



HENDERSON  
HATFIELD  
A PROFESSIONAL CORPORATION

Stacy L. Henderson  
stacy@hendersonhatfield.com

December 15, 2021

**VIA ELECTRONIC MAIL ONLY**

Phyllis Stanin and Liz Elliott  
E-mail: [PStanin@toddgroundwater.com](mailto:PStanin@toddgroundwater.com)  
[l Elliott@toddgroundwater.com](mailto:l Elliott@toddgroundwater.com)

Oakdale Irrigation District c/o Eric Thorburn  
E-mail: [ethorburn@oakdaleirrigation.com](mailto:ethorburn@oakdaleirrigation.com)

Stanislaus County c/o Walt Ward  
E-mail: [wward@envres.org](mailto:wward@envres.org)

City of Oakdale c/o Michael Renfrow  
E-mail: [mrenfrow@ci.oakdale.ca.us](mailto:mrenfrow@ci.oakdale.ca.us)

Modesto Irrigation District Board of Directors and  
General Manager  
E-mail: [paul.campbell@mid.org](mailto:paul.campbell@mid.org)  
E-mail: [john.mensinger@mid.org](mailto:john.mensinger@mid.org)  
E-mail: [stu.gilman@mid.org](mailto:stu.gilman@mid.org)  
E-mail: [nick.blom@mid.org](mailto:nick.blom@mid.org)  
E-mail: [larry.byrd@mid.org](mailto:larry.byrd@mid.org)  
E-mail: [board@mid.org](mailto:board@mid.org)  
E-mail: [bill.schwandt@mid.org](mailto:bill.schwandt@mid.org)

Stanislaus & Tuolumne Rivers Groundwater Basin  
Association, GSA  
E-mail: [strgba@mid.org](mailto:strgba@mid.org)

Modesto Irrigation District c/o Gordon Enos  
E-mail: [Gordon.Enas@mid.org](mailto:Gordon.Enas@mid.org)

City of Waterford c/o Mike Pitcock  
E-mail: [mpitcock@cityofwaterford.org](mailto:mpitcock@cityofwaterford.org)

City of Modesto c/o Miguel Alvarez  
E-mail: [malvarez@modestogov.com](mailto:malvarez@modestogov.com)

Re: *STRGBA GSA's Draft Groundwater Sustainability Plan*

Ladies and Gentlemen:

I represent a number of farming families, residential and commercial customers of Modesto Irrigation District. My Clients live and farm in the Modesto Subbasin, primarily in the area designated as the Modesto ID Management Area in the STRGBA GSA's Draft Groundwater Sustainability Plan ("Draft GSP"). (Draft GSP Section 6.2.3, Figure 6-2). This comment letter is submitted on behalf of my Clients to identify issues we believe should be addressed in the final version of Draft GSP and should also be considered in further detail during the administration of the GSP once it has been adopted.

1. **The Modesto ID Management Area is a Net-Contributor and has *already* achieved Sustainability.** In recognition of the fact that there are varying groundwater conditions in the Modesto Subbasin, the GSA identifies 4 Management Areas. Modesto ID's Management Area (as well as Oakdale ID's Management Area) utilizes surface water in conjunction with groundwater in a sustainable manner and is identified as a net-contributor to groundwater in the Draft GSP. The Draft GSP recognizes that the undesirable results of

chronic lowering of water levels, overdraft and reduction of groundwater in storage have occurred primarily within and around the Non-District East Management Area. (Draft GSP Section 6.2.1, Table 6-1, Figure 6-1). **The Draft GSP explains that the Non-District East Management Area is a net-extractor and is completely dependent on groundwater** as its primary water supply. (Draft GSP Sections 5.1.4.4, 5.3, 6.2 and 6.2.3, among others). **The Non-District East would need to reduce its use of groundwater by 58%** in order to meet the goals set forth by the sustainability indicators unless Projects and/or Management Actions are implemented. (Draft GSP Section 5.3). These facts set the stage for evaluating the need for, and terms of Projects and Management Actions as well as assessment of the associated costs.

Unfortunately, Section 9.1.1 of the Draft GSP explains that the *conceptual* Projects identified for *possible* future implementation in the Non-District East are not projected to be implemented, if at all, until between 2023 – 2027. It is extremely concerning that while the GSA is waiting to see: (a) *if* the Non-District East will implement any of the conceptual Projects, (b) *if* any Projects that are implemented are actually effective in any measurable amount, (c) *if* Management Actions will be necessary, and (d) *if* any Management Actions that are undertaken are sufficient to bring the Non-District East closer to achieving sustainability, that the GSP does not identify any interim measures to avoid any further increase of the undesirable results. Noticeably lacking from the GSP is any requirement that the Non-District East begin addressing the overdraft issue that exists. Specifically, neither the GSP nor any other agency, requires the Non-District East to immediately reduce groundwater pumping, which is especially troubling during drought years like this year. Nor is the Non-District East required to monitor the use of groundwater at this time, although we know that the continued overdraft is inevitable until Projects and/or Management Actions are in place. Thus, during this uncertain timeframe, nothing is stopping the Non-District East from exacerbating the overdraft problem or requiring the Non-District East to be held accountable to the rest of the Modesto Subbasin for the current and anticipated future undesirable results.

