ORDER ON SUBMITTED MATTER

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

MCMULLIN AREA GROUNDWATER SUSTAINABILITY AGENCY, Plaintiff and Petitioner, vs. JAMES IRRIGATION DISTRICT, Defendant and Respondent.	Case No. 24CV447516 ORDER RE: PLAINTIFF AND PETITIONER MCMULLIN AREA GROUNDWATER SUSTAINABILITY AGENCY'S MOTION FOR PRELIMINARY INJUNCTION

The motion for preliminary injunction by plaintiff and petitioner McMullin Area Groundwater Sustainability Agency ("MAGSA") came on for hearing before the Honorable Theodore C. Zayner on April 2, 2025 at 9:00 a.m. in Department 19. Having reviewed and

considered the case record and filings including the evidence and authorities submitted, and the supplemental filings, the court issues its order after hearing as follows.

I. INTRODUCTION

This action is a dispute over use and management of water resources. On July 17, 2024, petitioner and plaintiff McMullin Area Groundwater Sustainability Agency ("MAGSA") filed a petition for writ of mandate and complaint ("Petition") against respondent and defendant James Irrigation District ("District"), asserting causes of action for:

1) Declaratory relief;
2) Writ of mandate for injunctive relief (CCP § 1085);
3) Temporary injunctive relief;
4) Civil penalties (Water Code § 10732(a)(1); and,
5) Civil penalties (Water Code § 10732(a)(2).

According to the allegations of the Petition, MAGSA is a Groundwater Sustainability Agency ("GSA") established pursuant to Water Code §§ 10720, et seq.—the Sustainable Groundwater Management Act ("SGMA")—which required MAGSA to develop and adopt a Groundwater Sustainability Plan ("GSP") to bring its portion of the Kings River Subbasin ("Kings Subbasin") into sustainability by 2040. (See Petition, ¶ 2.) On December 9, 2020, pursuant to SGMA and its GSP, MAGSA adopted an export policy ("Export Policy") to address the export of groundwater extracted from within MAGSA's boundaries for use outside of MAGSA's boundaries. (See Petition, ¶ 3, exh. A.) On April 6, 2022, MAGSA adopted the related Implementing Rules and Regulations of the MAGSA Regulating Export of Groundwater in Support of Sustainable Groundwater Management ("Implementing Regulations"). (See Petition, ¶ 3, exh. B.) The Export Policy and the Implementing Regulations require anyone who seeks to export groundwater pumped from within MAGSA's boundaries for use outside of MAGSA's boundaries to first obtain a permit from MAGSA to do so, which requires the submission of an application and the payment of a fee based on the amount of water to be exported from MAGSA. (See Petition, ¶ 4.)

District, located adjacent to MAGSA, owns certain groundwater wells located within MAGSA's boundaries, and also holds a 1920 easement that provides District access to extract and transport groundwater from within MAGSA's boundaries for export and use within those boundaries. (See Petition, ¶ 5.) However, at the time that District obtained its easements, groundwater was not subject to such state or local regulation, and SGMA has since changed this. (*Id*.) District has not paid the fee MAGSA imposes on landowners because District does not own the land where its wells sit and does not use the groundwater from those wells on its overlying land. (See Petition, ¶ 7.) As a groundwater user and major contributor to the critical overdraft of the Kings Subbasin within MAGSA, MAGSA asserts that it is imperative that District participate in management solutions in the subbasin and seeks a declaration that District's groundwater pumping within MAGSA is subject to MAGSA's Export Policy and Implementing Regulations and a temporary and permanent injunction directing District to immediately cease and desist exporting groundwater pumped from within MAGSA's boundaries for use outside of MAGSA's boundaries unless District applies for and receives a permit under the Export Policy and Implementing Regulations. (See Petition, ¶¶ 8-9.) MAGSA also seeks civil penalties against District pursuant to Water Code section 10732, subdivision (a) for its continuing export of groundwater without first applying for and obtaining an export permit in violation of MAGSA's Export Policy and Implementing Regulations. (See Petition, ¶ 10.)

