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October 31, 2024

Eastern San Joaquin Groundwater Authority
1810 E Hazelton Ave
Stockton, CA 95205
Sent via email: info@esjgroundwater.org

Re: Eastern San Joaquin Groundwater Authority's Draft Groundwater Sustainability

Plan

To Whom It May Concern:

Restore the Delta (RTD) works in the areas of public education, program and policy development, and outreach so that all Californians recognize the Sacramento-San Joaquin Delta as part of California's natural heritage, deserving of restoration. We interface with local, state and federal agencies to advance this vision.

We envision the Sacramento-San Joaquin Delta as a place where a vibrant local economy, tourism, recreation, farming, wildlife, and fisheries thrive as a result of resident efforts to protect our waterways. We seek water quality protections for all communities, particularly environmental justice communities and California Tribes, as well as community protections from flood and drought impacts.

Ultimately, our goal is to connect communities to our regional rivers and to empower communities to become the guardians of the estuary through participation in government planning, community science and waterway monitoring, and a sustainable local economy. We seek to build the next generation of water leaders by developing programs in science, land and water management, and the green economy. Rooted in the Clean Water Act, we work for a Delta with waters that are fishable, swimmable, and drinkable, and farmable.

We envision improvements in the Delta as opportunities for Delta Tribes, Delta farming communities, and environmental justice communities to gain greater equity in decision making and to share in the benefits from area natural resources management.

We are providing comments on the Eastern San Joaquin Groundwater Authority's ("Authority") draft Groundwater Sustainability Plan ("Plan"), pursuant to a January 2025 deadline for submission to the Department of Water Resources. Groundwater management in the Eastern San Joaquin Groundwater Basin is of direct interest to our organization due to potential Delta and Delta-adjacent impacts in the watershed.

We respectfully submit this letter for consideration in regard to the adoption of the amended Plan. After reviewing in detail, the amendments to the Plan, we have identified a number of flaws that the Authority should be aware of prior to the approval and adoption of the Plan. Accordingly, we lay out our key concerns and findings, below.

SGMA background and RTD position on SGMA

After one of the most severe droughts in state history, former California Gov. Jerry Brown signed into law the Sustainable Groundwater Management Act (SGMA) in 2014 to ensure better local and regional management of groundwater use by 2040. SGMA was crafted to shift traditional views of groundwater use away from the current siloed approach to encourage cities, counties, and irrigation districts to work together in a regional collaborative process.

SGMA requires over-drafted water basins to become sustainable (prevent overdrafts from pumping more than what is replenished during the year) by 2040. Over-drafting means more water is pumped from a groundwater basin than is replaced through sources like rainfall, irrigation water, streams fed by mountain runoff, and intentional recharge efforts (spreading surface water to feed into the basin).

The 70-square-mile Eastern San Joaquin Groundwater Subbasin is bounded by the Sierra Nevada foothills to the east, San Joaquin River to the west, Dry Creek to the north, and the Stanislaus River to the south. It's one of 21 basins and subbasins identified by the California Department of Water Resources (DWR) as being in a state of critical overdraft. Current analysis indicates that groundwater pumping offsets and/or recharge on the order of 95,000 acre-feet per year (AF/year) may be required to achieve sustainability.

Local stakeholders had until 2022 (in critically overdrafted basins until 2020) to develop, prepare, and begin implementation of Groundwater Sustainability Plans (GSP). The first reports of an area's effort toward sustainability were filed in 2020 and the first 5-year updates are required by January 2025. Plans include various projects and management actions that are supposed to help the basin reach a balance between inputs (rivers, rainfall, etc.) and outputs (pumping for irrigation, drinking water, etc.).

Summary of concerns

With public trust requirements of SGMA, the Authority has legal and fiduciary responsibilities for proper implementation of the Ground Water Sustainability Plan. We are concerned that the Authority has failed to follow State mandates. First, the compliance issues in regard to funding accountability put the entire subbasin at risk of sanctions and further punitive actions by the State. Second, fundamental stakeholder engagement is required by law and must be a part of the process through better community outreach, Tribal engagement, disadvantaged community inclusion, and small farmer protections. Additionally, the Plan the Authority is reviewing does

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not identify current permit applications for carbons sequestration projects that could affect the subbasin particularly, through CO2 sequestration. Poor planning for the future will, therefore, leave the Authority and its member agencies ill-prepared for future monitoring. Listed below are the flaws we have found in the current iteration of the Plan that will then be discussed in greater detail in descriptive narrative.

