MASTER RESPONSES TO COMMENTS RECIVED BY PIXLEY IRRIGATION DISTRICT GSA (PIXIDGSA)

The following Master Responses have been prepared by staff for consideration by the Governing Board of the PIXIDGSA. The numbered responses correspond to the topics identified on the attached Table of Comments Received:

1. **SUBSIDENCE/INFRASTRUCTURE IMPACTS**
   a. **COMMENTORS:**
      Friant Water Authority, Arvin-Edison Water Storage District, Shafter-Wasco Irrigation District, United States Department of the Interior – Bureau of Reclamation, Lindsay-Strathmore Irrigation District.
   b. **COMMENT SUMMARY:**
      A number of comments were received on the topic of land subsidence and related impacts to infrastructure including the Friant Kern Canal (FKC), expressing concern that continued FKC subsidence will negatively impact other FKC users and was not adequately described in the GSP, and suggesting that the minimum thresholds for land subsidence established in the GSP should be set lower.
   c. **MASTER RESPONSE:**
      The undesirable results associated with subsidence that impacts major infrastructure such as the FKC is described in detail in the GSP itself, as well as in the Coordination Agreement between the GSAs in the Tule Subbasin, and in supporting technical reports. As has been shown in numerous studies, land subsidence is a gradual process that takes time to develop and time to halt. Subsidence impacts from groundwater pumping that have already occurred may continue for years. The minimum thresholds identified in the GSP, which were adopted in consultation with the other GSAs subject to the Tule Subbasin Coordination Agreement, must take into consideration future subsidence caused by groundwater pumping that has already occurred, along with proposed future actions. Based on existing information available to the GSA and information provided in the comment letters , the pumping by irrigators within the GSA has not been identified as the primary cause of the FKC subsidence, and much of the subsidence has occurred due to groundwater pumping outside the GSA boundaries. The GSP includes a number of actions to reduce undesirable results within the GSA's boundaries, but cannot control actions that occur outside GSA boundaries or reverse groundwater pumping that has already occurred. By reference to the Coordination Agreement and the technical data related to that Agreement, the GSA believes that there has been adequate description of the subsidence issues related to critical infrastructure, including specifically the FKC.

Regarding the monitoring sites (RMS) and measureable objectives and minimum threshholds selected for the Subsidence Indicator, the GSA notes that subsidence impacts to critical infrastructure, including the FKC, are still in the process of being understood and quantified. At the same time the GSA acknowledges that site-specific monitoring locations as well as higher sensitivity minimum threshholds may be warranted in specific areas, which may in the future warrant consideration of establishment of management areas for these regions. The GSA governing board may consider additional language to address this concern be added to the GSP (See staff recommendations below.)

Regarding specific mitigation measures or payments for FKC repairs, the GSP identified, in general, that transitional pumping fees and penalties for excessive water usage would be used to mitigate impacts caused by groundwater pumping above the sustainable yield of the Tule Subbasin. As identified in the GSP, these fees will be adopted during the planning period. The GSA may consider adding additional provisions of the GSP to specify that it is likely that at least a portion of those fees will be used for mitigating impacts to critical infrastructure, and that the FKC is a likely focus of any contribution of fees for mitigation purposes (See staff recommendations below).

Several comments were received noting that the GSP's description of a transitional pumping plan to reduce groundwater pumping over time could potentially allow for pumping levels above current levels if each acre within the GSA utilized the full amount of transitional pumping. The GSP is identifying, in general terms, the transitional pumping plan that will be applied between 2020-2040, and the general description of the plan includes accounting for the pumping levels throughout the GSA and calling for a general reduction in use. Specific rules for the transitional pumping will be adopted under the GSP and these rules will be drafted to ensure that that overall pumping levels will not increase under transitional pumping. Transitional pumping is intended to allow for the reduction of groundwater pumping gradually; it is not intended to allow an increase in groundwater pumping.

d. STAFF RECOMMENDATIONS

Staff recommends that additional language could be added to the following sections of the GSP:

