

Item 4a

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July 6, 2021

Dear MID Landowner,

The Madera Irrigation District Board of Directors would like to make you aware of the current actions and correspondence between Madera Irrigation District (MID) and the County of Madera (County).

Despite MID's best efforts with the County including years and years of meetings and countless discussions, on June 8, 2021, the Madera County Board of Supervisors voted in favor of "Option C" for the Madera County Groundwater Sustainability Agency's (GSA) "Groundwater Allocation Amounts for 2021 through 2025". While this might appear not to affect those within MID as this was voted on for the Madera County GSA, **the reality is that it absolutely does affect MID and you, an MID landowner.**

MID has attached the recent correspondence to the County of Madera that details these issues, but to summarize, Madera County GSA is already violating the Groundwater Sustainability Plan (GSP) that was just submitted in 2020.

So how does this affect YOU personally?

Have you noticed any impacts to your wells lately (i.e. wells going dry, lowering of water levels, poorer water quality, higher PG&E costs, etc.)??? The majority of those impacts to you are due to the pumping of groundwater occurring on lands located within the Madera County GSA.

The Madera County GSA, on June 8, 2021 voted on "Option C" that, as of 2021, is already over 47,000 acre feet in deficit from the plan adopted in 2020! If Madera County doesn't take action immediately, the groundwater impacts will continue to be exacerbated to a deficit of over 72,000 acre feet in 2022! And these numbers are beyond the already planned overdraft of Madera County, **these are in addition to the previously contemplated overdraft!**

Additionally, to add insult to injury, Madera County is planning to charge for and monetize the overdraft (with the fancy term of "Transitional Water" which is OVERDRAFT) to benefit the Madera County GSA and "white area landowners". However YOU, a MID landowner, is the one feeling the real impacts of the situation. You and your fellow MID neighbors are the ones not only paying for MID surface water and to retain those precious water rights, but now YOU also have to pay to lower your wells, drill new wells, additional PG&E pumping costs, and water treatment costs because of the actions (or really

inactions) of Madera County. Meanwhile, Madera County GSA's plan is now to monetize that overdraft for the benefit of themselves only?!!?

Finally, as part of Madera County's adoption of "Option C" they have admitted and vocalized that the Madera Subbasin boundary, and thus sustainable yield calculations, are wrong. Why are they wrong? Because Madera County GSA has failed to correct an erroneous boundary line which exists, according to them, and instead of doing the correction, they are going to try to use it to their advantage by adding it to the Madera County GSA's water balance. This means that they are attempting to take from the other GSAs in the Madera Subbasin including the MID GSA (i.e. YOU, again) through higher Sustainable Yield calculations for the Madera County GSA.

What happens if their adoption of "Option C" is not corrected immediately?

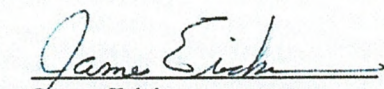
This will likely result in a lawsuit or lawsuits being filed. However, as all MID landowners are also Madera County taxpayers, you will likely be paying for their defense also. Again, the key word is YOU.

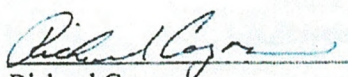
So what should I do about this?

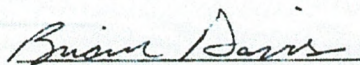
We recommend you contact the Madera County Board of Supervisors immediately and voice your concerns. We recommend that you remind them that not only do they represent the Madera County GSA, they represent the entire County of Madera, including you, and that they need to develop **and implement** a *viable* program immediately.

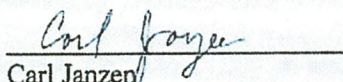
Should you have any questions or want to discuss further, you are welcome to contact any or all of us below. We would be happy to discuss as we are all landowners within MID, sharing the same impacts and same concerns.

