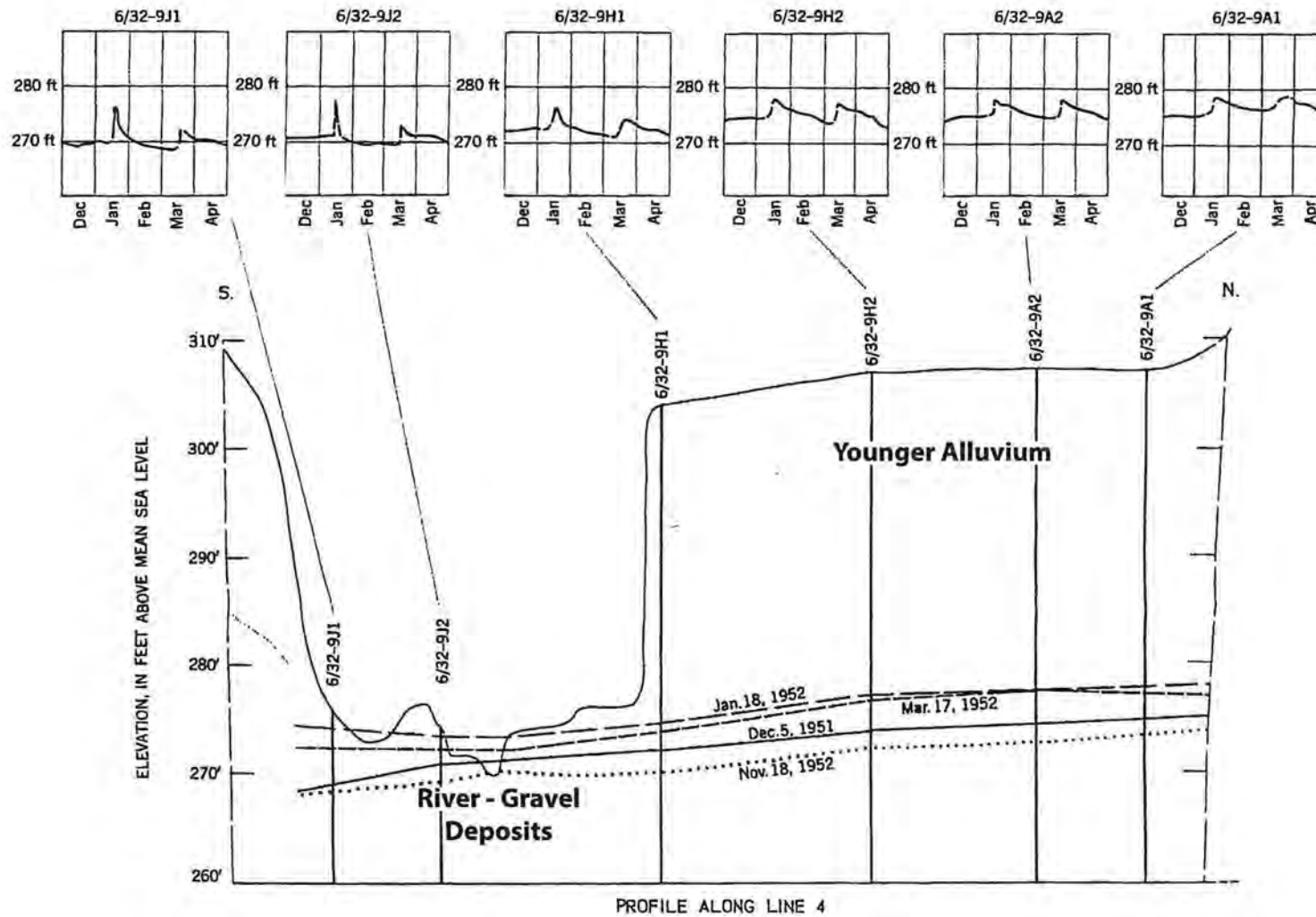


Figure 3 - Underflow Water Level Response to Surface Flow upstream of Buellton Bend in January and March 1952



Source: U.S. Geological Survey, 1959.
Wilson, USGS Water Supply Paper 1467.



Deposits, 6N/32W- 9J2. In the USGS Water Supply Paper 1107 (USGS, 1951), the USGS further describes the connection in both geologic formations:

Thus, throughout its reach from San Lucas Bridge downstream to about 3,000 feet beyond Robinson Bridge, no thick impermeable strata intervene between the bed of the Santa Ynez River and the lower member of the younger alluvium. Accordingly, throughout that reach there is free interchange of water between the river and the lower member of the younger alluvium. Therefore, the lower member contains and transmits river underflow. Also, as its cross-sectional area is much greater than that of the river-channel deposits, the lower member transmits the bulk of that underflow.

4 CONCLUSION

Based on extensive evidence, as well as Stetson's experience of more than 50 years working in the Santa Ynez River Valley for a number of agencies, including work for the State Board, we believe that the water in the River-channel Deposits and the Younger Alluvium downstream of Lake Cachuma and upstream of the Lompoc Narrows constitutes underflow in a definite and known channel with a defined and relatively impermeable bed and banks. This finding is also consistent with the practice of the State Board, which has considered applications and granted permits for diversion of underflow of the Santa Ynez River. (See, e.g., State Board Water Rights Decisions 886, 1338, 1486; State Board WROs 73-37, 89-18, 2019-0148; USGS Papers 1107, 1467.) Accordingly, this water is distinct from "groundwater" as defined by SGMA. In addition to the technical analyses contained in the respective GSPs for the Basin, the information described herein has been used to support the descriptions and analyses of the groundwater system and surface water systems of the Basin in accordance with the provisions of SGMA and the SGMA Regulations.



5 REFERENCES

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FINAL DRAFT

Santa Ynez River Alluvium Underflow and Subterranean Stream Report



Prepared in Response to the April 14, 2023 Comments by
State Water Resources Control Board Staff
regarding Groundwater Sustainability Plans for the
Santa Ynez River Valley Groundwater Basin



STETSON
ENGINEERS INC.

Stetson Engineers
August 2023

FINAL DRAFT

August 2023



Cover Photograph: Santa Ynez River alluvium and outcrop of underlying Monterey Formation. The photograph shows the surface boundary between the channel of alluvium and the relatively impermeable bed and banks. The photograph is along the Santa Ynez River in the Santa Rita Reach. Photograph taken by Miles McCammon, PG, CHG, on October 22, 2019.



EXECUTIVE SUMMARY

This report is submitted, along with geological data, historical documents (including State Water Board decisions), and other relevant information, as confirmation that the three Santa Ynez River Valley Ground Water Basin (SYRGB or Basin) Groundwater Sustainability Plans' (GSPs') characterization of subsurface water within the Santa Ynez River Alluvium upstream of the Lompoc Narrows as "underflow" and water that flows in a known and definite channel, is supported by substantial evidence, and, accordingly, such subsurface water is not "groundwater" as defined by the Sustainable Groundwater Management Act (SGMA) (Water Code, § 10721, subd. (g)).

The SYRGB is located within central Santa Barbara County in the central coast region of California. The California Department of Water Resources (DWR) identified the Basin as a medium-priority groundwater basin. The eight public water agencies within the SYRGB divided the Basin into three Management Areas (GSAs): the Western Management Area (WMA), Central Management Area (CMA), and Eastern Management Area (EMA). The three GSAs coordinated on developing three Groundwater Sustainability Plans (GSPs) to manage the groundwater in the Basin under SGMA.

In Bulletin 118, DWR derived the Basin boundaries based on a regional-scale historical geological map from 1959. To implement the mandate of SGMA in preparing their GSPs and using the best available information including the best available science,¹ the three GSAs investigated and identified the lateral basin boundaries, principal aquifers (including vertical and lateral extent, hydraulic conductivity, and storativity), aquitards, and surface water systems significant to the management of the Basin. The GSAs' investigation noted that a small portion of the DWR-identified boundaries included the younger alluvial² sediments prevalent along the Santa Ynez River. These are geologically young sediments deposited in and on top of a channel formed by historical river flows and bounded by much older, and relatively impermeable, formations that had been uplifted, rotated, compressed, bent, and eroded over geological time.

The GSAs through their consultants, including Stetson Engineers and GSI, conducted hydrogeological investigations for the GSPs using the best available science. Data reviewed included past geologic reports, geologic maps, well logs, aquifer tests, and new fieldwork. From this data, the scientists developed three-dimensional geological models for each GSP and then developed calibrated groundwater flow models. As directed by SGMA regulations (e.g., 23 CCR, § 354.14), the GSPs characterized the groundwater and

¹ Water Code section 113 states: "It is the policy of the state that groundwater resources be managed sustainably for long-term reliability and multiple economic, social, and environmental benefits for current and future beneficial uses. Sustainable groundwater management is best achieved locally through the development, implementation, and updating of plans and programs **based on the best available science.**" [Emphasis added.]

² Alluvial is a geological term that means the loose sediments that are deposited by running water. It comes from the Latin *alluvius*, from *alluere* "to wash against".



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surface water systems based on this effort. These investigations determined that subsurface water within the Santa Ynez River Alluvium upstream of the Lompoc Narrows is water located and flowing within a known and definite channel. As a result, each of the three GSAs concluded in their GSPs that this alluvial area is part of the surface water system and did not meet the SGMA Water Code definition of “groundwater.”³

As discussed in detail below, the GSPs also identified that past and current management of the Santa Ynez River has consistently treated water flowing (aka underflow) in this subsurface channel as part of overall Santa Ynez River flows, treating those subsurface flows as part of the surface flows of the river. The three GSAs included a Technical Memorandum regarding the “Hydrogeological Basis for Characterization of Water with the Santa Ynez River Alluvium Upstream of the Lompoc Narrows as Underflow of the River in a Known and Definite Channel” (the 2021 Stetson Technical Memorandum), as an appendix to each of their GSPs: WMA Appendix 1d-B, CMA Appendix 1d-B, and EMA Appendix K.

The 2021 Stetson Technical Memorandum references the California State Water Resources Control Board (“SWRCB” or “State Water Board”) characterization and treatment of subsurface water in the lower Santa Ynez River area alluvium (downstream of Bradbury Dam to the Lompoc Narrows) as “underflow.” The information in this report regarding Santa Ynez River Alluvium and underflow supplements the information provided in the 2021 Stetson Technical Memorandum and confirms that the GSPs appropriately characterized the subsurface water within the alluvium in this part of the watershed as water flowing in a known and definite channel. This report further documents that in at least ten (10) independent permitting or other decisions, the SWRCB has explicitly or implicitly determined that diversions from wells along the Santa Ynez River from the Lompoc Narrows up to Bradbury Dam produce water from alluvium underflow. The most recent SWRCB order (2019-0148) relating to the Cachuma Project and requiring releases from Bradbury Dam to replenish the downstream Santa Ynez River Alluvium (also referred to as the Above Narrows area), and other downstream subsurface water in the Below Narrows area, summarizes the long history of SWRCB regulation of river flows for alluvium replenishment and permitting/licensing of alluvium diversions.

The GSAs solicited public comments on individual sections of the draft GSPs as they were each prepared, as well as the completed GSPs. The GSAs addressed all comments submitted and provided the adopted GSPs to DWR in January 2022. Following submission, DWR opened an additional 45-day comment period through April 2022. Approximately one year following the closure of the DWR comment period, in April of 2023, SWRCB staff submitted a comment letter (“SWRCB Staff Comments”) to suggest without evidence that water in the Santa Ynez River Alluvium from Bradbury Dam to the Lompoc Narrows is

³ Water Code Section 10721, subd. (g), states: “‘Groundwater’ means water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water, but **does not include water that flows in known and definite channels** unless included pursuant to Section 10722.5.” [Emphasis added.]



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presumptively groundwater, despite the scientific analyses and conclusions in the GSPs. This report focuses on addressing and providing clarification and supplemental information regarding geologic and other relevant data supporting the GSPs' determination that water within the Santa Ynez River Alluvium is flowing in a known and definite channel. Although briefly described below as necessary for context, the legal issues raised in the SWRCB Staff Comments, and the legal standards applied in this report, are more fully addressed in the transmittal letter to which this report is appended.

The April 2023 SWRCB Staff Comments do not consider the full scientific and administrative record used by the GSAs as specifically authorized by SGMA to characterize water flowing in the Santa Ynez River Alluvium. For example, the SWRCB Staff Comments did not review or discuss water levels or any other data described in the GSPs or in the annual reports for the Basin. They also do not address any of the data and analysis provided by the 2021 Stetson Technical Memorandum or GSP modeling. The Comments are inconsistent with nearly all the available geologic and hydrogeologic evidence, as well as past SWRCB actions and decisions in the Santa Ynez River watershed. In summary:

- 1) The areas in question (Santa Ynez River Alluvium) are where "water that flows in known and definite channels" is not groundwater as defined by SGMA (Water Code, § 10721, subd. (g)). The areas defined in the GSPs as underflow of the Santa Ynez River Alluvium flowing through known and definite channels are supported by the GSAs' and their qualified geologists' and engineers' substantial investigation and fact-gathering process, including the collection and review of geological maps, water level data, well completion reports, conducting studies with new geophysical data, development of a three-dimensional geological model, and development of a calibrated groundwater flow model. All this information is presented in the GSPs.
- 2) The SWRCB Staff Comments do not provide any scientific data or analysis relevant to hydrogeologic or other conditions prevailing in the Santa Ynez River Alluvium that is contrary to the conclusions in the 2021 Stetson Technical Memorandum. The Comments purport to characterize the entire Santa Ynez River (discussed in the WMA, CMA, and EMA GSPs). In fact, however, the Comments only refer to geological conditions within a small reach of the Santa Ynez River Alluvium near the City of Buellton. As explained below, the Comments do not include any technical information that is contrary to the GSPs' conclusion that subsurface water within the alluvium in the Buellton Reach⁴ is underflow or water flowing within a known and definite channel. This Report further addresses the hydrogeologic evidence related to all reaches of the Santa Ynez River.
- 3) The SWRCB Staff Comments make general statements about consolidation and permeability in the Santa Ynez River Alluvium in the Buellton Reach to assert that a finding that the alluvium is

⁴ The Buellton Reach is the area near the City of Buellton and located almost entirely within the CMA. A small portion extends into the EMA (downstream of the City of Solvang). Figure 2 shows the extent of this area.



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“relatively impermeable” cannot be made; yet those statements are scientifically incomplete. Indeed, the Comments do not address that the alluvium in the Buellton Reach is 40 to 800 times higher permeability and is relatively unconsolidated, as compared to the geologic materials that underlay the bed and banks of the underflow deposits. Accordingly, the best available science shows that, even if the underflow conditions were not present, the bed and banks are “relatively impermeable”⁵ throughout the Santa Ynez River above the Lompoc Narrows, including in the Buellton Reach. The Buellton Reach also needs to be put in the context of the entire underflow channel from Bradbury Dam to the Lompoc Narrows, where the difference between the river alluvium and less permeable adjacent formations is even greater than in this small reach of the entire alluvial channel.