Recommendation 1.a. End of Section 3.5.1.4.2 (Measureable Objectives and Interim Milestones/Land Subsidence/Process for Determining Measurable Obectives and Interim Milestones):

"In response to concern about subsidence-related damage specifically to the Friant-Kern Canal ("FKC"), it has been suggested that monitoring sites and higher sensitivity Minimum Thresholds should be established for areas in close proximity to the FKC. In concept, the development of a defined FKC subsidence management area within the Tule Subbasin, with specific minimum thresholds and management actions for that management area, may be appropriate for some portions of the GSA. However, this is an action that the GSA Board, as well as the governing boards of other GSAs within the Tule Subbasin, will consider in the future as regionalized subsidence impacts are better understood through future monitoring and analysis."

Recommendation 1.b. End of Section 5.2.1. (Management Actions/Agency Groundwater Accounting Action):

"*The GSA recognizes that the Friant Kern Canal ("FKC") is among the most important critical infrastructure features that has been and will continue to be affected by subsidence. Along with the other GSA's in the Tule Subbasin, the PIXIDGSA has been part of the discussions on finding solutions to mitigate for future FKC subsidence. The relationship between groundwater use specifically within the GSA's planning area and subsidence of the FKC is still being studied and developed at the Subbasin level. As the FKC subsidence mitigation issues, and the relative impact of groundwater use as amongst the various regions of the Subbasin, become better defined, the GSA may consider adopting a specific policy that calls for the use of a reasonable portion of the transitional pumping fees, or other GSA related fees, for mitigation of future FKC subsidence. At this time, however, any mitigation program is too speculative to be defined specifically in the GSP. In concept, the development of a defined FKC subsidence management area within the Tule Subbasin, with specific minimum thresholds and management actions for that management area, is an action for future consideration by the GSA Board and by the governing boards of other GSAs within the Tule Subbasin."*

2. ENVIRONMENTAL/GROUNDWATER DEPENDENT ECOSYSTEMS

a. COMMENTORS:

Audubon California / Community Water Center / The Nature Conservancy (joint letter); California Department of Fish and Wildlife; The Nature Conservancy (individual letter)

b. SUMMARY OF COMMENTS:

Several commenters suggested that the GSP did not utilize statewide data sources for identifying Groundwater Dependent Ecosystems (GDEs), and requested the GSP provide additional information concerning GDEs.

c. MASTER RESPONSE:

The term Groundwater Dependent Ecosystems has been specifically defined at 23 CCR § 351(m) to mean "ecological communities or species that depend on groundwater emerging from aquifers or on groundwater occurring near the ground surface." The report prepared by the Tule Subbasin GSAs, the Tule Subbasin Settings referenced in section 2.3.6 of the GSP and attached to and incorporated into the GSP, found no interconnected surface water systems in the Tule Subbasin. Based on the data collected as part of the Tule Subbasin Setting no areas of surface water were found that meet the above definition.

Section 2.3.7 of the GSP, again referencing the *Tule Subbasin Settings*, found no GDEs based on a review of the the CDWR Groundwater Dependent Ecosystems database and the applicable depth to groundwater maps, although noting that such systems may be found in upstream areas of surface water streams. There may be areas where GDEs could exist due to seasonal variations, water year types, or areas where the type of soil allows slow percolation of surface waters or a perched level of groundwater, but such areas have not yet been identified from available data sources. Based on existing studies, and the nature of the groundwater basin as being clearly detached from any surface water ecological assets, it is not likely that any GDEs meeting the statutory definition exist (as noted in section 1.4.8.1 of the GSP).

The GSA will continue to address any emerging data. As the planned monitoring network is implemented and additional monitoring stations are installed and additional data is collected, particularly in areas near surface water, this analysis will be updated as data is collected. The potential for short term connectivity due to variations in water year types during different seasons of the year or due to types of soil will be studied. If interconnected surface waters or GDEs are identified, then the GSP will be updated to reflect how the identified sustainable management criteria will impact these areas.

