



County of San Diego

MARK WARDLAW
DIRECTOR
PHONE (858) 694-2962
FAX (858) 694-2555

PLANNING & DEVELOPMENT SERVICES
5510 OVERLAND AVENUE, SUITE 310, SAN DIEGO, CA 92123
www.sdcounty.ca.gov/pds

DARREN GRETLER
ASSISTANT DIRECTOR
PHONE (858) 694-2962
FAX (858) 694-2555

April 1, 2016

Laura Bisnett
Department of Water Resources
Post Office Box 942836
Sacramento, CA 94236

Delivery via E-Mail
(sgmps@water.ca.gov)

Draft GSP Emergency Regulations Public Comment

Dear Ms. Bisnett:

The County of San Diego (County) has reviewed the Draft Groundwater Sustainability Plan (Plan) Emergency Regulations (Regulations) that were released by the Department of Water Resources (Department) on February 18, 2016. These Regulations provide critical guidance for local agencies to implement the Sustainable Groundwater Management Act (SGMA).

Overall, the County believes these Regulations give local agencies sufficient flexibility to adequately address the groundwater conditions that are unique to each basin. To ensure that each Plan is prepared to address the distinctive needs of each community and successfully implemented to achieve sustainability, the County has prepared questions and comments regarding the Regulations for the Department. General comments of most concern are provided below with detailed comments provided on the subsequent pages of this letter.

- Public review with Plan development must be an Agency responsibility only (see Comment 4). SGMA requires stakeholder participation by the Agency(ies) developing each Plan. The Department conducting public review as proposed in the Regulations would be confusing to the public, takes the Agency(ies) out of the role of developing their Plan, and puts the Department at risk of being asked to override community recommendations;
- The Department and the SGMA provide no process to vet whether entities are eligible to become an Agency under the SGMA. The Department must confirm eligibility and legal authority to participate as an Agency (see Comment 5 and 11);
- Projecting future available water based on climate change is problematic due to the inherently complex and speculative nature in performing such an analysis (see Comment 8). We recommend minimizing the scope of the analysis under climate

change to remove what will become a burdensome and potentially indefensible regulatory requirement;

- SGMA does not apply to water that flows in known and definite channels (§10721(f)). For those basins or portions of basins where the State Water Resources Control Board (Board) has jurisdiction over surface waters, these Regulations should make it clear that it is the responsibility of the Board to prepare and implement a Plan (see Comment 9);
- The allowance for a two year review period by the Department should be shortened to 180 days (see Comment 10). If the Department cannot shorten the review period, it should add a 180-day “completeness” screening that would allow the Department to screen all Plans to ensure they have covered the required scope under the Regulations; and if they have not, be returned to the Agency(ies) for additional work. This will allow the Department to proceed to review complete documents and allow Agencies with additional work to begin that as soon as possible;
- SGMA recognizes that there may be more than one Agency working on a single Plan. Therefore, these Regulations must define a “Coordinating Agency” or a “Submitting Agency” and assign a single Agency the responsibility to report on the Plan that has been developed in such a partnership. This could be accomplished in Section 353.6 of the Regulations; and
- Plans received from low and very low priority basins must not be reviewed by the Department until all Plans from medium and high priority basins have been reviewed. The Regulations should include this statement.

General Comments:

1. **General Comment, Report Format:** We recommend that the Department prepare report format requirements and/or a template for the Plan to maintain consistency of Plan preparation throughout the state.
2. **General Comment, California Environmental Quality Act (CEQA):** The Regulations should exempt both Plan preparation and implementation from CEQA.
Rationale: Currently, SGMA exempts the Plan preparation from SGMA, but not implementation. Without eliminating the CEQA requirement for implementation, the Plan exemption is not meaningful. We believe that SB1415 would allow this exemption.

Specific Comments:

3. **Article 3, Section 352.6.(a)(2) Data and Reporting Standards:** Land surface elevation should be given an accuracy of at least 1-foot or more rather than 0.1 feet.
Rationale: Working within large basins does not require this level of accuracy to provide data usable for purposes of sustainable groundwater management. To obtain the 0.1 feet of accuracy for land surface elevation will require the expense of

hiring of a land surveyor and/or the use of high precision GPS for every new well that is entered. Additionally, Section 352.6(a)(4) provides for an accuracy of 30 feet for latitude and longitude which appears to be aligned with obtaining a land surface elevation with much greater tolerance for error than 0.1 feet.

