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California Dept. of Water Resources
Attn: Sustainable Groundwater Management Section
P.O. Box 942836
Sacramento, CA 94236
Via email to: SGMPS@water.ca.gov

September 25, 2015

To Whom it May Concern,

The Paso Robles Water Integrity Network (PR-WIN), a group comprised of overlying land owners in the Paso Robles Groundwater Basin (PRGWB), hereby submits the following additional information in order to assist DWR in reaching a determination on whether or not to include the PRGWB on the final list of Critically Overdrafted Basins. As a threshold matter, however, it is incumbent upon DWR to extend the time period for public comment on the Draft List for at least an additional 30 days.

As you are aware, the public comment period opened on August 25, 2015 and is set to close today, September 25th. Shortly before the public comment period opened, on August 20, 2015, I submitted a request pursuant to the California Public Records Act (CPRA) seeking "any reports, studies, information, or data that were reviewed or relied upon by officials, employees, or agents (including consultants) of the Department of Water Resources in determining that the Paso Robles Groundwater Basin (Basin No. 3-04.06) should be added to the August 6, 2015 draft list of Critically Overdrafted Groundwater Basins." This information was necessary in order for PR-WIN to provide meaningful public comment on the Draft List. This email was sent to Mary Scruggs as well as the general DWR email address for CPRA requests (pubrec@water.ca.gov), and I received both delivery receipts and read receipts back, indicating the email had been received and opened that day.

Under the CPRA, an initial response to this request was due within 10 days. (Gov. Code § 6253.) Unfortunately, this deadline came and went with no response. On September 8, 2015, I sent an email to Ms. Scruggs and the DWR CPRA email address asking for an immediate response and requesting that the Draft List comment period be extended as a result of the delay. I also submitted a second CPRA request for all recent communications between DWR and the County of San Luis Obispo. Again, I received no response to my inquiry.

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On September 16, 2015, my office was able to contact Dane Mathis, DWR Senior Engineering Geologist, who indicated verbally that the only information DWR relied on in adding the PRGWB to the Draft List was Figure 3-3 from the 2011 Paso Robles Groundwater Basin Management Plan (2011 Management Plan).[1] A formal response to the CPRA request, however, was not forthcoming. Finally, on September 22 and 23rd, out of desperation, my office contacted the office of the Chief Counsel for DWR, and left a messages seeking to find out the status of the CPRA requests. Although those calls have yet to be returned, at approximately 2 pm on September 23rd, I received a response to my original CPRA request from Helen Riddle. (A copy of Ms. Riddle's email is attached as Exhibit A.) Unfortunately, the response did not contain any reports, studies, or data that DWR might have relied on in adding the PRGWB to the Draft List; instead, the response consisted exclusively of a somewhat random assortment of emails between DWR and various individuals, almost all of which had nothing whatsoever to do with the Draft List, or even the PRGWB.

Because this formal response was received less than two days prior to the close of the public comment period and appears to be largely incomplete (it did not even include a reference to Figure 3-3, which Mr. Mathis indicated that *he* had relied on in adding the PRGWB to the Draft List), PR-WIN requests an extension of the public comment period, in order to formulate a more detailed and relevant commentary on the Draft List. In the event such an extension is not granted, however, and in the absence of any further information regarding the basis for DWR's conclusion that the PRGWB is critically overdrafted, PR-WIN submits the following comments for your consideration.

DWR's Methodology in Preparing the Draft List

The Draft List, prepared under authority of Water Code § 12924, identifies basins that are subject to "critical conditions of overdraft." Under the Sustainable Groundwater Management Act (SGMA), any basin that is identified on the List of Critically Overdrafted Basins must be managed under a Groundwater Sustainability Plan (GSP) by January 31st, 2020. (Water Code § 10720.7.)

[1] Mr. Mathis also sent an email on August 25th to PR-WIN member Greg Grewal containing a link to the 2011 Management Plan, in response to Mr. Grewal's verbal request at the Clovis meeting for the data DWR relied on to add the PRGWB to the Draft List. It was also indicated verbally at the meeting that the PRGWB was added to the Draft List at the request of the County of San Luis Obispo.

