

# Kern Delta Water District

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March 30, 2016

California Department of Water Resources  
Attn.: Lauren Bisnett, Draft GSP Emergency  
Regulations Public Comment  
P.O. Box 942836  
Sacramento, CA 94236

RE: Public Comments to Draft GSP Regulations

Dear Ms. Bisnett:

Kern Delta Water District appreciates the opportunity to provide comments to the Department of Water Resources regarding the Sustainable Groundwater Management Act Draft Emergency Regulations For Groundwater Sustainability Plans And Alternatives.

Kern Delta Water District (Kern Delta) is a California Water District, formed and operating pursuant to and in accordance with Division 13 of the California Water Code (commencing with Water Code §34000), and overlies a portion of the Kern County Subbasin of the San Joaquin Valley Groundwater Basin portion of the Tulare Lake Hydrologic Region, as defined in Bulletin 118 of the California Department of Water Resources. Kern Delta has recently taken action to form and participate in a Groundwater Sustainability Agency in conjunction with the City of Bakersfield, Kern County Water Agency on behalf of its Improvement District No. 4, and various other local agencies and purveyors.

Initially, Kern Delta wishes to express a few fundamental concepts that we believe should be overarching principles when drafting regulations pertaining to Groundwater Sustainability Agencies (GSA) and Groundwater Sustainability Plans (GSP). The first principle is that a GSP should be based upon and cover only the jurisdictional boundaries of the GSA adopting the GSP. A GSA in one area of a basin should not be compelled (financially or otherwise) to develop or report data pertaining to a GSA that may be located 25, 50, 75, or more miles away. We believe each GSA should be responsible for developing and reporting the appropriate data and managing the groundwater underneath its own GSA. The second principle is that the Sustainable Groundwater Management Act (SGMA) specifically sets forth the responsibility of GSAs in

developing GSPs and reporting to the Department. There is no legislative authority for the additional creation of Coordinating Agencies or Submitting Agencies. It is appropriate and necessary that each and every GSA has direct and unfiltered access to the Department at all times. Finally, it appears the proposed regulations will require groundwater flow models. While such modeling may be helpful for some GSAs and some basins, there are likely other ways and methods by which a GSA can show sustainability within its boundaries, other than through the use of groundwater modeling. We believe groundwater modeling should be a potential tool available to a GSA, but not a mandatory requirement. The Department should remain mindful of the costs associated with SGMA compliance and minimize such costs when possible.

In addition to the foregoing general comments, comments related to specific regulations are included below.

#### **INTRODUCTORY PROVISIONS:**

350.2(a): This section should specify the Plan must achieve the sustainability goal for the area to be managed under the plan (not the entire basin). Multiple GSAs can create multiple GSPs, and it is not legal, logical nor practical for one GSA's plan to bring another GSA's management area into sustainability. This also seems contrary to WC<sup>1</sup> 10735.2 (e). Even section 354.2 references the "area covered by the Plan."

350.2(g): As written, evaluation of a Plan at any time by DWR provides for no finality in an approved (adequate) plan. Subsequent look-ins by DWR should be based upon revisions, updates, or based upon a defined "good cause" (such as based upon a lack of meeting goals).

#### **DEFINITIONS:**

351(e): If the definition of "baseline" or "baseline condition" is intended to mean the beginning level of measurement for sustainability purposes (e.g., baseline water levels), it should also indicate that such baseline conditions do not require a plan to address undesirable results occurring prior to January 1, 2015 (see WC 10727.2 (b)(4)).

351(i): Defines a Coordinating Agency that represents two or more Agencies or Plans. What are the parameters of "representation" and how does a coordinating agency "represent a Plan"? Is this the same as a Submitting Agency? This type of organization is not referenced or authorized by SGMA legislation and should not be needed or required. Each GSA must have independent access to DWR, without third-party interference.