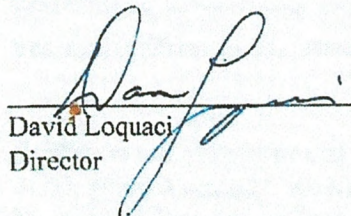
Sincerely,


James Erickson
Board President


Richard Cosyns
Vice President


Brian Davis
Director


Carl Janzen
Director


David Loquaci
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July 2, 2021

VIA OVERNIGHT MAIL & EMAIL

MADERA COUNTY BOARD OF SUPERVISORS
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Madera, CA 93637

Stephanie Anagnoson, Director
WATER AND NATURAL RESOURCES DEPT.
COUNTY OF MADERA
200 West 4th Street
Madera, CA 93637

Jay Varney
COUNTY ADMINISTRATIVE OFFICER
COUNTY OF MADERA
204 W. 4th Street
Madera, CA 93637

Re: June 8, 2021, Action Concerning Resolution 2021-069

Dear Madera County Supervisors and Ms. Anagnoson:

I am writing on behalf of the Madera Irrigation District ("MID") and its Board of Directors to convey their concerns regarding the Resolution 2021-069 adopted by the Madera County Board of Supervisors' action on June 8, 2021 (the "Resolution"). The Resolution established groundwater allocation amounts for 2021 through 2025 for certain properties within the Madera County Groundwater Sustainability Agency ("Madera County GSA"). MID understands this action included a category of groundwater called "Transitional Water," which is defined as the "continued overdraft of the Subbasins." MID also understands the County intends to impose a fee for the use of Transitional Water. Additionally, through the County's actions, Madera County

WANGER JONES HELSLEY PC

Madera County Board of Supervisors
Stephanie Anagnoson, County of Madera
Jay Varney
July 2, 2021
Page 2

GSA has claimed that certain lands should not be able to access “Sustainable Yield” (“SY”) because SY does not physically exist beneath those lands. These efforts are collectively referred to herein as the “Program.”

MID has significant concerns regarding the Program. Instead of implementing the Program, the County should instead work with stakeholders on the development and implementation of a practices and projects that reduce overdraft and help bring the Madera Subbasin closer to sustainability immediately. In any event, if the County seeks to proceed with the Program, the County should first perform environmental review under the California Environmental Quality Act, Pub. Resources Code, 21000, *et seq.* (“CEQA”) to ensure any potential environmental effects associated with the Program are mitigated.

A. The Program is Inconsistent with the Madera Subbasin GSP

As an initial matter, the Project is in direct conflict with the Madera Subbasin Joint Groundwater Sustainability Plan (“GSP”), which was adopted by both Madera County GSA and MID GSA on December 17, 2019, and submitted to the State of California’s Department of Water Resources (DWR).

As the resolution for the item recognizes, the Transitional Water is actually-existing overdraft. Transitional Water is addressed as part of the “Madera County Demand Management Program” defined in the GSP under Section 4.4.4.2. The GSP explicitly states:

[T]he Madera County demand management program will, by 2040, reduce average annual groundwater pumping by 90,000 acre-feet The annual reduction in pumping in Madera County will equal 90,000 acre-feet by 2040.

(Madera Subbasin GSP at 4-41.) Thus, the GSP contemplated there would be so-called “Transitional Water” in an initial amount of 90,000 acre feet (AF) with annual groundwater pumping “reduced by 2% (of the total demand reduction amount) per year, for a total cumulative reduction of 10% by 2025.” This concept was defined in the GSP, agreed to amongst GSAs in the Subbasin, previously approved by the Madera County Board of Supervisors, and submitted to DWR in 2020.

“Option C” is inconsistent with the commitments in the GSP. Instead of the 90,000 acre-foot baseline articulated in the GSP, the County approved a Program with a baseline of 113,000 AF in 2020. This equates to a 23,000 AF difference (90,000 AF versus 113,000 AF). While both figures would purportedly decline over time, the selection of the 113,000 AF baseline would result in greater overdraft than had the County elected to continue with the thresholds established in the

WANGER JONES HELSLEY PC

Madera County Board of Supervisors
Stephanie Anagnoson, County of Madera
Jay Varney
July 2, 2021
Page 3

