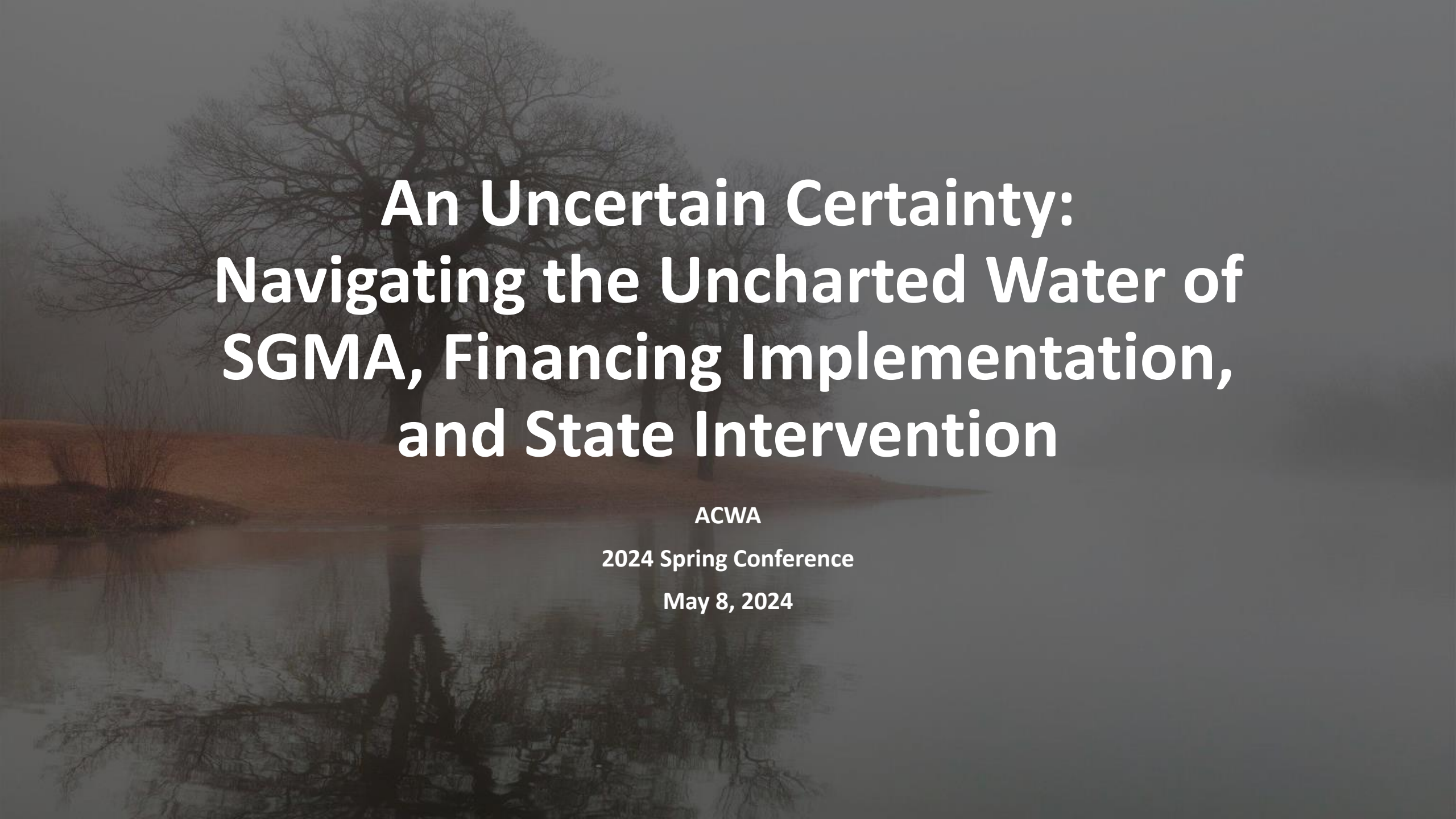




An Uncertain Certainty: Navigating the Uncharted Water of SGMA, Financing Implementation, and State Intervention

ACWA

2024 Spring Conference

May 8, 2024

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A photograph of a rusty metal pipe discharging a stream of water into a grassy field. The pipe is on the left, and the water flows towards the right, creating a small splash. The background is a vast, green field under a clear sky.

Topics

- ☐ Sustainable Groundwater Management Act (“SGMA”) Overview
- ☐ Litigation Update
- ☐ Update on inadequate GSPs
- ☐ GSA Funding Options
- ☐ Common Issues Facing GSAs
- ☐ Legislation

SGMA Overview

- **SGMA** passed in 2014 – became effective January 1, 2015 - Water Code §§ 10720, *et seq.*
 - **Purpose:** “To manage groundwater basins through the actions of local governmental agencies to the greatest extent feasible, while minimizing state intervention to only when necessary to ensure that local agencies manage groundwater in a sustainable manner.” - Wat. Code § 10720.1(h).
 - **Undesirable Results** means one or more of the following effects caused by groundwater conditions occurring throughout the basin:
 - (1) ***Chronic lowering of groundwater levels*** indicating a significant and unreasonable depletion of supply if continued over the planning and implementation horizon.
 - (2) Significant and unreasonable ***reduction of groundwater storage***.
 - (3) Significant and unreasonable ***seawater intrusion***.
 - (4) Significant and unreasonable ***degraded water quality***.
 - (5) Significant and unreasonable ***land subsidence*** that substantially interferes with surface land uses.
 - (6) ***Depletions of interconnected surface water*** that have significant and unreasonable adverse impacts on beneficial uses of the surface water. – Wat. Code §10721(x)(1)-(6)
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Christopher Guillen