- 4) SWRCB determinations and orders issued in the Santa Ynez River watershed over the last 75 years have consistently described extractions from the alluvial portion of the Santa Ynez River as “underflow.” The SWRCB has continued to use this language in recent (post-2000) determinations and orders, including Water Rights Order No. 2019-0148 and its supporting Environmental Impact Review (EIR, e.g. Appendix B). As described in the accompanying cover letter, the courts and SWRCB have consistently described “underflow” as subsurface flow that is in contact with and flows in the same direction as the associated surface water. And, consistent with these SWRCB and court findings, the hydrogeological evidence and analyses contained in the GSPs for the Basin show that production of water from the Santa Ynez River Alluvium is underflow.

This report confirms the hydrogeologic conditions along the reaches of the Santa Ynez River within the Basin boundaries including the GSPs’ characterization of the surface and groundwater systems based on best available science as required by SGMA. In short, based on the GSAs’ investigation, the subsurface water flowing with the above the Lompoc Narrows alluvium of the Santa Ynez River is water that flows in a known and definite because it is “underflow,” which is not subject to the relative impermeability requirement of the Garrapata Test. However, even if this subsurface water were not underflow, all the physical conditions of the Garrapata Test for underground water to be classified as a subterranean stream flowing in a known and definite channel nevertheless exist in the alluvium above the Lompoc Narrows.

⁵ “Relatively impermeable” bed and banks is one condition or element of the four-part test (“Garrapata Test”) set forth in the 1999 SWRCB Decision 1639 (In the Matter of Garrapata Water Company: Extraction of Water by Garrapata Water Company From the Alluvium of the Valley of Garrapata Creek, etc.), hereafter the “Garrapata Creek Decision.” In contrast, as explained below, the relatively impermeable condition is not part of the underflow test, and the subsurface water in the alluvium meets the elements of the underflow test.

Paeter Garcia

From: California Water Boards <public@info.waterboards.ca.gov>
Sent: Thursday, August 10, 2023 10:15 AM
To: Paeter Garcia
Subject: Revised Notice: Hexavalent Chromium MCL - Comment Deadline Extension to August 18th

Having trouble viewing this? [View it as a webpage](#)



Revised Notice: Hexavalent Chromium MCL - Comment Deadline Extension to August 18th

This is a message from the State Water Resources Control Board. Please note the following change regarding the public comment opportunities for the proposed Hexavalent Chromium Maximum Contaminant Level:

- The written comment deadline has been extended to 18 August 2023, at 12:00 p.m. (noon).

Additional information about hexavalent chromium may be found at:
https://www.waterboards.ca.gov/drinking_water/certlic/drinkingwater/Chromium6.html

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Chromium-6 Drinking Water MCL

Announcements

August 2023

The State Water Board held a hearing under the Administrative Procedure Act (APA) on August 2nd on the proposed maximum contaminant level (MCL) for hexavalent chromium in drinking water.

- [Hearing recording \(English | Spanish\)](#)
- [Board staff presentation slides \(English | Spanish\)](#)
- [Written comments will be accepted until **August 18 \(noon\)**](#)
 - [Submit via email to \[commentletters@waterboards.ca.gov\]\(mailto:commentletters@waterboards.ca.gov\)](#)
 - [For proposed MCL comments, use subject line "SWRCB-DDW-21-003: Hexavalent Chromium MCL"](#)
 - [For draft EIR comments, use subject line "Comment Letter - DEIR Hexavalent Chromium MCL"](#)
 - [Written comments on either document can also be mailed to Courtney Tyler, State Water Resources Control Board, PO Box 100, Sacramento, CA 95812](#)
- [Frequently asked questions \(FAQ\) - English](#)
- [Preguntas frecuentes \(FAQ\) - Espanol](#)
- [Notice of Proposed Rulemaking](#)
 - [Notice of Proposed Rulemaking](#)
 - [Revised Notice of Proposed Rulemaking](#)
 - [Second Revised Notice of Proposed Rulemaking](#)
 - [Third Revised Notice of Proposed Rulemaking](#)
- [Rulemaking page](#)
 - [ISOR Errata sheet \(released July 31\)](#)

June 2023

The State Water Board released the Notice of Proposed Rulemaking for the Hexavalent Chromium MCL and associated Draft Environmental Impact Report.

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March 2022

The State Water Board released a Notice of Public Workshop and Opportunity for Public Comment on Hexavalent Chromium MCL Administrative Draft.

- Notice of Public Workshop and Opportunity for Public Comment. Workshops will be held April 5, 2022 and April 7, 2022.
 - Notice | Aviso
- Draft Regulation Text
- Staff Report
- Attachment to Staff Report (Tables)

November 2021

CEQA Scoping Meeting

- Notice of Preparation of an environmental impact report
- Copies of comment letters received during the meeting available upon request at ddw-hexavalentchromium@waterboards.ca.gov

December 2020

Public Workshop on Cost Estimates

- Notice

Fall 2020

Occurrence Data Released

Preliminary Treatment Costs Released

- Cost Estimates Notice
- Methodology and Assumptions
- Treatment Costs Data
- Treatment Costs Equations
- Sources, Service Connections, and Population
- Community Water Systems Costs
- NTNC Water Systems Costs
- Health Effects

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Background

In 1999, as part of the process of reviewing MCLs in response to public health goals (PHGs), The California Department of Public Health's (CDPH's) precursor, the California Department of Health Services (CDHS), identified the total chromium MCL (see below) as one for review (CDPH's Drinking Water Program is now the State Water Board's Division of Drinking Water (DDW)).

In particular, DDW sought to determine whether or not an MCL that is specific for the hexavalent form of chromium—also known as chromium-6—would be appropriate. Subsequently, concerns about hexavalent chromium's potential carcinogenicity when ingested resulted in a state law that requires CDPH to adopt a hexavalent chromium-specific MCL (see hexavalent chromium timeline).

California's Health and Safety Code guides the development of an MCL for hexavalent chromium: §116365.5 requires the adoption of an MCL for hexavalent chromium by January 1, 2004. In addition, Health and Safety Code §116365(a) required CDPH to establish an MCL at a level as close as is technically and economically feasible to the contaminant's PHG, which is the concentration of a contaminant in drinking water that does not pose a significant risk to health. PHGs are developed by Cal/EPA's Office of Environmental Health Hazard Assessment (OEHHA).

In July 2011 OEHHA established a PHG for hexavalent chromium of 0.02 micrograms per liter ($\mu\text{g}/\text{L}$). The PHG represents a *de minimis* lifetime cancer risk from exposure to hexavalent chromium in drinking water, based on studies in laboratory animals. OEHHA also prepared a PHG fact sheet. The availability of the hexavalent chromium PHG enabled CDPH to proceed with setting a primary drinking water standard.

OEHHA reviews each PHG once every five years unless there has not been a detection of the corresponding contaminant in the preceding five years. In 2016, OEHHA initiated a PHG review for hexavalent chromium with a data call-in for information that could assist in updating the risk assessment. Based on the review of the information from the data call-in and authoritative groups, OEHHA concluded that there was not enough evidence to warrant a change in OEHHA's approach for determining hexavalent chromium's cancer potency and that an updated PHG would not vary significantly from the 2011 value.

As part of the rulemaking process, in August 2013 CDPH proposed an MCL for hexavalent chromium of 0.010 milligram per liter (equivalent to 10 $\mu\text{g}/\text{L}$) and announced the availability of the proposed MCL for public comment. The public comment period closed in October 2013. CDPH reviewed the comments submitted by interested parties and responded to them in the final statement of reasons, which is part of the final hexavalent MCL regulations package. Documents from the regulation package can be found [here](#).

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proof that it has done so (California Manufacturers and Technology Association, et al. v. California Department of Public Health, et al. (Super. Ct. Sacramento County, 2017. No. 34-2014-80001850).

The change became effective with the Office of Administrative Law filing the change with the Secretary of State, on September 11, 2017. Thus, as of September 11, 2017, the maximum contaminant level for hexavalent chromium is no longer in effect. However, the MCL for total chromium of 50 parts per billion will remain in place.

The court's primary reason for finding the MCL invalid is that the California Department of Public Health (which was responsible for the drinking water program before it was transferred to the State Water Board) failed to comply with one of the requirements in the Safe Drinking Water Act for adopting an MCL. In particular, the department "failed to properly consider the economic feasibility of complying with the MCL." The court did "not decide whether the MCL is economically feasible." The court did not make any finding about whether the MCL adequately protected public health, nor did it reach a conclusion about whether the MCL was too low or too high. The court merely found that the department did not adequately document why the MCL was economically feasible.

The court also ordered the State Water Board to adopt a new MCL for hexavalent chromium.

Readers interested in the levels of hexavalent chromium in their drinking water should refer to the water systems' annual Consumer Confidence Reports (CCRs). Many CCRs are available from DDW's Drinking Water Watch website, which also includes other information about drinking water quality.

MCL for Total Chromium

Hexavalent chromium has been regulated under the 50- $\mu\text{g}/\text{L}$ primary drinking water standard (MCL) for total chromium. California's MCL for total chromium was established in 1977, when we adopted what was then a "National Interim Drinking Water Standard" for chromium. The total chromium MCL was established to address exposures to hexavalent chromium, the more toxic form of chromium. Chromium-3 (trivalent chromium) is a required nutrient.

The US Environmental Protection Agency (EPA) adopted the same 50- $\mu\text{g}/\text{L}$ standard for total chromium, but in 1991 raised the federal MCL to 100 $\mu\text{g}/\text{L}$. California did not follow US EPA's change and stayed with its 50- $\mu\text{g}/\text{L}$ standard.

Proposed Hexavalent Chromium Maximum Contaminant Level Administrative Procedure Act Hearing

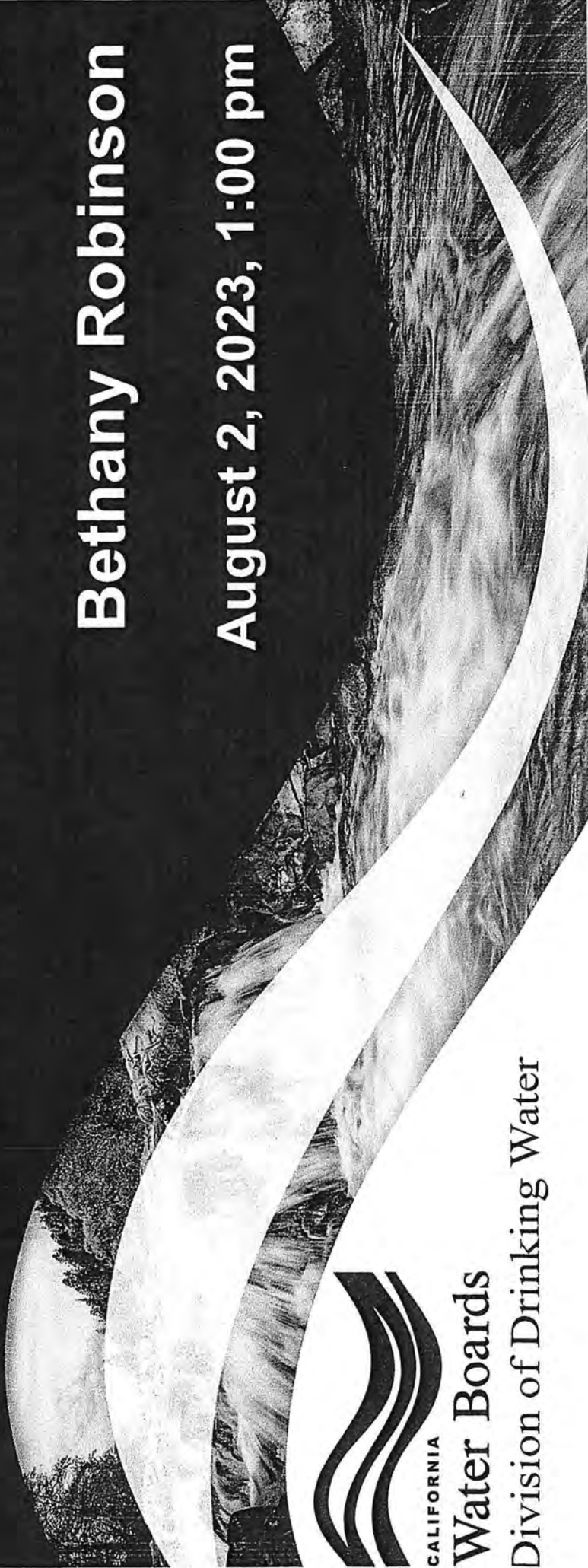
Bethany Robinson

August 2, 2023, 1:00 pm



Water Boards

Division of Drinking Water



Outline

- Background Information
- Regulatory Proposal
- Cost Estimates
- Economic Feasibility
- Timeline
- Public Comments

Administrative Procedure Act (APA) Hearing

- Objectives
 - Review the intent and key requirements of the proposed hexavalent chromium regulation
 - Provide opportunity for comments on the proposed regulation
- No action on the regulation today
- There will be future opportunities to comment if the regulation changes

Regulation Development

| <i>DATE</i> | <i>EVENT</i> |
|--------------------------------|--|
| April 2020 to April 2022 | Public Workshops regarding: <ul style="list-style-type: none"> • White paper on economic feasibility • Draft treatment costs • CEQA scoping • Administrative draft |
| March 2022 | Release of Administrative Draft |
| June 16, 2023 | Notice of Proposed Rulemaking |
| August 2, 2023 | Public Hearing |
| August 11, 2023 (noon) | Close of Public Comment Period |
| TBD | Board Adoption Hearing |
| TBD | Approved by the Office of Administrative Law |
| TBD | Effective Date of Regulation |

Material Released for Comment Period

- Notice of Proposed Rulemaking
- Proposed Regulation Text
- Initial Statement of Reasons (ISOR)
 - A1: Cost Tables
 - A2: Standardized Regulatory Impact Assessment (SRIA), including Cost Estimating Methodology (CEM)
 - A3: Other Chemicals with MCLs Above PHGs
 - A4: DLR Surveys Summary
 - A5: Cost Estimates for Individual Sources
- CEQA Documentation
 - Draft Environmental Impact Report
 - Notice of Availability
 - Notice of Completion

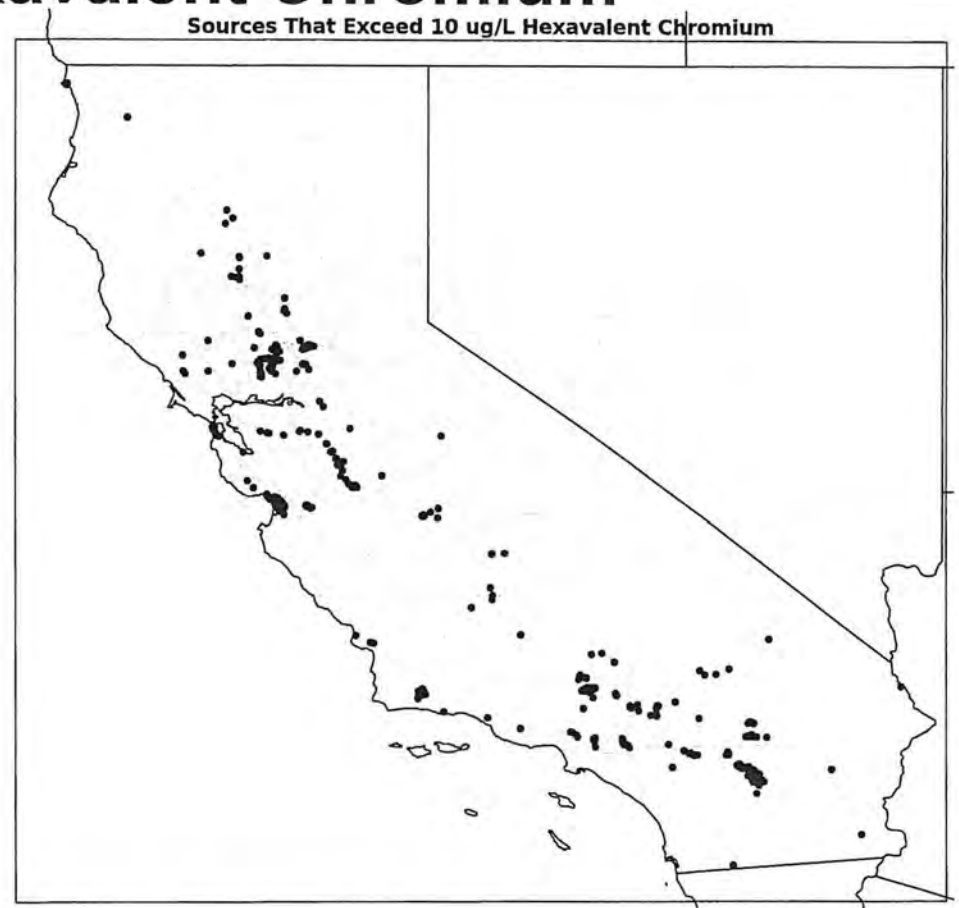
Rulemaking Webpage
bit.ly/Cr6-Rulemaking

What is Hexavalent Chromium?

