



## Buena Vista Water Storage District

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March 31, 2016

California Department of Water Resources  
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Sacramento, CA 94236

**Sent Via Email: [sgmps@water.ca.gov](mailto:sgmps@water.ca.gov)**

Re: Sustainable Groundwater Management Act--Draft Emergency Regulations Public Comment

Buena Vista Water Storage District (the District) appreciates this opportunity to provide comments to the California Department of Water Resources (DWR) on the Draft Emergency Regulations for Groundwater Sustainability Plans and Alternatives (Draft Regulations), released for comment on February 18, 2016. BVWSD covers approximately 48,810 acres and is the first authorized entity to apply for Groundwater Sustainability Agency status within the Kern Subbasin of the Tulare Lake Basin.

The District is providing general comments on the Draft Regulations, followed by specific comments and recommendations on a section by section basis in an effort to clarify and/or improve the Draft Regulations.

### General Comments

The District appreciates the access to DWR staff prior to and during the development of the Draft Regulations. Sustainable groundwater management has long been a goal of the District's past and present directors. The District recognizes the significant level of effort by DWR to accommodate and incorporate the thoughts of diverse interests throughout the state. We believe this has resulted in generally supportable Draft Regulations for the Kern Subbasin and offer the following comments aimed at further improving and clarifying the regulations prior to finalization.

The District is supportive of the substantial compliance and adaptive management provisions within the Draft Regulations and understands that the flexibility afforded by those measures does not compromise the sustainability requirement or goal but are intended to recognize the temporal and spatial dynamics of groundwater, climate variability and the evolving technologies available for measuring, monitoring and managing water resources.

One area where the Draft Regulations should be improved is in the proposed “Coordinating Agency” or “Submitting Agency” concept. The Draft Regulations are structured in a manner that requires each Groundwater Sustainability Plan (Plan) prepared by an approved Groundwater Sustainability Agency (GSA) to achieve sustainability for the entire basin (see, e.g., 350.2(a) and elsewhere). This premise is counter to the statute allowing for multiple GSAs and coordinated Plans within a basin as provided in Water Code Section 10727 and is inconsistent with the concept of local control. A GSA within a large basin such as the Tulare Lake Basin does not have the ability to balance nor report for such an expansive area. The concept of one “Coordinating Agency” or “Submitting Agency” is counter to the plain language of SGMA and should be stricken from the Draft Regulations. Similarly, the Draft Regulations should be modified, consistent with SGMA, to permit multiple GSAs and multiple Plans as an optional approach to comply with SGMA.

Water Code Section 10735.2(e), which provides an exclusion from probationary status for those portions of the basin that are compliant with the sustainability goal, states that “The board shall exclude from probationary status any portion of a basin for which a groundwater sustainability agency demonstrates compliance with the sustainability goal”. Therefore the regulations must, consistent with SGMA, allow for the option of multiple GSA’s and multiple coordinated Plans within any single basin and the possibility of a minority being out of compliance.

In the event of multiple GSA’s and multiple Plans, SGMA’s requirement of a coordination agreement will accomplish the unification of data and reporting from within a basin, as envisioned and articulated in Water Code Section 10727.6.

## **Specific Comments and Recommendations**

### **Article 1. General Principals**

The District recommends that 350.2(g) be clarified to read “The Department may evaluate at any time whether a Plan is being implemented in compliance with the Plan, the Act and this Subchapter.”

### **Article 2. Definitions**

The District recommends that 351(i) should exclude any reference to “Coordinating Entity” or “Submitting Agency” as these terms were never part of SGMA legislation. This concept does not work in a large basin and flies in the face of the requirement for local control.

The District recommends 351(n), be modified as follows: “Interim milestone” refers to a target value for management actions or measurable groundwater conditions set by an Agency as part of its Plan implementation. Milestones do not have to be agreed upon or coordinated with other Plans.

The District recommends 351(w), be modified as follows: “Plan manager” is an employee or authorized representative of a groundwater sustainability agency, or agencies if appointed through a coordination agreement, who has been delegated management authority for submitting the groundwater sustainability

plan and serving as the point of contact between the groundwater sustainability agency/agencies and the Department.

The District recommends 351(z), be modified as follows: "Reporting period" refers to the period covered by the annual report required by Water Code Section 10728, which shall consist of the previous water year. The first report shall be submitted March 31, 2021 for the 2019/2020 water year.