II. MAGSA'S MOTION FOR PRELIMINARY INJUNCTION

On February 28, 2025, MAGSA filed a motion for preliminary injunction against District, seeking to enjoin District from exporting groundwater pumped from within MAGSA's boundaries for use outside of MAGSA's boundaries without first having obtained a groundwater export permit as required by MAGSA's Export Policy and Implementing Regulations.

MAGSA's request for judicial notice

In support of its motion, MAGSA requests judicial notice of the following documents:

1) District's first amended petition for writ of mandate and complaint for declaratory and injunctive relief in *James Irrigation District v. McMullin Area*

Groundwater Sustainability Agency (Super. Ct. Santa Clara County, 2023, No. 23CV417565) (attached as Exhibit 1);

2) The notice of entry of order sustaining demurrer to first amended petition for writ of mandate and complaint for declaratory and injunctive relief and May 24, 2024 order sustaining demurrer to first amended petition for writ of mandate and complaint for declaratory and injunctive relief in *James Irrigation District v. McMullin Area Groundwater Sustainability Agency* (Super. Ct. Santa Clara County, 2023, No. 23CV417565) (attached as Exhibit 2); and,

3) A copy of the District's General Information webpage from District's official website, available at http://www.jamesid.org (attached as Exhibit 3).

As to District's official website, the request for judicial notice is DENIED. (See *LG Chem, Ltd. v. Super. Ct. (Lawhon) (2022)* 80 Cal.App.5th 348, 362, fn. 7 (stating that "[w]e may not take judicial notice of the truth of the contents of a website"); see also *Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 889 (stating that "[s]imply because information is on the Internet does not mean that it is not reasonably subject to dispute"), quoting *Huitt v. Southern California Gas Co.* (2010) 188 Cal.App.4th 1586, 1605, fn. 10; see also *Ragland v. U.S. Bank National Assn*. (2012) 209 Cal.App.4th 182, 194 (stating that "[n]or may we take judicial notice of the truth of the contents of the Web sites").)

As to District's first amended petition for writ of mandate and complaint for declaratory and injunctive relief, the request for judicial notice is GRANTED as to its existence. (See Evid. Code § 452, subd. (c); see also *Lockley v. Law Office of Cantrell, Green, Pekich, Cruz & McCort* (2001) 91 Cal.App.4th 875, 882 (stating that "while courts are free to take judicial notice of the *existence* of each document in a court file, including the truth of results reached, they may not take judicial notice of the truth of hearsay statements in decisions and court files… Courts may not take judicial notice of allegations in affidavits, declarations and probation reports in court records because such matters are reasonably subject to dispute and therefore require formal proof"); see also *Richtek USA, Inc. v. uPI Semiconductor Corp*. (2015) 242 Cal.App.4th 651, 658 (stating that "while courts are free to take judicial notice of the existence of each document in a court file, including the truth of results reached, they may not take judicial notice of the truth of hearsay statements in decisions and court files").)

As to the order sustaining the demurrer to the first amended petition for writ of mandate and complaint for declaratory and injunctive relief, the request for judicial notice is GRANTED. (See Evid. Code § 452, subd. (c); see also *Randy's Trucking, Inc. v. Super. Ct. (Buttram)* (2023) 91 Cal.App.5th 818, 847, fn. 19 (stating that "[j]udicial notice can be taken only of the contents of orders, findings of fact, conclusions of law, and judgments"); see also *In re Amber D.* (1991) 235 Cal.App.3d 718, 724 (stating that "the judge may take judicial notice of facts asserted in findings and orders"); see also *Richtek USA, supra*, 242 Cal.App.4th at p.658 (stating that "[t]he court may in its discretion take judicial notice of any court record in the United States… [t]his includes any orders, findings of facts and conclusions of law, and judgments within court records").)

District's request for judicial notice

In support of its opposition to the motion, District requests judicial notice of 22 facts and documents.