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<sup>1</sup> WC is a reference to the California Water Code. Numbers without reference are intended to be a reference to the proposed regulations unless the context is otherwise.

351(j): These appear to be the same items as “undesirable results” as referenced in WC 10721(x). Why is there a change in phraseology? This creates confusion and possible ambiguity.

351(m): Is the phrase “interconnected surface water” intended to apply to recharge ponds, regulating reservoirs, canals and transportation facilities, and/or similar-type facilities?

351(o): Does the phrase “are significantly different from basin conditions as a whole” modify the entire list of stated conditions, or only modify the phrase “related to critical parameters”? The regulations should allow a “management area” to be based upon any condition as designated by a GSA; there should be no preconceived limitation or definition for what a GSA might wish to do within one or more of its geographic areas (or “management areas”).

351(v): The phrase “Plan implementation” refers to a date. Is this intentional?

351(w): Use of the phrase “plan manager” implies more power than is granted (which is to submit a plan and serve as contact.) Perhaps each GSA should have a “GSA designated agent”?

351(ag): References water supply reliability. DWR must consider that certain GSA areas within a basin may consist of lands entitled to a surface supply, and that other lands within the basin will not be entitled to such surface supply. Water supply reliability should be determined based upon GSA areas, not basin-wide.

#### **TECHNICAL AND REPORTING STANDARDS:**

352.4: The regulations should allow the use of BMPs, but not require them, and only to the extent reasonably practicable.

352.6(a)(2): Requires groundwater, surface water, and land surface elevations to be measured and reported to an accuracy of “at least” 0.1 feet. This accuracy may be possible with land surface elevations but may not be possible for groundwater and surface water elevations.

352.6(b)(2): If privately owned wells are used as the source of basic geology, will the information provided be kept confidential or will it become public information. If this information is made public, it could have a cooling effect with well owners such that GSAs are not permitted to use private wells for source information.

352.6(b)(3): What if the only monitoring wells available don’t meet the DWR Bulletin 74-90 standard or if all of the identifying information is not available? The use of the word “shall” is a

mandatory provision. Reporting requirements should include the phrase "... to the extent available".

352.6 (e): Requires public domain open-source software. What if other models have already been developed or substantially developed and are usable? Models should not be required if other methods can reasonably indicate sustainability within a GSA.

352.8: What exactly is meant by a "coordinated" data management system (as opposed to a data management system)? Also, is "implementation of the plan" substantially different than "Plan implementation," which is defined as a "date" in 351(v)?

#### **PROCEDURES:**

353.4(b): Why is penalty of perjury involved in submittal of reports? Are such certifications required of all other "Plans" that are required under the Water Code, Government Code, or other state laws? It is unreasonable to require a single person to be responsible for all submitted data within a GSA, or a groundwater basin that conceivably covers hundreds of square miles.

353.4(c): Posting should exclude any confidential information that may be required by the Department.

353.6(a): What if the GSA does not have a website?

353.8(c)(1): Not all persons have access to internet or have electronic mail addresses. Use of the word "shall" makes the requirement mandatory and not permissive.

353.10: If a Plan is withdrawn, does that portion of the basin become probationary? May adjacent GSAs mutually modify GSA boundaries and incorporate and/or exchange management areas? [Example: Agricultural land in one GSA converts to M&I land and wishes to transfer to adjacent M&I dominated GSA and GSP – how is this accomplished – simultaneous boundary adjustments?]

#### **PLAN CONTENTS:**

354.6(e): Why must a budget be included within a Plan? What happens when financial needs change over time or new projects are proposed through adaptive management? GSPs are not statutorily required under SGMA to include budgets.

354.8(a): The request for one or more maps includes reference to several matters and information that are basin-wide and not limited to the proposed management area of a GSA.

Why should a particular GSA's GSP include all general plans, existing land uses, location of all wells, and other basin-wide data that will be covered by other distinct GSAs and GSPs that may be located 50, 75, or even 100 miles or more away?