GSP. The table below illustrates the impacts of the June 8, 2021, vote and the lack of demand management to date by the County:

| Difference in Continued Overdraft Between Madera Subbasin GSP and Option C | | | | | |
|--|----------|---------------|-------------|-----------------|-----------------|
| YEAR | GSP (AF) | OPTION C (AF) | ACTUAL (AF) | DIFFERENCE (AF) | CUMULATIVE (AF) |
| 2020 | 90,000 | 113,000 | 113,000 | (23,000) | (23,000) |
| 2021 | 88,200 | 110,740 | 113,000 | (24,800) | (47,800) |
| 2022 | 86,400 | 108,480 | 110,740 | (24,340) | (72,140) |

As you can see, both the annual and cumulative difference in overdraft between the GSP and “Option C” results in tens of thousands of additional acre-feet of overdraft in the Madera Subbasin compared to baseline conditions. As a result, if the County seeks to implement the Program, that implementation will be contrary to the County’s own GSP.

MID recognizes that “you cannot go back in time”; however, Madera County can, and must, adhere to the numbers agreed to in the GSP. Thus, MID expects that Madera County “manage” demand to the agreed upon level of 86,400 AF in 2022 (going forward).

B. Madera County’s Plan to Monetize Transitional Water (*i.e.*, Overdraft)

MID understands the County’s “allocation plan” and “Option C” include the concept of monetizing overdraft for the benefit of the Madera County GSA and its landowners. MID has several concerns with this concept.

Overdraft by landowners within the Madera County GSA reduces the amount of groundwater available to the other GSAs and creates detrimental impacts. The landowners within the Madera Subbasin each have a usufructuary right to the Transitional Water. Through the creation of the Transitional Water category, the Madera County GSA is essentially permitting—and charging for—the extraction of water that belongs in part to other landowners within the adjoining GSAs, and in particular those GSAs with active recharge programs and high surface water usage.

The Madera County GSA’s action appears to be an attempt to monetize efforts made by MID and other GSAs within the Madera Subbasin. MID has actively constructed recharge projects and successfully encouraged its landowners to use surface water, which has resulted in MID being at or near balance. The Madera County GSA, in contrast, does not typically import surface water or recharge; rather, its growers are dependent primarily on wells. Thus, the lands within the Madera County GSA are contributing to the ongoing existence of overdraft conditions. It makes little sense for the Madera County GSA to view “Transitional Water” as an “asset” that it can monetize, when “Transitional Water” merely reflects the existing overdraft conditions caused in large part by landowners within the Madera County GSA. In other words, under the Madera

WANGER JONES HELSLEY PC

Madera County Board of Supervisors
Stephanie Anagnoson, County of Madera
Jay Varney
July 2, 2021
Page 4

County GSA's line of thinking, the more significant a GSA's overdraft problem is, the more "Transitional Water" that GSA has to "sell." This would conversely mean that a GSA such as MID, that has little to no overdraft and is actively investing in and implementing several recharge projects, would have no Transitional Water to monetize. This outcome is arbitrary and capricious, irrational, and incentivizes the wrong outcomes.

MID also has concerns about the fee the Madera County GSA will seek to charge for the use of transitional water. There is nothing in the resolution or elsewhere mandating that those fees be used by the County to take aggressive action to bring the Madera Subbasin into sustainability. In addition, because any further overdraft by landowners within the Madera County GSA reduces the amount of groundwater available to the other GSAs and continues to cause impacts to landowners in these GSAs such as well failures, diminished water quality, subsidence, and other impacts, the fees collected by the Madera County GSAs should be spread equitably amongst the GSAs within the Madera Subbasin.

C. The County's Sustainable Yield Calculation for the Madera Subbasin

I understand that one component of Madera County's reasoning for the adoption of "Option C" is that the certain lands within the Madera County GSA should not be entitled to their Sustainable Yield because physically there is no groundwater (the lands overlay bedrock or other natural materials that inhibit the extraction of groundwater). If this is in fact the case, and substantial evidence supports this determination, then the calculations for Sustainable Yield for the Madera Subbasin, as a whole, need to be recalculated.