Brownstein

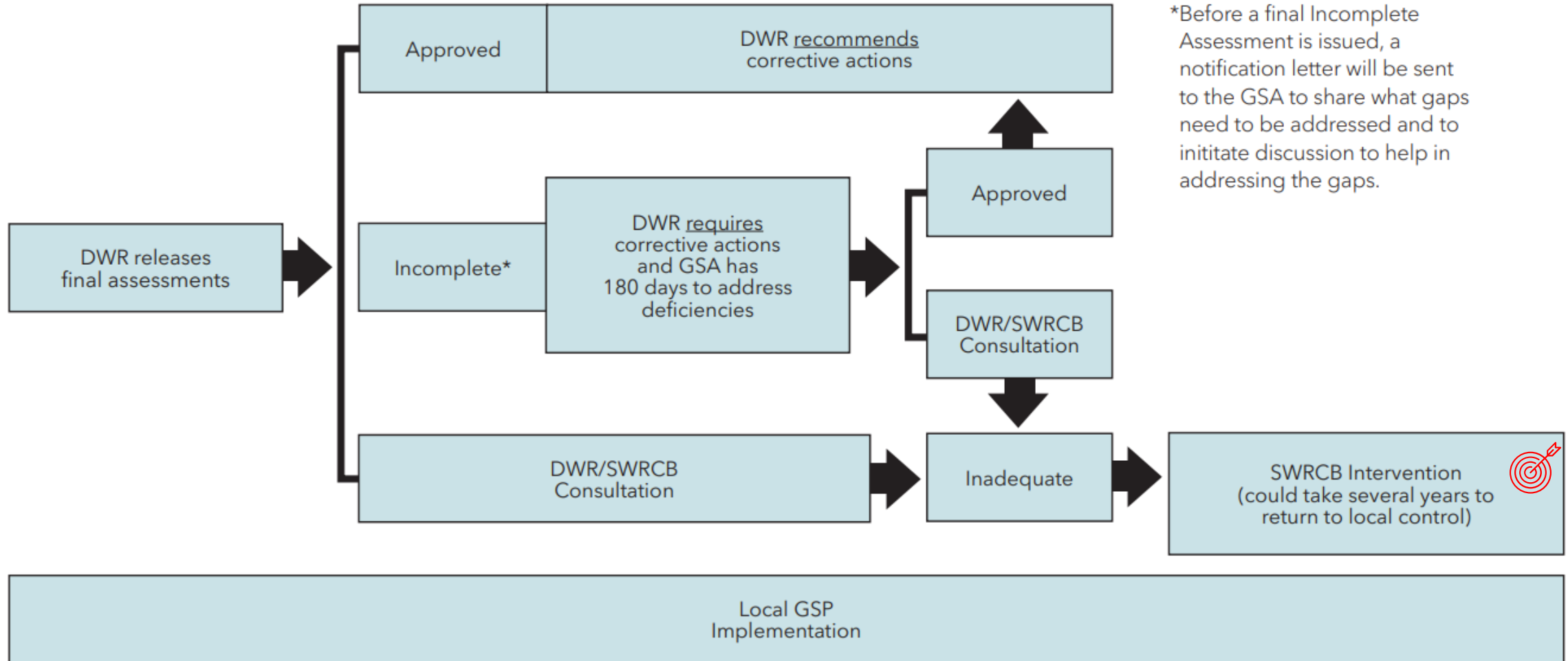
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SGMA GSP Pathways

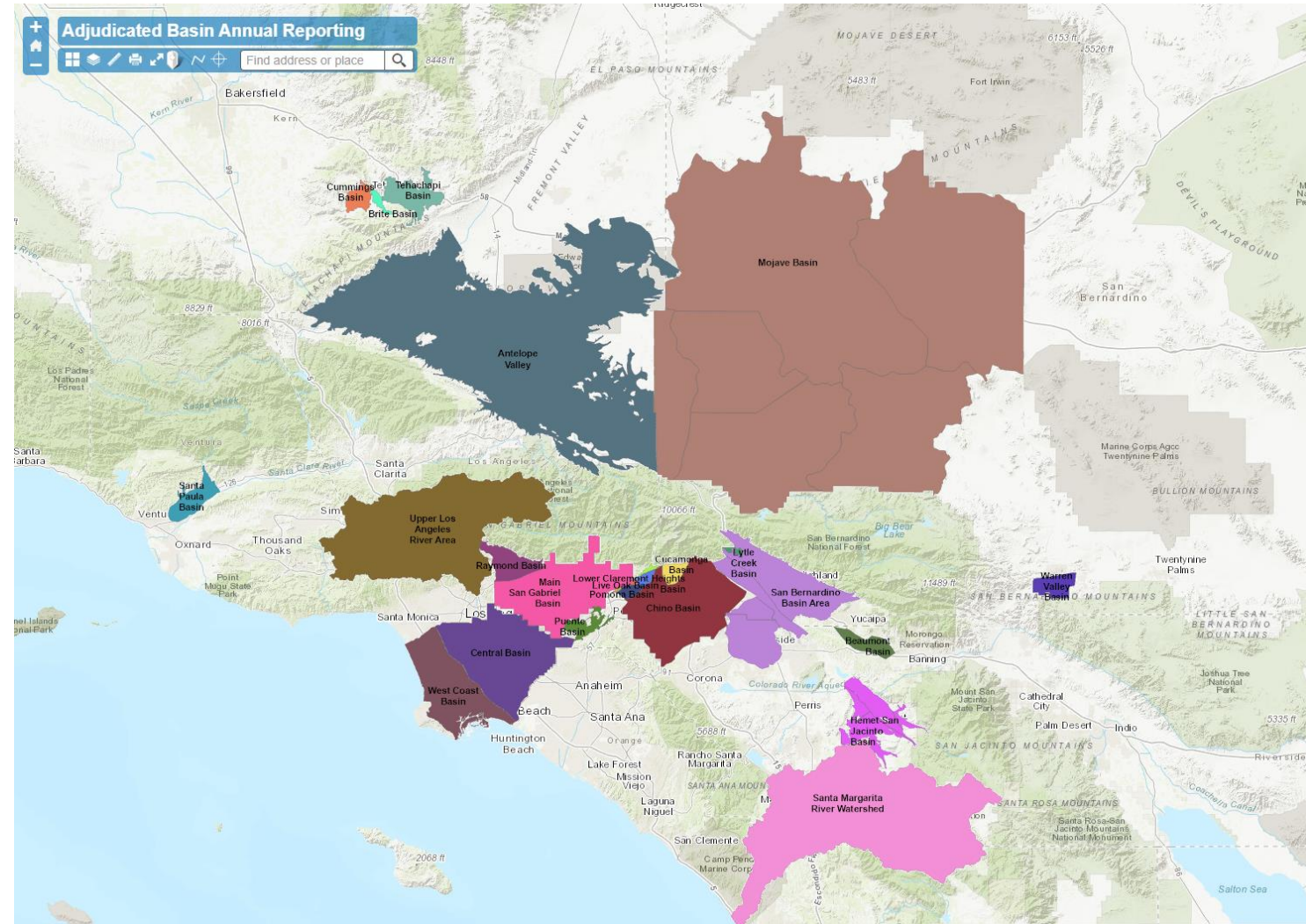
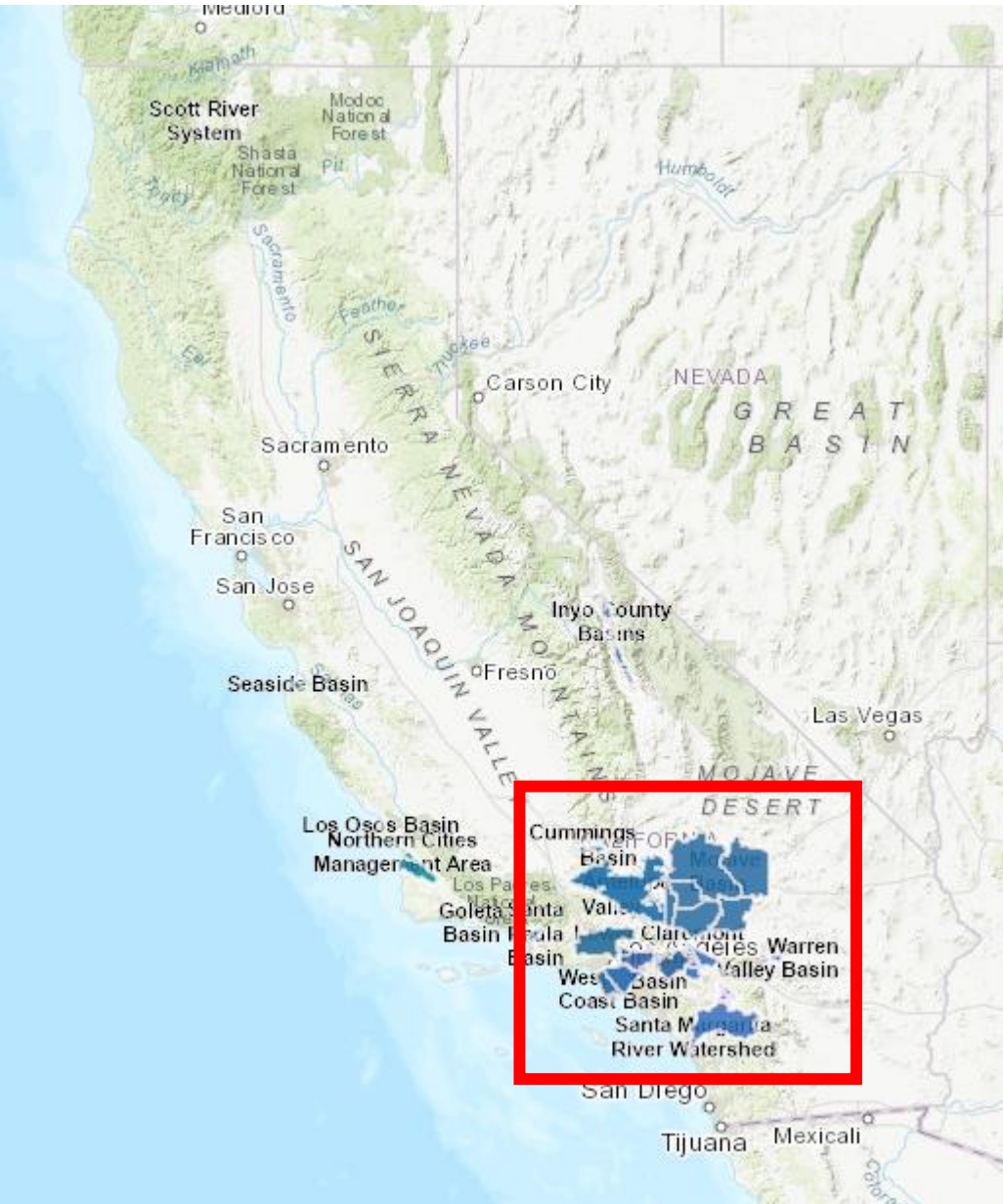
DWR will assess plans no later than the two-year statutory deadline.