- A heavy metal used in industrial applications and found throughout the environment
- Chromium has trivalent and hexavalent forms
- Hexavalent chromium causes cancer and kidney/liver toxicity
- Also known as: Chromium-6, Chrome-6, Chromium (hexavalent), Hex Chrome

Occurrence of Hexavalent Chromium

- Detections in 53 of 58 counties, mostly throughout Central Valley
- Counties with highest occurrence:
 - Los Angeles
 - San Bernardino
 - Fresno
 - Riverside
 - Stanislaus
- Presence in groundwater can be naturally occurring or from industrial activities



Sources that exceed 10ug/L Hexavalent Chromium

What are MCL's?

- Maximum contaminant levels (MCLs) are standards limiting concentrations of chemicals in drinking water for protection of public health
- Health and Safety Code section 116365 requires that MCLs be set as close to the public health goal (PHG) as technologically and economically feasible

Why Do We Establish MCLs?

- MCLs are established for protection of public health
- Public health goal (PHG) for hexavalent chromium is 0.02 µg/L
 - Set by Office of Environmental Health Hazard Assessment (OEHHA)
 - PHG of 0.02 µg/L based on cancer (tumors in the small intestine)
 - Health protective value of 2 µg/L based on liver toxicity
- Theoretical cancer risk for drinking hexavalent chromium daily for 70 years (2 liters per day) at 10 µg/L is 1 in 2,000

What are DLR's?

- Detection limit for purposes of reporting (DLR) means the designated minimum level at or above which any analytical finding of a contaminant in drinking water resulting from monitoring required under this chapter shall be reported to the State Board [22 CCR §64400.34]

Why Do We Establish DLRs?

- DLRs protect drinking water quality by assuring confident quantification of chemicals that may adversely affect public health
- Confidently measuring chemicals to the lowest value technologically feasible provides a solid foundation for understanding health impacts, which may be used to prioritize regulations
- To support feasibility analyses for future MCL reviews and potential revisions

Existing Requirements

- Monitoring is required to start within 6 months of the effective date of the regulation
 - Sampling from the previous 2 years may be substituted for initial monitoring if it was performed in accordance with 22 CCR § 64432 (includes requirement to comply with the proposed DLR of 0.1 ug/L)
- Permits must be amended in some cases, including when there is any addition or change in treatment
[22 CCR § 64556]

Regulatory Proposal

Hexavalent Chromium MCL (10 $\mu\text{g/L}$) and DLR (0.1 $\mu\text{g/L}$)

- Compliance Schedule
- Consumer Confidence Report and Health Effects Language
- Compliance and Operations Plans
- Analytical Methods
- Best Available Technologies (BAT)
- Affected Entities

Compliance Schedule for MCL

| System Size (Service Connections Served) | Regulatory Compliance Date | Earliest Compliance Date |
|--|---|--------------------------|
| 10,000 or more service connections | two years after regulation takes effect | 1 January 2026 |
| 1,000 to 9,999 service connections | three years after regulation takes effect | 1 January 2027 |
| Fewer than 1,000 service connections | four years after regulation takes effect | 1 January 2028 |

Specified Language for the Public

- Consumer Confidence Report – Annual Drinking Water Quality report
- Typical Contaminant Origins
 - “Discharge from electroplating factories, leather tanneries, wood preservation, chemical synthesis, refractory production, and textile manufacturing facilities; erosion of natural deposit; transformation of naturally occurring trivalent chromium to hexavalent chromium by natural processes and human activity.”*
- Health Effects
 - “Some people who drink water containing hexavalent chromium in excess of the MCL over many years may have an increased risk of getting cancer.”*

Specified Language for the Public

If a system exceeds MCL before applicable compliance date, additional language is required in their Consumer Confidence Report:

“Chromium (hexavalent) was detected at levels that exceed the chromium (hexavalent) MCL. While a water system of our size is not considered in violation of the chromium (hexavalent) MCL until [insert applicable compliance date], we are working to address this exceedance and ensure timely compliance with the MCL. Specifically, we are [insert actions taken and planned to ensure compliance by applicable compliance date].”

Compliance Plans

- Systems that exceed the MCL before the compliance date must submit a compliance plan
- Compliance Plans must
 - Be submitted within 90 days of exceedance
 - Ensure compliance by deadline
 - Be implemented by water system once approved

Compliance Plans

- Must include:
 - Proposed method for complying with the MCL
 - Date by which the system will submit final plans and specifications
 - Dates for starting construction and completing construction
 - If a new or modified treatment process is proposed:
 - A pilot study
 - The date by which a treatment **operations plan** will be completed
- Systems can make amendments to their compliance plans
- Systems are required to implement their approved compliance plans

Operations Plan

- Only required for systems proposing a new or modified treatment process
- Must include the following, if applicable:
 - Performance monitoring program
 - Unit process equipment maintenance program
 - How and when each unit process is operated
 - Procedures used to determine chemical dose rates
 - Reliability features
 - Treatment media inspection program
- Must be approved by DDW before treated water is served

Analytical Methods

- DDW has a responsibility to ensure analytical methods used for compliance are appropriate to assess water quality
- EPA Methods 218.6 and 218.7 are capable of reporting concentrations down to **0.1 ug/L** (proposed DLR) while maintaining a high level of confidence
- Confirmed adequate laboratory capacity for demand at the proposed MCL and DLR

Best Available Technologies (BAT)

- Three treatment technologies identified as Best Available Technologies (BAT):
 - Ion exchange
 - Reduction/coagulation/filtration (RCF)
 - Reverse osmosis
- Treatment effectiveness of BATs has been peer reviewed
- Other options may be allowed

Who is Affected?

- **Affected source:** a source with a running annual average that exceeds 10 µg/L between January 1, 2010, and June 21, 2021.
- **Affected system:** a system with at least one affected source
- **Affected population:** all persons within an affected system
- **Affected service connections:** all connections within an affected system

Systems, Sources, Connections, and People affected at MCL of 10 ug/L

| System Type | Number of Systems | Number of Sources | Number of Service Connections | Number of People Served |
|--------------------------|-------------------|-------------------|-------------------------------|-------------------------|
| Community | 160 | 412 | 1,348,147 | 5,328,938 |
| NTNC | 62 | 72 | 597 | 15,638 |
| Wholesalers ¹ | 4 | 10 | - | 197,129 |

¹Wholesalers do not report the number of connections their water serves once it is sold. The population value for wholesalers is estimated.

Estimated Costs

- Costs estimated generically for California
- Assumed every system would pursue treatment
- Costs broken down per system, source, person, and service connection
- Costs estimated for potential MCLs of 1 to 15, 20, 25, 30, 35, 40, and 45 ug/L
- Treatment costs depend on contamination level
 - Higher source concentrations cause higher treatment costs
 - Source concentrations assumed to be the *highest running annual average (RAA)* of previous 10 years (historical “worst case”)

Cost Assumptions

- Each source exceeding proposed MCL will be
 - treated
 - treated separately
 - treated to concentration equal to 8 ug/L for MCL of 10 ug/L (80% of the MCL)
- Capital costs based on treatment plants capable of treating full source flow to < 1 ug/L
- Operation and maintenance (O&M) costs based on treating source flow from the highest RAA to 80% of the MCL
- Water provided by each source (source flow) =
$$\frac{\text{total system water produced}}{\text{total \# of active sources}}$$

Costs Assumptions

- Land costs excluded
- Sales tax of 7.25% added to capital costs
- All costs adjusted to June 2022 dollars using the Engineering News Record (ENR) Cost Indices
- Average flow (used for O&M costs) calculated using
 - 150 gallons/person/day for community and wholesaler systems
 - 120 gallons/person/day for NTNC systems
- Peak flow (used for capital costs) calculated using a peaking factor of 1.5

Cost Assumptions

- All systems will need to prepare both compliance and operations plans (this is likely an over-estimate)
 - Compliance plans estimated to take an average of 10 hours to prepare (\$762)
 - Operations plans will take an average of 90 hours to prepare (\$6,857)
- Costs based on median engineering salary of \$113,200 x 1.4 to account for the costs of benefits and employment taxes

Model to Estimate Costs

- Costs were estimated for
 - Each source with a RAA higher than the MCL
 - Most common expected treatment types: SBA, WBA, RCF
 - Including different treatment assumptions for each flow range
- Treatment type with the lowest estimated cost was used
- Costs estimated using sources in Documents Relied Upon
 - Available at bit.ly/Cr6-Rulemaking-File

Estimated Annual Costs for MCL at 10 ug/L

All cost tables are available in ISOR Attachment 1



Community Water Systems

| Per | Fewer than 100 SC | 100 to 199 SC | 200 to 999 SC | 1,000 to 4,999 SC | 5,000 to 9,999 SC | 10,000 or more SC | Average | Attachment 1 Table # |
|-----------------------|-------------------|---------------|---------------|-------------------|-------------------|-------------------|-------------|----------------------|
| Source | \$57,645 | \$86,343 | \$173,011 | \$405,343 | \$620,623 | \$608,937 | \$419,092 | 8A |
| System | \$69,732 | \$117,180 | \$276,817 | \$1,293,979 | \$1,861,868 | \$3,437,549 | \$1,079,163 | 7.2A |
| SC (household) | \$1,622 | \$808 | \$647 | \$466 | \$255 | \$91 | \$128 | 9.2A |
| Person | \$443 | \$279 | \$60 | \$136 | \$67 | \$23 | \$32 | 10.2A |
| Volume Treated (kgal) | \$10 | \$6 | \$5 | \$4 | \$3 | \$3 | \$3 | 11.3A |

SC = Service Connections

Pop = People

NTNC Water Systems

| Per | Fewer than 50 Pop | 50 to 99 Pop | 100 to 199 Pop | 200 to 399 Pop | 400 to 999 Pop | 1,000 or more Pop | Average | Attachment 1 Table # |
|-----------------------|-------------------|--------------|----------------|----------------|----------------|-------------------|----------|-----------------------|
| Source | \$47,889 | \$48,810 | \$54,150 | \$71,526 | \$136,118 | \$180,364 | \$71,303 | 8B |
| System | \$51,081 | \$48,810 | \$59,072 | \$93,877 | \$217,789 | \$180,364 | \$82,803 | 7.2B |
| SC | \$25,541 | \$14,286 | \$3,249 | \$11,644 | \$72,596 | \$2,973 | \$8,599 | 9.2B |
| Volume Treated (kgal) | \$28 | \$16 | \$9 | \$7 | \$6 | \$5 | \$8 | Calculated from 11.2B |

Breakdown of Cost Impacts on Individuals

- 13.6% of California residents may see water bill increases as a result of the hexavalent chromium MCL
 - 11.5% may see monthly water bill increases up to \$20
 - 1.9% may see monthly water bill increases up to \$58
 - Less than 0.3% may see higher water bill increases
- For the largest systems (those with at least 10,000 connections), the average and median monthly water bill increase is \$8

Estimated Costs

- Are not the actual costs systems will face when complying with the MCL
- Capital costs were amortized at 7% over 20 years
- Most systems would see less than \$50 increase in monthly household water bills
- State financial assistance may be available
- Systems with fewer than 200 connections may be eligible to use Point-of-Use (POU) or Point-of-Entry (POE) devices for compliance

How is the level of an MCL determined?

Step 1: What level can we measure to?

0.1 $\mu\text{g/L}$

Step 2: What level can we treat to?

as low as $\sim 1 \mu\text{g/L}$

Step 3: What treatment level is economically feasible?

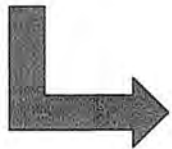
10 $\mu\text{g/L}$

} *Technological Feasibility*

} *Economic Feasibility*

Technological Feasibility

- Hexavalent chromium can be measured to 0.1 $\mu\text{g/L}$
- Hexavalent chromium can be treated to 1 $\mu\text{g/L}$



Therefore, the MCL of 10 $\mu\text{g/L}$ is technologically feasible.

Economic Feasibility

- Included in consideration of economic feasibility:
 - Estimated compliance costs (total, per system, per source, per connection, per person, per unit of water)
 - Median and maximum monthly household cost increases
 - Types and sizes of affected systems
 - Information for affected systems in the 2022 Drinking Water Needs Assessment
 - Impacts of future planned regulations
 - Analysis of household cost increases by system size
 - Variability of unit costs at alternative MCLs
 - Cost-effectiveness

Economic Feasibility

- Proposed **MCL is economically feasible:**
 - 4.7 of the 5.3 million affected people would only see monthly cost increases of \$8
- There are **sufficient resources available** to potentially mitigate the challenge of compliance for the systems that are already struggling.

Economic Feasibility

- **No significant cost savings for small systems at alternative MCL values**, without substantial reductions in protections to public health
- In addition, estimated costs are based on **conservative assumptions**, and for those smallest systems that might find the regulation most economically burdensome, there are ways to mitigate those costs, including the use of POU/POE and consolidations with nearby systems.