As to District's request for judicial notice number 1, the request for judicial notice of the 1920 Deed and that the Petition attaches it as Exhibit E is GRANTED. (See Evid. Code § 452, subd. (c).) As to the remainder of the request, while the Petition alleges that District "owns certain groundwater wells that are located within MAGSA's boundaries… [and] holds a 1920 easement that provides [District] access to extract and transport groundwater from within MAGSA's land for export and use within [District's] boundaries" (Petition, ¶ 5), and "operates its Wellfield pursuant to a Deed dated April 22, 1920, issued by San Joaquin Valley Farm lands Company, which granted to [District], among other things, certain easements for canals and 'the preferential right to develop and take a maximum total of 200 cubic feet per second of fresh subterranean waters flowing, percolating, lying or being beneath the surface of' certain lands located within MAGSA's boundaries" (Petition, ¶¶ 41 (also alleging that the Wellfield is defined as "thirty (30) wells located within MAGSA's boundaries… spread across approximately 18,000 acres within MAGSA's boundaries"), 43), District does not cite to where the complaint alleges that "the purpose and use of the water is for the landowners of the District west of the Bypass." (See Rule of Court 3.1306, subd. (c)(1) (stating that "[a] party requesting judicial notice of material under

Evidence Code sections 452 or 453 must… [s]pecify in writing the part of the court file sought to be judicially noticed").) Thus, the request for judicial notice as to "[t]he fact that the Petition admits that… the purpose and use of the water is for the landowners of the District west of the Bypass" is DENIED. The request for judicial notice that the Petition alleges that District has had its water rights in the Wellfield since 1920 is GRANTED. (Evid. Code § 452, subds. (c), (h).)

District's request for judicial notice number two regarding the 1920 deed is GRANTED. (See *West v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 780, 803 (stating that "[a] court may take judicial notice of a recorded deed); see also *Poseidon Development, Inc. v. Woodland Lane Estates, LLC* (2007) 152 Cal.App.4th 1106, 1117 (stating that "[a] court may take judicial notice of something that cannot reasonably be controverted, even if it negates an express allegation of the pleading… [t]his includes recorded deeds").)

District's request for judicial notice numbers three through twenty-two seek judicial notice of documents published by or submitted to the Department of Water Resources ("DWR") and statements within those documents. The request for judicial notice is GRANTED as to the *existence* of the documents and the statements. (See *Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 898, fn. 2 (taking judicial notice of annual management bulletins published by DWR); see also *Paulek v. Department of Water Resources* (2014) 231 Cal.App.4th 35, 40, fn. 3 (taking judicial notice of notice of preparation for DWR Perris Dam Emergency Release Facility Project EIR and power point presentation made for that project); see also *Johnson Rancho County Water Dist. v. State Water Rights Board* (1965) 235 Cal.App.2d 863, 873 (taking judicial notice of DWR bulletin and its contents); see also *Baldwin v. County of Tehama* (1994) 31 Cal.App.4th 166, 178, fn. 8 (case involving groundwater management plan taking judicial notice of DWR bulletin showing that Tehama, Glenn and Colusa counties are located within the Sacramento River Basin).)

Law on a motion for preliminary injunction

"The general purpose of a preliminary injunction is to preserve the status quo pending a determination on the merits of the action." (*Law School Admission Council, Inc. v. State of*