Adjudications

Adjudicated Area	Total GW Extraction (AF)	Adjudicated Area	Total GW Extraction (AF)	Adjudicated Area	Total GW Extraction (AF)
San Bernardino Basin Area	233,379	Scott River Stream System	30,000	Warren Valley Basin	2,181
Main San Gabriel Basin	177,746	Santa Margarita River Watershed	29,295	Seaside Basin	2,173
Central Basin	171,296	Beaumont Basin	19,938	Los Osos Basin	2,006
Chino Basin	159,465	Raymond Basin	19,744	Wright Judgement (Goleta)	1,643
Mojave Basin Area	145,786	Cucamonga Basin	13,970	Puente Basin	1,036
Santa Maria Valley Management Area	125,351	Nipomo Mesa Management Area	13,188	Brite Basin	51
Upper Los Angeles River Area	68,653	Six Basins	11,984	Lytle Basin (Absorbed to San Bernardino Basin Area)	
Inyo County Basins	45,788	Tehachapi Basin	4,916	Santa Paula Basin	
Hemet-San Jacinto Basin	39,120	Cummings Basin	3,413	Antelope Valley	
West Coast Basin	35,020	Northern Cities Management Area	2,695	Borrego Springs Subbasin	

Adjudicated Areas



Adjudications Currently in Court

OPV Coalition et al. v. Fox Canyon Groundwater Management Agency et al

❖ Santa Clara Valley – Oxnard (No. 4-001.2) and Pleasant Valley (No. 4-006) groundwater basins, commenced in December 2022.

Bolthouse Land Company, LLC et al. v. All Persons Claiming a Right to Extract or Store Groundwater in the Cuyama Valley Groundwater Basin

❖ Cuyama Valley groundwater basin (No. 3-013), commenced in March 2022.

Indian Wells Valley Water District v All Persons Who Claim a Right to Extract Groundwater in the Indian Wells Valley Groundwater Basin, etc., et al.

❖ Indian Wells groundwater basin (No. 6-054), commenced in November 2021.

Santa Barbara Channelkeeper v. SWRCB, et al.

❖ Upper Ventura River (No. 4-003.01), Ojai Valley (No. 4-002), Lower Ventura River (No. 4-003.02), and Upper Ojai Valley (No. 4-001) groundwater basins, commenced in November 2019.

Los Posas Basin v. Fox Canyon Adjudication

❖ Los Posas Valley groundwater basin (No. 4-008), commenced in November 2018

SGMA-related Litigation

Mojave Pistachios, LLC v. Superior Court of Orange County (2024) 99 Cal.App.5th 605

- ❖ Holding: As a matter of first impression, a person challenging a groundwater fee imposed under SGMA must first pay the fee before bringing an action for a refund.

City of Marina v. County of Monterey (2023) 97 Cal.App.5th 17

- ❖ Holding: Overlap in GSPs caused the CEMEX area to become unmanaged and thereby the County properly entered into a Coordination Agreement of the area with the SVB GSA over the City's objections.

Environmental Law Foundation v. State Water Resources Control Bd. (2018) 26 Cal.App.5th 844

- ❖ Holding: SGMA did not supplant common law or abrogate the state's public trust duty, which applies to groundwater extraction only where such extraction impacts navigable waterways.

City of San Buenaventura v. United Water Conservation Dist. (2017) 3 Cal.5th 1191

- ❖ Holding: A fee is charged for a "property-related service" if it is imposed on a property owner, in their capacity as a property owner, to pay for the costs of providing a service to a parcel of property (GW charge was not a property-related fee); see also *City of San Buenaventura v. United Water Conservation District* (2022) 79 Cal.App.5th 110, review denied (Aug. 10, 2022) (declaring Wat. Code section 75594 unconstitutional).

Pleasant Valley County Water District v. Fox Canyon Groundwater Management Agency (2017) 2017 WL 5589178 (Not Officially published)

- ❖ Holding: Upholding Agency's authority to consider river surface water use in the calculation of a surcharge for excessive groundwater extractions.

