EASTERN TULE
GROUNDWATER SUSTAINABILITY AGENCY

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COURT CONFIRMS ETGSA'S VIEW OF SETTLEMENT AGREEMENT

Porterville, CA – Today the Court met for the first time with lawyers for both sides in a lawsuit filed February of this year by the Friant Water Authority and Arvin Edison Water Storage District (plaintiffs) against Eastern Tule Groundwater Sustainability Agency (ETGSA). Both plaintiffs and ETGSA are public agencies established under California law, with the latter having been formed in 2016 to implement the Sustainable Groundwater Management Act (SGMA) for its area of the Tule Subbasin.

Plaintiffs' lawsuit alleges breaches of a 2021 "Settlement Agreement" though which ETGSA agreed to help mitigate land subsidence impacts to the Friant-Kern Canal. The U.S. Bureau of Reclamation built the canal, which is operated by Friant Water Authority, in the late 1940s as part of the Central Valley Project. Subsidence caused by groundwater pumping, oil and gas extraction, and other factors has reduced the capacity of the canal to deliver water for decades.

The Court conducted a case management conference and confirmed its ruling on a demurrer and motion to strike filed by ETGSA in May. The purpose of a demurrer and motion to strike is to test the validity of plaintiffs' complaint against ETGSA early in the lawsuit. ETGSA's moving papers explained that plaintiffs misrepresent their Agreement as ensuring $200 million in penalty payments by ETGSA to Friant Water Authority. The Agreement does not require ETGSA to pay Friant $200 million over time. Rather, the Agreement calls for ETGSA to set a penalty rate for excessive groundwater pumping, and Friant acknowledged that the initial rate was correct in the Agreement. And the Agreement states ETGSA "shall pay ninety-one percent (91%) of Tier 1 and Tier 2 penalty monies received in each calendar quarter [to Friant] within forty-five (45) days following the end of the subject quarter."

The Court's ruling expressly makes a critical finding confirming ETGSA's long-standing position, explaining, first, that plaintiff's recitation of the Agreement provided misleading citations to section 1.A. of the Agreement by omitting half of a sentence. The Court noted, "Plaintiffs, in their opposition, strategically dodge ETGSA's' central contention, which is that it did not unconditionally commit contractually to collect a minimum of $220,000,000.00 in 'penalty revenues.'" The ruling continues:

> "Plaintiffs essentially dodge the contention that they falsely allege the agreement requires an unconditional *collection* of a minimum of $220,000,000 by plucking ETGSA's mention of section 3.A to assert that ETGSA falsely argues the [complaint] 'alleges that FWA is 'guarantee[d]' $200 million in penalties from the pumping of overdraft water.' Plaintiffs then follow with another deceptive partial citation to section 1.A (though they correctly identify it as a separately stated contractual obligation), again omitting the limiting condition: '… if the anticipated transitional pumping of 1,034,553 acre-feet actually occurs.'"
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> "The court can and does find that section 1.A of the agreement **does not state an unconditional obligation to collect a minimum of $220,000,000.00 in penalties**, as a reasonable construction of the provision necessarily requires reading 'if the anticipated transitional pumping of 1,034,553 acre-feet actually occurs' as a limiting condition." (Emphasis added.)

The Court's ruling on the demurrer and motion to strike contains language favorable to ETGSA's position, as described, despite overruling the demurrer and denying the motion on the grounds that "further development of the evidence is required before [the Court] can determine, as a matter of law, that the agreement is not reasonably susceptible to the plaintiffs' interpretation …." For example, the ruling states,

> "ETGSA raises compelling arguments that the [plaintiffs' complaint], at least as far as it concerns ETGSA's penalty collection, runs into significant separation of powers issues …."

The Court's ruling continues:

> "ETGSA has no power to collect any penalties except as has been conferred on it by law … and the power conscripted by the parties in their agreement for ETGSA to satisfy its collection obligations is a power … that does not, on its face, authorize collection of penalties to meet contractual obligations."

Lawyers for ETGSA expressed that they are encouraged by the ruling. Gina Nicholls of Nossaman LLP, a law firm representing ETGSA in the lawsuit, stated, "Clearly the Court grasps the strengths of ETGSA's position because the ruling confirms ETGSA's interpretation of the Agreement that there is no assurance of an unconditional minimum payment of $200 million to Friant."

The Court has set a trial date for June 2. The parties have agreed to try to resolve their dispute through mediation, and ETGSA hopes that early mediation might resolve the matter without the need for further judicial intervention. ETGSA offered to mediate in August with either mediator proposed by plaintiffs' attorneys, but plaintiffs' attorneys refused.

Rogelio Caudillo, ETGSA's General Manager, stated that, "ETGSA looks forward to continuing its collaborative efforts with partners and stakeholders to find creative solutions to challenges that have plagued our region for decades."

Further information about the ETGSA can be found on its website, *https://easterntulegsa.com/*.

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