

This complex legal dispute involved two related appellate proceedings concerning the State Water Resources Control Board's (the State Board) designation of the Tulare Lake groundwater subbasin as a "probationary basin" under the Sustainable Groundwater Management Act (the Act).

Appellate Court Decisions Summary

The Fifth Appellate District Court of Appeal issued decisions in both the writ of mandate proceeding (F088909) and the appeal of the preliminary injunction (F088720), primarily siding with the State Board.

1. Writ of Mandate Proceeding (F088909) - Challenging the Demurrer

The appellate court concluded that the trial court erred by overruling the State Board's demurrer on three of the Farm Bureau's causes of action (the sixth, seventh, and ninth).

- **Sixth Cause of Action (Underground Regulations Claim):** The court found that this claim, which alleged violations of the Administrative Procedures Act (APA), was **not viable** because the Act specifically exempts the State Board's proceedings under the relevant sections (§\S 10735.2 and §\S 10735.8) from the APA.
- **Seventh Cause of Action (Fees as Unlawful Tax Claim):** The court concluded that this challenge to the extraction fees as an unlawful tax was **barred by the "pay first" rule** of the California Constitution (§\text{Art. XIII}, § 32), which requires payment of a tax before it can be challenged in court. No exception applied in this instance.
- **Ninth Cause of Action (General Declaratory Relief Claim):** The court found that a general declaratory relief action was **improper** because the Legislature had already provided the exclusive and adequate legal remedy for reviewing the State Board's decisions through a petition for a writ of mandate (§\S 1126).

2. Preliminary Injunction Appeal (F088720) - Challenging the Injunction

The appellate court **reversed** the trial court's order granting the preliminary injunction, concluding the trial court abused its discretion.

- **Likelihood of Success on the Merits:** The appellate court found the trial court had incorrectly assessed the Farm Bureau's likelihood of success on most claims, including the claim regarding the State Board exceeding its authority and the notice claim. The only claim the appellate court found likely to succeed on the merits was the **"Good Actor Exclusion"** claim, finding that the State Board may have erred by failing to consider whether portions of the subbasin should be excluded from the probationary designation if a local agency demonstrates compliance, even if the overall groundwater plan was deemed inadequate.
- **Scope of Relief:** Because the likelihood of success was limited to claims covering only portions of the subbasin, the court ruled that the broad injunction affecting the **entire Tulare subbasin** was not properly **tailored to the harm at issue** and was therefore an abuse of discretion.
- **Undertaking (Bond):** The court rejected the State Board's argument that the nominal \$1 undertaking was improper, finding that the State Board's proposed measure of lost fees was not an accurate reflection of the actual harm caused by the injunction.

Next Steps for the Superior Court

The superior court (trial court) is now directed to take the following actions:

1. **Vacate and Grant Demurrer:** The court must **vacate** its prior order that overruled the State Board's demurrer. It must then enter a **new order granting the demurrer without leave to amend** for the following causes of action:
 - **Sixth Cause of Action** (Underground Regulations).
 - **Seventh Cause of Action** (Unlawful Tax/Fees).
 - **Ninth Cause of Action** (General Declaratory Relief).
2. **Vacate Preliminary Injunction:** The court must **reverse** the order granting the preliminary injunction.
3. **Further Proceedings on Injunction:** The matter is **remanded for further proceedings consistent with the appellate court's opinion** on the preliminary injunction. This means the superior court *may* consider issuing a *narrower* injunction, but only if:
 - The Farm Bureau can demonstrate a likelihood of success on its remaining claims (primarily the "Good Actor Exclusion" claim, which applies only to a portion of the basin).
 - The injunction is properly tailored to address the specific harm and is not overbroad.
 - A new, adequate undertaking (bond) is ordered based on the evidence presented for the narrower injunction.

Would you like to know more about the Sustainable Groundwater Management Act (SGMA)?

The appellate court rulings significantly shift the balance of power back to the State Water Resources Control Board (State Board) in the immediate term and narrow the focus of the remaining litigation.

Here is the likely outcome and direction for the superior court proceedings:

1. Immediate Implementation of State Board Mandates

The most immediate and impactful consequence is the reversal of the preliminary injunction.

- **Sanctions Take Effect:** The State Board will now be able to resume its full intervention activities in the Tulare subbasin. This means:
 - **Fees and Reporting:** Groundwater extractors in the subbasin must likely begin complying with the State Board's monitoring, reporting, and fee requirements, including the \$20 per acre-foot extraction fee.
 - **Metering:** Requirements to install and calibrate water-measuring devices will likely be enforced.
- **Case Simplification:** The superior court must also grant the demurrer on three causes of action (Underground Regulations, Fees as Unlawful Tax, and General Declaratory Relief). This eliminates three major legal theories, ensuring the lawsuit is now focused purely on the remaining writ of mandate claims.

2. Narrowed Focus of Remaining Litigation

The core of the Farm Bureau's remaining case lies in the writ of mandate claims, primarily the following issues:

- **The "Good Actor Exclusion" Claim (Likely to Succeed):** The appellate court provided a significant legal victory to the Farm Bureau by agreeing that the State Board likely misinterpreted the law when it failed to analyze whether certain portions of the subbasin should be excluded from the probationary designation under the "good actor" provision.
 - **Likely Path Forward:** The superior court must continue to hear this claim, which asserts the State Board had a duty to consider the local agencies' proof of compliance with the sustainability goal in their specific areas, even if the overall plan was inadequate. This may result in the ultimate exclusion of certain areas from the probationary designation.

- **The Probationary Designation Claims (Central Legal Challenges):** The Farm Bureau's arguments that the State Board's designation was arbitrary and capricious, or that the Board exceeded its legal authority in other ways, remain active claims that will proceed to trial.