Timeline

| DATE | EVENT |
|-------------------------------------|--|
| 11 August 2023 (noon) | Close of formal comment period |
| 16 June 2024 | Deadline to complete rulemaking process |
| 1 October 2024 | Latest regulation effective date |
| After effective date | Compliance plans due within 90 days of MCL exceedances (may require up to 4 quarters of sampling to determine) |
| 2 years after effective date (2026) | PWS \geq 10,000 service connections compliance deadline |
| 3 years after effective date (2027) | 1,000 to 9,999 service connections compliance deadline |
| 4 years after effective date (2028) | Less than 1,000... |

Written Comments

Public Comment Deadline – 11 August 2023 at noon

Written comments can be sent via email to:

commentletters@waterboards.ca.gov

Subject line: "SWRCB-DDW-21-003: Hexavalent Chromium MCL"

OR

Courtney Tyler, Clerk to the Board

State Water Resources Control Board

P.O. Box 100, Sacramento, CA 95812

All comments will be made public

Thank You

Public Comments before August 11

commentletters@waterboards.ca.gov

Drinking Water Rulemaking Questions

melissa.hall@waterboards.ca.gov

Project Website:

bit.ly/Cr6Webpage

Email List – *Drinking Water Program Announcements:*

bit.ly/SWRCB_Email_SignUp



COPY
mailed 7/31/23

August 4, 2023

VIA E-MAIL AND U.S. MAIL

Courtney Tyler, Clerk to the Board
State Water Resources Control Board
P.O. Box 100, Sacramento, CA 95812-2000
commentletters@waterboards.ca.gov

Re: Comment Letter re Draft Environmental Impact Report For Adoption of a Regulation for the Hexavalent Chromium Maximum Contaminant Level

Dear Courtney Tyler,

The City of Winters ("City") submits these written comments in response to the State Water Resources Control Board's ("State Water Board") Notice of Availability of a Draft Program Environmental Impact Report ("EIR") for the adoption of a regulation for the maximum contaminant level ("MCL") for hexavalent chromium ("chromium-6"). The City hopes that its written comments will help the State Water Board fully analyze, mitigate, and avoid the potential environmental impacts of the Project in compliance with the California Environmental Quality Act (Pub. Resources Code, § 21000, et seq.: "CEQA").

The EIR analyzes a proposed primary drinking water standard for chromium-6 that includes a MCL of 10 micrograms per liter (ug/L) or parts per billion (ppb) (the "Project"). The City has serious concerns about both the proposed MCL of 10 ppb and the adequacy of the EIR prepared for the proposed Project. The City is a responsible agency for the proposed Project, as the City operates its own public water system, and the City will be required to comply with the new MCL if adopted as proposed. (State CEQA Guidelines, § 15381.)

The MCL would significantly impact the City, its ratepayers, and the environment. Given the potential impacts of the MCL, the City appreciates the State Water Board's commitment to prepare an EIR for the Project. The City believes, however, that significant revisions are necessary to the EIR in order to bring it into compliance with CEQA.

The City additionally urges the State Water Board to refrain from certifying the EIR or from approving the Project until the Office of Environmental Health Hazard Assessment ("OEHHA") completes its pending revision to its public health goal ("PHG") for chromium-6. Given the centrality of OEHHA's PHG to the EIR, and in particular to the EIR's analysis of alternatives to the Project, the City believes that the State Water Board cannot comply with CEQA.

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until OEHHA provides clarity on the PHG that will be in effect when the Project is proposed to be implemented two to four years from now. (*Washoe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277, 287 [“an accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient EIR”].)

The City appreciates the opportunity to submit these comments, and the City is hopeful that it can work with the State Water Board to ensure that a valid CEQA document is prepared and that any future MCL for chromium-6 is protective of the public health, the environment, and the City’s ratepayers.

1. **The Project Could Dramatically Impact The City Of Winters, Its Ratepayers, And The Environment.**

The State Water Board’s proposed MCL for chromium-6 would significantly impact the City, which derives 100 percent of its water from ground water with naturally occurring chromium-6. The City relies on five groundwater wells to provide water to its residents, and these wells have chromium-6 levels ranging from 7.2 ppb to 17 ppb. For this reason, the City has long been concerned about the establishment of an MCL for chromium-6 that protects public health while being both technologically and economically feasible, as required by law. (Health & Safety Code, § 116365(a), (b)(3).) A technologically and economically feasible MCL would allow the City to continue to provide a sustainable public water supply to its residents.

The Project, however, proposes an MCL that is neither technologically nor economically feasible for the City. The City is concerned that an unduly stringent MCL of 10 ppb would require the City to construct economically infeasible facilities or to deploy other treatment options at enormous cost. Both the construction of new facilities and the deployment of treatment options would significantly impact the environment.

The proposed MCL will have enormous adverse economic impacts on the City and its ratepayers, but these impacts are not just economic—they will translate into significant and unavoidable environmental impacts. These impacts must be avoided, and the means to avoid them is by adopting an economically and technologically feasible MCL—i.e., an MCL for chromium-6 greater than the currently proposed MCL of 10 ppm. The City urges the State Water Board to revise and recirculate the EIR to address the City’s concerns and to comply with CEQA.

2. **The EIR violates CEQA because it does not provide the detail necessary to inform the public of the Project’s potential impacts to the environment.**

The California Supreme Court has characterized an EIR as “the heart of CEQA.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.)

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“An EIR is an ‘environmental alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” (*Ibid.*) “The EIR is also intended to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” (*Ibid.*) Because the EIR must be certified or rejected by public officials, it is a document of accountability.” (*Ibid.*) “If CEQA is scrupulously followed, the public will know the basis on which its responsible officials either approve or reject environmentally significant action, and the public, being duly informed, can respond accordingly to action with which it disagrees.” (*Ibid.*) The EIR thus “protects not only the environment, but also informed self-government.” (*Ibid.*)

In light of the above-referenced policies, “[w]hen determining whether an EIR’s discussion of potentially significant effects is sufficient, the ultimate inquiry is whether the EIR includes enough detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” (*Save Our Capitol! v. Department of General Services* (2023) 87 Cal.App.5th 655, 670, quoting *Laurel Heights, supra*, 47 Cal.3d at p. 405.)

The EIR here fails to comply with CEQA because it does not include enough detail to enable the public to understand and to consider meaningfully the Project’s potential impacts on the environment. (*Save Our Capitol!, supra*, 87 Cal.App.5th at p. 670.) An EIR is intended to serve as an “environmental alarm bell,” but the EIR here sounds more like the boy who cried “wolf!” The EIR finds that the proposed Project will result in a wide range of significant and unavoidable impacts to the environment, but it also declares that this finding may simply be a false alarm—that there isn’t necessarily anything to be worried about. The EIR provides the public with mixed messages, in effect declaring: “The Project could result in environmental disaster. Or maybe everything will be fine. We just don’t know.”

The EIR recognizes that its analysis is not premised on a strong factual foundation. For example, the EIR provides:

- “Because it would be speculative to assume the type, size, and location of potential compliance projects, as well as the type of resources impacted, this EIR cannot quantify the impacts associated with the implementation of any specific project, but does recognize the potential for such impacts, and identifies potential mitigation that could be implemented at site-specific projects to avoid such impacts.” (EIR, p. S-3.)
- “[E]ven where a source of drinking water is known to be contaminated with hexavalent chromium based on data collected under the prior regulation, it would be speculative to guess the location of a future compliance project to address that contamination.” (EIR, p. 2-7.)

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- “Without attempting to quantify the impacts associated with the implementation of any specific project, the EIR includes a list of potential actions or mitigation measures that could possibly reduce the impact to a less-than-significant level or contribute to doing so. However, because of the programmatic nature of the analysis and because the State Water Board does not have control over how a public water system will ultimately comply with the regulations, including where it would locate site-specific compliance projects, it is uncertain whether the identified mitigation would be effective in reducing the potential impacts for any specific project.” (EIR, p. 3-8.)

In short, the EIR’s analysis concludes that it does not know what the Project’s potential impacts may be, and it does not know whether those impacts could be mitigated to a level of less than significant. This mixed messaging does not promote “informed self-government.” (*Laurel Heights, supra*, 47 Cal.3d at p. 392.) It does not address the concerns of “an apprehensive citizenry” that looks to the lead agency to determine whether the environmental impacts of the Project have been duly considered. (*Ibid.*) In short, the EIR fails to include “enough detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” (*Save Our Capitol!, supra*, 87 Cal.App.5th at p. 670.)

For these reasons, the EIR fails to comply with CEQA. (*Save Our Capitol!, supra*, 87 Cal.App.5th at p. 670; *Laurel Heights, supra*, 47 Cal.3d at p. 392.)

3. The EIR abdicates its responsibility to analyze the potential environmental impacts of the Project by finding nearly every impact to be “significant and unavoidable” without reference to any standard of significance.

“The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.” (Pub. Resources Code, § 21002.1(a).) To further this purpose, the lead agency must disclose the “analytic route” between its conclusion that an impact may have a potentially significant impact on the environment and its conclusion of whether, and to what extent, the impact can be mitigated. (*Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 654.)

A lead agency does not satisfy its responsibility under CEQA by merely reaching a conclusion regarding whether a proposed project may have a significant and unavoidable impact on the environment. (*Lotus, supra*, 223 Cal.App.4th at p. 654.) Instead, a lead agency must (1) set forth the standard of significance by which it will determine whether a proposed project will have a significant impact on the environment; (2) provide analysis demonstrating whether the proposed project will exceed that standard of significance; (3) propose mitigation to reduce the proposed

| | | | |
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|---|---|---|---|



project's potentially significant impact on the environment; and (4) analyze the extent to which that mitigation will reduce the potentially significant impact. (*Id.* at pp. 655-658; see also Pub. Resources Code, § 21100(b).)

The EIR fails to meet any of the above criteria. For example, in its analysis of whether the proposed Project could violate any air quality standard or contribute substantially to an existing or projected air quality violation, the EIR provides no factual analysis. Instead, the EIR refers the public to its roughly one-page analysis of whether the proposed Project would conflict with or obstruct implementation of any applicable air quality plan. (EIR, p. 6-9.) The EIR's analysis of whether the proposed Project would conflict with or obstruct implementation of the applicable air quality plan, however, is not based on, and does not reference, any threshold of significance. (See EIR, pp. 6-7 through 6-9.)

Without any threshold of significance to guide its significance determination, the EIR does not and cannot include any factual analysis demonstrating whether the proposed Project will exceed any threshold of significance. Moreover, while the EIR proposes mitigation measures, it does not analyze whether and to what extent this mitigation could reduce the potentially significant impact. The EIR ultimately concludes that the proposed Project may result in a significant and unavoidable air quality impact, but this conclusion is based on conjecture, not facts. (*King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814 , 838 [public agency violates CEQA and abuses its discretion when its determination is not supported by substantial evidence]; see also Pub. Resources Code, § 21168.5.)

In sum, the EIR violates CEQA by failing to measure the proposed Project's potential impacts against any threshold of significance, and by further failing to quantitatively analyze whether the mitigation measures identified could reduce the proposed Project's potential impacts to a level of less than significant. The EIR is littered with conclusions of "significant and unavoidable impacts," but the EIR fails to disclose the "analytic route" taken to reach these conclusions. (*Lotus, supra*, 223 Cal.App.4th at p. 654.)

4. The EIR must analyze how the economic impacts of compliance with the MCL could result in physical impacts on the environment.

The EIR must serve as an informational document that will inform public agency decisionmakers and the public generally of the significant environmental effects of the Project, identify possible ways to mitigate the Project's significant effects, and describe reasonable alternatives to the Project. (State CEQA Guidelines, § 15121(a).) To achieve this purpose, the EIR must analyze how the economic impacts of compliance with the MCL could result in physical impacts on the environment. (State CEQA Guidelines, § 15382 ["economic change related to a physical change may be considered in determining whether the physical change is significant"].)

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The cost of compliance with the MCL for chromium-6 would shape the behavior of both water agencies and ratepayers, and the environmental impacts of this reasonably foreseeable behavior must be analyzed in the EIR. To do so, the EIR must analyze and discuss the costs of complying with the MCL, and how activity in response to such costs could potentially impact the environment. The City provides a non-exhaustive list of examples of how behavior responding to the cost of the MCL could result in a potentially significant impact on the environment.

(1) Shift from groundwater usage to surface water usage. While the City does not have this option, the high cost of compliance with an overly stringent MCL could cause water agencies to shift from groundwater usage to surface water usage, and the EIR must analyze the potential environmental impacts of this reasonably foreseeable shift, as further discussed in Section 5 of this comment letter below. Notably, Yolo County water agencies have already made this shift. The shift to surface water usage would have numerous deleterious impacts on the environment, including decreased in-stream flows and adverse impacts to fish and wildlife.

(2) Increased dependency on surface waters would increase the need for water storage. The MCL could spur a wave of reasonably foreseeable water storage and conveyance projects, as water agencies increasingly use surface waters to avoid the costs of compliance with the MCL. The EIR must analyze and mitigate the environmental impacts of these projects, including impacts on air quality, water quality, and biological resources. Moreover, the need for water storage may require flooding large areas of land to store water, and the environmental impacts of transforming the environment in this manner must be analyzed.

(3) The EIR must analyze the reasonably foreseeable environmental impacts of the Project resulting from increased rates to ratepayers. The cost of compliance with a MCL of 10 ppb would shape not only the behavior of water agencies, but also of ratepayers who could face dramatic increases in monthly costs as a result of their water agencies' efforts to comply with the MCL. For example, economically vulnerable ratepayers unable to afford these increased costs may be forced to migrate from a service area with high MCL compliance costs to a service area that either has lower such costs or an area that is better able to distribute such costs among a greater number of ratepayers. This migration is a reasonably foreseeable response to higher water rates, and the environmental effects of such migration must be analyzed in the EIR. These impacts may include (1) rural blight, as ratepayers in smaller service areas with high MCL compliance costs migrate to more metropolitan service areas, where the costs of such compliance can be distributed among a larger population; (2) VMT associated with such migration; (3) air quality and greenhouse gas impacts related to such migration; and (4) substantial unplanned population growth in areas with lower MCL compliance costs and the displacement of substantial numbers of people in areas with high MCL compliance costs.

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The above-referenced impacts do not appear to be analyzed in the EIR. The City urges the State Water Board to recirculate the EIR to analyze and mitigate these impacts in order to comply with CEQA.

5. The EIR fails to analyze or mitigate the Project's potential to force water agencies to shift from groundwater to surface water and the potential environmental impacts that may result from this shift.

A lead agency fails to comply with CEQA when its EIR does "not discuss the impact of new surface water diversions, enforceable measures to mitigate those impacts, or the remaining unmitigated impacts." (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 444 [Supreme Court held that lead agency's failure to properly analyze project's impacts on surface water violated CEQA]; see also *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 664 [lead agency violated CEQA where it "fail[ed] to adequately analyze impacts to surface water"].)

In response to the Notice of Preparation ("NOP") of the EIR, many public agencies commented that the proposed Project would cause water agencies to shift from groundwater usage to surface water usage. (See EIR, Appendix B [NOP Comment Letters].) CEQA requires the EIR to analyze the potential environmental impacts of this reasonably foreseeable shift (including impacts relating to decreased in-stream flows and adverse impacts to fish and wildlife), and to mitigate the impacts of this shift. (See Pub. Resources Code, § 21159(a).)

The EIR identifies "switching to surface water" as a reasonably foreseeable means of complying with the proposed MCL. (See, 7-7-g., EIR, pp. S-3, 1-1, 2-7 through 2-8, 2-15 [recognizing water agencies may "increase their reliance on surface water and reduce or cease using the groundwater supply contaminated by hexavalent chromium"].) The EIR, however, fails to analyze any potential environmental impacts that may result from this increased reliance on surface water. The EIR does not analyze the Project's potential impact to result in decreased in-stream flows, nor does it analyze potential adverse impacts to fish and wildlife that may result from increased reliance on surface water.

While the EIR recognizes that increased reliance on surface water is a reasonably foreseeable means of complying with the proposed MCL, the EIR fails to analyze any of the potential direct, or reasonably foreseeable indirect, impacts to the environment that may result as a result of this action. This renders the EIR fatally flawed under CEQA, and the EIR must therefore be revised and recirculated to address this issue. (See, e.g., *Vineyard Area Citizens for Responsible Growth, Inc.*, *supra*, 40 Cal.4th at p. 444.)