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In a presentation to the California Water Commission on August 19, 2015, Mary Scruggs, DWR Supervising Engineering Geologist, explained that her team was looking for basins in "extreme" or "critical" stages of overdraft—overdraft alone was not sufficient to place a basin on the list. DWR Staff chose a base period of 1989-2009 for the Draft List, in order to avoid the data being skewed by the recent drought, and then examined basins for at least one of four undesirable results during that period, which DWR believed were indicative of extreme overdraft: (1) subsidence; (2) seawater intrusion; (3) water quality issues; and (4) chronic lowering of groundwater levels without rebound. In each of those instances, Ms. Scruggs emphasized that the undesirable results must be "significant and unreasonable," and that DWR was looking for actual or reality-based conditions of extreme overdraft during the base period, not simply forecasts or models.

DWR's decision to include the PRGWB on the Draft List was evidently made on the basis of "chronic lowering of groundwater levels," because that is what appears to be depicted in Figure 3-3 in of the 2011 Management Plan, referenced by Mr. Mathis. Figure 3-3 portrays a map of the PRGWB overlaid with color shading that relates to average groundwater elevation declines. The color shading indicates that the area east and south of the City of Paso Robles has seen average groundwater elevation declines of approximately 70 feet, and that the area directly west of Shandon has seen average elevation declines of approximately 30 feet.

The following sections identify flaws in the data and methodologies used in the studies that the County relied upon in creating Figure 3-3. Because the Figure 3-3 from the 2011 Management Plan does not rely on accurate scientific or technical data, DWR does not have a well-reasoned basis to conclude that there have been "significant and unreasonable" declines in groundwater levels, without rebound, over the base period. Further, the absence of widespread physical indications of overdraft underscores the differences between the PRGWB and the other basins included on the list. The sections below highlight additional technical, scientific, and legal considerations relevant to DWR's determination; because of the numerous issues discussed herein, we urge staff to reconsider the decision to include the PRGWB on the Draft List.

Insufficiencies in Hydrograph Data in Figure 3-3

The data that was used to create Figure 3-3 is based on hydrograph data that was accumulated during the multiple studies conducted from 1998 to 2011. (2011 Management Plan, 5-6.)

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However, this hydrograph data was found to be inadequate for management purposes by an independent hydrologist who was commissioned to peer review all existing studies of the PRGWB in 2010. The 2010 Peer Review by Gus Yates concludes that the network of monitoring wells responsible for the data used to estimate groundwater elevation trends: (1) do not show a connection between water levels and pumping or recharge, i.e., "the hydrographs show little or no response to . . . trends in rainfall."); (2) "do not correlate with the expected effects of seasonal pumping"; and (3) mix "data for shallow well tapping younger alluvium with data for deeper well tapping the Paso Robles Formation. (Peer Review of Paso Robles Groundwater Studies, Gus Yates, 2010, at 8.) One potent illustration of the problems in this data is the lack of correlation between seasonal pumping and water level declines: spring water levels should be higher than fall water levels due to the vast amount of irrigation between spring and fall; however, the water levels in many well did not respond as expected to these pumping trends. (*Id.*)

Lastly, it is problematic to rely on Figure 3-3 when Figure 5-1 in the same report clearly demonstrates there are significant gaps in the monitoring network east of the City of Paso Robles and west of Shandon, where the largest elevation declines are displayed. (*Id.*, pg. 73.) Accordingly, DWR should retract its reliance on Figure 3-3 until these deficiencies are remedied.[2]

Lack of Undesirable Results "Throughout the Basin"

In addition to the insufficiency of the data, Figure 3-3 is an inaccurate oversimplification of the actual water levels in the PRGWB. A closer look at the underlying data shows that chronic lowering of groundwater levels has not occurred "throughout the basin," as is required by Water Code § 10721(w) in order to qualify as an "undesirable result." The data also does not fit the criteria articulated by Ms. Scruggs, who stated that DWR was looking for "significant and unreasonable" drawdowns in groundwater levels, sustained over time without rebound.