- 1. Three Groundwater Sustainability Agencies have failed to develop groundwater sustainability proposals and must be brought into compliance to avoid state sanctions for the entire Subbasin. This process requirement should have been completed over the course of the last three years and ready for public review now.**
- 2. San Joaquin County is diverting funding that is supposed to be used for local flood control and water management projects to pay for Authority fees.**
- 3. The Authority needs to significantly improve its communications and community engagement methods to ensure the vast array of perspectives across the Subbasin are meaningfully incorporated into regional groundwater sustainability planning efforts.**
- 4. None of the 43 groundwater sustainability projects listed in the draft plan are located in South Stockton, a historically disadvantaged community that requires investment in groundwater protections.**
- 5. The plan should be amended to include protections for small farmers.**
- 6. The plan does not adequately identify or address subsidence.**
- 7. The plan needs to explicitly address future monitoring plans for geologic CO2 sequestration site proposals in the Subbasin, and ensure local groundwater monitoring programs are well-integrated into existing public monitoring networks.**
- 8. At public meetings, and in the documents, sustainability has not been fully and adequately defined, and does not encompass a broad definition of sustainability that represents the public interest.**

Below are detailed sections regarding our concerns with the draft plan:

- 1. The three GSAs that have failed to develop groundwater sustainability proposals must be brought into compliance to avoid state sanctions for the entire Subbasin. The lack of participation of three GSAs, including San Joaquin County, could cause all GSAs in the Subbasin to be subject to penalties from the State Water Board. These would not only impact farmers but also property owners in the cities and urban areas of San Joaquin County.**

The Eastern San Joaquin Groundwater Authority (“Authority”) is a joint powers agency consisting of 16 Groundwater Sustainability Agencies (GSAs) that make up the Eastern San Joaquin Subbasin. The purpose is to coordinate the various GSAs’ management of the basin, in

accordance with SGMA. The updated Groundwater Sustainability Plan that the Authority and member GSAs were charged to submit to the state is supposed to show progress toward

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groundwater sustainability by 2040. GSAs that have had their GSPs found to be deficient have been subject to enforcement (probation) by the State Water Board. For the GSAs in Kings County, for instance, this has meant the imposition of fees on wells and a fee per acre foot of water pump (the implementation of this has been stayed temporarily by the court). Additional fees will impact small farmers and economically disadvantaged households situated in the County and dependent on groundwater wells.

The three GSAs without plans are (1) San Joaquin County, (2) Central San Joaquin Water Conservation District, and (3) a Stanislaus County GSA in the southeast corner of San Joaquin/Stanislaus County. These GSAs have made no progress and have no proposals in place to work towards groundwater sustainability.

The failure of these three GSAs to develop their plans as stated above, could lead to sanctions by the State Water Board on all GSAs in the Subbasin, including per well charges along with additional charges per acre foot pumped. In the current agricultural economy such a charge would not be Sustainable and could potentially put small farmers out of business, create unemployment, reduce purchases of agricultural inputs, lower tax revenues, and subsequently property values.

2. Because the San Joaquin County Board of Supervisors has diverted over \$800,000 that was meant to be used for local flood control and water management projects to pay for Authority fees, most property owners are paying twice to meet SGMA requirements.

Groundwater Sustainability Agencies (GSAs) share in the general operating and administrative cost of operating the Authority in accordance with percentages determined by the Authority Board of Directors. GSAs are solely responsible for raising funds for payment of their individual shares. The current scheme of shifting public funding designated for flood control to pay for San Joaquin County's GSA is double taxation, and by shortchanging flood control spending puts County residents at risk physically and financially from a flood incident.

San Joaquin County's GSA is comprised of unincorporated areas of San Joaquin County and the Tracy Basin. Specifically, San Joaquin County is paying its GSA fees with monies from Flood Control and Water Conservation District Zone 2, an investigation zone with the primary purpose of carrying out engineering, geologic, and other studies including the reclamation, storage, distribution, purchase, sale, use, conservation, and development of water including the management of combined surface water and groundwater supplies. Zone 2 gets its funding from agricultural landowners on a per acre charge of \$.48 per acre plus a parcel charge of \$.768, along with various other charges collected on beneficial properties.

More than 62% of the Zone 2 District’s annual budget – \$1,358,000 – is being diverted for Authority fees. Zone 2 money (according to the [Zone 2 website](#)) is being used to pay for the

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eastern subbasin monitoring (\$138,000), GWA fee (\$25,000), a GSP/SGMA consultant (\$25,000), and an additional contribution to the ESJ GWA (\$225,000) for a total of \$413,800 for the Eastern Subbasin. Payment for the Tracy subbasin adds another \$231,267 for a total of \$802,840 from Zone 2.

The reason given for not assessing fees on the areas encompassed in the San Joaquin County GSA is that the Board of Supervisors did not want to address issues associated with the implementation of Proposition 218 or engage in establishing a “beneficial” district that would be subject to fees. The consequence is that others are being required to subsidize the San Joaquin GSA with their Zone 2 payments and still paying Authority assessments through the charges from their respective GSA, which is effectively double taxation. This is an equity concern for disadvantaged households and an economic hardship for small farming businesses.

