CALCIMA

California Construction and
Industrial Materials Association

March 29, 2016

California Department of Water Resources
Lauren Bisnett, Public Affairs Office
P.O. Box 942836
Sacramento, California 94236

RE: Draft Emergency Regulations for Groundwater Sustainability Plans (DRAFT)

Dear Ms. Bisnett:

The California Construction and Industrial Materials Association (CalCIMA) appreciates the opportunity to comment on the draft emergency regulations. As local agencies implement the Sustainable Groundwater Management Act, our members will be stakeholders in those processes.

We commend the Department on the draft regulations. We have relatively few comments, and the comments we do have are - we believe - focused on clarifying the Department's intent. In the current draft language, one aspect of the definition of sustainability is obscured: the use of groundwater for economic activities. Ensuring a proper understanding of these economic activity-based uses is critical to our members, as well as the implementation of SGMA. SB 1168 (Pavley) made many findings and declarations of legislative intent surrounding the SGMA that we do not believe are adequately expressed within the draft emergency regulations. A clear affirmation of the Legislature's intent will assist lead agencies in meeting the state's goals within this implementation process. In Section 1.(a)4 and (b)3, for example, SB 1168 found and declared these key principles:

> **Section 1. (a)4;**
> *"(4) When properly managed, groundwater resources will help protect communities, farms, and the environment against prolonged dry periods and climate change, preserving water supplies for existing and potential beneficial use"*
> ***And, Section 1. (b)(3);***

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"(3) To require the development and reporting of those data necessary to support sustainable groundwater management, including those data that help describe the basin's geology, the short- and long-term trends of the basin's water balance, and other measures of sustainability, and those data necessary to resolve disputes regarding sustainable yield, beneficial uses, and water rights."

Water Code 10720.1 (b) is in many ways a statutory expression of those findings in express intent language.

"(b) To enhance local management of groundwater consistent with rights to use or store groundwater and Section 2 of Article X of the California Constitution. It is the intent of the Legislature to preserve the security of water rights in the state to the greatest extent possible consistent with the sustainable management of groundwater."

That the SGMA is intended to protect communities and all beneficial uses, including economic beneficial uses, is a key concept of sustainability, and understanding the importance of this concept at the local agency level will be critical in selecting appropriate best management practices and developing sustainability plans. Furthermore, a clear goal of the Legislature was to resolve data questions regarding beneficial uses of water to help resolve disputes regarding sustainable yield and water rights. To ensure the draft regulations help achieve these goals, we believe modifications should be made to the draft emergency regulations to more clearly articulate the importance of this concept for local agencies in regards to existing water users. We have provided suggestions below.

Beneficial Uses and Users

In several places the department appropriately cites to beneficial uses and users. However at other times the draft emergency regulations cite only to beneficial uses. Our suggestion is that in order to ensure local agencies understand that the regulations and sustainability concepts include both users and their uses, each instance of "beneficial use" in the draft emergency regulations should be followed by "and users". The specific sections and adjustments are as follows:

Subsection 351(j), "Critical Parameter" definition - Page 4

(j) "Critical parameter" refers to chronic lowering of groundwater levels indicating a depletion of supply if continued over the planning and implementation horizon, of groundwater storage, sea water intrusion, degraded water quality, land subsidence that substantially interferes with surface land uses, and depletions of surface water that have adverse impacts on beneficial uses ***and users*** *of surface water that may lead to undesirable results, as described in Water Code Section 10721(x).*

Subsection 351(af), "Water Source Type" definition - Page 6

*(af) "Water source type" represents the source from which water is derived to meet the applied beneficial uses **and users**, including, but not limited to, groundwater, recycled water, reused water, and local or imported surface water sources identified as Central Valley Project, the State Water Project, the Colorado River Project, local supplies, and local imported supplies.*

Subsection 354.16(d), Basin Conditions - Page 21

*(d) Groundwater quality issues that may impact the supply and beneficial uses **and users** of groundwater, including a description and map of the following:*

Subsection 354.22, Introduction to Sustainable management Criteria - Page 25

This Subarticle describes criteria for sustainable management of a basin, including the standards by which an Agency shall define undesirable results and minimum thresholds for each relevant critical parameter. Critical parameter refers to chronic lowering of groundwater levels indicating a depletion of supply if continued over the planning and implementation horizon, reduction of groundwater storage, sea water intrusion, degraded water quality, land subsidence that substantially interferes with surface land uses, and depletions of surface water that have adverse impacts on beneficial uses and users of surface water that may lead to undesirable results, as described in Water Code Section 10721(x). This Subarticle describes the following:

Subsection 354.23(h)(6)(4), Monitoring Network - Page 34

(4) Any other factor that is necessary to identify potential significant and unreasonable adverse impact on beneficial uses and users of the surface water.

Best Management Practices

We would suggest the following change be incorporated in section 352.4, Best Management Practices:

Subsection 352.4(c) , Best Management Practices – Page 7

(c) If best management practices developed by the Department are modified, an Agency, that used the modified best management practice(s), shall not be required to amend the Agency's best management practices until the next five-year review.

This additional language helps clarify that only agencies utilizing the specific BMP's are expected to change and incorporate the modifications.

Baseline Groundwater Use

As currently drafted, the draft emergency regulations do not clearly direct local agencies to attempt to develop best available data on historic baseline groundwater use within the basin. Section 354.18 Water Budget seems the most likely place to make it clear that agencies should attempt to gather the best available historic use data from land uses for incorporation within the water budget. Mineral extraction in particular can present variable demands and be difficult to track, as the facilities often have both diversion rights and groundwater rights, and their water use itself can vary by factors such as silt content and material produced. We, therefore, believe it is appropriate in this section and the communications section to encourage agencies to collect the best available data from existing users.