[2] In fact, it appears that DWR staff were very much aware of the data gaps in the PRGWB. In email exchanges between Charles Michael McKenzie of DWR and SLO County staff (on which Dane Mathis was cc'd) in September and October of 2014, DWR pointed out that the existing network of monitoring wells in the Basin was wholly insufficient for CASGEM purposes. The veracity of the monitoring well data should be no less for Water Code § 12924 purposes than for CASGEM purposes.

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The hydrograph data that is summarized in Figure 3-3 is set forth in more detail in Section 4 of the 2011 Management Plan. (*Id.* at pg. 24.) That Section identifies eight separate Subareas, and looks at the hydrograph data separately for each.

1. Atascadero Subbasin: For the Atascadero Subbasin, the hydrograph data shows water levels have remained within 10 feet, up or down, of the same baseline since 1981. For every drawdown year, there is an almost equal rebound year. (2011 Management Plan, pg. 51.) In 2005, water levels were nearly 15 feet above 1981 levels. The report concludes**: "The overall trend of the average groundwater levels has remained relatively constant since the early 1980s…."** (*Id.*, pg. 50.) Figure 3-3 depicts the rising levels in this portion of the Basin with a blue dot.

2. Bradley Subarea: In the Bradley Subarea to the north, the report acknowledges that the data only comes from a single well, but notes that that one well, which is located near the Salinas River and is included in the groundwater monitoring network of the Monterey County Water Resources Agency, has maintained nearly a nearly constant level since 1960. (2011 Management Plan, 53.) The report concludes: **"At this time, we are not aware of any reports or anecdotal information that suggests groundwater levels in the Bradley Subarea is [sic] declining to the point of causing problems for local groundwater users."** (*Id.*) Notably, Figure 3-3 omits the Bradley sub-area from its color-coded depiction.

3. Creston Subarea: The 2011 Management Plan notes that there are 17 monitoring wells in the Creston subarea, but only four of those wells were selected as "representative." This begs the question: by what criteria were the representative wells selected, and what did the data from the other wells show? Regardless, the "composite hydrograph" from the four representative wells shows that **Water Surface Elevations (WSE) from 2008 were nearly exactly the same as in 1989**, with an equivalent rise and fall in the intervening years. (2011 Management Plan, pg. 55.) It certainly does not show a sustained and unreasonable chronic lowering of groundwater levels between 1989 and 2009, as would be required under the DWR critically overdrafted criteria.

4. Estrella Subarea: According to the 2011 Management Plan, there are 50 monitoring wells in the Estrella Subarea, but only 6 were selected as "representative." (2011 Management Plan, pg. 56.) Again, the criteria for determining which wells were used is omitted from the report. The report states that water levels have steadily declined by

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over 70 feet from 1981-2009, but this date range includes data that is not within DWR's base period. (*Id.*) Looking at the composite hydrograph for the DWR base period (1989-2009) appears to show drops in the 45-50 foot range (*id.* at pg. 58), and the report itself states that water levels dropped about 50 feet between 1997 and 2009 (*id.* at pg. 57), or **30% less** than what is depicted in Figure 3-3, which purports to only present data from 1997-2009, but seems to show drops of 70+ feet for this area. In other words, the picture in Figure 3-3 does not match the text of the report for this area, and therefore is unreliable.

5. North Gabilan Subarea: The 2011 Management Plan notes that there is no data available that could be used to represent average groundwater levels for this subarea, which is north of the City of Paso Robles and east of the Bradley subarea. (*Id.* at pg. 58.) The report notes that "**there are not identified groundwater problems or issues**" in this area that have been brought to the County's attention. (*Id.*)

6. San Juan Subarea: The San Juan Subarea composite hydrograph data is highly variable, as based on four representative wells out of fifteen total monitoring wells. (*Id.* at pg. 59-60.) This again begs the question of what the omitted well data showed. Regardless, the composite data clearly shows both declines and rebounds during the base period which correlate closely with precipitation, with well levels overall declining about 20 feet during that time. (*Id.*) Given the extreme fluctuations in the data and the close correlation with rainfall, it would be impossible to say that this is a significant and unreasonable chronic lowering as set forth in Water Code § 10721(w)(1).