California (2014) 222 Cal.App.4th 1265, 1280 (also stating that "[t]he granting or denial of a preliminary injunction does not amount to an adjudication of the ultimate rights in controversy… [i]t merely determines that the court, balancing the respective equities of the parties, concludes that, pending a trial on the merits, the defendant should or … should not be restrained from exercising the right claimed by him [or her]".) "In determining whether to issue a preliminary injunction, the trial court considers two related factors: (1) the likelihood that the plaintiff will prevail on the merits of its case at trial, and (2) the interim harm that the plaintiff is likely to sustain if the injunction is denied as compared to the harm that the defendant is likely to suffer if the court grants a preliminary injunction." (*Donahue Schriber Realty Group, Inc. v. Nu Creation Outreach* (2014) 232 Cal.App.4th 1171, 1177; see also *Millennium Rock Mortgage, Inc. v. T.D. Service Co.* (2009) 179 Cal.App.4th 804, 808 (stating same).) "The latter factor involves consideration of such things as the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo." (*Donahue Schriber Realty Group*, *supra*, 232 Cal.App.4th at p.1177.) The moving party bears the burden of proof and persuasion to support the issuance of a preliminary injunction. (See *Drakes Bay Oyster Co. v. California Coastal Com*. (2016) 4 Cal.App.5th 1165, 1171-1172 (stating that "[i]n considering whether to issue a preliminary injunction, a court evaluates two interrelated factors: the likelihood plaintiff will prevail on the merits at trial and the interim harm to plaintiff or defendant if the court denies or grants the preliminary injunction… Plaintiff carries the burden of proof and persuasion on these issues"); see also *O'Connell v. Super. Ct. (Valenzuela)* (2006) 141 Cal.App.4th 1452, 1481 (stating that "the burden was on plaintiffs, as the parties seeking injunctive relief, to show all elements necessary to support issuance of a preliminary injunction"); see also *Saltonstall v. City of Sacramento* (2014) 231 Cal.App.4th 837, 844 (stating that the moving party "Saltonstall mistakenly assumes respondents have the burden of showing a preliminary injunction will cause harm to them… [i]nstead, it is Saltonstall who bore but failed to meet the burden to show the necessity for a preliminary injunction").)

MAGSA fails to meet its burden of persuasion to demonstrate that it is likely to prevail on the merits at trial

MAGSA argues that it adopted the Export Policy on December 9, 2020 and adopted its Regulations for managing groundwater exports on April 6, 2022, which require anyone who seeks to export groundwater from MAGSA's area to apply for, obtain a permit from, and pay a requisite fee to, MAGSA. (See MAGSA's memorandum of points and authorities in support of motion for preliminary injunction ("MAGSA's memo"), p.3:4-11.) MAGSA argues that while District has had an easement to export groundwater from its area, the Sustainable Groundwater Management Act ("SGMA"), enacted in 2014, authorized GSAs such as MAGSA to require registration from District, impose permit fees and other fees on District, monitor District's extractions, regulate, limit or suspend extractions from District's wells, adopt other regulations to enforce the GSP, and enforce such requirements. (See MAGSA's memo, pp.1:3-28, 2:1-28, 3:1-3, 6:14-19 (stating that "SGMA expressly authorizes MAGSA to require registration of wells within its boundaries and limit extractions therefrom in order to reverse groundwater overdraft in a controlled manner… [t]he Export Policy and Regulations were duly adopted pursuant to these authorities").) MAGSA also argues that District continues to extract groundwater without applying for a permit or paying the required fee despite the prior dismissal of District's claims on demurrer. (See MAGSA's memo, pp.6:20-28, 7:1-13 (stating that "MAGSA will prevail on the merits as the Santa Clara Court already dismissed each of JID's claims that could serve as a defense to this action").)

Here, on April 22, 1920, consideration was provided from James Irrigation District to San Joaquin Valley Farm Lands Company for the "preferential right" to groundwater with "a maximum total aggregate quantity of 200 cubic feet per second." (Petition, Exh. E.) MAGSA

cites to certain provisions of the Water Code—sections 10725.2, subdivision (a)[1], 10725.6[2], 10725.8[3], 10726.4, subdivision (a)(2)[4], 10726.8, subdivision (a)[5], 10730, subdivision (a)[6], and

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[1] Water Code section 10725.3, subdivision (a) states: "A groundwater sustainability agency may perform any act necessary or proper to carry out the purposes of this part." (Wat. Code, § 10725.3, subd. (a).)

[2] Water Code section 10725.6 states: "A groundwater sustainability agency may require registration of a groundwater extraction facility within the management area of the groundwater sustainability agency." (Wat. Code § 10725.6.)

[3] Water Code section 10725.8, subdivision (a) states: "A groundwater sustainability agency may require through its groundwater sustainability plan that the use of every groundwater extraction facility within the management area of the groundwater sustainability agency be measured by a water-measuring device satisfactory to the groundwater sustainability agency." (Wat. Code § 10725.8, subd.(a).)