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6. The State Water Board, as Lead Agency, must take responsibility to mitigate the Project's potential impacts to the environment.

A fundamental purpose of an EIR is to identify ways in which a proposed project's significant environmental impacts can be mitigated or avoided. (Pub. Resource Code, § 21002.1(a), 21081(a)(1).) "A gloomy forecast of environmental degradation is of little or no value without pragmatic, concrete means to minimize the impacts and restore ecological equilibrium." (*Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1039.)

The EIR here provides a gloomy forecast of environmental degradation, concluding that the Project will result in a significant and unavoidable impact as to nearly every resource analyzed. Yet, the EIR fails to properly mitigate these significant and unavoidable impacts. State CEQA Guidelines section 15126.4 sets forth the State Water Board's responsibility as lead agency to commit to mitigation measures:

Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. Formulation of mitigation measures shall not be deferred until some future time. The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the project's environmental review provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the types of potential actions that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure.

(State CEQA Guidelines, § 15126.4(a)(1)(B), emphasis added.)

None of the mitigation measures proposed in the EIR comply with the above standards.

First, the State Water Board has not committed itself to any mitigation. The State Water Board has not even considered what steps that it—as opposed to agencies tasked with complying with the proposed MCL—could take to mitigate potential impacts to the environment. For example, compliance with the proposed MCL could result in significant economic burden to responsible agencies, and as various agencies commented in response to the NOP, there are significant impacts to the environment that could result from this economic burden. (State CEQA Guidelines, § 15382 ["economic change related to a physical change may be considered in

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determining whether the physical change is significant”).) The State Water Board, however, has not discussed how it could provide funding, grants, or subsidies to responsible agencies to mitigate potential impacts to the environment. State funding is the linchpin to achieve an economically feasible MCL. Without a specific and enforceable commitment from the State Board on funding, the economic feasibility analysis and the EIR are deficient.

Again, the State Water Board has not committed to any mitigation at all. The EIR must be revised so that the State Water Board itself commits to mitigation so that the burden of the State Water Board’s proposed Project does not fall squarely on the responsible agencies required to implement the Project. (State CEQA Guidelines, § 15126.4(a)(1)(B).) The State Water Board has an integral part to play in mitigating the impacts of its Project. By not taking responsibility to mitigate impacts that it can control, the State Water Board violates CEQA.

Second, while the EIR sets forth mitigation measures as to nearly every impact, the EIR does not specify any specific performance standards for any of the identified mitigation measures. (State CEQA Guidelines, § 15126.4(a)(1)(B).) Nor does the EIR explain why or how implementation of the mitigation measures will substantially lessen the Project’s significant and unavoidable impact. The EIR identifies a significant and unavoidable impact, and identifies mitigation measures, but fails to analyze or explain the relationship between the mitigation measures and the significant and unavoidable impact. This defect infects the discussion in nearly every section of the EIR.

Third, and related to the point above, the EIR does not identify the types of potential actions that can feasibly achieve the performance standard. (State CEQA Guidelines, § 15126.4(a)(1)(B).) Again, this is because the EIR simply does not identify any performance standards. As a result, the EIR does not explain to what extent or how the mitigation measures will substantially reduce impacts. This defect is fatal to the adequacy of the EIR.

7. The EIR fails to properly analyze the proposed Project’s cumulative impacts.

A proper analysis of a project’s cumulative impacts is a “vital informational function” of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214.) “[A] cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with other projects causing related impacts.” (*Ibid.*; State CEQA Guidelines, § 15130(a).) More specifically, the “cumulative impact from several project projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects.” (*Bakersfield Citizens for Local Control, supra*, 124 Cal.App.4th at p. 1214.) “Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.” (*Ibid.*; State CEQA Guidelines, § 15355(b).)

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“Proper cumulative impact analysis is vital because the full environmental impacts of a proposed project cannot be gauged in a vacuum.” (*Bakersfield Citizens for Local Control, supra*, 124 Cal.App.4th at p. 1214.) “One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources.” (*Ibid.*) These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.” (*Ibid.*)

To have an adequate discussion of significant cumulative impacts, an EIR must generally begin by setting forth a “list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency.” (State CEQA Guidelines, § 15130(b)(1)(A).)

Here, the EIR fails to properly analyze the proposed Project’s cumulative impacts for several reasons.

First, the EIR does not include the necessary “list of past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency.” (State CEQA Guidelines, § 15130(b)(1)(A).) This list should include both (1) past, present, and probably future MCLs for various contaminants that the State Water Board has adopted or plans to adopt; and (2) the various means by which the implementing agencies will implement the MCL for chromium-6 in connection with the proposed Project.

Second, the State Water Board recognizes that there are existing MCLs for other contaminants, and that the State Water Board is in the process or plans to adopt MCLs for a series of other contaminants, including arsenic, perfluorooctanoic acid and perfluoroalkyl substances, n-nitroso-dimethylamine, styrene, and cadmium. (https://www.waterboards.ca.gov/drinking_water/setting_drinking_water_regulations.html [setting forth existing MCLs adopted by State Water Board], https://www.waterboards.ca.gov/drinking_water/setting_drinking_water_regulations.html [setting forth planned future MCLs].) The cumulative economic and environmental impacts of requiring public agencies to comply with these past, present, and probably future MCLs must be analyzed in the EIR. This cumulative impacts analysis is a fundamental prerequisite to CEQA compliance because “consideration of the effects of a project or projects as if no others existed would encourage the piecemeal approval of several projects that, taken together, could overwhelm the natural environment and disastrously overburden the man-made infrastructure and vital community services.” (*Bakersfield Citizens for Local Control, supra*, 124 Cal.App.4th at pp. 1214-1215.) “This would effectively defeat CEQA’s mandate to review the actual effect of the projects upon the environment.” (*Ibid.*)

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Finally, the State Water Board has an obligation to not only analyze the cumulative impacts of the Project taken together with past, present, and probable future MCLs for other contaminants, but also an obligation to mitigate those impacts. (*Joy Road Area Forest & Watershed Assn. v. California Department of Forestry & Fire Protection* (2006) 142 Cal.App.4th 656, 676.) “A cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker’s perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval.” (*Ibid.*) Accordingly, the City urges the State Water Board to analyze the Project’s cumulative impacts, and to commit to mitigation measures that would reduce cumulative impacts to a level of less than significant. (State CEQA Guidelines, § 15126.4(a)(1)(B).) In particular, the City urges the State Water Board to adopt and implement a sustainable regulatory program that pairs each MCL with specific, dedicated funding programs sufficient to implement and mitigate the impacts of each MCL.

8. The EIR fails to properly analyze alternatives to the proposed Project.

“It is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures which substantially lessen the significant environmental effects of such projects.” (Pub. Resources Code, § 21002.) Accordingly, “CEQA requires an EIR to identify feasible alternatives that could avoid or substantially lessen the project’s significant environmental effects.” (*Save Our Capitol!*, *supra*, 87 Cal.App.5th at p. 702; Pub. Resources Code, §§ 21002, 21100(b)(4).) Indeed, courts have explained that one of an EIR’s “major functions” is to “ensure that all reasonable alternatives to proposed projects are thoroughly assessed.” (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 565.)

As part of this analysis, an EIR must “describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” (State CEQA Guidelines, § 15126.6(a).) The range of alternatives must provide “enough of a variation to allow informed decisionmaking.” (*Save Our Capitol!*, *supra*, 87 Cal.App.5th at p. 703.)

An EIR violates CEQA when the alternatives analyzed therein “do not contribute to a reasonable range of alternatives that fostered informed public participation and decision-making.” (*Save Our Capitol!*, *supra*, 87 Cal.App.5th at p. 703.) This occurs when an EIR does not consider any alternative that would feasibly attain most of the project’s objectives while also lessening the project’s significant impacts on the environment. (*Ibid.*) Accordingly, a public agency violates CEQA when it defines its project objectives so narrowly that it “preclude[s] any alternative other

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than the Project.” (*We Advocate Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683, 692 [hereinafter, “*WATER*”].) Thus, when a public agency effectively defines a project objective as achieving the proposed project, and dismissively rejects anything other than the proposed project as not meeting project objectives, the EIR “prejudicially prevent[s] informed decision making and public participation.” (*Id.* at p. 692.)

Here, the EIR proposes an MCL for chromium-6 of 10 ppb, but it dismisses all other alternatives as infeasible and incapable of meeting project objectives. The EIR provides no substantive or quantitative analysis of the other proposed alternatives. Instead, like the lead agency in the *WATER* decision, the EIR “dismissively reject[s] anything other than the proposed project.” (*WATER, supra*, 78 Cal.App.5th at p. 692.) And, like the EIR at issue in the *WATER* decision, this approach “transform[s] the EIR’s alternatives section—often described as part of the ‘core of the EIR’—into an empty formality.” (*Ibid.*) This is evidenced by the fact that the EIR’s “Discussion and Comparison of Alternatives” section is almost entirely devoid of analysis, and spans just over a single page. (See EIR, p. 26-6 through 26-7.) To comply with CEQA, a robust analysis of the Project alternatives is required. (*WATER, supra*, 78 Cal.App.5th at p. 692.)

To provide the public and the decision-makers with a complete assessment of the Project and the alternatives to the Project, the EIR must assess the relationships of each alternative to impacts on the environment and also the technical and economic feasibility of each alternative. The EIR cannot simply dismiss alternatives under CEQA by relying on State Water Board staff’s conclusion that an MCL of 10 ppb is technically and economically feasible and that, therefore, there are no other legally sufficient alternatives to analyze. To the contrary, CEQA requires a deeper assessment and acknowledgement of the interrelationship between the State Water Board’s assessment of feasibility under California Health and Safety Code section 116365(a) and its obligations under CEQA to assess alternatives. A full assessment of alternatives must inform the decision-making process under Section 116365(a). An MCL may appear feasible in a vacuum but prove to be infeasible when assessed in light of the various impacts it might have on the environment. A fully analyzed alternative may in fact be the one that is truly feasible under Section 116365(a) and environmentally superior under CEQA when all impacts are considered. By failing to meaningfully assess alternatives, the State Water Board is not only acting contrary to CEQA but also failing to perform its obligations under Section 116365(a).

9. **The EIR lacks stable project objectives, and this renders its Alternatives analysis fundamentally flawed.**

An EIR’s project description is “an indispensable element of both a valid draft EIR and final EIR.” (*Stophemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 16.) As has often been stated, “an accurate, stable, and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” (*Washoe Meadows, supra*, 17 Cal.App.5th at p. 287.)

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Accordingly, “a project description that gives conflicting signals to decision makers and the public about the nature and scope of the project is fundamentally inadequate and misleading.” (*Ibid.*)

A key component of the project description is the “statement of the objectives sought by the proposed project.” (State CEQA Guidelines, § 15124(b); *Washoe Meadows, supra*, 17 Cal.App.5th at p. 287.)

Here, however, the EIR does not provide an accurate and stable statement of the proposed Project’s objectives. The key project objective emphasized in the EIR is to “comply[] with the statutory mandate to adopt a primary drinking water standard for hexavalent chromium, as required by Health and Safety Code section 116365.5.” (EIR, p. 25-4.) The EIR rejects all alternatives to the proposed MCL of 10 ppb on the basis that “the State Water Board is legally required to adopt a primary drinking water standard that is as close as feasible to the corresponding public health goal” (“PHG”) established by OEHHA as required by Health and Safety Code section 116365.” (EIR, p. 26-7.) But, as discussed below, it is unclear what OEHHA’s PHG for chromium-6 will be when the Project is proposed to go into effect two to four years from now.

In July 2011, OEHHA established a PHG for chromium-6 of 0.02 ppb, representing a de minimis lifetime cancer risk from exposure to chromium-6 in drinking water, based on studies in laboratory animals. Since then, scientific information on the impacts of chromium-6 on human health has advanced substantially. The most recent scientific information on the health effects of human ingestion of chromium-6 in drinking water indicates that MCLs at or above the upper end of the MCLs set forth in the EIR’s range of alternatives are fully health protective.

OEHHA’s PHG for chromium-6 of 0.02 ppb is subject to imminent change. In October 2016, OEHHA announced that substantial new information warrants a review of the chromium-6 PHG, which to date has not been performed. More recently, in March 2023, OEHHA announced that it would be “completing the update” of the chromium-6 PHG that it had initiated in 2016.

OEHHA’s potential revision of its PHG for chromium-6 has significant CEQA ramifications. Again, the EIR eliminates all project alternatives on the basis that the State Water Board must adopt a drinking water standard for chromium-6 “that is as close as feasible to [OEHHA’s] corresponding public health goal” of .02 ppb that is technologically and economically feasible. (See EIR, p. 26-7; see also Health & Safety Code, § 116365(a)-(b).)

The EIR further provides that the project will not go into effect—i.e., that water agencies need not take actions to comply with the MCL—until between two and four years after the State Water Board certifies the EIR and adopts its chromium-6 MCL. (EIR, p. S-1.) This is problematic because in the next two to four years OEHHA could revise its PHG for chromium-6 significantly upward based on new information. This is not unrealistic, as the Environmental Protection

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Agency's ("EPA") drinking water standard for chromium-6 is 100 ppb—10x higher than the drinking water standard that the State Water Board proposes in the EIR. (100 ppb is ostensibly for total chromium, the regulation "assumes that a measurement of total chromium is 100 percent chromium-6".) Notably, the State Water Board is statutorily required to consider the EPA's drinking water standard of 100 ppb in establishing its own MCL. (Health & Safety Code, § 116365(b)(1).)

Under CEQA, this project objective instability renders the EIR's analysis of project alternatives—and by extension, the EIR itself—fatally defective. For example, OEHHA could within the next two years revise its PHG for chromium-6 from .02 ppb to 30 ppb. If the EIR is certified before this development takes place, then water agencies two years from now may be required to take action with significant and unavoidable impacts to the environment to comply with the EIR's proposed MCL of 10 ppb, when OEHHA's PHG for chromium-6 at the time of project implementation could be 30 ppb. This would result in significant and unnecessary impacts to the environment. (See EIR, p. 26-5 [water agencies in 44 counties would have to take action that could have a significant and unavoidable impact with an MCL of 10 ppb; less than half that amount, water agencies in just 16 counties, would need to take similar action with a chromium-6 MCL of 30 ppb].)

To avoid this circumstance, the City strongly urges the State Water Board to refrain from taking any action towards certifying the EIR or adopting the Project until OEHHA completes its pending update to the chromium-6 PHG.

10. The State Water Board should refrain from certifying the EIR until OEHHA completes its update of its chromium-6 public health goal; alternatively, the EIR must be revised and recirculated to comply with CEQA.

The City urges the State Water Board to hold off certification of the EIR or approval of the Project until OEHHA completes its pending update of the chromium-6 PHG. The revised PHG, based on the most recent science available, would then better guide the State Water Board in determining the proper MCL for chromium-6. And, from a CEQA perspective, this would streamline any EIR regarding MCL for chromium-6 by (1) eliminating from consideration the most stringent proposed MCLs, which are the MCLs that will have the most significant environmental impacts; and (2) allowing the State Water Board to prepare an alternatives analysis in the EIR that complies with CEQA. The people of California and the environment will both benefit from a reassessment of the PHG for chromium-6.