7. Shandon Subarea: The Shandon Subarea "hydrograph" is a composite of four very widely spread monitoring wells out of a total of 24. (2011 Management Plan, pgs. 44, 61.) The report asserts that, based on these four wells, water levels declined at the start of the base period (1989-1997), held steady during the middle (1997-2006), and then declined again from 2006-2009, with total net decreases of around 30 feet during the DWR base period. (*See id.* at pg. 63, depicting a total WSE departure of -35 feet in 1989 and a WSE departure of about -65 feet in 2009.) Similar to Estrella area, the color coding in Figure 3-3 does not match the data in the text. Figure 3-3 purports to show drops of over 60 feet in the Shandon area from 1997-2009, but the text of the report declares an average drop of only 32 feet during that time. (*See id.* at pg. 61 (stating that levels dropped approximately 2 feet from 1997-2006, and 30 feet from 2006-2009.)

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8. South Gabilan Subarea: The 2011 Management Plan states that there is no data that could be used to represent groundwater levels in this area north and east of the City of Paso Robles, but that **"there are no identified groundwater problems or issues**" that have been presented to the County. (*Id.* at pg. 63.)

To summarize, out of the eight Subareas in the PRGWB discussed in the 2011 Management Plan, two were identified as having insufficient data but also no identified problems (North Gabilan and South Gabilan), three had relatively constant water levels during the base period (Bradley, Atascadero, and Creston), and three appear to show declines—though, as noted above, these declines area not nearly as severe as depicted in Figure 3-3. The actual declines in these areas during the DWR base period appear to be **30-50% less than what is shown in Figure 3-3.** Regardless, the fact is that 5 out of the 8 subareas in the PRGWB did not show declines, or had "no identified groundwater problems or issues." Accordingly, the 2011 Management Plan clearly shows that significant and unreasonable chronic lowering of groundwater levels was not occurring "throughout the basin" during the base period, as would be required by Water Code § 10721(w) for the PRGWB to be eligible for the list of basins subject to critical conditions of overdraft.

The Impacts in the PRGWB Are Not Significant And Unreasonable

Under water code section 10721(w)(1), groundwater elevation decline alone does not enough to establish that an "undesirable result" is present. Instead, elevation declines must "indicat[e] a significant and unreasonable depletion" of groundwater throughout the basin. Although the terms "significant and unreasonable" are not defined in that section, Ms. Scruggs stated that DWR's interpretation of those terms means that overdraft conditions must be "extreme." However, once the estimated declines in groundwater elevation for the three subareas identified in the 2011 Management Plan are translated into alternative figures, such as total acre-feet available in storage, it becomes abundantly clear that the groundwater conditions in the PRGWB do not indicate a "significant and unreasonable depletion of supply."

Even if DWR assumes that the elevation data represented by Figure 3-3 are accurate (which PR-WIN does not believe is the case, as discussed above), the lowering of groundwater levels in these areas does not indicate "significant and unreasonable depletion in supply" because all available technical and scientific studies indicate that the overall groundwater supply in the PRGWB has stayed consistent during the base period. Although the map shading on Figure

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3-3 indicates elevation declines of approximately 70 feet in the area south and east of the City of Paso Robles (City), and declines of up to 60 feet in a small pocket west of Shandon, these declines cannot be considered significant in the PRGWB as a whole due to the massive amount of groundwater still in storage. Table 69 of the 2002 Fugro Report depicts this well: by comparing the annual change in groundwater storage (expressed in acre-feet) to the amount of groundwater that remains in storage, the table provides a better picture of the overall health of the aquifer. (Fugro 2002, pg. 144.)