4. **Article 4, Section 353.8. Public Comment:** Public review of the Plan and public comments must be included as an Agency responsibility rather than the Department. The Regulations should include a requirement that public review be conducted by each Agency prior to the Plan being submitted to the Department for review. Each Agency should be required to prepare a response to public comments and include it as an appendix to the Plan. Also, we recommend striking Section 353.8 (c) 1-3 due to the impossibility of regulating the content of public comments.

Rationale: By deferring the public review process until after the Plan has been submitted to the State could cause significantly more work for both the Department and Agency and could result in many inadequate Plans being submitted. By placing the public review process prior to the Plan being submitted to the Department allows for the Agency to take all public comments into consideration prior to submitting the document to the Department.

5. **Article 5, Subarticle 1, Section 354.6(d) Agency Information:** The Department must confirm the legal authority of an Agency prior to submitting a Plan to the Department. It is also recommended that the Agency provide evidence of its eligibility pursuant to Water Code Section 10723. It is recommended that the Agency provide legal authority prior to Plan preparation. Also, we recommend moving 354.6 (e) to 355.44 (7), and change 354.6(e) to require each Agency to include "A statement that it has the financial ability necessary to implement the Plan" in its submittal information.

Rationale: Currently under SGMA, there is not a process for the Department to vet the eligibility of agencies that are declaring to be a Groundwater Sustainability Agency, which could have serious consequences should an Agency later be found to be ineligible. Consequences could include a basin having significant delays in implementation of SGMA; potential lawsuits; and/or loss of resources expended by the Department, any other Agencies, stakeholders, and the public. Local agencies have no authority to make this determination and there is no mechanism in the SGMA for local agencies to challenge another agency's qualifications. The Department should develop such a process and vet agency qualifications to become an Agency. Finally, the information currently required in 354.6(e) is too detailed for a submittal letter, and is better placed in the Projects and Management Actions section of the Plan.

6. **Article 5, Subarticle 2, Section 354.14 Hydrogeologic Conceptual Model and Article 5, Subarticle 4, Section 354.34 Monitoring Network:** It is recommended that language be included in cases where subsidence is found to be very low risk for a given basin, that no ongoing monitoring is required.

Rationale: San Diego County has alluvial basins in narrow river valleys where the potential for subsidence is very low. There are other basins in the State where subsidence will not be an issue for sustainable management and this should be recognized in the Guidelines.

7. **Article 5, Subarticle 2, Section 354.18(d) Water Budget:** To allow Agencies to make reasonable progress, the Regulations must include a date by which this information will be provided by the Department. It is recommended that this information be made available to Agencies at the same time the GSP Emergency Regulations are adopted.

Rationale: This is a critical path to Plan preparation and must be provided to Agencies at the beginning of the Plan preparation phase.

8. **Article 5, Subarticle 2, Section 354.18(b)(3) Water Budgets:** The effects of climate change on local groundwater resources are subject to substantial uncertainty; therefore a requirement to evaluate these is onerous and potentially indefensible; but in any case is not appropriate to make Plan level water management decisions. This requirement should be deleted or substantially modified to remove a regulatory burden created by scientific uncertainty. The document should include language that continued ongoing research is necessary beyond Plan implementation to shed light on the many uncertainties of the linkages between climate change and its potential effects on local groundwater supplies.

Rationale: The linkages between climate change and groundwater are inherently complex, and potential effects from climate change are not known at this time. There are widely varying opinions and disagreements in regard to future temperature and precipitation projections for the western United States. This will inevitably lead to an array of potential scenarios which would be difficult, if not impossible to implement as water management tools. Recent climate change research results vary and make it unclear whether overall groundwater recharge will increase, decrease, or stay the same at any scale in the western United States.

9. **Article 6, Section 355.2(d) Department Review of Initial Adopted Plan:** It is imperative that if the State Water Resources Control Board (Board) has jurisdiction over a basin or portion of the basin, that the Board takes the responsibility for preparation and implementation of the Plan. The following underlined text is recommended to be inserted:

If the Board has jurisdiction over a basin or a portion of the basin pursuant to section 10735.2, the Board shall be responsible for preparation of elements of the Plan within the basin or portion of the basin. The Department after consultation with the Board, may proceed with an evaluation of a Plan.

Rationale: There are basins throughout the State (including a portion of the San Luis Rey Valley Groundwater Basin) that are under the jurisdiction of the Board since they have been determined to be subterranean streams flowing within known and definite channels (i.e. do not contain groundwater), and the definition of "groundwater" in SGMA specifically excludes "water that flows in known and definite channels".

Consequently, there is no legal basis for an entity to declare itself a Groundwater Sustainability Agency or be required to prepare a Plan under SGMA in basins or portions of basins under the jurisdiction of the Board.