SGMA-related Litigation, Cont.

Capistrano Taxpayers Assn., Inc. v. City of San Juan Capistrano (2015) 235 Cal.App.4th 1493

- ❖ Holding: Invalidated tiered water rate as Proposition 218 requires public water agencies to calculate the actual costs of providing water at various levels of usage

Friant Water Authority, et al. v. Eastern Tule GSA (2024) (VCU306343- Tulare County Superior Court)

- ❖ Claim: Breach of settlement agreement and intentional interference re Eastern Tule GSAs cause of subsidence along the Friant Kern Canal, with harm to downstream deliveries

CSPA Groundwater Cases (2022) (22cv-00203- Merced County Superior Court)

- ❖ Claim: Reverse validation action challenging the validity of the coordinated GSPs

Coziahr v. Otay Water District (2021) (37-2015-00400000-CU-MC-CTL- San Diego Superior Court)*

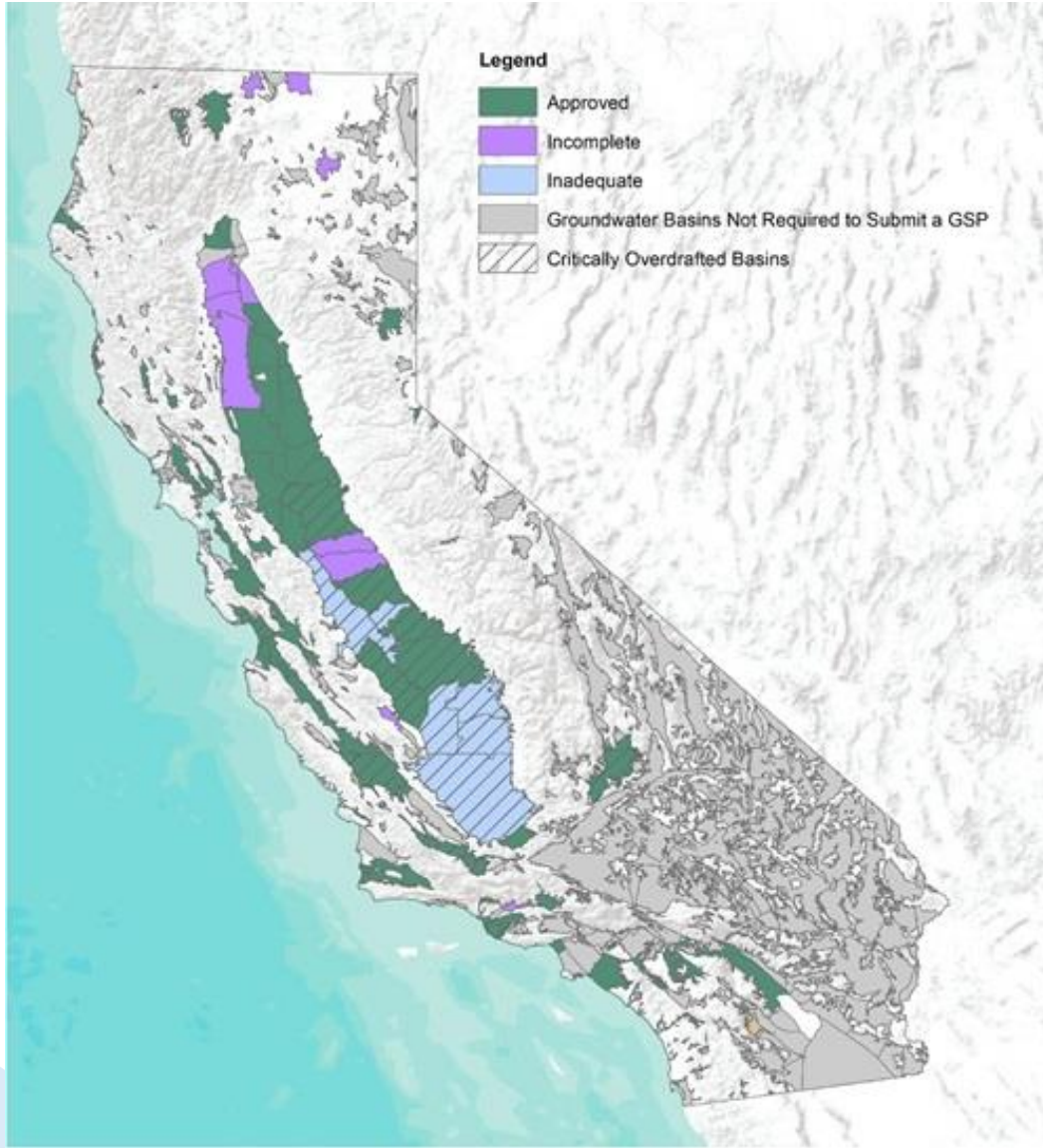
- ❖ Holding: Tiered water rate not proportional to cost of service: \$18M in refund awarded by trial court

Patz v. City of San Diego (2021) (37-2015-23413-CU-MC-CTL- San Diego Superior Court)*

- ❖ Holding: Tiered water rate not proportional to cost of service: \$79M in refund awarded in trial court

*Appeal pending

Current Status of GSPs



- 71 approved basins
- 13 incomplete basins
- 6 inadequate basins
- 10 still being reviewed

Current Status of GSPs, Cont.

Some Approved Basins	Incomplete Basins	Inadequate
Kings	Turlock	Tulare Lake
Westside	Modesto	Tule
Madera	Pleasant Valley	Kern County
Merced	Piru	Delta-Mendota
Santa Cruz	Fillmore	Keweah
Yuba	Tulelake	Chowchilla
Oxnard	Butte Valley	
Eastern San Joaquin	Red Bluff	
Paso Robles	Big Valley	
Cuyama	Los Molinos	
	Colusa	
	Corning	
	Antelope	

Common deficiencies with “Inadequate” GSPs

1. Lack of coordination between GSAs
2. Lack of consideration for protecting domestic wells
3. Insufficient prevention of subsidence
4. Lack of justification for water quality thresholds
5. Lack of monitoring to avoid depletions of interconnected surface waters



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State Intervention

- Inadequate Plan.
- Notice and public hearing.
- State Water Resources Control Board (“SWRCB”) may designate basin as “probationary.”
 - Mandatory fees on water users
 - \$300 per well and \$20 per AF of water extracted (can be amended with emergency regs.)
 - Mandatory groundwater extraction reports
- 1 year for GSAs to remedy deficiencies.
- If fail to remedy, another notice and hearing.
- SWRCB may adopt an interim plan to manage groundwater in the basin.
- GSAs must demonstrate to SWRCB (in consultation w/ DWR) that they can properly address groundwater issues locally to end state intervention.