According to the 2002 Fugro Report, which serves as a fundamental basis for the assumptions contained in the 2011 Management Plan, there was a 12,400 acre-foot reduction in the amount of water actually stored in the aquifer between the years of 1980 and 1997. When compared to the 30,534,000 acre-feet of estimated storage, that degree of change amounts to less than a hundredth of a percentage change in overall storage capacity. Further, the 2010 update by the Fugro Group estimates that the overall change in groundwater storage between the years of 1998 and 2009 "varied from a decrease of 72,736 AF in 2007 to an increase of 366,756 AF in 1998, with an average annual change of 19,108 AF." Under the two alternate pumping scenarios, the change in groundwater storage over this period was either: (1) a net increase of 21,646 af, or (2) a net increase of 17,147 AF. Again, this represents less than a hundredth of a percentage change in overall storage capacity.

This is depicted in a slightly different way in Figure 3-2 of the 2011 Management Plan, which immediately precedes Figure 3-3 at page 23. When these two figures are compared side-by-side, it is apparent that the areas shown in Figure 3-3 as having the greatest declines are also the areas in which groundwater elevations are still the highest in the Basin. The areas which have the deepest water experienced the least decline. Given that the vast majority of the Basin's groundwater is from 800-1,200 feet deep, declines of up to 70 feet around the City of Paso Robles—which as of 2009 still experienced water levels at less than 600 feet—cannot be considered significant and unreasonable.

When the elevation decline depicted in Figure 3-3 in and around the City of Paso Robles is given additional context, it becomes clear that these elevation declines are not associated with "depletion of supply" throughout the basin, but instead are directly related to "the concentration of pumping sources along Highway 46 east of Paso Robles" which results in "localized pumping depressions." (Executive Summary, Fugro 2005.) The primary area of decline depicted in Figure 3-3 includes the City and extends to the south and the east. Notably, these are also the areas where the City obtains its water—the City operates the

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Thunderbird Well Field adjacent to the Salinas River to the south, and has deep basin groundwater wells near the Paso Robles Airport to the east. This water is distributed among the City's residents, consumed, and then pumped to the City's wastewater treatment plant on the north end of the City, were it is treated and deposited into the Salinas River at a rate of 3 million gallons per day.[3]

Because the Salinas River flows north, this water is carried through and presumably acts to recharge the Monterey County portion of the PRGWB, including the Bradley and North Gabilan Subareas. Notably, neither of those subareas have any reported water supply issues, and the groundwater monitoring well for the Bradley Subarea, which is located near the Salinas River, has held remarkably constant for the past 50 years, including the DWR base period. (2011 Management Plan, pg. 53.) This strongly indicates that the groundwater level declines around the City of Paso Robles do not represent a depletion of total basin supply, but rather a transfer of groundwater from one area of the PRGWB to another.

Because DWR's standard for including the PRGWB on the Draft List required a finding that the "lowering of groundwater levels" indicate a "depletion of supply" occurring "throughout the basin," it should revisit this determination in light of the data that distinguishes localized declines in elevation from assumptions regarding "groundwater conditions occurring throughout the basin."

Previous Assertions by the County of SLO That the Basin is Not in Overdraft

It was interesting to learn from DWR Staff at the Clovis meeting that the addition of the PRGWB to the Draft List came at the behest of the County of San Luis Obispo, given the following previous assertions by the County that the PRGWB was **not** in overdraft during the DWR base period.

- In 2005, on behalf of its Service Area 16, which serves the Shandon Subarea, the County signed the Paso Robles Groundwater Basin Agreement, also known as the PRIOR Agreement. A copy of the PRIOR Agreement is attached as Exhibit B. Section 1 of the Agreement is titled "**BASIN NOT IN OVERDRAFT**," and states that no party to the agreement may assert (as against any other party) that the PRGWB was in overdraft as of the date of the Agreement. Section 3 also states that no Municipal User

[3] www.prcity.com/Government/departments/publicworks/wastewater

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(including the County on behalf of Service Area 16) may "take a position in any judicial or administrative proceeding that the Basin is in a condition of overdraft" unless and until the County Flood Control and Water Conservation District "has made a determination based on published studies that the Basin is in a condition of overdraft." To date, this has not occurred.

- In 2010, in an email to one of the County Supervisors concerning the PRGWB, former Public Works Director Paavo Ogren stated "Although this is oversimplified, the point is that our current studies do not indicate that the Paso basin is in overdraft," and "the County is obligated under the PRIOR agreement to make that determination of overdraft when we believe it to be true…" A copy of this email is attached as Exhibit C.