In the alternative, if the State Water Board presses forward with the proposed MCL of 10 ppb before OEHHA completes its update of the chromium-6 PHG, then at a bare minimum, the

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EIR must be revised to address the deficiencies raised herein. The revised EIR must then be recirculated to the public pursuant to State CEQA Guidelines section 15088.5.

II. Conclusion.

The City looks forward to working with the State Water Board to ensure that this Project receives the careful review that it deserves. Thank you for your consideration of the City's input.

Sincerely,

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Monthly Briefing

A Summary of the Alliance's Recent and Upcoming Activities and Important Water News

Senate ENR Subcommittee Tees up 16 Western Water Bills

The Senate Energy and Natural Resources (ENR) Water and Power Subcommittee last month heard testimony on sixteen bills dealing with the impacts of drought across the West, including restoration of fish habitat and permitting new hydropower projects.

Prior to the hearing, the Family Farm Alliance submitted written testimony that addressed most of the bills that were heard.

"We have actively advocated for and contributed to the development of several of the West-wide bills on the hearing docket," said Alliance Executive Director Dan Keppen.

Legislation addressed in the Alliance testimony includes:

- S. 482, the "Klamath Power and Facilities Agreement Support Act" from Subcommittee Chair Ron Wyden (D-OREGON) that would address issues related to impacts of the removal of non-federal hydro dams on the Klamath River, among other things left over from the failed Klamath Basin Restoration Agreement (KBRA).



Senate ENR Committee Chairman Joe Manchin (D-WV) flanked by Family Farm Alliance President Pat O'Toole and his wife, Sharon, who shared a flight from Washington, D.C. to Denver after the O'Tooles spent a week in the nation's capitol in July.

- S. 1521, the "Community and Hydropower Improvement Act" from Senators Steve Daines (R-MONTANA) and Maria Cantwell (D-WASHINGTON) which would improve the Federal Energy Regulatory Commission (FERC) licensing and relicensing processes across existing generation, nonpowered dams and pumped storage projects.
- S. 2247, from Senators John Hickenlooper (D-COLORADO) and Mitt Romney (R-UTAH) which would extend endangered fish recovery programs in the Upper Colorado and San Juan River Basins.
- S. 1118, the "Open Access Evapotranspiration Data Act (OpenET)," from Sen. Catherine Cortez Masto (D-NEVADA), which would provide for federal funds from the USGS to calculate water used by crops and vegetation across the landscape.
- S. 2102, the "Water for Conservation and Farming Act," from Sen. Wyden, would establish a \$300 million fund at the Bureau

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16 Water Bills on Senate Leg. Hearing Docket (Cont'd from Pg 1)

of Reclamation for water recycling, efficiency, and dam safety projects, among other programs.

- **S. 2160**, from Sen. Jim Risch (R-IDAHO), which would help accelerate repairs to high-risk canals running through urbanized areas of the West through additional financial assistance from the Aging Infrastructure Account funded by the bipartisan infrastructure law.
- **S. 2161**, the "Canal Conveyance Capacity Restoration Act," from Sen. Dianne Feinstein (D-CALIFORNIA), that would authorize \$653 million to restore three San Joaquin Valley canals impacted by subsidence and old age, and \$180 million for the restoration program on the San Joaquin River.
- **S. 2162**, the "Support to Rehydrate the Environment, Agriculture and Municipalities (STREAM) Act," from Sen. Feinstein, which would increase water supply and modernize water infrastructure across the West.
- **S. 2166**, the "Voluntary Agricultural Land Repurposing Act," from Sen. Alex Padilla (D-CALIFORNIA), which would provide grants to state and Native American tribes for programs to repurpose agricultural lands for at least 10 years in a bid to reduce groundwater use.
- **S. 2169**, the "Watershed Results Act," from Sen. Wyden, would authorize the Interior Department to spend up to \$15 million annually for as many as five watershed pilot projects designed to provide measurable results from prioritized conservation activities across a watershed using advance watershed analytics and streamlined federal grants.

- **S. 2202**, the "Restore Aging Infrastructure Now Act," from Sen. Feinstein, would draw from \$3.2 billion appropriated to the Bureau of Reclamation in the bipartisan infrastructure law to help pay for upgrades to aging Reclamation-owned canals that provide for additional public benefits, including drinking water for disadvantaged communities.

The sole witness at the hearing was Camille C. Touton, Commissioner of the Bureau of Reclamation.

"The American West faces severe water reliability challenges due to climate change, persistent drought, and the aging of critical infrastructure," Commissioner Touton testified. "The changing climate in the West highlights the need for immediate actions as well as for thoughtful planning and on-the-ground work to make both our infrastructure, and our operations, more resilient."

Chairman Wyden conducted an efficient hearing, where the subcommittee ploughed through the docket in just over an hour.

The panel also spent a portion of its hearing heaping praise on Commissioner Touton, highlighting the recent agreement by Colorado River Basin states over how to address shortfalls in that watershed (*E&E Daily*).

"I mean, I thought it was going to be a bouquet tossing contest because one senator after another kept saying, 'Ms. Touton, you've done this well. You've done that well,'" Chairman Wyden said in the midst of the hearing, following remarks from Sens. Mark Kelly (D-ARIZONA), Senator Cortez Masto and Senator Padilla.

"We appreciate your professionalism," said Mr. Wyden.



The Water Report

<https://www.thewaterreport.com/>

Alliance Executive Director Dan Keppen authored a 7,500-word article on Colorado River agricultural water that ended up being the cover story for this month's *The Water Report*, a publication that provides monthly detailed analyses from a variety of industry experts across the West.



Eastern Washington Family Farm Alliance Tour
 Four of Columbia River Project and Yakima Basin Agriculture Industry
 Fundraising Dinner
 September 11-13, 2023

Tri-tip & lamb BBQ dinner
 prepared by the Washington
 State Cattle Feeders
 Association

September 13, 2023
 5:30 p.m. - 9:30 p.m.

For more information: Go
 to [https://](https://www.familyfarmalliance.org)
www.familyfarmalliance.org

Save
 the
 date

DOI Announces \$152 Million Investment in Western Water Storage

The Department of the Interior (DOI) last month announced a \$152 million investment from the Infrastructure Investment and Jobs Act (IIJA) for six Western water storage and conveyance projects.

The projects in California, Colorado and Washington are expected to develop at least 1.7 million acre-feet of additional water storage capacity, enough water to support 6.8 million people for a year. The funding will also invest in a feasibility study that could advance water storage capacity once completed.

“Water is essential to every community – for feeding families, growing crops, powering agricultural businesses and sustaining wildlife,” said Bureau of Reclamation Commissioner Camille Calimlim Touton. “Our investment in these projects will increase water storage capacity and lay conveyance pipeline to deliver reliable and safe drinking water and build

resiliency for communities most impacted by drought.”

Through the IIJA, Reclamation is investing a total of \$8.3 billion over five years for water infrastructure projects, including water purification and reuse, water storage and conveyance, desalination and dam safety. The Inflation Reduction Act (IRA) is investing an additional \$4.6 billion to address the historic drought.

The Family Farm Alliance helped lead nation-wide coalitions in support of Congressional action to advance both initiatives in the past two years.

“New water infrastructure will help keep water flowing to our nation’s farms and ranches,” Family Farm Alliance Executive Director Dan Keppen said. “It will also improve our ability to provide water supply reliability for cities and the environment in future droughts.”

California Projects

The recent funding announcement will support three new storage projects in the Golden State.

“The Alliance has championed all three of the projects, some of which have been on the books for decades,” said Family Farm Alliance Executive Director Dan Keppen.

Reclamation will provide \$10 million to the San Luis and Delta-Mendota Authority, to pursue the B.F. Sisk Dam Raise and Reservoir Expansion Project, a Safety of Dams (SOD)

modification project. Once completed, the project will develop approximately 130,000 acre-feet of additional storage.

Phase II of the Los Vaqueros Reservoir Expansion will receive \$10 million to efficiently integrate approximately 115,000 acre-feet of additional water storage through new conveyance facilities with existing facilities. This will allow Delta water supplies to be safely diverted, stored and delivered to beneficiaries.

The Sites Reservoir Project received \$30 million to pursue off stream storage capable for up to 1.5 million acre-feet of water in the Sacramento River system, located in the Coast

range mountains west of Maxwell, California. The reservoir would utilize new and existing facilities to move water in and out of the reservoir, with ultimate release to the Sacramento River system via existing canals, a new pipeline near Dunnigan, and the Colusa Basin Drain.

“Sites Reservoir creates

new resiliency for California in the face of climate change,” Fritz Durst, chairman of the Sites Project Authority, previously said in a statement.

California Governor Gavin Newsom unveiled proposals in May to expedite permitting and review procedures for vital infrastructure projects, including Sites Reservoir and Los Vaqueros. The purpose is to help speed up the overall process of bolstering water resiliency in California. All seven water storage initiatives established under California Proposition 1 are eligible under recently signed legislation.

“We are grateful to Governor Newsom and the State Legislature for their leadership on such a challenging aspect of our regulatory process,” Executive Director of the Sites Project Authority, Jerry Brown said in a press release. “Their actions to incorporate these policy changes will expedite securing our water supplies to become more resilient to a changing climate.”

Arkansas Valley Conduit

The Arkansas Valley Conduit in Colorado will received \$100 million to continue construction of a safe, long-term water supply along the Arkansas River.

“I’ve fought to ensure the federal government keeps its

Promo piece for Sites Reservoir in California. Source: Sites Reservoir Authority

Continued on Page 4

2018 Farm Bill Likely to be Extended *Lawmakers Await Draft Text for New Bill*

All signs point to at least a short-term extension for several Farm Bill-related provisions from the 2018 Farm Bill covering numerous food and nutrition policies and programs.

Like government funding, the Farm Bill expires on September 30, 2023, creating a critical time crunch for lawmakers, who have yet to release draft text of the legislation.

House Agriculture Chair Glenn Thompson (R-Pa.) has said he still expects to mark up a farm bill in the Agriculture Committee in mid-September and that a bill could be ready for President Joe Biden to sign by the end of the year if the Senate keeps pace, according to *Politico*.

"That would require an extension past the 2018 farm bill's expiration Sept. 30, something that has happened several times in the past few decades," said Family Farm Alliance Executive Director Dan Keppen.

The farm bill is an omnibus, multiyear law that is typically renewed about every five years.

Given the delays from the debt ceiling and appropriations negotiations, lawmakers have yet to release the draft text of the Farm Bill legislation in both chambers. Leaders in the House and Senate, Rep. Thompson and Sen. Debbie Stabenow (D-Mich.) have mentioned their desire to share draft legislation soon. Even with the progress, all signs point to a short-term extension to the early part of next year.

"Engaging in the development of the 2023 Farm Bill is one of our top priorities this year," said Family Farm Alliance Executive Director Dan Keppen.

The Alliance in April publicly rolled out its "Six Point Plan" intended to guide the organization's advocacy efforts in Washington, D.C.

"Passing a 2023 Farm Bill that addresses Western agricultural challenges is a top priority," Mr. Keppen said. "We want to see 2023 Farm Bill conservation title programs that are administered efficiently and effectively, and support projects like irrigation modernization that provide multiple, stacked benefits, rather than simply focusing on climate fixes."

Once again, the Alliance is working with its partners in the Western Agriculture and Conservation Alliance - the "WACC" - on the conservation title. The WACC earlier this year finalized its Farm Bill platform, which, among other things, puts priority on improving implementation of the Watershed and Flood Prevention Operations ("PL-566") and the Regional Conservation Partnership Program, encouraging active management for grazing, and seeking to provide better and faster conservation program technical assistance and compliance.

The Alliance co-founded the WACC 12 years ago in an effort to better advocate for farm bill conservation title provisions that help Western farmers and ranchers, as well as the environment.

"The current farm bill has a strong Western flavor in large part due to the efforts of the WACC," said Jeff Eisenberg, the WACC coordinator. "Hill interest in WACC Farm Bill activity remains robust."

\$152M for Western Water Storage (Cont'd from Page 3)

word and finishes this vital infrastructure project for southeast Colorado," Senator Michael Bennet (D-COLORADO) said in a statement. "I'm grateful to have helped deliver this new funding to provide safe, clean water to nearly 40 communities and 50,000 Coloradans along the Arkansas River."

Once completed, the project will replace current groundwater sources contaminated with radionuclides and help communities comply with Environmental Protection Act drinking water regulations for more than 103 miles of pipelines designed to deliver up to 7,500 acre-feet of water per year from Pueblo Reservoir.

Washington State Projects

Drought conditions continue to impact Yakima River basin irrigators in Eastern Washington. Junior water-right holders were cut to 72% of their full water allotments earlier this summer. However, the recent DOI announcement includes \$2 million for projects that will provide additional flows for fish.

The Cle Elum Pool Raise Project will receive \$1 million to continue to increase the reservoir's capacity to an additional 14,600 acre-feet to be managed for instream flows for fish. Additional funds for shoreline protection will provide mitigation for the pool raise.

The Upper Yakima System Storage Feasibility Study received a boost of \$1 million to begin a feasibility study to identify and assess storage alternatives within the Kittitas Reclamation District (KRD) area.

The district could utilize conserved water or water diverted for storage as part of total water supply available for tangible improvements in meeting instream flow objectives, tributary supplementation efforts, aquatic habitat improvements, and support the delisting of steelhead and bull trout populations to meet the goals of the Yakima Basin Integrated Plan.

"All of this funding is a direct result of the constant professional efforts of the Family Farm Alliance team to work collaboratively with others," said Urban Eberhart, KRD general manager.

Last month's investments build on \$210 million in funding announced last year from the IJA for water storage and conveyance projects.

"These new water storage investments are possible because of the Alliance successfully working together with a broad coalition to include federal authorization language for water projects throughout the western U.S. in the IJA," said Mr. Eberhart, who is also the current chair of the Family Farm Alliance Advisory Committee.

EPA to Use ‘Good Cause’ Authority in WOTUS Rewrite

The Biden Administration’s Environmental Protection Agency (EPA) and the Army Corps of Engineers (Corps) have announced they will quickly and surgically amend their final “Waters of the U.S.” (WOTUS) Rule to incorporate the landmark Supreme Court decision in *Sackett v. EPA* by September.

Under the Administrative Procedure Act (APA), agencies can enact final rules without taking comment on a proposed version in limited cases, including where the agency has “good cause” to believe that the notice-and-comment process would be “impracticable, unnecessary, or contrary to the public interest.”

“Litigation over this decision is certain,” said Family Farm Alliance General Counsel Norm Semanko.

Implications of *Sackett* Decision

The May 25 decision in *Sackett* rendered parts of the Biden final WOTUS rule moot when a five-justice majority endorsed a narrower test for determining whether wetlands and other water bodies are considered WOTUS, based on a “relatively permanent” surface-water connection from late-Justice Scalia.

The Administration’s final WOTUS rule relied on both the Scalia test, as well as the broader “significant nexus” test from then-Justice Kennedy in the Supreme Court’s previous *Rapanos* decision, with allowances for “temporary interruptions” in that connection.

“Any revised rule is, at a minimum, expected to excise the ‘significant nexus’ test,” said Mr. Semanko, “It could also define key terms left unaddressed by the high court’s ruling in *Sackett*.”