Update on Inadequate GSPs

Basin	Hearing Date
Tulare Lake Subbasin	April 16, 2024
Tule Subbasin	September 17, 2024
Kaweah Subbasin	Est. November 2024
Kern County Subbasin	Est. January 2025
Delta-Mendota Subbasin	Est. 1 st Quarter 2025
Chowchilla Subbasin	Est. 2 nd Quarter 2025

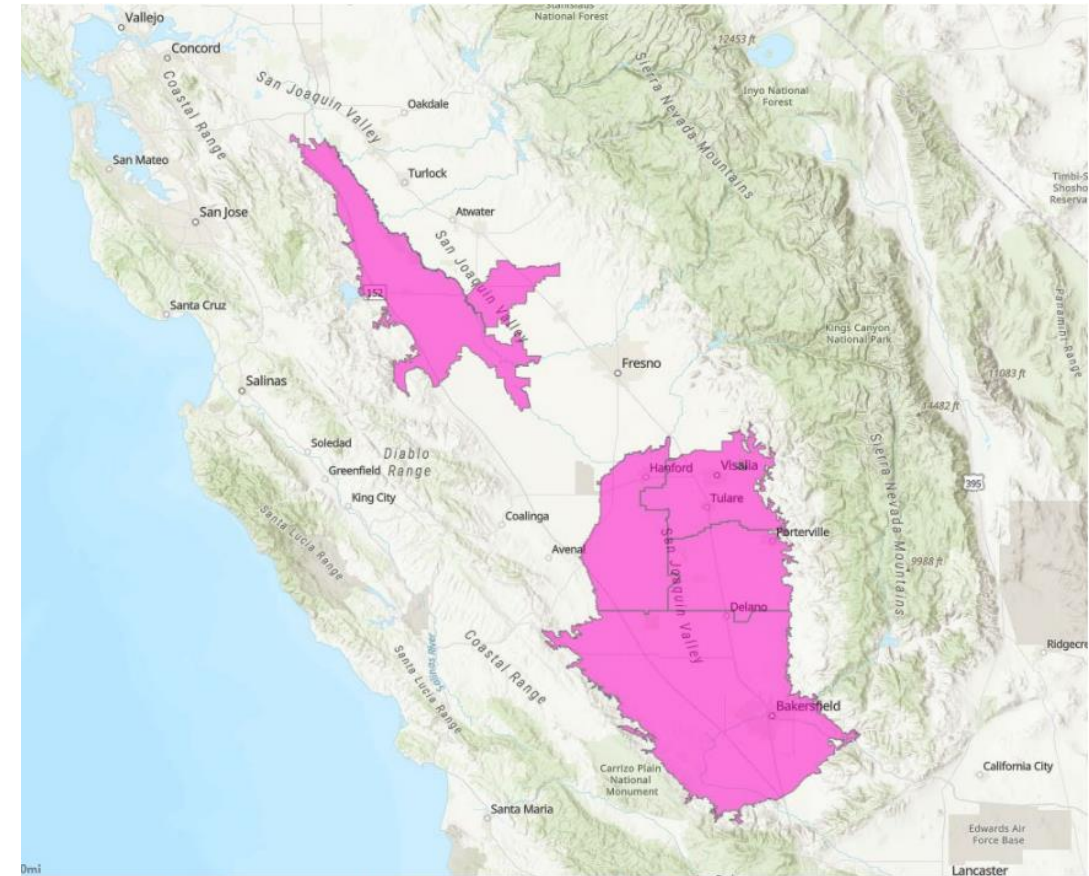


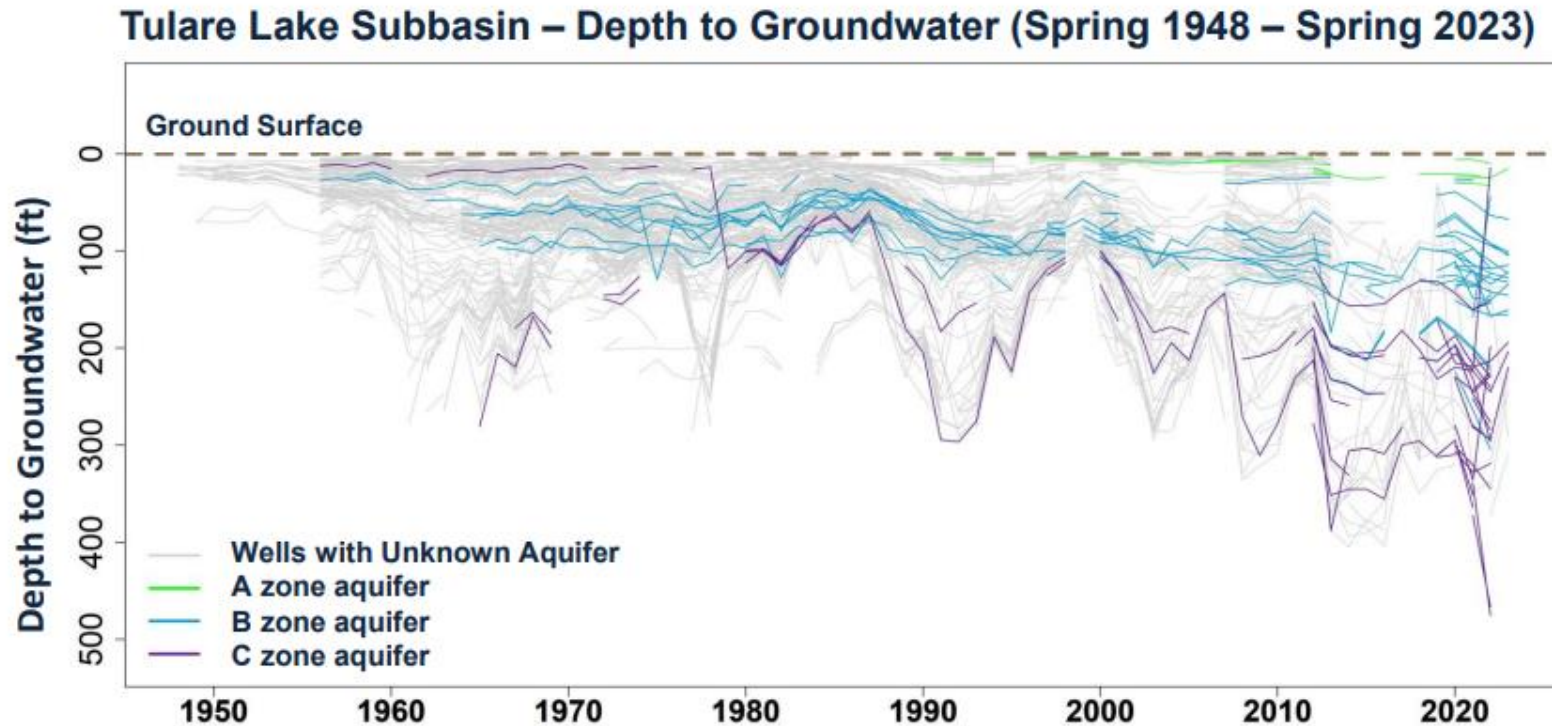
Figure 1: Map of six groundwater basins potentially subject to new state reporting rules