354.8(c): Why is a description of other monitoring programs required, especially if a GSP must stand on its own accord? Is the information required only with respect to the GSA boundary, or is it intended to be basin-wide?

354.8(d): Should the regulation ask how existing programs could "assist" the ability of the agency, as opposed to "affect" the ability of the agency, to achieve sustainability. Ultimate management under SGMA seems to be the responsibility GSA.

354.8(g) (1-8): Again, request is made for information that is basin-wide. The request for information that covers 100s of square miles seems inappropriate and cost-prohibitive for any small local agency that covers only a small geographic service area that wishes to create its own GSA and GSP, especially if the local agency is located wholly or partially within a disadvantaged community. The cost of requiring basin-wide information and matters not set forth in Chapter 6 of SGMA may dissuade small local agencies from creating their own GSAs and having their own GSPs (which is specifically authorized under SGMA), which will tend to limit local control, contrary to the intent of SGMA.

354.10(a)(b): Why should the names of specific individuals and representatives actually be listed in a GSP? Representatives often change over time. Including specific names in a particular Plan version may ultimately result in misinformation being provided if/when the representative is replaced. Also, what about privacy concerns of such individuals? These lists should be maintained by the GSA, but not included in a GSP.

354.14: This section seemingly requires a model of the basin. Nowhere within Chapter 6 of SGMA is there a requirement for a groundwater model. This requirement goes well beyond SGMA legislation and WC 10727.2 and 10727.4 and makes it impossible, as a practical matter, for smaller local agencies to become GSAs with GSPs, and hence prohibits "local control". Development of the information by a professional geologist or professional engineer (354.12) is also beyond the requirements imposed under the SGMA legislation and may be cost-prohibitive.

354.16: Information is being requested that is basin-wide, as opposed to information related to individual GSAs and the area within a GSA's jurisdiction. Why is pre-January 1, 2015 information required? WC 10727.2(b)(4) does not require "fixing" pre-existing conditions.

354.18: This section requires a water budget for the entire basin. To include basin-wide water budget information in each GSP within a basin seems contrary to WC 10727(b)(3)) which

specifically allows separate GSAs and GSPs with a coordination agreement (that necessarily includes water budget methodology (WC 10727.6). Furthermore, the request for information that could encompass 100s of square miles seems inappropriate and cost-prohibitive for any smaller local agency that covers only a relatively small geographic area within a basin that wishes to create its own GSA and GSP, especially if the local agency is located wholly or partially within a disadvantaged community. Requiring basin-wide information and matters not set forth in Chapter 6 of SGMA seemingly prohibits small local agencies from creating their own GSAs and having their own GSPs, which will tend to prohibit local control, which is contrary to the intent of SGMA.

354.18(a): References the numerous requirements for a water budget for the entire basin. While this may be appropriate for a single GSP that covers the entire basin, it is not appropriate for one GSA to indicate the water budget for another GSA's GSP which may be located 20, 50, or even 100 miles away or further, and which may be based upon different circumstances. WC 10727.6 requires a coordination agreement among GSAs to ensure the same data and methodologies are used (e.g. (a) groundwater elevation data and (b) groundwater extraction data). Clearly, the term data would apply to elevation and extraction "data", whereas "methodologies" should apply to the other coordination elements, including water budget. A singular GSA that covers only a portion of a basin should not be required to develop water budgets, or current, historical, or projected water budgets for areas outside of its geographic area.

354.18(b)-(g): Why are "historical" water budgets required? How does one GSA determine "historical planned" [354.18(b)(2)(A)] versus actual annual surface water deliveries of an unrelated public agency located 20, 50, or 100 miles away? Reference is also made to the issue of "calibrate" in (b)(2)(B). Groundwater models are not contemplated nor required in the statutory language of SGMA. Additionally, much of the information required could take many years to fully develop, and there may be limitations on possible GSA funding mechanisms (for example, Prop. 218 and other WC sections).