3. Remote Possibility of a Narrower Injunction

While the original injunction was reversed as overbroad, the superior court has the authority on remand to consider issuing a **new, narrower preliminary injunction**.

- This injunction would be highly specific, likely targeting only the local agencies that raised the "good actor" defense and limiting the relief to those portions of the subbasin.
- However, the State Board can argue that since the injunction was found to interfere with its core statutory mandate, injunctive relief is generally inappropriate. Given the elimination of the major claims, a full preliminary injunction is less likely than before.

In short, the State Board is now empowered to move forward with its intervention and fee collection while the superior court's proceedings will focus narrowly on the **procedural legality** of the State Board's probationary designation, particularly regarding whether specific local agencies were improperly denied the chance to be excluded.

The recent appellate court rulings have effectively cleared the path for the State Water Resources Control Board (State Board) to begin enforcement immediately, and yes, the State Board will have the legal authority to charge fees based on extractions retroactive to the date the probationary period officially began.

1. When Meter and Reporting Requirements Begin

The reversal of the preliminary injunction means the legal suspension of the State Board's enforcement actions is now lifted. Enforcement can begin immediately, based on the statutory deadlines triggered by the original probationary designation.

- **Probationary Date:** The Tulare Lake Subbasin was designated as probationary at a public hearing on **April 16, 2024**.
- **Metering and Recording Date:** State law requires groundwater extractors to begin monitoring and recording their monthly extractions **90 days** after the probationary designation.
 - For the Tulare Lake Subbasin, this date was **Monday, July 15, 2024**.
 - The requirement to measure and record extractions began on this date and extends until the State Board determines the local agencies are on track for sustainable management.
- **Reporting Deadline:** The deadline for extractors to report these monthly extraction volumes for the period between July 15, 2024, and September 30, 2024 (the end of the water year), was **December 1, 2024**.

The State Board will likely require immediate compliance with these mandates, which were legally in effect but paused by the original injunction.

2. Authority to Charge Retroactive Fees

Yes, the State Board has the authority to charge fees retroactive to the start of the probationary period.

- **Statutory Trigger:** Under the Water Code, entities that extract groundwater from a probationary basin more than 90 days after the designation are required to submit extraction reports and **pay associated fees**.
- **Fees for the Water Year:** Fees are collected with the annual groundwater extraction report and are required for **any portion of the water year that a basin is in probationary status**.
- **The "Pay First" Rule:** The appellate court's ruling mandates that the challenge to the fees must adhere to the "pay first" rule, meaning extractors must pay the assessed fee and then file for a refund to

maintain a fee challenge. The Farm Bureau's attempt to challenge the fees as an unlawful tax before payment was rejected by the appellate court.

- **Fee Structure:** The fees typically include a base filing fee (e.g., \$300 per well) plus a volumetric charge (e.g., \$20 per acre-foot). The total fee would be assessed on the volume of groundwater extracted during the relevant portion of the preceding water year, dating back to the statutory start of the reporting period (July 15, 2024).

In summary, the immediate legal consequence of the appellate ruling is that the State Board can require that all monitoring data be provided and that all accrued fees be paid, covering extractions that occurred since mid-July 2024.

The immediate lifting of the injunction creates a compliance challenge for landowners who were operating under a legal pause. However, the State Water Resources Control Board (State Board) anticipates this situation and provides alternative methodologies for reporting and assessing fees when meters are absent or have not been consistently monitored.

1. How Landowners Can Report Without Meters

Landowners are required to report **monthly records of groundwater extractions** using a **methodology, water-measuring device, or combination thereof satisfactory to the State Board**.

For wells that were not metered or lacked meter-reading activity during the retroactive period (starting July 15, 2024), the State Board accepts several estimation methods:

- **Run Time Method (for wells without a totalizer):** This involves estimating the extraction volume by calculating the well pump's total operational **Run Time** and multiplying it by the well's **Flow Rate**.
 - **Run Time Measurement:** This can be determined using a pump run time meter (hour meter) or a manual record/log of the date and time the pump was turned on and off.
 - **Flow Rate Determination:** This can be estimated using a pump curve from the manufacturer, a pump efficiency test, or a flowmeter (if available and working).
- **Evapotranspiration (ETa) Estimates:** For agricultural extraction (especially when solely using groundwater), the State Board may evaluate and permit the use of remotely sensed data like Actual Evapotranspiration (ETa) or crop water demand as a proxy to estimate groundwater extraction volumes.
- **Other Acceptable Methods:** Landowners can propose any alternative approach, but it must be approved by the Deputy Director of the Division of Water Rights on a case-by-case basis.

All required information, including well location, capacity, monthly extraction volumes, and the measurement method used, must be submitted through the State Board's online **Groundwater Extraction Annual Reporting System (GEARS)** web portal.

2. Data Used to Base Retroactive Fees

The fees are volumetric, meaning they are based directly on the reported volume of water extracted during the period the basin was probationary.

- **For Wells with Data Collection Activities (Meters):** The State Board will base the retroactive volumetric fees on the monthly extraction volumes recorded by the flow meters, which are considered the most accurate method.
- **For Wells Without Meters or Missing Data:** For wells where a meter was not installed or where data collection was paused due to the injunction, the fees will be calculated based on the **estimated monthly extraction volumes** derived from one of the alternative methodologies deemed satisfactory to the State Board (e.g., Run Time x Flow Rate, or ETa).

The fee structure for the Tulare subbasin currently includes a **\$300 base fee per well** and a **\$20 per acre-foot volumetric charge**. Extractors will receive an invoice after submitting the report, and the fees are due 30 days after the invoice date, or April 1, whichever is later.

Would you like a resource to find more information on the State Board's approved methods for estimating groundwater extraction volumes?