The White House Office of Management and Budget’s (OMB’s) recent listing for the rule confirms that the new definition is designated a final action, meaning it bypassed the APA’s notice and comment process for most rulemakings.

“That was expected given the short timeline for enacting it,” said Mr. Semanko.

EPA Office of Water Assistant Administrator Radhika Fox told committee members at a July 13 House hearing that the agency intended to invoke its authority to skip the proposal step for “good cause.”

WOTUS Rewrite a Priority for T&I Subcommittee Questioning Radhika Fox

During last month’s House Transportation and Infrastructure (T&I) Subcommittee on Water Resources and Environment hearing, both Republicans and Democrats alike questioned EPA Assistant Administrator Radhika Fox repeatedly about the Biden Administration’s work revising their final WOTUS rule following the Supreme Court decision in *Sackett v. EPA*.

Majority Republicans have praised the Supreme Court decision as effectively gutting the “significant nexus” definition of WOTUS used in the Administration’s final rule but were concerned about the proposed accelerated timeline for rewriting the rule, with EPA and Corps officials announcing that the newly revised WOTUS rule would be released in September of this year.

T&I Chairman Rep. David Rouzer (R-NC) expressed some skepticism at the hearing that the upcoming rule would modify the definition that EPA and the Corps released early this year beyond eliminating the significant nexus standard (*Inside Washington Publishers*).

Assistant Administrator Fox answered that while the rule will have to remove the significant nexus test, the *Sackett* decision also affects other provisions.

“The justices spoke very clearly on the definition of adjacency – that adjacency [means] you must have a direct surface connection,” she said. “That is a definition of adjacency that is narrower than currently in the 2023 rule, so we are going to have to address that too.”

Assistant Administrator Fox said her office is “carefully looking” at the rule and “intends to follow the law” as it moves forward with a new rule by September. She stated at the hearing that once that good-cause rule is finalized, EPA intends to host implementation discussions “with a range of stakeholders who have a stake in the Clean Water Act” if there are ongoing questions on the reach of WOTUS under the Clean Water Act as informed by the *Sackett* decision.

Democrats were equally interested in the speedy rulemaking, sending a letter to the Administration asking for clarity as



Family Farm Alliance General Counsel Norm Semanko (IDAHO).

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House WWF Subcommittee Oversight Hearing: Endangered Species Act's 'Destructive Cost'

The House Natural Resources Subcommittee on Water, Wildlife and Fisheries (WWF) held an oversight hearing last month with the focus on the enormous costs and regulatory burdens created by the implementation of the Endangered Species Act (ESA).

"The ESA is an act that could work if it were implemented as intended – to recover actually threatened or endangered fish, wildlife and vegetation," said Rep. Harriet Hageman (R-WYOMING). "It has instead become a business in and of itself, with an entire economy built around endless studies, monitoring, field work, and lawsuits which allow environmental groups to use the federal government to impose restrictions on the use of private property and limit our ability to use our energy, land and water resources, while also receiving massive federal subsidies through "sue and settle" actions."

With the ESA turning 50 years old in December, there is a renewed debate among lawmakers over the law and how it's implemented. Over the history of the ESA, approximately 1,700 species have been listed but only three percent have ever been considered recovered. The last time Congress significantly amended the ESA was in 1988.

The Biden administration has rolled back reforms made by the Trump administration intended to modernize the ESA.

"I think we should be celebrating the ESA. This is a historic and popular conservation law which has prevented countless species from going extinct," said Subcommittee Ranking Member Jared Huffman (D-CALIFORNIA). "But so far this year, my Republican colleagues have been more inter-

ested in using this form of this committee to villainize, attack and misinform people."

The House Appropriations Committee recently released their FY 2024 spending bill that includes several policy riders to prevent the Fish and Wildlife Service (FWS) from using appropriated funding in FY 2024 to implement some specific ESA listing decisions such as the greater sage grouse and the northern long-eared bat, among others.

FWS Director Martha Williams and NOAA Fisheries Deputy Administrator Janet Coit testified at last month's oversight hearing, as did Sean Vibbert, owner of the Obsidian Seed Co. in Madras (OREGON).

"You guys don't understand what it's costing you," Mr. Vibbert said, summarizing a series of ESA-related challenges he and other Oregon residents face because of obligations to the federally protected Oregon spotted frog (*E&E Daily*).

Rep. Westerman last month also announced the creation of a joint ESA Working Group with the Congressional Western Caucus to examine how the ESA is being implemented by federal agencies, ESA's practical impacts on the American people, how litigation is driving ESA decision mak-

ing and how success is defined under the ESA.

"It is time for Congress to act and amend the ESA to reign in its power and return the act to its original intent when first passed by Congress," said Rep. Westerman. "I am excited to begin and help lead this process of reforming the ESA in the Natural Resources Committee with today's hearing."

The work of the subcommittee and the working group will inform legislation in the Natural Resources Committee to modernize and reauthorize the ESA.



Rep. Harriet Hageman (R-WY)
Source: Office of Rep. Hageman

WOTUS Rewrite A Priority (Continued from Page 5)

to just what changes they intend to make to the rule and stating that they are prepared to possibly take measures amending the Clean Water Act to better safeguard areas that now lack protections.

On July 10, Rep. Rick Larsen (D-WASHINGTON), the Committee's Ranking Member, and Rep. Grace Napolitano (D-CALIFORNIA), wrote asking EPA and the Corps to "...systematically document the individual and cumulative impacts of the U.S. Supreme Court's (Court) misguided decision in Sackett."

"In its Sackett decision, the Court dramatically limited the scope of federal protections over the nation's waters and wetlands provided by the Clean Water Act," the letter stated.

"These new criteria are likely to result in greater adverse impacts to the nation's waters than the Trump administration's 2020 rulemaking – a rulemaking that a prior Federal court characterized as causing serious environmental harm."

Prior to that hearing, EPA and the Corps had not specified what authority they would use to complete the rulemaking process so quickly. The OMB received the final WOTUS rule from EPA on July 17 for approval.

"The current rule has already been stayed by the courts in approximately half of the country," said Mr. Semanko. "However, EPA recently won litigation stays in two of the three legal challenges against the previous final WOTUS rule based on the pending rulemaking."

CEQ Proposes Long-Awaited NEPA Rule Intended to Mesh Biden, Congressional Priorities

The White House Council on Environmental Quality (CEQ) last month released a proposed rule that it says would fully implement and build upon new permitting efficiencies directed by Congress under the Fiscal Responsibility Act (FRA) of 2023.

"These reforms to federal environmental reviews will deliver better decisions, faster permitting, and more community input and local buy-in," said Brenda Mallory, CEQ Chair. "This rule is a key element of President Biden's permitting reform agenda that will help us speed the build-out of our clean energy future while reducing pollution and harms in communities that have been left out and left behind for far too long."

CEQ claims it's "Bipartisan Permitting Reform Implementation Rule" would modernize and accelerate environmental reviews under the National Environmental Policy Act (NEPA), encourage early community engagement, accelerate America's clean energy future, strengthen energy security, and advance environmental justice.

Hill Republicans who fought to include permitting reform provisions in the FRA signed into law earlier this summer believe the CEQ rule is a step in the wrong direction.

"While CEQ claims to focus on much-needed NEPA reforms, their actual proposed rule ignores the will of Congress expressed in the FRA in many instances and instead opens future projects up to new litigation and extended delays," said House Natural Resources Committee Chairman Bruce Westerman (R-Ark.). "We expect CEQ and other agencies to

follow the intent of Congress and adhere to the clear deadlines, page limits and directives regarding environmental reviews in the FRA."

The FRA contained many of the key provisions from the Building U.S. Infrastructure through Limited Delays and Efficient Reviews (BUILDER) Act, introduced by U.S. Rep. Garret Graves (R-La.) and passed in the House of Representatives as a part of H.R. 1, the Lower Energy Costs Act, introduced by Majority Leader Steve Scalise (R-La.).

The legislation codified many of the Trump-era regulations regarding NEPA, actions supported by the Family Farm Alliance.

The Alliance has previously supported the bill's provisions to set 150-page limits for environmental impact statements (300 pages if the project is of extraordinary complexity) and 75-page limits for environmental assessments. It would also set time limits of one year for environmental assessments and two years for environmental impact statements and provide a right of action to project applicants if the agency does not adhere to these deadlines.

"We are always looking for ways to clarify ambiguous provisions, align NEPA with relevant case law, reflect modern technologies, optimize interagency coordination, and facilitate a more efficient, effective, and timely environmental review process," said Alliance Executive Director Dan Keppen. "We'll review the new CEQ proposal with an eye towards how it meets those objectives."

Biden Administration: Recent Appointments and Departures

A former Congresswoman from New Mexico has risen to the number two position at the U.S. Department of Agriculture (USDA) and another friend of Western farmers and ranchers announced her resignation from the Department of Interior last month.

Xochitl Torres Small is new USDA Deputy Secretary

The Senate last month confirmed Xochitl Torres Small as Deputy Secretary of the USDA.

"At this critical time when USDA and the Biden-Harris Administration are laser-focused on mobilizing historic investments to rebuild our economy and secure healthier, more vibrant communities for future generations, I am grateful to have Xochitl's partnership at the helm of the People's Department," said Agriculture Secretary Tom Vilsack. "She has time and again met the moment with a collaborative approach and a can-do spirit, and I applaud Congress for confirming her as USDA's next Deputy Secretary."

Since October 2021, Torres Small has served as Under Secretary for Rural Development at USDA. Effective July 14, Rural Development Chief Operating Officer Roger Glendenning will serve as Acting Under Secretary.

Prior to joining USDA, Torres Small was a United States Representative for the fifth largest district in the country. As a Member of Congress, she served as a member of the House Agriculture Committee, the House Armed Services Committee and as chairwoman of the Oversight, Management, and Accountability Subcommittee of the House Homeland Security Committee.

Tanya Trujillo Steps Down as Interior Assistant Secretary

The Department of the Interior (DOI) Assistant Secretary for Water and Science Tanya Trujillo stepped down from her position in early June and officially exited on July 17.

"Since the start of the Biden-Harris administration, Interior has taken a leading role in making unprecedented investments in drought resilience and water management and ensuring that the Department's decisions are made with sound science. Tanya has been at the center of these efforts. We are grateful for her strong leadership and vision at the Department and wish her the very best in her future endeavors," said DOI Chief of Staff Rachael Taylor.

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Tanya Trujillo Leaves Interior Department *(Cont'd from Page 7)*

Ms. Trujillo, an expert on the Colorado River, was confirmed by the Senate in the summer of 2021 to the Interior post. She has been working with the seven Colorado River Basin States, along with Interior Deputy Secretary Tommy Beaudreau and Bureau of Reclamation (Reclamation) Commissioner Camille Calimlim Touton, in negotiations over Colorado River operations.

"In these tough times, we needed someone at Interior who had Colorado River policy experience in her portfolio," said Family Farm Alliance Executive Director Dan Keppen. "Tanya's other seasoned qualities provided a steady hand at the helm in this important leadership position."

Before joining the Biden Administration, Secretary Trujillo served on New Mexico's Interstate Stream Commission, which governs the state's waters. A native of New Mexico, Ms. Trujillo's extensive career in water law also included work on Capitol Hill, where she was employed by former Sen. Jeff Bingaman (D-NEW MEXICO) and in the Obama Administration as counselor to the Assistant Secretary for Water and Science.

Over the past decade, Ms. Trujillo has participated in Family Farm Alliance annual conferences as a speaker or panelist several times. In recent years, she has delivered the keynote address at Alliance conferences.



"In our view, throughout her career, Tanya has excelled in her capacity in all that we worked with her on."
Alliance President Pat O'Toole
Photo Source: DOI

"In our view, throughout her career, Tanya has excelled in her capacity in all that we worked with her on," said Alliance President Pat O'Toole. "She was very responsive and effective on the issues we raised. We wish her the best in her future endeavors."

Michael Brain
Named Principal Deputy ASWS

DOI on July 19 announced that Deputy Commissioner of Reclamation Michael Brain has been named Principal Deputy Assistant Secretary for Water and Science.

"We welcome Michael, who brings more than a decade of experience in water resource development and management issues, as Principal Deputy Assistant Secretary for Water and Science," said Chief of Staff Taylor. "Michael will play a key role as Interior continues to implement President Biden's Investing in America agenda that is delivering historic resources to communities, helping advance drought resilience and strengthening local economies."

Before joining Reclamation, Mr. Brain held a variety of positions in the U.S. House of Representatives, including as Counsel for the Subcommittee on Water Resources and the Environment and as a professional staffer for the Subcommittee on Energy and Water Development Appropriations.

Senate EPW Committee Begins Talks on the Next WRDA

The Senate Environment and Public Works (EPW) Committee last month informally kicked off discussions over the next Water Resources Development Act (WRDA) bill, citing the need to begin early to continue to achieve the success of past WRDAs.

"As you will recall, the biennial WRDA legislation is an opportunity for us to once again consider the policies, projects, and programs of the U.S. Army Corps of Engineers," said Committee Chairman Tom Carper (D-Del.) in his opening statement. "Our most recent WRDA legislation passed the Senate in 2022 with a vote of 93-1 and became the engine that carried the annual defense authorization bill to President Biden's desk. That is a level of bipartisanship not often seen in Congress these days."

WRDAs address some of the nation's most pressing infrastructure concerns, providing the Army Corps of Engineers (Corps) with new authorizations for studies and construction of locks and dams, ports, environmental restoration, and projects bolstering climate resiliency.

"We do not anticipate that WRDA 2024 will be a policy-

heavy bill," said Committee Ranking Member Shelley Moore Capito (R-WV). "Instead, the bill will focus on authorizing new or modifying existing studies and projects, as well as making needed technical changes to prior provisions in order to reflect the intent of Congress. This limited scope will enable the Corps to fully implement the provisions of prior WRDA legislation, and help ensure that the Agency can be responsive to the water resources needs of all communities."

Of the issues discussed, some were more controversial than others, such as providing the Corps with permitting reforms to allow projects to be constructed more swiftly than in the past. The recently passed debt ceiling deal included some reforms to the National Environmental Policy Act (NEPA) process for permitting infrastructure projects but talks continue about another round of reforms to help move these projects forward even faster.

The Committee also raised issues to be contemplated for the next WRDA bill including extraordinary drought and floods that have been getting worse in various parts of the country.

FY 2024 Appropriations Process Continues

CR Likely Needed Beyond September

House and Senate leaders have scheduled consideration of FY 2024 appropriations bills this month, but with deep divisions between House Republicans and Democrats and considerable differences in spending levels between Senate and House versions, a temporary continuing resolution (CR) will most likely be needed to keep the government open past September 30.

House Ag Appropriations Update

The full House late last month took up their version of the Military Construction-VA (HR 4366) appropriations bill for FY 2024, which represented the only spending bill it was able to pass so far this Congress.

The House appropriations bill to support agriculture, rural development, and the Food and Drug Administration (HR 4368) was supposed to go to the floor for a vote in the last week of July, but internal GOP disagreements prevented that from happening.

Members of Congress made a beeline out of D.C. for their annual August recess. They'll return for a bruising September, the last month before the 2018 bill expires, with just three weeks to prevent a government shutdown.