Until there has been any new information that establishes the likelihood of the existence of any GDEs within the GSA planning area, additional information concerning the identification of conservation areas and public trust lands, as suggested by the comments received, is not warranted. If the GSA learns of the existence of areas that meet the regulatory definition of GDEs, then it will

consider the list of freshwater species provided by The Nature Conservancy, and determine the appropriate measurable objectives and minimum thresholds

Commenters on this topic noted the Pixley National Wildlife Refuge (PNWR) and planning actions in the GSP. The GSA notes that areas considered GDEs as defined in regulation (for which consideration must be made in a GSP) are distinguishable from ecological management areas that utilize pumped groundwater but do not have a naturally occurring surface-water-to groundwater connection as required to meet the regulatory definition. For example, PNWR is wholly located within the Pixley ID GSA planning area, utilizes groundwater pumped from deep-aquifer wells, but does not otherwise have a connection to groundwater and accordingly does not meet the regulatory definition and is not included on statewide databases identifying GDEs. Instead of being considered a GDE, this land use is considered any overlying groundwater user, and therefore will be required to adhere to the same accounting action items that other groundwater pumpers will be required to adhere to (as described in Section 5.2 of the GSP).

The GSA further notes that PNWR will have an obligation to more fully utlize its available surface water than it has in the past in order to adhere to the groundwater accounting requirements as described in Chapter 5.2 of the GSP. The Central Valley Project Improvement Act (1992, the "CVPIA") provided 1,280 a/f Level 2 supply for the PNWR which could be accessed by delivery from Millerton. CVPIA also provided for 4,720 a/f Level 4 for the PNWR. That supply could be delivered to the refuge through purchases and banking programs managed by FWS. There is no basis for allocating groundwater to PNWR in lieu of or as an element of his Level 2 or Level 4 supply, as one commenter suggested.

The Conveyance Refuge Water Supply EA/IS & ROD identified an alternative that would involve an in-lieu groundwater exchange between PID and the Pixley NWR. Under the exchange proposal, the Pixley GSA would decrease their annual pumping by 6,000 ac-ft and receive an equivalent amount of surface water from the Friant-Kern Canal through existing district facilities. This 6,000 ac-ft of surface water would be the water used to supply the refuge with CVPIA Level 2 and Level 4. Six new deep aquifer groundwater wells have been installed on the refuge and could be used to provide the full Level 2 & 4 demand of 6,000 ac-ft. The net change in annual withdrawals from the deep aquifer would be zero if the FWS provided the Level 2 and Level 4 water to the Pixley GSA. This program would be a benefit to the environmental use of water in the Pixley GSA.

d. **STAFF RECOMMENDATIONS**

Recommendation 2.a. Staff recommends that the GSA governing board consider adding all or a portion of the above response as additional text in the GSP at the end of Section 1.4.8.1 (GSA Plan Area/Communities Dependent on Groundwater/Potentially Groundwater Dependent Ecosystems).

3. **BENEFICIAL USER IDENTIFICATION - PUBLIC WATER SYSTEMS/DOMESTIC WELLS**

a. **COMMENTORS:**

AC-CWC-TNC, CWC, TC, WPUD

b. **SUMMARY OF COMMENTS:**

Commenters assert that the GSP does not adequately describe public drinking water systems or Disadvantaged Communties, does not identify domestic water users or domestic well identification and quality tracking data, and does not identify how an adequate groundwater supply will be ensured for public water systems and domestic water users or future growth of those systems.

c. **MASTER RESPONSE:**

Regarding the assertion that public drinking water systems have not been adequately identified or included in the planning process, these comments ignore the fact that the PixIDGSA formed under cooperative agreements with the only public water systems and Disadvantaged Communtities that exist within the GSA's planning area. Accordingly, the public water systems and DACs have been specifically identified from the outset of the planning process, and the DAC representatives have participated in every aspect of the GSP review process from the outset of GSP development. These representatives have had the opportunity to suggest specific monitoring steps, measurable objective criteria and management actions, but did not in fact offer any.