[4] Water Code section 10726.4, subdivision (a)(2) states: "A groundwater sustainability agency shall have the following additional authority and may regulate groundwater extraction using that authority… [t]o control groundwater extractions by regulating, limiting, or suspending extractions from individual groundwater wells or extractions from groundwater wells in the aggregate, construction of new groundwater wells, enlargement of existing groundwater wells, or reactivation of abandoned groundwater wells, or otherwise establishing groundwater extraction allocations…." (Wat. Code § 10726.4, subd. (a)(2).)

[5] Water Code section 10726.8, subdivision (a) states: "The local agency may use the local agency's authority under any other law to apply and enforce any requirements of this part, including, but not limited to, the collection of fees." (Wat. Code § 10726.8, subd. (a).)

10732[7]. (See MAGSA's memo, pp.2:21-28, 3:1-3.) However, MAGSA fails to cite to any case authority stating that the SGMA authorizes the taking or termination of a party's claimed preexisting preferential easement without compensation, or that such a preexisting preferential easement would be subject to regulation by the GSA rather than the GSA having to account for the easement in its management of the remaining groundwater. Indeed, Water Code section 10720.5, subdivision (a) states that "[n]othing in this part modifies rights or priorities to use or store groundwater consistent with Section 2 of Article X of the California Constitution." (Wat. Code § 10720.5, subd. (a); see also *El Dorado Irrigation Dist. v. State Water Resources Control Bd*. (2006) 142 Cal.App.4th 937, 961-962, 966 (stating that "as between appropriators, the rule of priority is 'first in time, first in right'…[t]he senior appropriator is entitled to fulfill his needs before a junior appropriator is entitled to use any water… [i]t should be the first concern of the court in any case pending before it and of the department in the exercise of its powers… to recognize and protect the interests of those who have prior and paramount rights to the use of the waters of [a] stream… our Supreme Court stated that 'water right priority has long been the central principle in California water law'… priority of right is significant only when the natural or

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[6] Water Code section 10730, subdivision (a) states: "A groundwater sustainability agency may impose fees, including, but not limited to, permit fees and fees on groundwater extraction or other regulated activity, to fund the costs of a groundwater sustainability program, including, but not limited to, preparation, adoption, and amendment of a groundwater sustainability plan, and investigations, inspections, compliance assistance, enforcement, and program administration, including a prudent reserve. A groundwater sustainability agency shall not impose a fee pursuant to this subdivision on a de minimis extractor unless the agency has regulated the users pursuant to this part." (Wat. Code, § 10730, subd. (a).)

[7] Water Code section 10732 provides for penalties against persons who violate rules, regulations, ordinances or resolutions pursuant to section 10725.2.

abandoned flows in a watercourse are insufficient to supply all demands being made on the watercourse at a particular time… [o]bviously, when flows are of sufficient abundance that every water user can fulfill his or her needs, the rule of priority does not matter… [e]very effort… [] must be made to respect and enforce the rule of priority... [a] solution to a dispute over water rights 'must preserve water right priorities to the extent those priorities do not lead to unreasonable use'").)

MAGSA's cases cited in its reply brief do not concern a GSA's authority, or address a lack of priority. *Baldwin v. County of Tehama* (1994) 31 Cal.App.4th 166, merely addressed whether the field of groundwater was within the county's police power. *People v. Glenn-Colusa Irrigation Dist*. (1932) 127 Cal.App. 30, actually supports District's position. There, the Glenn-Colusa Irrigation District built a number of water pumps to pump water into its canals; however, the pumps were sucking in and killing large numbers of fish. (*Id*. at p. 33.) The Fish and Game Commission requested the Glenn-Colusa district to install a fish screen—which the district did; however, the screen washed away a year later. (*Id*.) When the Fish and Game Commission sought to enjoin the Glenn-Colusa district from operating the pumps without a screen, like MAGSA, the Glenn-Colusa district argued that it had the authority to control the waters of the river regardless of the state of California's preexisting property right of the fish within the state's waters. (*Id*. at pp.33-36 (stating that "[t]he title to and property in the fish within the waters of the state are vested in the state of California and held by it in trust for the people of the state… [a]ppellant contends that, as the irrigation district was formed under an act of the legislature of this state, and was, by the laws of this state and by an act of Congress, granted the right to divert water from the Sacramento River for the irrigation of the land lying within the district, by such diversion it was not guilty of creating a public nuisance… [w]e find nothing either in the said act of Congress or in the statutes of this state which gives to appellant express authority to divert the waters of said river regardless of its duty in so doing to protect the fish therein").) The court thus affirmed the trial court's decision to overrule the Glenn-Colusa district's demurrer and the judgment in favor of the People. (*Id*. at p.38.) The last case cited by MAGSA, *Department of*