3. The Authority needs to significantly improve its communications and community engagement methods to ensure proper stakeholder engagement and that the vast array of perspectives across the Subbasin are meaningfully incorporated into regional sustainability planning efforts.

It’s been over a year since the [2023-2024 Civil Grand Jury](#) published a scathing review of the Authority’s planning activities. Many of the issues raised by the Grand Jury, including a lack of transparency and inequitable community engagement practices, remain unresolved. Jurors recommended a variety of measures to the Authority for improving accessibility and transparency (e.g. updating its website with meeting times, agendas, and minutes; disclosing financial and project information, etc.), and diversifying community engagement.

Despite these recommendations, meaningful stakeholder and community engagement efforts have remained insufficient, especially in communities like Stockton, the largest city in the subbasin and broader Sacramento-San Joaquin Delta region, which has the highest proportion of environmental justice (EJ) communities in California. Overall, nearly 30% of the Delta's population belongs to EJ communities that are disproportionately impacted by the degradation of Delta waterways. This environmental degradation affects their health, well-being, and economic opportunities.

The Authority has failed to proactively engage with Tribal Nations and Disadvantaged communities from the inception of the agency and throughout ongoing development of the overarching Groundwater Sustainability Plan for the subbasin. Both are listed as proper stakeholders in the Plan and SGMA regulations. The Plan has been in development for three years, yet meaningful outreach and community involvement only began in the final four months.

This last-minute effort to engage EJ communities is unacceptable. The absence of consistent engagement from the project's onset failed to prioritize the voices and concerns of those most impacted, reinforcing a long-standing pattern of exclusion. Three meetings were originally planned, but at the most recent public meeting, when community members asked budget-related

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questions, they were directed to speak with county representatives privately rather than having an open discussion.

Similarly, the Authority has done little to address accessibility issues for engaging in plan development. The requirement for public comments to be submitted in writing, for instance, creates challenges for community members who lack access to the internet and computer literacy and removes a layer of transparency between communities.

Lackluster engagement and inaccessibility issues add to the history of limited public events and outreach, especially concerning the Eastern San Joaquin GSP, highlighting a systemic issue: critical EJ communities were not adequately consulted and lack of stakeholder outreach. Waiting until the final phase of a three-year process to involve these communities undermines the potential for equitable outcomes. Participation from the beginning would have advanced shared concerns while shaping groundwater sustainability planning efforts in ways that protect health and livelihood. Going forward, the Authority must adopt a more inclusive and transparent approach to ensure these communities have a meaningful role in water management decisions.

One of the Grand Jury's recommendations was for the Authority to "identify ways to better find and engage with members of disadvantaged communities (DACs), including non-English speakers, in the San Joaquin Subbasin." The Authority responded that it would consider ways to expand language access in its pending "Communications and Engagement Plan", which was to be posted within 10 days after its adoption (GJR, p. 183). As of writing, this plan has not been made publicly available.

To support the 5-year Periodic Evaluation of the GSP and development of the 2024 GSP Amendment, the Authority's Steering Committee approved the formation of a Project Management Committee (PMC), "comprising six GSA volunteers representing the varied interests in the Subbasin and covering both urban and agricultural areas" who met 20 times on a bi-monthly basis. The "20 meetings" described in the draft plan were not publicly accessible.

Further, against the recommendation of the Grand Jury, the Authority Board of Directors refused to amend its bylaws and update its website to reflect the actual meeting times of the Board. The Authority's reasoning for its lack of transparency was that board meeting frequency is variable. The Authority also refused to formalize the status of its Technical Advisory Committee as a standing committee and bring it into compliance with the requirements of the Ralph M. Brown Act. These actions show an unwillingness to integrate more diverse perspectives into the Authority's planning processes.

4. None of the 43 groundwater sustainability projects listed in the draft plan are specifically designated to benefit South Stockton. A historically disadvantaged community that requires investments in groundwater protections (e.g. water recycling, stormwater reuse, aquifer recharge, etc.).

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The GSAs have identified 43 projects for potential development that either replace groundwater use (offset) or supplement groundwater supplies (recharge) to meet current and future water demands. Project types include direct and in-lieu recharge, intra-basin water transfers, demand conservation, water recycling, and stormwater reuse. Furthermore, the Authority failed to hold the City of Stockton accountable for not analyzing groundwater conditions thoroughly in South Stockton in order to meet environmental justice needs for this historically redlined community.