As described in the GSP (in particular Section 1.4.3.2), the agreements with the PUD/CSDs within the GSA boundaries (copies of signed agreements attached to the draft GSP as Appendix 1-B provide extensive detail on how the GSA has engaged, and will continue to engage, with the PUD/CSDs under SGMA. Some of the specific provisions of these agreements include:

- PUD/CSDs agreed not to form a GSA over its jurisdictional boundaries of the GSA and agreed to be included within the boundaries of the GSA
- Sections 5-7 of the MOUs between the Special Districts and the GSA provide for various terms related to accounting for PUD/CSD water use, and potential treatment of the PUD/CSD as a separate management area.
- Sections 9-10 of the MOUs provide the PUD/CSDs with various means for participation in the preparation of the GSP, which is intended to ensure

that water supply planning for their areas is adequately provided for in the GSP.

- Section 11 of the MOUs provide the PUD/CSDs with the ability to withdraw from the Agreements and constitute their own GSAs, either individually or in combination with other agencies, a provision that is intended to protect the ability of the PUD/CSDs to manage its own groundwater supply planning in the event that any of them are not satisfied with the protections provided in the GSP prepared by the Irrigation District GSA.

These provisions will be implemented through the Groundwater Accounting system described in Section 5.2.1 of the GSP. Draft policies implementing this provision of the GSP have been drafted with input from the PUD/CSDs, and will be adopted following final adoption of the GSP. These policies essentially provide that the PUD/CSDs are able to operate according to historic averages without incurring any additional fees or costs, while providing a mechanism to allow for growth through the payment of fees for exceedance of historic pumping amounts. No additional or clarifying text to the GSP will is being recommended.

Regarding individual domestic connections, the GSA acknowledges that domestic well data represents a data gap that will be addressed moving forward, and is recommending additional GSP text to address this.

d. STAFF RECOMMENDATIONS

Recommendation 3.a. Staff recommends that the GSA governing board consider adding the following text to end of Section 3.5.1.3.1 (Measureable Objectives and Interim Milestones/Groundwater Quality/Process for Determining Measurable Obectives and Interim Milestones).

The GSA acknowledges a gap in data related to individual domestic well water locations, elevations and water quality. The GSA will address this gap in coordination with Tulare County, to the extent it is not addressed by other water quality monitoring programs that are being coordinated with this GSP. Although the GSA cannot assume responsibility for failure of individual wells, the GSA may consider additional management actions beyond those identified in Section 5 of this GSP if specific data is developed that identifies domestic wells that go dry due to the lowering of groundwater levels during plan implementation. Any such action should be in coordination with Tulare County, including the potential for the continuation by the County of existing programs for drought mitigation assistance implemented during the last major drought.

4. **WATER QUALITY - DISADVANTAGED COMMUNITIES (DACS)**

   a. **COMMENTORS:**
   Community Water Center

   b. SUMMARY OF COMMENTS:
   One commenter asserts that the GSP does not provide sufficient monitoring for water quality purposes, and does not establish sufficient measurable objectives and minimum thresholds related to groundwater quality that are specifically applicable to public drinking water systems and domestic water users. The commenter also asserted that the GSP does not provide sufficient protections against water quality problems that may be identified through existing or additional monitoring.

   c. MASTER RESPONSE:
   As a general proposition, the GSP recognizes the importance of protecting drinking water quality but also recognizes that water quality is already currently being addressed through a variety of programs and by numerous agencies with the authority and responsibility to specifically manage water quality. The GSA desires to coordinate with these agencies that have existing water quality regulations to avoid duplication of efforts and to utilize limited resources. To the extent the commenters suggest that greater water quality monitoring and protective actions should be provided for in the GSP, the GSA responds that such monitoring and protections, outside the context of existing water quality regulations and monitoring efforts, would be duplicative and outside the requirements that SGMA establishes for GSPs.

