



Salinas Basin Water Alliance

"Preserve and Protect Salinas Valley Water"

June 9, 2022

VIA ELECTRONIC MAIL — BOARD@SVBGSA.ORG

Salinas Valley Basin Groundwater Sustainability Agency
Board of Directors
c/o Clerk of the Board
P.O. Box 1350
Carmel Valley, CA 93924

RE: June 9, 2022 Board of Directors Meeting — Second Comment Letter — Agenda Item No. 7.d; Consider Adopting a Resolution in Response to Governor's Order N-7-22 Regarding Continuing Drought Conditions and Establishing a Well Permitting Response to a Well Permitting Agency

Dear Chair Pereira and Honorable Directors:

The Salinas Basin Water Alliance ("Alliance") is a California nonprofit mutual benefit corporation formed to preserve the viability of agriculture and the agricultural community in the greater Salinas Valley. The Alliance submits this second comment letter in opposition to the draft Resolution for Implementing the Governor's Executive Order N-7-22 Regarding Continuing Drought Conditions ("Resolution") and associated draft Verification in Compliance with Executive Order N-7-22 ("Verification") to be considered by the Salinas Valley Basin Groundwater Sustainability Agency ("SVBGSA"). For the reasons discussed below, the Alliance respectfully requests the SVBGSA deny the Resolution and Verification and direct staff to formulate an alternative path to comply with the EO.

The Alliance understands the SVBGSA's obligation to comply with Executive Order N-7-22 ("EO"). As applied to all groundwater sustainability agencies ("GSA") across the State, the EO provides:

- Members
- Bengard Ranch
- Boutonnet Farms
- Louie Calcagno
- Christensen & Giannini
- Costa Farms
- Cooper Land Corp.
- D'Arrigo Bros.
- Dole Fresh Vegetables
- Fontes Farms
- General Farm Investment
- Higashi Farms
- Huntington Farms
- Lanini Family
- Merrill Farms
- Norcal Harvesting
- Nunes Vegetables
- Ocean Mist Farms
- Panziera Ranches
- Pedrazzi Farms
- Queen Victoria Farms
- R.C. Farms
- Secondo Farms
- Scattini Family LP
- Springfield Farms
- Sunberry Growers
- Sunset Farms
- Tanimura & Antle
- Taylor Farms
- The Tottino Group

To protect health, safety, and the environment during this drought emergency, a county, city, or other public agency shall not: a. Approve a permit for a new groundwater well or for alteration of an existing well in a basin subject to the Sustainable Groundwater Management Act and classified as medium- or high-priority without first obtaining written verification from a Groundwater Sustainability Agency managing the basin or area of the basin where the well is proposed to be located that groundwater extraction by the proposed well would not be inconsistent with any sustainable groundwater management program established in any applicable Groundwater Sustainability Plan adopted by that Groundwater Sustainability Agency and would not decrease the likelihood of achieving a sustainability goal for the basin covered such a plan.

(EO, § 9.a. [emphasis added].) The Resolution and the Verification, however, go well beyond the provisions of the EO. Instead, the Resolution and Verification insert the SVBGSA into the well permitting process without authority and include other unnecessary and illegal terms.

Generally, the Board should prevent the GSA from unnecessarily inserting itself into Monterey County's ("County") well permitting process by refusing to adopt the Resolution and the Verification. Presently, the County retains well permitting authority in the Salinas Valley Basin, reviewing, analyzing, and acting on well drilling applications. While the County receives advice on well permitting from other agencies at times, the County remains the agency charged with determining the terms and conditions within each well permit and issuing the permit to the applicant. The Resolution alters this regime by requiring a well permit applicant to execute the Verification in order for the SVBGSA to comply with the EO. In other words, the Resolution develops a new permitting relationship between the well permit applicant and the SVBGSA. That is not what is called for in the EO. The EO only requires the GSA to issue a "written verification" to the County that groundwater extraction from the well would not be inconsistent with any sustainable Groundwater Sustainability Plan ("GSP") or decrease the likelihood of achieving a sustainability goal for the basin covered by the GSP; the EO requires nothing of the applicant.

Specifically, the Resolution and the Verification have the following infirmities:

1. **Term of Resolution:** The EO will terminate when the State of Emergency—i.e., drought—ends. However, as currently drafted, the Resolution does not include a termination or expiration date. When the EO sunsets, the SVBGSA will have no legal obligation or authority to conduct the tasks assigned in the EO. Accordingly, the Resolution and the Verification should include a termination date that coincides with the expiration of the EO.
2. **Resolution, § 2 & Verification, Eighth Checkbox:** The Resolution states that the SVBGSA is authorized to provide the "appropriate response" to a well permitting agency for a well that is subject to the EO, "including providing an opinion as to whether a well is 'not likely to cause subsidence that would adversely impact or damage nearby infrastructure' as required by paragraph 9 (b) of the Executive Order." Similarly, the Verification requires an acknowledgment from the applicant that any well would not run afoul of Section 9(b) of the EO. The Resolution and Verification again overstate the obligations imposed on the SVBGSA by the EO. Section 9(b) of the EO requires the well permitting

agency, not the GSA, to consider whether “extraction of groundwater from the proposed well (1) is not likely to interfere with the production and functioning of existing nearby wells, and (2) not likely to cause subsidence that would adversely impact or damage nearby infrastructure.” Section 9(b) makes no mention of GSAs; only Section 9(a) refers to GSAs. As such, the Resolution and the Verification should be tailored to only require the SVBGSA to address the directives in Section 9(a) of the EO.