The District recommends adding a definition of Groundwater Recharge or Recharge to the Regulations. The following is suggested wording for this definition: "Recharge" is the augmentation of groundwater, by natural or artificial means, including 'in-lieu' use of surface water as a substitute for the extraction of a portion of the sustainable yield of groundwater in order to leave groundwater in the basin. Where surface water is used "in-lieu" of groundwater, a landowner's entitlement to a portion of the safe yield of the basin could be carried over to subsequent years. The Agency will account for all Recharge in the Groundwater Balance.

Consideration should be given to allowing credit for reducing groundwater extraction during the interim period (2015 – 2020) and acknowledgment of and respect for the rights to water used to recharge the basin (either direct or in lieu). Allowing groundwater extraction credits and acknowledging and respecting rights to water that has recharged the aquifer during this time period would assist in "jump starting" the progress towards sustainable groundwater balances within a Plan's boundary.

### **Article 3. Technical and Reporting Standards**

The District recommends 352.4(c), be modified as follows: If best management practices developed by the Department are modified, an Agency shall not be required to include the amended best management practices until the next five year review and then only if the amendments are finalized and provided prior to the beginning of the last water year in the five year review period.

The District recommends 352.6(a)(2), be modified as follows: Reference points, surface water, and land surface elevations shall be measured and reported in feet relative to NAVD88, or as modified, to an accuracy of at least 0.1 feet. This information should be certified by a Licensed Professional per Business and Professions Code Sections 6700-6795 and 8700-8805.

The District recommends 352.6(a)(3), be modified as follows: Groundwater elevations shall be measured and reported in feet relative to NAVD88, or as modified, to an accuracy of at least 0.5 feet or the best available information, with the method of measurement described.

The District recommends 352.6(b)(3)(D) be modified as follows: A list of all casing perforations, borehole depth, and total well depth, to the extent available.

A groundwater model, calibrated to within industry standards, has been identified as a requisite for understanding and managing the groundwater basin. The District contends that having such a model should allow the Agency to remain in compliance even when some wells lack depth and completion intervals.

The District recommends 352.6 (b)(4) be modified as follows: If an Agency relies on wells that lack casing perforations, borehole depth, and total well depth information to monitor groundwater conditions as part of an initial Plan, the Agency shall describe a schedule for acquiring monitoring wells with the necessary information, or demonstrate to the Department that such information is not necessary to understand and manage groundwater in the basin. Where an Agency has access to and is utilizing a groundwater model calibrated to within industry standards, specific monitoring well information is not required.

The District comment to 352.8 is that DWR should provide the Plan submittal format as early as possible, or no later than December 31, 2016 to assist in the preparation of a Plan and such format should be vetted through the same process as the emergency regulations.

#### **Article 4. Procedures**

The District requests that DWR include a date that forms and instructions referred to in 353.2(a) will be available.

The District comment to 353.4(b) is that it should be noted that the concept of “Coordinating Agency” or “Submitting Agency” would make this type of certification virtually impossible due to the liability for information supplied by subservient GSAs. “Coordinating Agencies” or “Submitting Agencies” were never included in SGMA legislation as that legislation was based on local control of groundwater issues.

#### **Article 5. Plan Contents**

The District recommends 354.8(a)(5) be modified as follows: The density of wells per square mile, by dasymetric or similar mapping techniques, showing the distribution of all agricultural, industrial, and domestic water supply wells in the basin, including de minimis extractors, and the location and extent of communities dependent upon groundwater. Each Agency shall utilize data available from the Department, as specified in Section 353.2, or the best available existing information. Existing information should be updated for each five year review.

The District comment to 354.8 (g) (1) – (7) is that there are a number of provisions within this section which require an Agency to evaluate and even speculate on land use planning issues. While it is appropriate to identify and address existing water quality issues, it is beyond the purview of an Agency to evaluate and/or limit land use planning decisions.

The District comment to Section 354.8 (g) (8) is that this section requires an analysis of land use planning documents outside of one’s basin and in order to comply with the requirements requires an understanding of the groundwater basin within which those plans are administered. This requirement effectively ties the entire Central Valley into one Plan. The District recommends elimination of Section 354.8 (g) (8).

The District recommends 354.18 be modified as follows: The Plan shall include a water budget, which has been coordinated with all other Plans within the basin or subbasin. The water budget shall provide an

accounting and assessment of the total annual amount of groundwater and surface water entering and leaving the Plan area, including a minimum of 10 years of historical, current and projected water budget conditions, water recharged for third parties within the plan area that is contracted to be recovered from the plan area, with cumulative balances for each recharging party. Water budget information shall be reported in tabular and graphical form.

