

# Windfall Farms

Chair Supervisor Arnold  
County Government Center  
1055 Monterey Street  
San Luis Obispo, CA 93408

**Re: Comments on April 17, 2019 Draft of Chapter 9 of the Paso Robles Basin Groundwater Sustainability Plan**

Chair Supervisor Arnold:

This is Lee Nesbitt, General Manager of Windfall Farms, a landowner overlying the Paso Robles Groundwater Basin. Windfall Farms and its predecessors in interest have relied on the basin since 1983 and before for numerous beneficial uses of the land. I have reviewed the April 17, 2019 Draft of Chapter 9 of the Paso Robles Sub-basin Groundwater Sustainability Plan (“Plan”) and submit these comments on it for the Cooperative Committee’s consideration.

**1. The Plan should be corrected to make clear that any restrictions on pumping will be consistent with common law water rights.** As drafted, Chapter 9 suggests that the burden of pumping restrictions could be geographically discriminatory.<sup>1</sup> This approach is inconsistent with the physically interconnected nature of the basin and with common law water rights.<sup>2</sup> Rather, the Plan should make clear that there will not be disparate treatment of pumpers based on physical location within the basin and that all pumpers on equal legal footing with regard to water rights must bear similar financial responsibility for solving the basin’s challenges. Moreover, even “area-specific” responsive management actions must be specifically associated with avoiding undesirable results identified in the Plan. If pumping by a discrete area or growers must be physically restricted, that burden must be shared basin-wide by implementation of a physical solution that distributes that burden legally and equitably among all pumpers according to their allocations.

**2. New and expanded groundwater production should be prohibited.** Consistent with Water Code § 10720.5, the Plan should provide that no new or expanded production, in excess of

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<sup>1</sup> See Plan, p. 14 (“a pumping reduction of approximately 18% will be needed across the basin to reduce pumping to the sustainable yield. Larger pumping reductions will likely be necessary in specific areas to arrest groundwater level declines.”); p. 15 (“the rate of ramp down would depend on when the program starts and projections of how long lower pumping rates are required in specific areas in order to achieve sustainability by 2040.”); and p. 17 (expanding this concept to differential fees for pumping in “portions of the subbasin with localized groundwater decline.”). (Emphasis added.)

<sup>2</sup> We recognize that actual physical pumping restrictions may be required in particular locations to address acute undesirable results. However, the Plan should expressly distinguish between such physical pumping restrictions and allocation of financial burden for reductions necessary to achieve sustainability. The basin is a hydrologically connected unit; pumping in one location affects others over time. Thus, if groundwater rights are determined, they will be determined on a basin-wide basis. (See Water Code § 10721(b); Civ. Proc. Code § 832 (indicating that a comprehensive groundwater adjudication will be made on a basin-wide basis, with “basin” being the hydrogeologic unit defined by Bulletin 118).)

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historical production, after January 1, 2015 will count toward any groundwater production allocations implemented to advance Level 2 PMAs. This would put all pumpers on notice that if they initiate new or expanded pumping, they do so at their own risk, and may need to acquire pumping allocation from others or pay surcharges to maintain such production.

**3. The Plan should encourage voluntary fallowing/reductions in pumping.** To encourage voluntary fallowing/reductions in pumping without risk of potential loss of water rights, the Plan rightfully provides, but should confirm, that historical pumping need not be maintained or continued to support a water right claim based on historical pumping from the basin.

**4. The Plan should not delay implementation of Level 2 Proposed Management Actions if required.** The Level 1 proposed management actions (“PMAs”) are a valuable first step, may not be sufficient to achieve sustainability. If implementation of Level 2 PMAs are delayed, the impacts on groundwater pumpers may be significantly greater – i.e., more restrictive, more expensive, etc. – than would be the case if the Level 2 PMAs had commenced sooner. The Plan should provide a date (post 2020) for anticipated introduction of Level 2 PMAs **IF** Level 1 PMAs do not achieve sustainability goals.

**5. Implementation of Level 2 PMAs should be based on, and tied to, adaptive management principles based on evolving science.** The Plan should make clear that as the Plan is implemented, our technical understanding of the basin will continue to be evaluated and that target metrics will be refined accordingly.

**6. Level 2 PMAs require allocations and allocations necessarily implicate water rights.** The plan should recognize that implementation of any Level 2 PMAs will necessarily require determinations of pumping allocations across the basin, which necessarily implicates a pumper’s water right claim. The Plan should acknowledge that it cannot determine or alter water rights (Water Code § 10720.5). Further, the Plan should anticipate that upon any determination that Level 2 PMAs are required, such PMAs may not go into effect during the pendency of any litigation.

**7. The Plan should include a process by which allocations necessary for Level 2 PMAs are determined.** In an effort to best anticipate the allocation determination process and streamline it, the Plan could provide that upon a determination that Level 2 PMAs are required, a structured and facilitated process will commence to engage stakeholders and seek a negotiated resolution. Ideally, the Plan would highlight the scope, stages, and timing of such a process, based on input from facilitators with relevant experience. By providing a process by which allocations may be determined, the Plan may ameliorate concerns about the Plan’s impacts on water right.

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We write these comments as part of the community of the Creston/Paso Robles. While this topic can always be a difficult one to discuss, we believe that positive dialogue with solutions based in science and law with a bit of reasonableness thrown in works best for all concerned. I want to thank you for your consideration of these comments. We look forward to continuing to work with you and the Cooperative Committee to develop a GSP that satisfies SGMA's regulatory requirements and benefits the basin as a whole.

Sincerely,

Lee Nesbitt-General Manager  
Windfall Farms