Subsection 354.18(b)(3)(B), Water Demand - Page 23

(B) Water Demand: Projected water demand shall utilize the most recent land use, evapotranspiration, and crop coefficient information as well as the best available information collected from historic water users to develop the baseline water demand over the planning and implementation horizon, while evaluating scenarios of future water demand uncertainty associated with projections of local land use planning, future population growth, and climate change.

Management Areas

We would suggest the following changes be incorporated in section 354.20, Management Areas:

Subsection 354.20 (a)(1) & (b), Management Areas – Page 24

(a)(1) The criteria to be used and the basis for the formation of each management area.
This additional language helps to clarify how local agencies decide to form a management area, if at all, which can impact stakeholders, and even more so for those located within multiple management areas and potentially subject to different management standards.

(b) If a Plan creates one or more management areas, the descriptions, maps, and cross-sections required by this Subarticle shall include information about those areas and how management decisions of one area may impact an adjacent or other management areas within the same basin, if at all.

The additional language helps establish criteria for local agency decision making as well as how stakeholders, within and among, management areas might be affected by management-area decisions.

We would also suggest revising the definition of "Management area" in Subsection 351(o) of the Definitions, to delete the term "water use sector," as follows:

Subsection 351(o), "Management area" Defined – Page 4

(o) "Management area" refers to areas within a basin where conditions such as ~~water use sector,~~ water source type, geology, aquifer characteristics, or critical parameters related to undesirable results are significantly different from basin conditions as a whole, and justify different minimum thresholds, measurable objectives, monitoring and management actions.

Inclusion of the term "water use sector" is unnecessary, and we are concerned that it could be improperly viewed as a license for agencies to define management areas according to specific types of uses, such as industrial uses, and thereby result in undue targeting. "Management areas" is already defined to include a reference to "critical parameters related to undesirable results," which alone is sufficient to identify geographic areas that might warrant the distinction of a specific management area. Additionally, Subsection 354.26(b) already allows agencies to exercise discretion in establishing the criteria and definitions of the groundwater conditions giving rise to undesirable effects in management areas. We note that in exercising that discretion, agencies must adequately consider the interests of beneficial uses and users.

Finally, our proposed revision is consistent with Section 354.20., which authorizes an agency to "define one or more management areas within a basin if local *conditions for one or more critical parameters differ significantly from those of the basin at large …* " We believe the language in Section 354.20 more clearly reflects the Department's intent to allow agencies to establish management areas based on conditions in geographic areas and not in way that could be used to target specific types of users—particularly users with vested water rights.

Contingency Projects and Actions

We believe that certain definitions to contingency projects create a presumption requiring groundwater use reductions, instead of enabling them also to potentially consider methods of enhancing groundwater availability within the basin through enhanced recharge. As a result we would suggest the following change;

Subsection 354.44(b)(3), Projects and management Actions - Page 38

(3) Contingency projects or actions shall be supported by available scientific data, analytical methods, and groundwater models, if available, and quantify changes to

groundwater use or availability required to achieve the measurable objectives of the Plan or to avoid undesirable results in the basin.

We recognize that the swift action required of a contingency project or action may make expanded water availability unlikely as a management plan, but the variable nature of the implementation of the SGMA at the local level does not absolutely preclude the possibility. As such, the language of the draft emergency regulations should include this possibility, consistent with other directions to identify possible, additional sources of recharge.

Notice and Communication

It also is advisable that the regulations encourage solicitation of water use data within the subsection 354.10 notice and communication. We suggest that it be added under 354.10(e) as a new item (6).

Subsection 354.10(e), notice and communication – Page 18 Add a new (6)

(6) A description of how the Agency encourages the active involvement of current and historic groundwater users within the basin including the collection of best available information on historic water use.

This language somewhat mirrors the language for community involvement incorporated in item 354.10(e)(3), but is specific to those uses and users with established groundwater rights within the basin. These plans will be dependent on achieving as much accurate data as possible to be incorporated within the models, and calling out existing users specifically is a necessity.

Finally, we would like to call a possible error to the Department's attention. Subsection 354.18(d)(1) contains a specific citation to "central valley land use" that we do not believe is intentional and should be corrected. We suspect the Department actually meant "land use" or "local land use" as the regulations apply statewide.

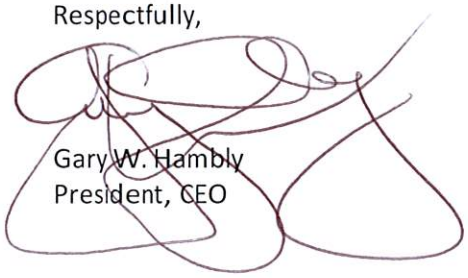
Subsection 354.18(d)(1) – Page 23

(1) Historical water budget information for mean annual temperature, mean annual precipitation, water year type, and ~~central valley~~ land use.

As framework for the boundaries of how agencies will develop sustainable groundwater plans, the draft emergency regulations are critical to providing general guidance that ensures flexibility in local agency implementation. While the Best Management Practices have not yet been developed, and it would indeed be inappropriate for the Department to mandate specific actions of that nature, we note that increasing surface supply availability for activities, such as recharge and use, should be among the options in the draft emergency regulations when

developed. The key to successful sustainability planning will be developing models that incorporate the best information on historic practices and the most flexibility in management for the future.

Respectfully,



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