3. **Resolution, § 3 & Verification, Second Checkbox:** The Resolution and the Verification require well permit applicants to “acknowledge” the SVBGSA’s authority under the Sustainable Groundwater Management Act “to limit extractions” or impose “pumping restrictions or other forms of demand management” included in the GSPs. This acknowledgment exceeds the requirements of the EO and is entirely unnecessary. Water Code section 10726.4(a)(2) already grants GSAs the authority to “control groundwater extractions,” stating:

To control groundwater extractions by regulating, limiting, or suspending extractions from individual groundwater wells or extractions from groundwater wells in the aggregate, construction of new groundwater wells, enlargement of existing groundwater wells, or reactivation of abandoned groundwater wells, or otherwise establishing groundwater extraction allocations. Those actions shall be consistent with the applicable elements of the city or county general plan, unless there is insufficient sustainable yield in the basin to serve a land use designated in the city or county general plan. A limitation on extractions by a groundwater sustainability agency shall not be construed to be a final determination of rights to extract groundwater from the basin or any portion of the basin.

There is no need to reiterate this authority in the Resolution, much less to require a well permit applicant to “acknowledge” the authority in the Verification. If the SVBGSA believes it requires a legal citation for the verification that it is required to provide to the County, it should cite to the EO.

4. **Resolution, § 4 & Verification, Preamble:** The Resolution and the Verification define “replacement well” as a well that “a) is designed and constructed to not exceed the capacity (gallons per minute) of the well to be replaced, b) extracts groundwater from the same aquifer as the well to be replaced, and c) the well to be replaced ceases to be operated upon construction of the new well and is destroyed within ___ days thereafter.” There are several issues with this definition. First, the definition of “replacement well” should grant staff discretion to consider as a replacement well consolidation of multiple small wells into a single well with the same capacity as the cumulative total of the small wells. Production would not increase and there would be fewer wells for which to consider impacts to other existing wells. Second, there is no requirement in the EO that “replacement wells” be limited to those wells that extract groundwater from the “same aquifer” as the well to be replaced. Third, the County, the well permitting authority in the Salinas Valley, has never adopted an ordinance limiting “replacement wells” to produce water from the “same aquifer” as the well to be replaced. In fact, Ordinance 5302, adopted by the County in 2018 and which has since expired, defined “replacement well” as a well-constructed “to provide water for the same purpose as the existing water well, and if the purpose is for irrigation, it must deliver water to the same amount of irrigated acreage (or less acreage) as served by the existing water well.” (Ordinance 5302, § 3.1.) The Resolution and the Verification should maintain consistency with the County’s

definition of “replacement well,” as the County is the well permitting authority in the Salinas Valley Basin.

5. **Verification, Fourth Checkbox:** The Verification requires an applicant to “agree that [their] groundwater use will comply with [sustainable management] criteria.” The Verification misunderstands sustainable management criteria (“SMC”). The SMC were set in the GSPs to manage the entirety of each subbasin’s GSP. This means the SMCs were developed at a subbasin-level, not a property specific-level. Individual landowners and individual wells cannot “comply” with the SMC as there are no property- or well-specific requirements. Accordingly, the required verification is entirely infeasible. Further, even if minimum thresholds or measurable objectives were considered property- or well-specific, individual landowners and individual wells cannot guarantee any particular groundwater level in a specific area; groundwater levels are determined by numerous factors outside the control of any individual landowner, including the collective production from and management of the Salinas Valley Basin as a whole.

6. **Verification, Seventh Check Box:** The Verification would insert the SVBGSA into the well permitting process and then requires an applicant to indemnify the GSA for any “liability stemming from or related to Monterey County issuing a well permit” in response to the well permit application. As discussed above, this requirement attempts to create a new permitting relationship between the GSA and the well permit applicant that the EO does not require. Since the County retains sole well permitting authority in the Salinas Valley Basin, there is no basis for indemnification of the SVBGSA. The County, the well permitting authority, already requires well permit applicants to indemnify the County. Additionally, the indemnity language included in the Verification is overbroad—it fails to provide the applicant notice of what liability it could potentially be responsible for in the event the indemnification provision is triggered.

For each of the reasons discussed above, the Alliance respectfully requests the GSA reject the Resolution and the Verification and reformulate its approach in complying with the EO.

Respectfully submitted,



George Fontes

President, Salinas Basin Water Alliance