"While these two appropriations bills are usually considered as non-controversial as any of the 12 annual spending measures, how the GOP controlled House dispatches these bills will impact how the rest of the FY 2024 appropriations process plays out this year," said Mark Limbaugh with The Ferguson Group, the Family Farm Alliance's representative in Washington, D.C.

The White House has issued veto threats for both House bills, citing GOP-led spending cuts and targeted policy riders affecting climate-related and other programs as reasons for not supporting the bills.

"House Republicans had an opportunity to engage in a productive, bipartisan appropriations process, but instead, with just over two months before the end of the fiscal year, are wasting time with partisan bills that cut domestic spending to levels well below the Fiscal Responsibility Act (FRA) [debt limit] agreement and endanger critical services for the American people," said the White House.

House Speaker Kevin McCarthy (R-CALIFORNIA) has said he still intends to pass all 12 appropriations bills before the new fiscal year begins October 1. However, Speaker McCarthy and the House GOP leadership team have been struggling to placate the far-right members of the Freedom Caucus, who are demanding steeper cuts.

"Sometimes when you come in and say, 'OK, I'm gonna get savings here. I'm gonna squeeze here,' the balloon pops up in other places," Rep. Garret Graves (R-La.), one of McCarthy's top negotiators, said in a brief interview with *Politico*. "So I just lost four moderates and picked up two Freedom Caucus guys."

Twenty-one House Republicans wrote to Speaker McCarthy announcing that they wouldn't vote to approve spending

bills at the levels indicated in the FRA, passed earlier this summer to address the national debt limit (*Epoch News*).

"We plan to vote against any appropriations bills designed to achieve the approximately \$1.586 trillion top-line level—roughly equal to the spending caps agreed to with President Biden in the debt ceiling deal and representing a mere 1 percent reduction from Democrats' egregious post-COVID spending level," the signers, led by Rep. Scott Perry (R-Pa.) said on July 10.

The bill would already slash more than \$8 billion from various recessions and would fund the agencies at close to \$18 billion. There are now about 160 amendments proposed for the bill (*Politico Weekly Agriculture*).

Senate Appropriations Committee Approves Energy and Water Development Bill

Senate appropriators, meanwhile, are quickly marking up their FY 2024 spending bills with strong bipartisan support, setting higher spending levels that were set in the June FRA. They sent some of the year's biggest bills to the floor, including those that would fund the Pentagon and the largest swath of domestic programs (*Politico*).

"Today, our Committee will continue passing serious Appropriations bills that can actually be signed into law and making sure the voice of the Senate—and the voice of our constituents—is heard loud and clear in this process," Senator Patty Murray (D-WASHINGTON), Chair of the Senate Appropriations Committee, said at the July 20 markup. "As the bills we are discussing today show, we aren't just talking about numbers on a page. We are talking about our country's competitiveness and leadership on the world stage, the safety and well-being of our families and communities, and the future for our children."

The Senate Appropriations Committee added almost \$14 billion in emergency funds beyond the debt ceiling deal and marked up all but one of its final four spending bills by the end of the month. The Committee moved its Energy and Water, State and Foreign Operations, and Transportation-HUD bills with bipartisan support, fully funding and even boosting funding for some of the programs sustaining cuts in the House bills.

The Committee approved their \$1.92 billion version of the FY 2024 Energy and Water Development bill and report funding the Department of Energy, the Army Corps of Engineers (Corps), and the Bureau of Reclamation (Reclamation).

"Our energy and water infrastructure need significant investment to meet the needs of Americans throughout the country, particularly in the West," said Senator Dianne Feinstein (D-CA), Chair of the Senate Appropriations Subcommittee on Energy and Water Development. "The bill passed by the Appropriations Committee today will help modernize our water systems to improve and increase dam safety, water storage,

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Activists to Ask Judge to Order Breaching of Snake River Dams

Last month, a coalition of environmental groups announced its intent to ask a federal judge to order the lower Snake River dams to be breached as a necessary step to prevent the extinction of endangered sockeye salmon that spawn in central Idaho.

As reported in the June 2023 edition of the *Monthly Briefing*, environmentalists concerned about salmon spawning have advocated to undam the Snake River for decades, focusing their efforts on four dams on the lower part of the Snake, just above its confluence with the Columbia River.

The Columbia River Keeper, Idaho Rivers United, Idaho Conservation League and the Northwest Sport Fishing Alliance filed a 60-day notice of intent to sue the Army Corps of Engineers (Corps). They claim the impoundments behind the four dams cause the river to overheat just as adult sockeye salmon are migrating upstream to spawn near the Sawtooth Mountains.

"If we look back at the last five to 10 years of (sockeye) survival, we've had bad years and we have had terrible years," Miles Johnson, executive director of Columbia Riverkeeper, told the *Idaho Tribune*. "If we continue to have terrible years like 2021 and 2015 this species is not going to be around very much longer."

Government witnesses at Congressional hearings in June provided a different assessment of how the four dams impact salmon populations.

Jennifer Quan, the West Coast Regional Administrator for the National Marine Fisheries Service at the hearing acknowledged that the latest ESA biological opinion issued by her agency assessed and concluded that the operations and maintenance of the Columbia River Systems' 14 dams was not likely to jeopardize the continued existence of listed salmon

and steelhead or result in the destruction or adverse modification of their critical habitat.

Other experts believe the legal arguments advanced by the environmental groups will not prevail.

"The Ninth Circuit in 2004 has already held that the Corps has no authority to remove/breach the federal dams to address water temperatures," said Norm Semanko (IDAHO), General Counsel for the Family Farm Alliance. "Only Congress can do that."

Western Republicans in Congress and the *Wall Street Journal* in June pushed back on the breaching advocates, publicly highlighted the importance of dams in the Northwest and their impacts on river commerce, agriculture and energy production.

"The lower Snake River dams are a critical linchpin to North Idaho and for the Pacific Northwest," said Rep. Fulcher (R-IDAHO) said at a June GOP forum on the dams. "And the removal of those or breaching those would be economic devastation."

Last spring, Republican Representatives from Washington state Cathy McMorris Rodgers and Dan Newhouse introduced legislation to preserve the dams.

The Family Farm Alliance earlier this year sent a letter to Agriculture Secretary Vilsack, urging his engagement on this matter, with an eye towards defending the interests of farmers and ranchers.

"Altering operations along the Columbia and Lower Snake Rivers, whether through shifted flow regimes or dam removal, would send ripple effects throughout the broader agricultural community served by this system," the Alliance letter stated. "The multiple-year drought we have faced in many parts of the West—coupled with other domestic and global developments—has already affected the availability and price of food for many Americans."



Rep. Russ Fulcher (R-IDAHO)
Photo Source: Office of Rep. Fulcher

CR likely as House Spending Bills Stall (Cont'd from Page 9)

water recycling, desalination projects and more."

The Senate appropriations bill includes nearly \$58.1 billion in discretionary funds, about a \$3.4 billion increase. The Corps would get \$8.9 billion for civil works in the Senate bill, about a \$600 million increase from FY 2023. Reclamation, meanwhile, would see a slight cut, getting \$1.9 billion, about \$10 million lower than the current funding level.

As reported in the July *Monthly Briefing*, the House Appropriations Committee in June followed the GOP playbook setting FY 2024 spending levels below the spending caps agreed to in the debt ceiling deal and approved their version of the FY 2024 spending legislation last month, with deep

cuts to Biden Administration priority renewable energy and climate-related spending.

The House Appropriations Committee approved their \$1.83 billion version of the bill earlier in the month. Both bills exceed the Biden Administration's budget request of \$1.44 billion.

"Once passed by each respective chamber, any differences will need to be worked out in a conference before final passage," said Mr. Limbaugh. "We do not expect Congress to move these bills to the President's desk for his signature before the end of FY 2023 on September 30, so a temporary CR will be needed to keep the federal government open on October 1."

Supreme Court Urged to Adopt Settlement in *Texas v. New Mexico*

The Special Master has released his decision in *Texas v. New Mexico*, a long-running case involving an interstate dispute regarding New Mexico's compliance with the Rio Grande Compact of 1938.

This Compact established a plan for equitable apportionment of the water in the Rio Grande Basin among the states of Colorado, New Mexico, and Texas.

"This has been one of New Mexico's most important water cases in recent history, and we are proud to have reached an agreement that equitably divides the water below Elephant Butte Reservoir to ensure that New Mexico farmers and municipalities receive their fair share of water for decades to come," New Mexico Attorney General Raúl Torrez said in a press release.

However, the U.S. Justice Department (DOJ) warned that the agreement could deplete the Rio Grande Project, which includes the Elephant Butte Dam and its power plant, and provides irrigation to nearly 200,000 acres.

"The mandates of the proposed decree ... overrides the complex operations of the [Rio Grande] Project that ensure the releases and delivery of the project water," said Lee Leininger, a trial attorney in the DOJ's Environment and Natural Resources Division at a February 2023 hearing in Cedar Rapids, Iowa.

New Challenges for EBID

Elephant Butte Irrigation District (EBID) general manager Gary Esslinger said prolonged droughts from 1951 until 1978 and from 2003 until today, limited the water supply in the reservoir (*NM Political Report*).

"Farmers responded by doing what? Drilling wells to provide the supplement that they were not getting from the surface water," he said. "If we didn't have a groundwater system, agricultural farming would likely not exist."

But relying on groundwater for irrigation has caused the aquifer to decline and the use of groundwater by farmers in New Mexico led to a lawsuit Texas filed against the state in 2013, which resulted in a proposed settlement agreement earlier this year.

Under the 1938 compact, Texas' share of the river is measured below Elephant Butte Reservoir, approximately 100 miles north of the Texas border. Texas had accused New Mexico of allowing its residents to remove water below the reservoir, depleting expected water deliveries to Texas.

The consent decree would implement a new reporting system, including a new gauge near El Paso, and requirements for recording groundwater pumping and river flows, to deter-

mine whether Texas has received its share of the river. The agreement says that if New Mexico draws too much water from the river basin, it must temporarily transfer water from EBID to the El Paso County Water Improvement District No. 1 in Texas.

"We've got this impending settlement which is going to put a new set of constraints on the way we operate," Elephant Butte Irrigation District (EBID) engineering consultant Phil King recently told the New Mexico Legislative Finance Committee. "Because now not only do we have to get our water to the farmers, and to Texas and Mexico to meet their Rio Grande Project orders, but we also will have to meet this new state line index, which is a bit trickier than meeting the index at Elephant Butte."

EBID officials say that infrastructure will be key to meeting that index, particularly improving stormwater flood control, but that alone will be insufficient.

"Let me start by saying that this infrastructure is absolutely necessary to adapt to this changing climate that we're in," said Mr. King. "It is necessary but not sufficient, we're definitely going to have to change the way we administer our water."

D.C. Activist Report Targets New Mexico Agriculture

Meanwhile, a deep-pocketed activist group from Washington, D.C. released a report last month targeting the water use of New Mexico pecan, dairy and alfalfa farmers. "Big Ag Fuels New Mexico's Water Crisis" – a report released by Food & Water Watch (FWW) – uses misleading terms like "industrial-scale agriculture" and "mega-dairies", in addition to the "Big Ag" reference in the report's title.

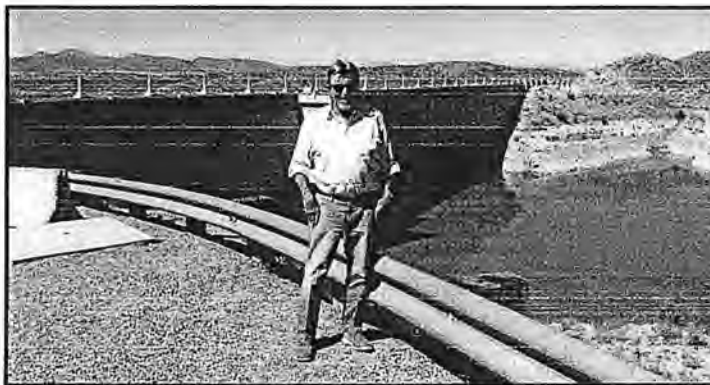
"We cannot protect our future against drought without combating corporate agriculture," the FWW report intones. "It is past time for New Mexico to address the corporate abuse of water."

The report points out that the number of New Mexico alfalfa farms over 1,000 acres in size doubled from nine to 19 between 1997 and 2017. It fails to mention that over half of the farms in the state are

less than 50 acres in size, and a third of the farms are one to nine acres in size, according to a representative of the New Mexico Farm and Livestock Bureau.

Food and Water Watch operates on a \$17 million budget and employs a staff of over 80 individuals to "protect people from the corporations and other destructive economic interests that put profit ahead of everything else", according to its website.

"They're going nuts over water use on pecans," Mr. Esslinger observed.



EBID general manager Gary Esslinger behind Elephant Butte Dam, September 2016. Photo by Dan Keppen

CORRESPONDENCE LIST
AUGUST 2023

Agenda Item 11

1. July 12, 2023 – Letter from District to two customers regarding past due balances
2. July 12, 2023 – Public Records Act Request received from Mr. S. Soulages
3. July 14, 2023 – Notice and Agenda received from the Santa Ynez Community Services District for the July 19, 2023 Regular Board Meeting
4. July 17, 2023 – Notice and Agenda received from the Los Olivos Community Services District for the July 20, 2023 Grants Subcommittee Meeting
5. July 20, 2023 – Letter from Santa Barbara County Fire Department regarding Fire Service Requirements for APN 137-081-010
6. July 20, 2023 – Notice and Agenda received from the Santa Ynez Community Services District for the July 25, 2023 Wastewater Treatment Committee Meeting
7. July 20, 2023 – Notice and Agenda received from the Los Olivos Community Services District for the July 24, 2023 Project Management Subcommittee Meeting
8. July 20, 2023 – Notice and Agenda received from Cachuma Operations and Maintenance Board for the July 24, 2023 Regular Board Meeting
9. July 20, 2023 – Letter from District regarding Water Service Requirements for APN 137-020-029
10. July 20, 2023 – Letter from District to Mr. S. Soulages regarding Public Records Act Request
11. July 21, 2023 – Notice and Agenda received from the Los Olivos Community Services District for the July 24, 2023 Project Management Subcommittee Meeting
12. July 24, 2023 – Notice and Agenda received from the Central Coast Water Authority for the July 27, 2023 Board of Directors Meeting
13. July 24, 2023 – Los Olivos Community Services District Update for July 2023
14. July 26, 2023 – Notice and Agenda received from the Los Olivos Community Services District for the July 31, 2023 Finance Subcommittee Meeting
15. July 27, 2023 – Letter from District to Santa Barbara County Property Tax Auditor & Specialty Accounting regarding submittal of June 20, 2023 Board Meeting Minutes
16. July 31, 2023 – Letter to Santa Ynez River Water Conservation District regarding Payment under protest – Groundwater Production Charges for Period January 1, 2023 through June 30, 2023
17. August 1, 2023 – Letter from District to two customers regarding backflow testing requirement
18. August 4, 2023 – Notice and Agenda received from the Groundwater Sustainability Agency for the Eastern Management Area for the August 10, 2023 Special Meeting
19. August 8, 2023 – Letter from District to three customers regarding past due balances

20. August 9, 2023 – Revised Water Service Requirements Letter for APN 137-081-047
21. August 10, 2023 – Letter from Santa Barbara County Fire Department regarding Fire Department requirements for APN 135-122-025