Tulare Lake Subbasin Probationary Hearing

- April 16, 2024 SWRCB Hearing
- Staff review of revised July 2022 GSP
- SWRCB Staff report released March 26, 2024
- Major deficiencies:
 - Groundwater Levels
 - Subsidence
 - Groundwater Quality
- Board **unanimously** voted for probationary status
 - Metering for pumpers over 500 AFY
 - Levy fees: \$20/AF + \$300 annual well registration fee per well



Tulare Lake Subbasin: Groundwater Overdraft



**Longterm subbasin
sustainable yield:
299,220 acre-feet per year***

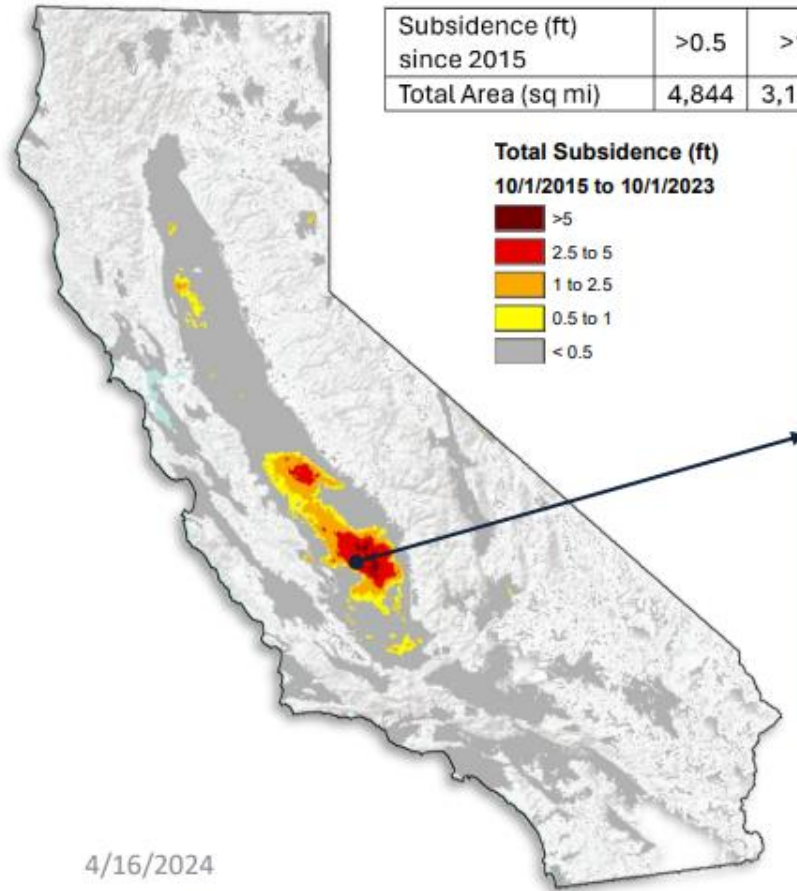
**Total average annual
groundwater extraction,
2019 - 2022:
514,309 acre-feet per year****

**Average subbasin
overdraft, 2019 - 2022:
215,089 acre-feet per year**

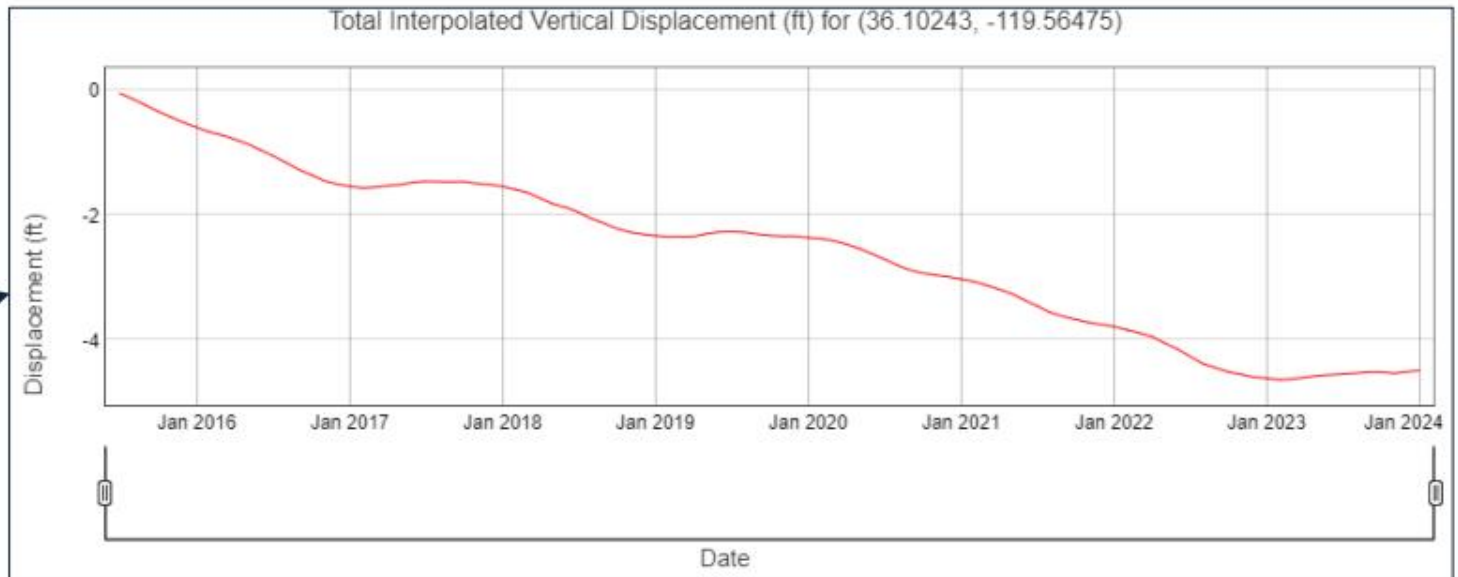
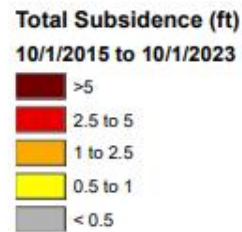
*Data source: 2022 Amended GSP and Addendum

**Data source: basin annual reports

Recent Subsidence Data



Subsidence (ft) since 2015	>0.5	>1	>2.5	>5
Total Area (sq mi)	4,844	3,123	1,293	159



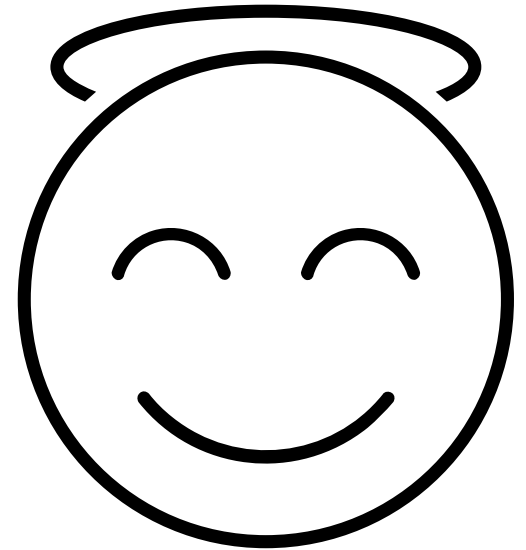
Exiting State Intervention- Inadequate GSP

- GSA(s) must revise GSP(s) to address DWR's identified deficiencies and on track to achieve sustainability goal.
 - Unclear how to deal with SWRCB comments
 - Effective until GSP deficiencies are resolved
- After a revised or new GSP is submitted, Board staff will review.
 - 3 month to review
 - Probationary hearing may proceed if not enough time to review
- Board decides
 - Basin oversight would return to DWR, or
 - Board may develop interim plan



Good Actor Exemption?