The District recommends 354.18(b) be modified as follows: The Plan shall quantify the current, historical, and projected water budget for the Plan area as follows:

The District comment to Section 354.20 is that it should be clear that a Management Area can be a subdivision of a Plan area. The term "Management Area" shall not be used by DWR to coerce GSAs into creating one basin wide GSP with the promise of local flexibility in these "Management Areas".

The District comment to 354.26 (b) is this section has the potential of punishing sustainable areas of a basin by injuring their ability to exercise latent groundwater rights or to modify application of surface water consistent with existing surface water rights. Sustainable areas with different minimum thresholds must be permitted to exercise their groundwater and/or surface water rights; for instance, an area that usually relies on surface water must be able to use groundwater during a drought pursuant to overlying groundwater rights, even if that means that groundwater-only areas will have to cut back more during the drought. Also, entirely groundwater-dependent areas cannot rely upon other neighboring area's use of surface water—the other landowners have a right to groundwater as well. The regulations should not allow sustainable areas to be punished or underlying groundwater or surface water rights undermined for the benefit of non-sustainable areas. Similarly, the regulations should not allow non-sustainable areas to rely upon neighboring sustainable area's surface water rights to achieve basin sustainability.

The District comment to Section 354.28 is that this appears to be an appropriate section to address the need for differentiation between "good" and "poor" quality groundwater. This differentiation should not only be in a qualitative measure (EC or TDS) but also a quantitative measure. Leaving one acre foot of poor groundwater in the aquifer should not translate into the ability to pump one acre foot of good groundwater in another portion of the basin.

The District comment to Section 354.28(b)(1)(B) is that sea water should be defined by EC or TDS value. The purpose of this definition is to differentiate between "sea water intrusion" and other water quality issues by the chemical composition of the water.

The District recommends 354.28(d) be modified as follows: An Agency, after consultation with the Department and coordination, if applicable, with other Agencies in the basin, may establish a representative minimum threshold for groundwater elevation to serve as the minimum threshold value for multiple critical parameters, as appropriate. The Agency shall demonstrate that the representative minimum threshold is a reasonable and effective surrogate for multiple individual minimum thresholds and is supported by substantial evidence in the Plan.

## **Article 6. Evaluation and Assessment**

The District recommends 355.2(e) be modified as follows: The Department shall evaluate a Plan within six months of its submittal date and issue a written assessment of the Plan that includes a description supporting the assessment, which will be posted on the Department's website. If applicable, the Department shall include recommended corrective actions to address any deficiencies identified in the assessment. When Department review is final, the assessment will include a determination of whether the Plan is one the following:

It would be helpful for DWR to have a basic review that would provide for a one-year "conditional approval" of a Plan. The "conditional approval" would allow the GSA to begin implementation of certain actions, such as investment in water management programs, assessment of fees or other regulatory actions to begin implementing the Plan.

The District recommends 355.4(a)(3) be modified as follows: The Plan covers the entire Plan area and is coordinated with all other Plans within the basin.

The District recommends 355.4(b) be modified as follows: The Department shall evaluate a Plan that satisfies the requirements of Subsection (a) to determine whether the Plan is likely to achieve the sustainability goal for the Plan area. When evaluating whether a Plan is likely to achieve the sustainability goal, the Department shall consider the following:

The District comment to 355.4(b)(6) is that the draft regulations should contain the same SGMA language that states "Nothing in this Subchapter 2 determines or alters surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights or groundwater rights". Plans may well affect the sustainability of another Plan. The act of pumping groundwater in a sustainable portion of the basin will affect the sustainability of groundwater only portions of the basin that are not sustainable.

## **Article 8 – Coordination Agreements**

The District recommends 357.4(b) be modified as follows: Intrabasin coordination agreements shall identify the point of contact with the Department.

In addition any references to "submitting agency" or "Coordinating Agency" should be eliminated from the emergency draft regulations. These entities were never intended in the SGMA legislation. This comment applies to 357.4(c), 357.4(d) and 357.4(e),

Thank you for your consideration of these comments. Buena Vista Water Storage District looks forward to working with the Department to refine the Draft Regulations as necessary so that they may serve as a workable and effective tool for local agencies to sustainably manage their groundwater.

California Department of Water Resources

March 31, 2016

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If you have any questions, please contact me at [maurice@bvh2o.com](mailto:maurice@bvh2o.com) or (661) 324-1101.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. J. Etchechury". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Maurice J. Etchechury  
Engineer Manager