- To date, the County has not made any finding that the PRGWB is in overdraft, under the PRIOR Agreement or otherwise.

You may not be aware that, on November 25, 2013 the County of San Luis Obispo was sued by over 400 landowners seeking to quiet title to their overlying groundwater rights. (*Steinbeck Vineyards #1, et al. v. County of San Luis Obispo*, et al., Santa Clara County Superior Court Case No. 1-14-CV-265039.) In response to the landowners' claims, the County is-- as of a filing made on September 14, 2015-- asserting for the first time that there has been overdraft in the PRGWB and that it has secured prescriptive rights against landowners as a result.

Obviously, the County faces a difficult road in proving that there was notice of overdraft for a continuous 5 year period prior to the filing of the lawsuit in 2013 (which is one of the elements of proving a prescriptive groundwater right), in light of the County's previous statements that the PRGWB was **not** in overdraft, and the fact that none of the published studies during this time made any findings of overdraft. Accordingly, it would no doubt help the County immensely in the lawsuit if DWR were to declare that the PRGWB was nevertheless subject to "critical conditions of overdraft" at some point between 1989 and 2009. It is little wonder that the County itself requested that DWR add the PRGWB to the Draft List.

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DWR should, at all costs, avoid the implication or perception that it is assisting the County in its lawsuit or rewriting history by determining that the PRGWB was overdrafted during the base period. Unless DWR is confident that there clear and convincing evidence that the PRGWB was critically overdrafted between 1989 and 2009, and that such evidence would withstand scrutiny by a court, it should decline to place the PRGWB on the list of critically overdrafted basins.

Misuse of Public Funds

As a final matter, it would also be improper of DWR to place the PRGWB on the Final List unless it is absolutely certain that the evidence supports a critical overdraft determination, because to do otherwise could result in a misuse of public funds. According to an email from Dane Mathis to Courtney Howard at the County of SLO, dated July 15, 2015, "DWR is working on making Proposition 1 competitive grant funding available for local agencies…. A total of $100 million from Proposition 1 is available for Sustainable Groundwater Planning. **It is anticipated that one of the grant program priorities will be basins identified as critically overdrafted."** A copy of this email is attached as Exhibit D.

Again, DWR should avoid any implication or appearance that it is assisting the County by prioritizing the PRGWB to be first in line for Prop 1 monies. Although DWR still has not responded to PR-WIN's CPRA request of September 8, 2015, seeking all recent communications between the County of SLO and DWR, if it is true that the County *requested* that the PRGWB be added to the Draft List, DWR has an obligation to the public and the taxpayers to assess the justification for the request, and to independently verify the data provided by the County.

Based on DWR's September 23rd response to PR-WIN's first CPRA request, it does not appear that DWR has *any* "reports, studies, information, or data" in its possession that it reviewed prior to adding the PRGWB to the Draft List, since that response consisted solely of largely irrelevant emails. However, Mr. Mathis represented on several different occasions that it was the hydrograph data from the 2011 Management Plan, and specifically Figure 3-3, which caused the PRGWB to be added to the Draft List. As discussed above, there are significant problems with data in that report, not the least of which is that the groundwater level declines depicted in Figure 3-3 are not supported by the composite hydrograph data in the report itself. In addition, the 2011 Management Plan as a whole actually shows that 5 of the 8 subareas in the PRGWB are not experiencing significant undesirable results.

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Unless DWR can independently and objectively conclude that the PRGWB meets the "extreme" criteria for the critically overdrafted basins list, it should decline to include the PRGWB on the Final List, due to the potential misapplication of Proposition 1 grant monies.

Conclusion

In light of the data, observations, and analysis contained within this letter, PR-WIN respectfully requests that DWR review the data cited in this letter and revisit its decision to list the PRGWB on the Draft List. If there are any questions regarding the matters in this letter, PR-WIN would appreciate the opportunity to consult further with DWR staff regarding those matters before the Final List is produced.

Sincerely,

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