- Wat. Code 10735.2(e): The board shall exclude from probationary status any portion of a basin for which a groundwater sustainability agency demonstrates compliance with the sustainability goal.
 - Area is covered by a GSA
 - Area has a GSP that meets the requirements of SGMA
- Southwest Kings GSA and Tri-County Water Authority petition to Board
- Staff recommended no portion of subbasin be excluded from probationary status



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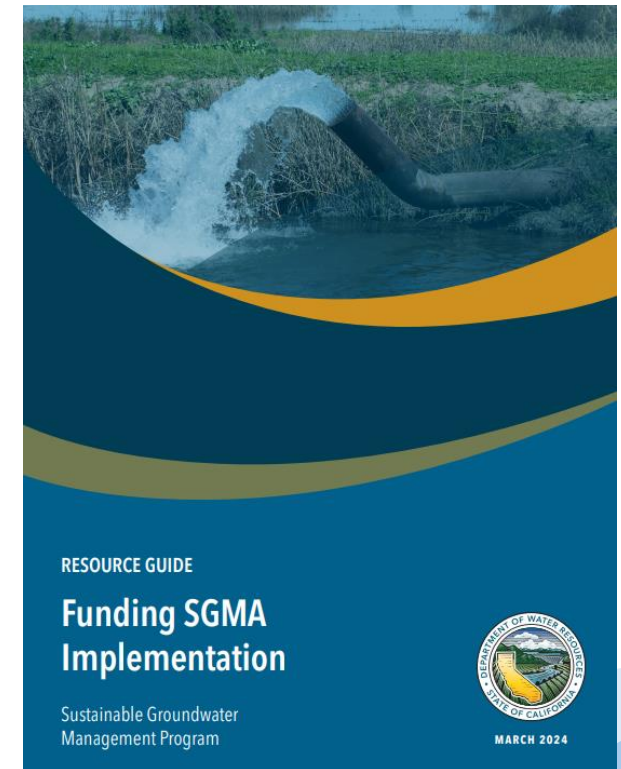
The Unfunded Mandate: Common GSA Challenges

- GSP Updates
- P/MAs
- Data issues
- Accounting programs
- Multi-benefit Land Repurposing Program
- Groundwater Allocations
- Other: Investigations, inspections, compliance assistance, enforcement, program administration, ect.



GSA Funding

- DWR awarded more than \$500 million for the development and implementation of GSPs
- No resources to fund costs of SGMA implementation over the 20-year horizon
- Now, GSAs must self-fund
- See DWR's March 2024 Resource Guide
- DWR is planning to release guidance for interconnected surface water and subsidence
- 2025/2027 5-year updates coming soon
- Possible water bond in the works, but still in very early stages of discussion



SGA Funding Mechanisms – Options

- Property Related Fees (Prop. 218)
- Assessments (Prop. 218)
- Regulatory fees (Prop. 26)
- Special Taxes
- SGMA (Water Code §§ 10730 and 10730.2)
- Grants
- Loans
- Bonds



Funding Mechanism	Regulatory Mechanism	Ballot Required	Approval	Collection	Public Outreach Requirements
Regulatory Fee	Proposition 26	No	Board Approval	Direct or County Tax Roll	Public Meeting Notice
Property Fee	Proposition 218	No	No Majority Protest and Board Approval	Direct or County Tax Roll	Mailed Notice to impacted customers, Public Hearing
Benefit Assessment	Proposition 218	Yes	No Majority Protest and Board Approval	Direct or County Tax Roll	Mailed Notice to impacted customers, Public Hearing
Special Tax	California Government Code	Yes	Two-thirds approval from electorate	County Tax Roll	Mailed Notice to impacted customers, Public Hearing

Reference: DWR's Funding SGMA Implementation Guide, March 2024

What will the Revenue Fund?

- **Administrative Costs**

- “Administrations, operations, and maintenance, including a prudent reserve.” (See Wat. Code § 10730.2(a)(1))

- **Development and Implementation of GSPs**

- “Other activities necessary or convenient to implement the plan.” (See Wat. Code § 10730.2(a)(4))

- **Mitigation**

- “Acquisition of lands or other property, facilities, and services.” (See Wat. Code § 10730.2(a)(2))
 - “Supply, production, treatment, or distribution of water.” (See Wat. Code § 10730.2(a)(3))
- 

Domestic Well Mitigation Fees

- SGMA: Consideration of all beneficial uses and users
 - Municipal entities, small communities, and individual domestic wells
 - Human Right to Water (AB 685)
- DWR March 2023 Guidance on Water Well Impacts

“While SGMA does not require that all impacts to individual drinking water well users be avoided or mitigated, SGMA and other state laws and policies do require deliberate and careful consideration and a well-supported management approach regarding potential impacts to these users.”

- Domestic Well Mitigation Fee Programs
 - No funding provided



Domestic Well Mitigation Fees - Chowchilla GSP

- Chowchilla Water District admin of the program
- No income threshold limit
- Applicant must complete private well education online class
- First come, first serve basis
- Max award of \$30,000
- Award is once per well, recorded in the title
- Funding: With a majority protest, **no fees** in the Chowchilla Subbasin
 - Chowchilla Growers Group collecting voluntary assessments to pay for the program
 - Penalties?



Sample GSA Budgets

- Mid Kings River GSA (~ 93,500 acres)
 - Proposing an operational fee of \$25.00 per acre
 - Proposing a GW extraction fee of up to \$95.00 per acre-foot
 - Proposing an exceedance penalty of up to \$500.00 per acre-foot

Table 2-1. MKRGSA Budget.