2. **The GSP should clearly articulate that all Projects and Management Actions are to be funded by the Management Area(s) in need of the Projects and Management Actions.** The area(s) that need to implement Projects and Management Actions in order to achieve Sustainability should be required to completely fund the Projects and Management Actions, as well as all monitoring, reporting, enforcement and other actions related thereto. Although Draft GSP Section 6.2.3 recognizes that “[m]ost of the infrastructure required for GSP [P]rojects will need to be developed in the Non-District East Management Areas by local landowners,” Chapter 9 of the Draft GSP does not mandate a definitive method for allocating any costs associated with Projects and Management Actions.

The draft of Section 9.2 includes estimated costs of GSP implementation and GSA Management at \$200,000 to \$300,000 per year, with additional costs for Projects and Management Actions in an unknown amount. Section 9.2.1 indicates the GSA will develop a financing plan, which may include pumping fees, assessments or a combination of fees and assessments. Surprisingly, Section 9.2.1 states: “During development of a financing plan, the GSA would also determine whether to apply fees across the Subbasin as a whole or just within certain Management Areas.” We believe the GSA should definitively confirm that the GSA’s financing plan will absolutely require that any and all fees and assessments associated with the implementation of the GSP be imposed at varying rates in accordance with each Management Area’s impact or benefit to the Subbasin. A Management Area that is a net contributor to the Subbasin should pay far less than the unsustainable Management Areas that is completely dependent on groundwater and must implement Projects or undertake Management Actions to avoid any further undesirable results.

Given the Draft GSP’s recognition that a “one-size-fits-all” approach is **not** appropriate for water budgets due to the varying groundwater conditions in the Modesto Subbasin, we believe the GSP should also confirm that fees and assessments, if any, **will not** be imposed using a “one-size-fits-all” approach. It is critical that all costs are allocated in a sensible manner to avoid requiring those Areas, like the Modesto ID Management Area, which includes the residents of the City of Modesto and Modesto ID’s Farmers, who have already expended considerable funds and effort in developing, implementing and effectively managing


the use of groundwater to achieve sustainability and to be a net-contributor of groundwater, being forced to pay more than is reasonable under the circumstances.

It would be demonstrably unreasonable for MID's Farmers, the City of Modesto's citizens, and others who live in the areas of the Modesto Subbasin that have already achieved sustainability to be required to either (a) contribute to the cost of Projects, or participate in Management Actions that are not needed in the Modesto ID Management Area (or any other sustainable Management Area), or (b) to pay the same fees or assessments for GSP administration as the Non-District East given that the vast majority of the work needed to comply with SGMA is the result of the overdraft conditions in the Non-District East Management Area. Accordingly, **the GSP should include a detailed analysis of the various costs associated with the GSP's implementation, administration, monitoring and reporting of Projects and Management Actions, and equitably allocate those costs among the Management Areas based on each Management Area's impact on sustainable management criteria. Put simply, all costs should be allocated and apportioned according to need and benefit.**

3. **Management Actions must be implemented only on an as-needed basis in unsustainable Management Areas – NOT in the Modesto ID Management Area.** Section 8.4 of the Draft GSP describes potential Management Actions involving *demand reduction* in the form of either conservation or land fallowing, as well as *pumping management* to reduce pumping through managing and monitoring the use of groundwater and assessment of groundwater extraction fees. Although we agree with the general content of the statements in the draft GSP indicating that the Management Actions "would be evaluated and selected for implementation if, based on data gathered during GSP implementation, the GSA finds that established IMs and MOs cannot be maintained and/or if MTs are being approached," we believe it is appropriate and necessary that the GSP confirm that decisions regarding the implementation of Management Actions will be made on a Management Area-level, as opposed to using a Subbasin-wide approach.

On behalf of my Clients, I thank you for the opportunity to provide input into the development of the final version of the GSP. Should you wish to discuss any of the foregoing, you may contact me directly.

Sincerely,



Stacy L. Henderson  
Attorney at Law

Cc: City of Modesto – Mayor Sue Zwahlen ([mayor@modestogov.com](mailto:mayor@modestogov.com))  
City of Modesto – Vice Mayor Rosa Escutia-Braaton ([rescutiabraaton@modestogov.com](mailto:rescutiabraaton@modestogov.com))  
City of Modesto – City Manager Joseph Lopez ([joelopez@modestogov.com](mailto:joelopez@modestogov.com))  
Modesto Chamber of Commerce – President / CEO Trish Christensen ([tchristensen@modchamber.org](mailto:tchristensen@modchamber.org))  
Modesto Chamber of Commerce – Chairman Michael Gaffney ([michael.gaffney@pge.com](mailto:michael.gaffney@pge.com))  
Modesto Chamber of Commerce – Chairman-Past Steve Rank ([srank@rankinv.com](mailto:srank@rankinv.com))  
Modesto Chamber of Commerce – Vice Chair, External Operations Michael Moradian, Jr. ([michaeljmoradianjr@gmail.com](mailto:michaeljmoradianjr@gmail.com))