If certain lands are not physically part of the Madera Subbasin, as the County has now stated and relied on for its decision making, they must be removed from the calculation that determined the average Sustainable Yield for the *entire* Madera Subbasin, not just the Madera County GSA. In other words, the total Sustainable Yield needs to either be redistributed over the acres of the Madera Subbasin less those that Madera County GSA has determined should not be within the subbasin or left out of Madera County GSA's Sustainable Yield calculation as a whole. Madera County GSA cannot simply take this self-described, non-existent yield and add it to other acreage within their GSA, as it either exists as a yield for the entire Madera Subbasin or doesn't exist at all. If the yield does exist, MID GSA expects to receive its additional share of the Sustainable Yield calculation and thus have a Sustainable Yield greater than the 0.5 AF per acre previously used. MID requests that Madera County GSA provide all Madera Subbasin GSAs this information immediately so all GSAs can plan accordingly with this redistribution of Sustainable

WANGER JONES HELSLEY PC

Madera County Board of Supervisors
Stephanie Anagnoson, County of Madera
Jay Varney
July 2, 2021
Page 5

Yield or, conversely, Madera County GSA needs to remove this area and associated Sustainable Yield from the Madera County GSA.¹

D. The Program is not Exempt from CEQA

MID also notes that the Madera County GSA is purporting to rely upon Class 7 and Class 8 exemptions from CEQA. (CEQA Guidelines, §§ 15307, 15308.) Neither is applicable. The Class 7 and Class 8 exemptions apply only where the objective of the action is to maintain, restore, or enhance “natural resources” and/or the environment. These exemptions are inapplicable because they seek to increase the amount of Transitional Water (*i.e.*, overdraft); in other words, the objective and design of the Program is to continue and exacerbate overdraft conditions.

And even if the Madera County GSA could assert the approvals had some environmental benefit, the Class 7 and Class 8 exemptions are inapplicable where a regulation designed to reduce one environmental effect has the capability of causing other adverse environmental effect. (See, e.g., *Calif. Unions for Reliable Energy v. Mojave Desert Air Quality Mgmt. Dist.* (2009) 178 Cal.App.4th 1225, 1246-47 [use of Class 8 exemption for regulation requiring roadway paving to offset air quality emissions was inapplicable because there was no evidence supporting the agency’s claim that no significant adverse impacts associated with road paving would occur].)

And even if the exemptions were applicable, unusual circumstances exist—*i.e.*, the fact that the action promotes and monetizes overdraft—that have a “reasonable possibility” of having a significant effect on the environment. (See CEQA Guidelines, § 15300.2.) Because the Program seeks to increase and monetize overdraft compared to the baselines established in the GSP, a fair argument plainly exists that the Program would have a significant environmental effect. (See, e.g., *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1115.)

Categorical exemptions also do not apply “when the cumulative impact of successive projects of the same type in the same place, over time is significant.” (CEQA Guidelines, § 15300.2(b).) As explained above, the Regulations will have cumulatively considerable impacts as a result of the promotion and monetization of overdraft conditions in the Madera Subbasin, which includes not only the Madera County GSA, but all other GSAs within the subbasin. The County cannot rely upon the Class 7 or Class 8 categorical exemptions.

Finally, because there is at the very least a “possibility” the action will result in negative environmental consequences—*i.e.*, worsened groundwater conditions—the common-sense exemption is simply inapplicable. (CEQA Guidelines, § 15061(b)(3).)

¹ As Madera County staff is aware, the Madera Subbasin boundaries can be modified and adjusted through a process with DWR.

WANGER JONES HELSLEY PC

Madera County Board of Supervisors
Stephanie Anagnoson, County of Madera
Jay Varney
July 2, 2021
Page 6

E. Conclusion

MID urges the Madera County GSA to reconsider its adoption of the Program, and its selection of "Option C." In the event the Madera County GSA elects to proceed with the Program, it cannot do so at this time, as it has failed to perform any environmental review, and the exemptions relied upon are plainly inapplicable.

Thank you for your consideration of these important comments.

Respectfully submitted,



John P. Kinsey