   Consistent with our agreements with existing identified DACs, the GSA has established broad water quality minimum thresholds and measurable objectives, utilizing existing water quality monitoring programs. As noted in the prior master comment response, the PUD/CSDs that are cooperating with the GSA in the development of this GSP had the opportunity to propose their own management area, with distinct minimum thresholds and measurable objectives, as the commenters have suggested. Specifically as noted in Section 1.4.3.2 of the GSP, the agreements with PUD/CSDs feature the following provisions:

   - PUD/CSDs have the opportunity to request a separate management area, with distinct minimum thresholds and measurable objectives to meet the sustainable management requirements. If they so elect, the PUD/CSDs will define the minimum thresholds and measurable objections that will apply within the PUD jurisdictional boundaries, in conformance with state law.

- The PUD/CSDs agreed that if they do not elect to become a separate management area or if the proposed thresholds and objectives do not meet state legal requirements, then the GSA will prepare thresholds and measurable objectives needed to comply with state law and the PUD/CSDs will agree to implement them as necessary to meet the sustainable groundwater management requirements or until the PUD as a separate management area proposes thresholds and objectives that meet state requirements

None of the PUD/CSDs elected to propose a management area, nor have they proposed minimum thresholds or measurable objetives to be applied in their areas that are different or distinct from the remainder of the GSA planning area. The GSA will revisit this issue if and when the PUD/CSD representatives identify a need or desire for a separate management area, under the terms of the cooperative agreements. Staff will be recommending that these provisions be highlighted in the text of the GSP as a response to the comments received.

Regarding the comments suggesting that the GSA should be collecting data from the public water systems and individual domestic water users, the GSA has in fact been planning on collecting such data, and staff will recommend that additional text be added to the GSP to recognize this.

d. STAFF RECOMMENDATIONS

Recommendation 4.a. Staff recommends that the GSA governing board consider adding the following text to end of Section 3.5.1.3.1 (Measureable Objectives and Interim Milestones/Groundwater Quality/Process for Determining Measurable Obectives and Interim Milestones).

Under the terms of the cooperative agreements with the PUD/CSDs, those agencies have an ongoing opportunity propose minimum thresholds for additional constituents and determine whether additional changes to the monitoring network should be made to address water quality issues. The GSA will consider such proposals when made.

In addition, the GSA will seek to collect data from the public water systems as part of monitoring efforts. The collected data will reflect what these public water systems report to existing regulatory agencies to determine if existing regulatory requirements are being met and to determine if specific management actions would be warranted by the GSA under its authority to manage groundwater. The GSA will be monitoring and coordinating these items to determine if groundwater

pumping activities are contributing to undesirable effects related to degraded water quality.

5. **PUBLIC PARTICIPATION**
   a. **COMMENTORS:**
      Audubon California / Community Water Center / The Nature Conservancy (joint letter), Community Water Center (individual letter), Woodville Public Utility District
   b. **SUMMARY OF COMMENTS:**
      Commenters asserted that public comment was not sufficiently invited or that public noticing requirements were not met.
   c. **MASTER RESPONSE:**
      The GSA complied with all applicable statutory notice requirements in releasing the GSP. In addition, the GSA formed a Groundwater Planning Commission specifically for the purpose of expanding public participation. This step is not required by SGMA, and provides a higher degree of public participation than that provided by the majority of other GSAs.

      In addition, the GSP includes a detailed description of public meetings that were held in the planning process for the basin wide coordination agreement, which included all CSDs and PUDs in the current GSA service boundaries. As part of GSA formation, the irrigation district reached agreements with the CSD and PUD within its proposed boundaries to discuss rights and duties. The MOUs specified that the CSD and PUD could select their own representative to the Groundwater Planning Commission, the advisory board for the GSA. Notice of the Groundwater Planning Commission meetings and Irrigation District Board of Director meetings were sent to the CSDs and PUDs for distribution to their customers.