Fish & Game v. Anderson-Cottonwood Irrigation Dist. (1992) 8 Cal.App.4th 1554, is very similar to *Glenn-Colusa Irrigation Dist.*, *supra*; however, *Department of Fish & Game* not only involved large numbers of fish, but large numbers of *endangered* fish. When the Department of Fish and Game sought to enjoin the Anderson-Cottonwood Irrigation District ("ACID") from pumping water from Sacramento River without a fish screen, ACID refused to install the screen and the trial court denied a preliminary injunction prohibiting ACID from operating the pumping facility in a manner that took the endangered winter-run chinook salmon in violation of the California Endangered Species Act, stating that ACID did not "take" or "possess" fish in violation of the Act because it only pertained to hunting and fishing related activity. (See *Department of Fish & Game, supra,* 8 Cal.App.4th at pp.1558-1560.) The Third District reversed, finding that ACID's proffered interpretation of the Act was incorrect as the Act does not require a specific intent to hunt or fish and would otherwise lead to absurd results in light of the Act's legislative purpose to protect fish and natural resources. (*Id*. at pp.1560-1564.) *Department of Fish & Game* then cited *Glenn-Colusa Irrigation Dist.*, *supra*, noting that it had previously "held that an irrigation district's right to divert water from the river for irrigation purposes carries with it an implied duty in so doing to protect fish." (*Id*. at p.1566.) Thus, *Department of Fish & Game* confirmed the opinion in *Glenn-Colusa Irrigation Dist.* and in Water Code section 10720.5, subdivision (a) that a public agency or district's authority to address the export of groundwater is not absolute and is subject to other interests. *Department of Fish & Game* is not helpful for MAGSA.

As MAGSA fails to articulate how it would have priority over a preexisting preferential right to a certain rate or amount of groundwater, it does not meet its burden of persuasion to support the issuance of a preliminary injunction.

Moreover, MAGSA's reliance on the order sustaining the demurrer is misplaced. In the order, the Court sustained the demurrer "on statute of limitations grounds." (May 24, 2024 order sustaining demurrer to first amended petition for writ of mandate and complaint for declaratory and injunctive relief ("May 24, 2024 order"), pp.9:14-15 (stating that "MAGSA's demurrer to the first cause of action on statute of limitations grounds is therefore SUSTAINED"), 11:25-26 (stating that "[t]he court therefore SUSTAINS MAGSA's demurrer to the second through fifth

causes of action on the basis that they are time-barred"), 12:2-3 (stating that "the demurrer to the second through fifth causes of action is sustained without further leave to amend on statute of limitations grounds").) The May 24, 2024 order does not demonstrate that "MAGSA will prevail on the merits [on its Petition] as the Santa Clara Court already dismissed each of JID's claims that could serve as a defense to this action."

MAGSA also argues that the May 24, 2024 order cited *Mojave Pistachios, LLC v. Super. Ct. (Indian Wells Valley Groundwater Authority)*(2024) 99 Cal.App.5th 605, for the proposition that "a groundwater user court [sic] not bring any cause of action (including causes of action alleging violations of constitutional rights) attacking the propriety of a groundwater extraction fee under the SGMA without first paying any amount owed, because such lawsuits are subject to the 'pay first' rule for tax disputes." (MAGSA's memo, p.6:20-26.) In *Mojave Pistachios*, *supra*, the court stated that 'we hold that any cause of action that attacks the propriety of the Replenishment Fee or attempts to impede its prompt collection cannot proceed unless Mojave first pays the outstanding amounts owed." (*Mojave Pistachios*, *supra*, 99 Cal.App.5th at p.633.) However, here, on MAGAS's Petition, District is not asserting any cause of action against MAGSA. MAGSA does not cite to any case law to suggest that the "pay first" rule is applicable to the instant situation and thus, this argument also fails to support MAGSA's burden of persuasion on its motion for preliminary injunction.