On the heels of three years of lackluster engagement with disadvantaged communities and Tribes, the list of proposed beneficial projects in the plan is, unsurprisingly, largely concentrated away from communities who have historically been harmed the most by inequitable water and land management planning. This represents a missed opportunity for project development at the intersection of groundwater recharge and floodplain restoration in San Joaquin County that could've been highly competitive for federal and state funding if environmental justice considerations had been prioritized in the initial scoping phase.

Going forward, we request that the Authority encourage member GSAs to emphasize how their proposed projects can advance environmental justice and offer meaningful community benefits, including unincorporated areas of East Stockton that fall in the County. Ideally, projects should be co-designed from the start with community-based organizations who are experts on local environmental and public health challenges. Enhancement of projects and methodology can only be accomplished with more equitable community engagement practices.

5. The plan needs to be amended to explicitly outline protections for small farmers.

In 2023, the California Legislature passed AB 779, which sets new terms for comprehensive adjudication of groundwater rights in civil court. This SGMA add-on became effective this year. It asks courts to consider the “water use of small farmers and disadvantaged communities,” in SGMA-related decisions (for the purposes of the bill, small farmers are those who earn between \$10,000 and \$400,000 in gross income). Several areas in need of revision include subsidence and small farm protections from substantial fees and undue burdens.

Subsidence leads to undesirable results on farmland. Dr. Steven Deveral from Hydro Focus based out of Davis, CA points out in his *Simulation of Subsidence Mitigation Effects on Island Drain Flow, Seepage, and Organic Carbon Loads on Subsided Islands Sacramento–San Joaquin Delta* how subsidence is affected by groundwater pumping ([Deveral, 2017](#)). We recommend

looking over this study and making sure to consider his findings when setting up a subsidence baseline to be in compliance with AB 779.

The Authority must ensure small farmers and disadvantaged communities are protected. Disproportionately burdening small farmers with fees, further meetings, and administrative processes that will have negative impacts on their small farms is a further failure of the public

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trust responsibility of the Authority. With over three hundred thousand acres of agricultural land in the subbasin consideration for this stakeholder group must be research and addressed to provide proper protections for small farmers.

6. The plan needs to explicitly address future monitoring of potential groundwater contamination risks associated with geologic CO2 sequestration site proposals in the subbasin and ensure local groundwater monitoring programs are well-integrated into existing public monitoring networks.

The Plan lacks a section reviewing emerging industries and the potential for impacts to groundwater. Successful implementation of CO2 sequestration projects proposed in the western part of the subbasin demands careful coordination between project operators and groundwater protection efforts. To facilitate redundancy and data-sharing, extensive groundwater monitoring systems required under US EPA Class VI Underground Injection Control permits should be integrated into the existing subbasin monitoring network. Additionally, the results should be made publicly available.

The current sustainability indicators and minimum thresholds in the draft plan should be expanded to include monitoring for CO2-related impacts, including changes in groundwater acidity, pressure gradients, and water quality parameters. Regular testing for acidity levels near injection sites should be integrated into the GSP's measurable objectives with clear guidelines for corrective action if monitoring reveals potential impacts to groundwater quality and quantity. These protections are essential to prevent undesirable results and ensure the long-term viability of the region's groundwater resources.

7. As full analysis and plans have not been completed for all GSAs, environmental justice needs and concerns have not been addressed or incorporated into basin projects, subsidence is not being accurately addressed, and misuse of public funds continue with San Joaquin County GSA operations, the plan fails to adequately define or demonstrate sustainability as required under the law.

Conclusion

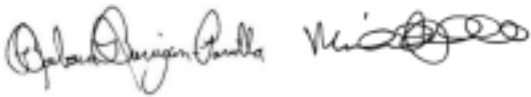
In summation, Restore the Delta has reviewed the Eastern San Joaquin Groundwater Authority's draft Groundwater Sustainability Plan and found the document with its efforts to be lacking

critical components. The failure of three GSAs to develop groundwater plan, and the Authority's failure to ensure that San Joaquin County's GSA properly allocates funds place the entire subbasin at risk of sanctions. The minimal engagement of stakeholders by the Authority does not meet environmental justice requirements for SGMA as required by law, or meet the standards for public trust responsibilities of proper outreach, collaboration, and good neighbor efforts. There are no disadvantaged community projects in the County's most pollution burdened areas, and a lack of protections for small farmers. Finally, future planning for emerging industry coordination

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must be added to the Plan and the Authority's goals. Collectively, this Plan falls short of DWR requirements and the intentions of the purpose of state and local agency efforts. These cumulative flaws make the amendment incomplete and not to standards set by SGMA. Restore the Delta recommends deep consideration of these issues prior to submitting this plan to DWR for Subbasin certification.

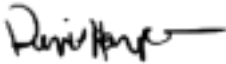
Respectfully Submitted,



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