Fixed Costs	2024	2025	2026	2027	2028
KCWD/Hanford Payback	\$ 100,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ -
Administration					
Staff	600,000	618,000	637,000	656,000	676,000
Vehicles	100,000	0	106,000	0	112,000
Building Rental	20,000	21,000	22,000	23,000	24,000
Operations					
GSP Revisions	100,000	103,000	106,000	109,000	112,000
Annual Reports	20,000	21,000	22,000	23,000	24,000
Monitoring	150,000	155,000	160,000	165,000	170,000
Well Registration	100,000	0	0	0	0
Fee Structure Services	100,000	0	0	0	0
County Impact Study	50,000	0	0	0	0
New Monitor Wells	300,000	309,000	318,000	328,000	338,000
Reserves	360,000	360,000	360,000	360,000	360,000
Total Fixed Costs	\$ 2,000,000	\$ 1,687,000	\$ 1,831,000	\$ 1,764,000	\$ 1,816,000
Variable Costs	2024	2025	2026	2027	2028
Dry Well Mitigation	\$ 6,000,000	\$ 6,000,000	\$ 6,000,000	\$ 6,000,000	\$ 6,000,000
Recharge Basin Development	2,500,000	2,500,000	2,500,000	2,500,000	2,500,000
Subsidence Mitigation	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
Total Variable Costs	\$ 9,500,000	\$ 9,500,000	\$ 9,500,000	\$ 9,500,000	\$ 9,500,000
Total Costs	\$ 11,500,000	\$ 11,187,000	\$ 11,331,000	\$ 11,264,000	\$ 11,316,000

Table 2-3. Fee Estimate Calculation.

Revenue Source	Fee		Projected Revenue
Fixed Fees	\$ 25.00 /ac	82,797 ac	\$ 2,069,925
Variable Fees	Fee	Initial Pumping Cap	Annual Revenue
A Zone Pumping Fee	\$ 95.00 /AF	3,000 AF	285,000
B Zone Pumping Fee	\$ 95.00 /AF	75,000 AF	7,125,000
C Zone Pumping Fee	\$ 35.00 /AF	60,000 AF	2,100,000
Total Variable Fees			\$ 9,510,000
Total Revenue			\$ 11,579,925

Sample GSA Budgets

- McMullin Area GSA (~ 114,749 assessable acres)
 - Seeking to renew annual assessment of \$19.00 per acre (> 2 acres)

Budget Item	Current	Years 1-5: Proposition 218					5-Year Total
	FY 2022-23	FY 2023-24	FY 2024-25	FY 2025-26	FY 2026-27	FY 2027-28	
GSA Administration							
Agency Management	\$246,050	\$492,000	\$506,400	\$521,300	\$539,200	\$555,000	\$2,613,900
Office Supplies / Postage	2,000	3,000	3,100	3,200	3,300	3,400	16,000
Insurance	1,250	2,000	2,100	2,200	2,300	2,400	11,000
ACWA / GRAC Membership / Misc. Overhead	10,000	15,000	15,500	16,000	16,500	17,000	80,000
<u>Rent, Telephones, Internet</u>	<u>20,000</u>	<u>20,000</u>	<u>20,600</u>	<u>21,200</u>	<u>21,800</u>	<u>22,500</u>	<u>106,100</u>
Subtotal GSA Administration	279,300	532,000	547,700	563,900	583,100	600,300	2,827,000
Professional Services							
Legal	473,450	300,000	305,100	451,200	451,800	452,500	1,960,600
Prop 218 Elections / Funding	48,600	0	0	0	0	48,600	48,600
GSP Compliance Revision	25,000	25,000	0	25,000	0	0	50,000
GSP 2025 Update Preparation	0	200,100	406,800	0	0	0	606,900
Grant Writing	50,000	50,000	51,500	53,000	54,600	56,200	265,300
Project Development	310,100	495,000	250,000	250,000	250,000	250,000	1,495,000
<u>Governmental Relations / Legislative Advocate</u>	<u>49,250</u>	<u>49,300</u>	<u>50,800</u>	<u>52,300</u>	<u>53,900</u>	<u>55,500</u>	<u>261,800</u>
Subtotal Professional Services	956,400	1,119,400	1,064,200	831,500	810,300	862,800	4,688,200
Monitoring & Implementation	607,100	240,000	279,500	353,100	401,900	379,800	1,654,300
Subtotal Budget Items	\$1,842,800	\$1,891,400	\$1,891,400	\$1,748,500	\$1,795,300	\$1,842,900	\$9,169,500
Reserve / Contingency	332,300	283,700	283,700	426,600	379,700	332,300	1,706,000
TOTAL ESTIMATED BUDGET	\$2,175,100	\$2,175,100	\$2,175,100	\$2,175,100	\$2,175,000	\$2,175,200	\$10,875,500

**Table 2: Fee Calculation
McMullin Area Groundwater Sustainability Agency
Fee Study**

Total Estimated Budget	\$2,175,100
Acres	114,475
Fee Calculation (\$/acre)	\$19.00

2023 Legislative Session



- **AB 779 (Wilson)**
 - ❖ Groundwater Adjudications
 - ❖ Signed by the Gov. in October 2023
- **SB 389 (Allen)**
 - ❖ Grants SWRCB authority to investigate Sr. water rights and Pre-1914 claims
 - ❖ Signed by the Gov. in October 2023
- **AB 1337 (Wicks)***
 - ❖ Would have granted the SWRCB with curtailment authority
- **AB 460 (Bauer-Kahan)***
 - ❖ Would have granted the SWRCB with authority to issue an interim relief order to enforce the reasonable use doctrine, the public trust doctrine, water quality objectives, and other provisions of law
- **AB 1205 (Bauer-Kahan)**
 - ❖ Would have declared “the sale, transfer, or lease of water rights from our agricultural lands by investment funds as a wasteful or unreasonable use of water.”
 - ❖ Ordered to inactive file at the request of Senator Hurtado—Principal coauthor.

*Currently “two-year bills”

2024 Proposed Legislation

➤ AB 1827 (Papan)

- ❖ Fees or charges for property-related water service may include the incrementally higher costs of water service due to specified factors.

➤ SB 1072 (Padilla)

- ❖ Requires excess revenue obtained via Prop. 218 to be used only to reduce the subsequently adopted and following property-related fee or charge.

➤ AB 2257 (Wilson)

- ❖ Requires parties opposing Prop. 218 fees/assessments to submit a written objection to the fee/assessment before being able to sue the agency.

➤ AB 2079 (Bennett)

- ❖ Requires a local enforcement agency (“LEA”) to provide notice 30 days before determining whether to approve a permit for a new “large-diameter, high capacity” well, as defined.
- ❖ “Large-diameter, high capacity” means any water well with a diameter of more than eight inches and intended to produce greater than two acre-feet annually.
- ❖ Requires an LEA, before approving any well permit for a large-diameter, high capacity well, to provide certain information to the applicant.
- ❖ Prohibits an LEA from approving a permit for a large-diameter, high capacity well if that well is proposed to be located within one-quarter mile of a well used for supplying domestic water to one or more persons in a community OR within one-quarter mile of an area that has subsided greater than 0.5 feet in total since January 1, 2025, as reported and defined by DWR.
- ❖ Aims to minimize impacts to drinking water wells and subsidence.

Questions?