Even if MAGSA met its burden of persuasion that it would likely prevail on the merits—which it does not—MAGSA also fails to meet its burden to demonstrate that it would suffer irreparable harm.

MAGSA also argues that District's "unregulated exports—which are happening now—must be restrained immediately because they greatly and irreparably deplete the groundwater supply of landowners and further worsen the effects within MAGSA's boundaries." (MAGSA's memo, p.7:16-18.) In support of this initial assertion, MAGSA cites to paragraph 26 of the declaration of its General Manager, Matthew Hurley; however, that paragraph merely repeats the conclusion stated above. There is neither an indication as to how Mr. Hurley arrived at this

conclusion nor how he has the foundational knowledge to make such a conclusion. Paragraph 25 states the conclusion that without a permit, District's exports are unregulated and cause great and irreparable harm to the local groundwater supply and MAGSA's ability to manage that supply. Paragraphs 11 and 12 of the Hurley declaration state that District exported certain amounts of acre-feet of groundwater from the Wellfield, but the declaration fails to provide any evidence supporting this statement, how such an amount of groundwater was measured, how such an amount "greatly and irreparably deplete[s] the groundwater supply" and how Hurley has the requisite special knowledge, skill, experience, training, and education to give such an opinion. District's objections numbers 1 through 3 to paragraphs 12, 25 and 26 are SUSTAINED.

Citing paragraph 27 of the Hurley declaration, MAGSA also argues that "groundwater lost from within MAGSA's boundaries during the pendency of this litigation cannot be restored or cured by any other remedy… [because e]xcessive pumping depletes the aquifer and can create pressure changes within the aquitard (the space between the confined and unconfined aquifers) which can cause the aquifer to collapse on itself (subsidence), reducing overall storage and rendering it less usable in the future." (MAGSA's memo, p.7:23-27.) "Groundwater is not replenished immediately and can takes years to restore, if at all." (*Id*. at p.7:27-28.) Again, however, the declaration fails to provide information demonstrating that Mr. Hurley has the requisite special knowledge, skill, experience, training, and education to give such a scientific opinion. District's objections numbers 5 and 6 to paragraph 27 are SUSTAINED.

Paragraph 25 of the Hurley declaration also complains that District "continues exporting groundwater from the Wellfield… without having paid the requisite fees." (Hurley decl. in support of MAGSA's motion for preliminary injunction ("Hurley decl."), ¶ 25.) Yet, MAGSA also argues that "[b]y comparison, any harm JID will experience if the requested order is granted is purely monetary…. JID could apply for and pay the permit fee…." (MAGSA's memo, p.8:7-8; *id*. at p.8:15-18 (stating that District "is instead simply electing to ignore MAGSA's duly-enacted Export Policy and Regulations and simply continue to export groundwater without obtaining a permit and paying the related fees because that is apparently cheaper in the short-term than utilizing its other water sources… [this is a purely financial decision").) The nonpayment of

a fee is not irreparable injury for purposes of a motion for preliminary injunction. (See *Tahoe Keys Property Owners' Assn. v. State Water Resources Control Bd.* (1994) 23 Cal.App.4th 1459, 1471 (regarding the collection of a mitigation fee, stating that "[i]n general, if the plaintiff may be fully compensated by the payment of damages in the event he prevails, then preliminary injunctive relief should be denied… to support a request for such relief the plaintiff must make a significant showing of irreparable injury"); see also *Intel Corp. v. Hamidi* (2003) 30 Cal.4th 1342, 1352 (stating that "in order to obtain injunctive relief the plaintiff must ordinarily show that the defendant's wrongful acts threaten to cause *irreparable* injuries, ones that cannot be adequately compensated in damages") (emphasis original).) While it does not appear that MAGSA argues that District's nonpayment of its fee constitutes irreparable injury, to the extent that MAGSA relies on this portion of paragraph 25 concerning the nonpayment of a fee, this evidence fails to demonstrate such irreparable harm as a matter of law. As to Paragraph 28's conclusions that District will only suffer monetary harm and chooses to export its groundwater from MAGSA because it is cheaper, these are both speculative and without foundation. Moreover, the declaration of Robert Motte establishes that as a customer of District, like other customers, he relies on District's water to irrigate his crops, and absent the use of the Wellfield, he would not receive sufficient water to irrigate his farm and would lose a substantial amount of crops and trees permanently. (See Motte decl. in opposition to MAGSA's motion for preliminary injunction, ¶¶ 1-5.) District's objections numbers 7 and 8 to paragraph 28 of the Hurley declaration are SUSTAINED.