10. **Article 6, Section 355.2(e) Evaluation and Assessment:** It is recommended the Department be allowed up to 180 days for Plan review instead of the 2 years proposed.

Rationale: If the Agency has to wait two years for Department comments before being able to validate the Plan, this would cause a major delay on Plan implementation and sustainable groundwater management.

11. **Article 6, Section 355.4(a)(5) Criteria for Plan Evaluation:** The following underlined text is recommended to be inserted as new subsection 355.4(a)(5):

(5) The Plan has been prepared by an Agency that has legal authority to prepare the Plan pursuant to Water Code Section 10723.

12. **Article 6, Section 355.10(a) Resolution of Conflicts by Department:** The following language is recommended to be edited as follows:

Disputes within a basin shall be the responsibility of each Agency ~~the Coordinating Agency~~ or other entities responsible for managing Plans and alternatives within that basin.

Rationale: Presumably, Agencies within the same basin will have prepared a legal agreement with details about 'dispute resolution' between/among Agencies. In any case, this section suggests that the Coordinating Agency is ranked higher than other Agencies with regard to resolving disputes, which is not supported by the regulations.

13. **Article 6, Section 355.10(c) Resolution of Conflicts by Department:** The following language is recommended to be removed from the document:

~~Information withheld will be presumed not to support the interpretations that rely upon the data.~~

Rationale: The Agency preparing the Plan will have a professional engineer and/or professional geologist prepare and sign the Plan. As such, information that was withheld is the responsibility of the professional who signed the report who has an ethical obligation to the State for all work stamped by that individual.

Minor Issues/Edits:

- a. **Article 3, Section 352.6(e):** Recommended edit for typographical error (...Plan shall be consist of...).
- b. **Article 3, Section 352.8(e):** It is recommended the Department create a central repository for all data to be placed into from all Agencies.
- c. **Article 4, Section 353.6(a) Initial Notification:** The first sentence should be changed to be within 30 days prior to an Agency's commencement of Plan preparation rather than the date the Agency "decides."

Rationale: The date when an Agency decides to develop a Plan is not always well defined but the date it starts Plan preparation is typically clearly defined.

- d. **Article 5, Section 354.8(c):** We recommend edits of typographical errors (...the Irrigated Lands Regulatory Program, and the Groundwater Ambient Monitoring Assessment Program, and Salt Nutrient Plans.
- e. **Article 5, Subarticle 1, Section 354.10(a):** The Regulations should allow for the possibility that some interested persons may not want their information made public and allow their names to be redacted from the interested parties list for purposes of submittal with the Plan.
- f. **Article 5, Subarticle 2, Section 354.18(d)(1) Water Budget:** The Regulations require an explanation as to what is meant by "central valley land use" and "Statewide land use."
- g. **Article 5, Subarticle 4, Section 354.40(b) Reporting of Monitoring Data to Department:** The language "throughout the year" is concerning since it is ambiguous what the requirement of the Agency is. We recommend requiring the data to be provided by the Agency not more frequently than semi-annually.
- h. **Article 6, Section 355.4(b)(10) Criteria for Plan Evaluation:** The following underlined text is recommended to be inserted:

Public comments and other information that is reasonable and supported by the available evidence indicating that impacts were not adequately considered...
- i. **Article 7, Section 356.12 Amendments and Modifications to Plan:** Turnaround times and review times are necessary for this section.
- j. **Article 8, Section 357.4(b) Intrabasin Coordination:** This section references a Submitting Agency while *Section 255.10(b)* references a Coordinating Agency. Are these the same? Please define. Also, **Section 354.6(c)** references a Plan Manager. Is the Plan Manager from the Coordinating/Submitting Agency? Please clarify these titles, and include them in Section 351, "Definitions."

The County appreciates the opportunity to provide comments to the Department. If you have any questions, or require additional information, I can be reached at (858) 694-3820 or jim.bennett@sdcounty.ca.gov.

Sincerely,



JIM BENNETT, Groundwater Geologist
Planning & Development Services

Email cc:

Michael De La Rosa, Policy Advisor, Board of Supervisors, District 1
Adam Wilson, Policy Advisor, Board of Supervisors, District 2
Keith Corry, Policy Advisor, Board of Supervisors, District 3
Melanie Wilson, Policy Advisor, Board of Supervisors, District 4
Chris Livoni, Policy Advisor, Board of Supervisors, District 5
Megan Jones, Group Program Manager, LUEG
Alex Elias, Group Program Manager, PDS
Eric Lardy, Land Use/Environmental Manager, PDS