      All of the multitude meetings held over the past two years have been open to the public and conducted in a manner than encouraged public participation. Although many meetings may not have had a segmented portion of the meeting devoted to public comment, where no such segmented portion was provided, public comment was instead invited and encouraged throughout the entire meeting, and members of the public were never discouraged from offering comments. In fact, one of the commenters on this topic was a frequent public commenter during these unsegmented comment opportunities.

      Staff will not be recommending any additional GSP text in response to these comments.

d. **STAFF RECOMMENDATIONS**
NA

6. **LAND USE (FUTURE GROWTH) – TULARE COUNTY/DACS**
   a. **COMMENTORS:**
   County of Tulare
   b. **SUMMARY OF COMMENTS:**
   The County of Tulare requested various clarifications regarding County and LAFCO authority over land use and growth issues related to or impacted by groundwater use and groundwater planning.
   c. **MASTER RESPONSE:**
   The comments received from the County of Tulare on the topic of land use and growth are clarifying in nature. Section 1.4.12.1 of the GSP adequately describes all of the updated plans. As land use in the identified communities is governed by Tulare County and is not directly addressed through the GSP, inclusion of a copy of these plans in the GSP is not necessary. Staff recommends clarifying language regarding individual domestic wells, consistent with changes recommended in response to other comments.

   In addition, the GSA notes that the substantive land use and growth related issues involving public water systems and individual domestic water users will be addressed within the Groundwater Accounting System described in Section 5.2.1 of the GSP, and in the policies to be adopted in furtherance of that section, particularly policies related to accounting for municipal water agencies groundwater use and planning. See Master Responses 3 and 4 above.
   d. **STAFF RECOMMENDATIONS**
   Staff recommends adding the following text to the following GSP sections:

   Recommendation 6.a. End of section 1.4.8.2 (GSA Plan Area/Communities Dependent Upon Groundwater/Groundwater Dependent Communities)

   Groundwater dependent communities may also encompass individual domestic wells. Identification and monitoring of existing domestic water wells is difficult due to the lack of existing permitting and tracking information, and will be an item of future data development as part of GSP implementation.

7. **WATER BUDGETS/TECHNICAL ISSUES**
   a. **COMMENTORS:**
   Arvin-Edison Water Storage District/Shafter-Wasco Irrigation District (joint letter) Community Water Center (individual letter), County of Tulare, Hancock Farmland Services, Westchester Group Invesetment Management,

b. **SUMMARY OF COMMENTS:**
Commenters suggested or requested clarification and higher degree of specificity within the GSP regarding water budget conclusions, including sustainable yield determinations and landowner specific allocation methodologies.

c. **MASTER RESPONSE:**
Many of the details requested in these comments are provided in various analyses included in appendices, in particular the Tule Subbasin Coordination Agreement and the studies attached to that Agreement. Given the complexity of those attachments, the GSP itself was drafted in a manner to provide sufficient specificity while leaving the finer details to the appendices. Given that the information sought by the commenters can be found in the appendices, no changes to the GSP are recommended in response to these comments.

To the extent the comments suggested that landowner-level allocation details be provided in the GSP, the GSA notes that these details are more appropriately determined in the specific policies to be adopted to implement the Groundwater Accounting System action item described in Section 5.2.1 of the GSP. These policies are presently in draft form, and are publicly available for review in advance of anticipated approval after January 2020. This action is sufficiently described in the GSP and no additional language is recommended by staff to address these comments.

d. **STAFF RECOMMENDATIONS:**
NA.

8. **GENERALIZED COMMENTS**

a. **COMMENTORS:**
Multiple

b. **SUMMARY OF COMMENTS:**
See attached Matrix

c. **MASTER RESPONSE:**
These comments are general in nature and as such are not susceptible to specific responses. These comments are noted in the attached matrix for informational purposes.

d. **STAFF RECOMMENDATIONS:**
NA.