Lastly, Hurley's declaration indicates that he has "received complaints from MAGSA's landowners regarding negative impacts on their wells and pumping from JID's unauthorized pumping." (Hurley decl., ¶ 26.) To the extent that MAGSA seeks to introduce this evidence to establish negative impacts, it is hearsay. District's objection number 4 is SUSTAINED on this basis. To the extent that MAGSA submits this evidence to merely establish that MAGSA received complaints from landowners, this fails to demonstrate irreparable injury. The complaints that were received occurred in the past and Hurley does not state that the *complaints* are continuing. (See *McManus v. KPAL Broadcasting Corp*. (1960) 182 Cal.App.2d 558, 563 (stating that "an

injunction lies to prevent threatened injuries and has no application to completed wrongs for the redress of which the plaintiff is relegated to an action at law… [o]bviously, a completed wrong cannot be corrected by a preliminary injunction, the purpose of which is to preserve the status quo until after final judgment"); see also *Allen v. Hotel & Restaurant Employees' International Alliance & Bartenders' International League* (1950) 97 Cal.App.2d 343, 347 (stating that "[a]n injunction lies only to prevent threatened injury and has no application to wrongs which have been completed").)

Regardless, the receipt of an unknown number of complaints by unspecified landowners does not sufficiently establish irreparable harm to MAGSA, especially when considering the likelihood of harm to District's customers during the interim period if the Court were to grant a preliminary injunction. (See *Donahue Schriber Realty Group, supra*, 232 Cal.App.4th at p.1177 (stating that "[i]n determining whether to issue a preliminary injunction, the trial court considers two related factors: (1) the likelihood that the plaintiff will prevail on the merits of its case at trial, and (2) the interim harm that the plaintiff is likely to sustain if the injunction is denied as compared to the harm that the defendant is likely to suffer if the court grants a preliminary injunction… [t]he latter factor involves consideration of such things as the inadequacy of other remedies, the degree of irreparable harm, and the necessity of preserving the status quo").) Here, MAGSA alleges that District has been exporting groundwater from its boundaries for years pursuant to an easement established in 1920. The status quo, or "the last actual peaceable, uncontested status which preceded the pending controversy" was prior to MAGSA's adoption of the Export Policy and Regulations when District was exporting groundwater from MAGSA's boundaries. (See *14859 Moorpark Homeowner's Assn. v. VRT Corp*. (1998) 63 Cal.App.4th 1396, 1408 (defining "status quo").) Thus, even if MAGSA were to have met its burden of persuasion as to whether it would prevail on the merits of its case at trial—which it did not—MAGSA also fails to meet its burden of proof to demonstrate the interim harm it would likely sustain if the injunction was denied predominates relative to the harm District would suffer if the Court were to grant the injunctive relief. (See *Drakes Bay Oyster Co., supra*, 4 Cal.App.5th at pp.1171-1172 (stating that Plaintiff carries the burden of proof and persuasion to demonstrate both the likelihood that it

would prevail on the merits at trial and the interim harm to plaintiff or defendant if the court denies or grants the preliminary injunction); see also *O'Connell*, *supra*, 141 Cal.App.4th at p.1481 (stating that "the burden was on plaintiffs, as the parties seeking injunctive relief, to show all elements necessary to support issuance of a preliminary injunction").)

Accordingly, MAGSA's motion for preliminary injunction is DENIED.

Dated: April 10, 2025

Hon. Theodore C. Zayner
Judge of the Superior Court