9. **STAFF ADDITIONS/MODIFICATIONS**

9.1 - Clerical/Administrative/Non susbstantive

a. **Summary**

Various formatting, numbering, spelling, grammatical, organizational and other administrative corrections.

b. Staff Recommendations

Recommendation 9.a. 4 Creeks to provide

9.2 – No Authority or Intention to Affect Water Rights – Non-Waiver – Non-Admission

a. Summary

During development of the Coordination Agreeent, the collective GSAs within the Subbasin agreed to language for the Coordination Agreement to clarify that nothing in the water budgets, or the decisions as to how to calculate and divide the available Subbasin Sustainable Yield, should be construed as affecting any water rights of any landowner or any agency or entity that represents landowners (referred to in the Water Code, section 19, as a "Person"). Staff notes that this same intent should apply to the GSP, and to all conclusions and management actions called for under the GSP, and recommends that language similar to that included in the Coordination Agreement be added to the GSP.

b. Staff Recommendations

Recommendation 9.b. Add the following text to the end of section 1.3.3 (Introduction to GSP/Agency Information/Legal Authority):

It is noted that, consistent with § 10720.5(b) of SGMA, which provides that nothing in SGMA or in a plan adopted under SGMA determines or alters surface or groundwater rights under common law or any provision of law that determines or grants surface water rights, nothing in this Coordination Agreement is intended to modify the water rights of any Person (as that term is defined under Section 19 of the Water Code) . The GSA notes that it does not have the authority to modify any water rights through adoption of this GSP, nor does it intend that any in this GSP be construed as an admission by any Person (including without limitation the GSA, the Irrigation District or by any landowner or user of groundwater) regarding any subject matter of this GSP, including without limitation any water right or priority of any water right that is claimed by any Person. Nor shall this GSP in any way be construed to represent an admission by a Person with respect to the subject or sufficiency of another Person's claim to any water or water right or priority or defenses thereto, or to establish a standard for the purposes of the determining the respective liability of any Person, except to the extent otherwise specified by law. Nothing in this GSP shall be construed as a waiver by any Person of its election to at any time assert a legal claim or argument as to water, water right or any subject matter of this GSP or defenses thereto. The division of Sustainable Yield among the GSA landowners under any Management Action adopted by this GSP does not constitute any

determination that groundwater extractions by a landowner in excess of a budgeted amount would necessarily cause an undesirable result or that extractions less than a budgeted amount would necessarily not cause an undesirable result.

The GSA intends, to the fullest extent permitted by law, to preserve the water rights of all Persons affected by this GSP as they may exist as of the adoption date of the GSP or at any time thereafter. The GSA further intends that any dispute or claim arising out of or in any way related to a water right alleged by a Person shall be separately resolved before an appropriate judicial, administrative or enforcement body with proper jurisdiction.

9.3 – Clarification of Per Acre Division of GSA Sustainable Yield

a. Summary

The GSP is based on the assumption that the Subbasin Sustainable Yield will be divided at both the Subbasin level (as amongst the GSAs) and the GSA level (as amongst landowners) on a per-acre basis. Though comments were received during the public review period on this top, through the public outreach process, it has been asserted that a more detailed and landowner-specific process, which includes assessment of individualized historic use data, needs to be completed in order to allocate available Sustainable Yield in a manner that is consistent with groundwater rights. The GSP does not make a determination of the validity of these assertions. Instead, the calculation of Sustainable Yield for the GSA's portion of the Tule Subbasin under this GSP has been developed with the understanding that the determinations being made are for purposes of meeting SGMA requirements, and expressly not for the purpose of determining relative groundwater rights of landowners. In particular, the Groundwater Accounting System, as described in section 5.2.1, is not intended to constitute a determination of water rights. This understanding is consistent with § 10720.5(b) of SGMA, which provides that nothing in SGMA or in a plan adopted under SGMA determines or alters surface or groundwater rights under common law. Any determination to divide the Sustainable Yield in any particular manner should not be deemed to conclusively determine the water rights of landowners.

Moreover, the GSA, like the other GSAs within the Tule Subbasin, consider that the per acrea basis of dividing GSA specific Sustainable Yield quantities represents the most readily-available and implementable manner of honoring correlative groundwater rights, because it is based on the well-documented conclusion that beneficial uses of the lands of the Tule Subbasin are, for the most part, uniformly agricultural in nature, and uniform in intensity of

agricultural use. Furthermore, any individualized assessment that is based on historic use, even if it would be legally desirable or required in a legal process such as an adjudication, is not capable of being used due to the current state of data keeping for the thousands of individual landowners that exist within the entire Tule Subbasin. A decision to use historic use as at least one factor, therefore, would delay indefinitely the adoption any meaningful management plan under SGMA.

For these reasons, the per-acre division has been used for the purpose of the Groundwater Accounting System management action. At the same time, with the collection of additional data, refinements to the allocation or division methodologies will be considered in potential future updates, to and including the potential use of historic pumping data if such data is both available and is agreed to be used as the basis for any further refinement of allocation methodologies.

In order to clarify this issue and to acknowledge the potential future availability of alternative allocation or division methods, staff recommends adding language to the general description section for Management Action 5.2.1 (Agency Groundwater Accounting Action).

b. Staff Recommendations

Recommendation 9.c. Add the following to the end of Section 5.2.1 (Management Actions/Agency Groundwater Accounting Action/General Description):

As noted above, for purposes of creating a water budget pursuant to 23 Cal. Code Regs. §354.18, the GSAs in the Tule Subbasin have agreed that, for water budget accounting purposes, the Sustainable Yield for the Subbasin shall be divided amongst the GSAs for purposes of development of their GSPs as described in the attached water budget. The basin-wide portion of the Sustainable Yield identified in the water budget was divided amongst each GSA by multiplying that GSA's proportionate areal coverage of the Tule Subbasin times the total Subbasin Sustainable Yield.

In a similar manner, this Management Action (the creation of a Groundwater Accounting System) is intended to implement a division of the sustainable yield amongst affected landowners on the basis of a landowner's proportionate areal coverage of the GSA area times that portion of the Subbasin Sustainable Yield assigned to the GSA under the Coordination Agreement. This method of division

of the GSA's portion of Subbasin Sustainable yield is consistent with Irrigation District law related to District water supplies in general.

The water budget to be divided amongst the GSA landowners under this Management Action is not an allocation or final determination of any water rights (including claimed appropriative or prescriptive rights). This understanding is consistent with § 10720.5(b) of SGMA, which provides that nothing in SGMA or in a plan adopted under SGMA determines or alters surface or groundwater rights under common law or any provision of law that determines or grants surface water rights. Rather, the use of the proportional acreage basis for dividing up the water budget for accounting purposes, will be used because it represents the most readily-available and implementable manner of accounting for the water budget for GSP purposes at this time, without the need for determining specific water rights, which would be controversial and time consuming and could not be completed in the time frames applicable to GSP development.

Similar to the Subbasin, the GSA will be collecting additional data and will consider refining or changing the method of dividing Sustainable Yield for internal GSA water budget purposes in future updates, including the potential use of historic pumping data if such data is both available and is agreed to be used as the basis for division.

9.4 – Clarification of Treatment of Imported Recharged Water

a. Summary

In informal discussions amongst GSAs in the Subbasin, some parties suggested that the GSPs should uniformly specify that any imported water that is used in groundwater recharge or banking projects, or for direct groundwater replenishment, should maintain its status as imported water, and therefore fully accounted for as an asset of the importing entity. The GSA agrees with this concept, and staff suggests wording be added to the GSP to clarify this.

b. Staff Recommendation

Recommendation 9.d. Add the following text to the end of Section 2.4.2.6 (Tule Basin Setting/Water Budget/Groundwater Budget/Sustainable Yield):

It should be noted that the GSAs have agreed, and this GSP assumes, that the exclusion of water imported by an entity from the calculation of Sustainable Yield of the Subbasin applies to imported water that is used for groundwater recharge or water banking purposes. The recharged or banked imported water retains its characterization as imported water even after it is used for recharge or banking

purposes, and therefore is accounted for as being for the benefit of the importing entity, and not an addition to Sustainable Yield.