354.20: Allows for "management areas "if local conditions for one or more critical parameters differ significantly from those of the basin at large..." This seems contrary to regulation 351(o), which allows a management area for areas with different conditions, such as water use, water source, etc. Different management areas (and differing management techniques) should be allowed within a GSA/GSP based upon water use/customer type (as is allowed pursuant to draft regulation 351(o)), even if the same critical parameters exist, so long as sustainability is reached. In other words, different management areas should be allowed if and when determined to be appropriate by a GSA.

354.24: While basin sustainability is the goal of SGMA, one GSA cannot determine sustainability for another GSA, although sustainable yield methodology is one of the

coordinating agreement requirements. Each GSA should determine sustainability for its area (and management areas) and “coordinate” with other GSAs and GSPs such that basin sustainability is obtained. One GSA may be sustainable within a basin while another GSA will need to develop programs to meet sustainability within its area. One GSA should not be able to dictate to another.

354.26: This section references undesirable results caused by groundwater conditions occurring throughout the basin. What is intended when one or more undesirable results occurs in a localized area? When there are multiple GSAs and GSPs within a basin, how does one GSA (GSA 1) respond to another GSA (GSA 2) which allows pumping within GSA 2 that exceeds safe basin/sustainable yield, yet GSA 2 claims its pumping levels are sustainable (because of an ever-increasing pumping depression that pulls groundwater from adjacent GSAs). In other words, what is done if GSA 2 is in overdraft (unbalanced water budget) and GSA 1 is in balance (balanced water budget), and GSA 2 is pulling groundwater from underneath GSA 1? In this scenario, GSA 2 has “sustainable” water levels, but only because it is pulling groundwater from underneath GSA 1. Pumping depressions/overdraft can occur in certain limited areas of the basin – yet not be “occurring throughout the basin” as set forth in the regulation. Also, 354.26(a)(4) references a groundwater model which is not referenced nor required under SGMA.

354.28(b): The regulatory language should mirror the statutory language of WC 10721(x) as to undesirable results to avoid ambiguity and confusion. It appears 354.28(b)(1)(C) is actually dictating a GSP’s action plan (management of extraction and recharge), which should be left to individual GSAs and GSPs. As to subsection (d), and the ability of a GSA to consult with DWR regarding threshold values, will other GSAs within the basin be given notice of the DWR/Agency consultation regarding the establishment of minimum thresholds for groundwater elevations? The burden of “clear and convincing” in (d) and (e) is too high. Why not substantial or reasonable evidence or inferences?

354.30: Measurable objectives are required in WC 10727(b)(1) so as to “achieve the sustainability goal in the basin within 20 years of the implementation of the plan”. WC 10727.2(b)(4) provides “a groundwater sustainability agency has discretion as to whether to set measurable objectives ... for undesirable results that occurred before, and have not been corrected by, January 1, 2015.” Are the measurable objectives as set forth in subsection 354.30(b) intended to require more than January 1, 2015 conditions (because they must be “above” minimum thresholds)?

354.34: Monitoring networks should be developed for GSAs within a basin. Coordination should occur, but it is unduly burdensome for a GSA to create and/or monitor wells in another GSA that may be located 25, 50, 75, or 100 miles away. The same issue applies to monitoring of

surface water conditions, especially where a particular party may have no rights to a specific surface water supply. Best management practices should be followed to the extent practicable.

354.36: This section seems to indicate that a specific subset of monitoring sites can be used to determine if critical parameters are being impacted. If a subset of sites may be used, doesn't this seemingly imply that section 354.34 requires an excessive monitoring network or excessive monitoring, or both?

354.38: A GSA should not be responsible for monitoring and/or data gaps for areas within the basin that are located outside of its jurisdictional boundary of the GSA. Subsection (d) requires monitoring of surface conditions and the effectiveness of management actions. SGMA is intended to create sustainable groundwater management – however, certain local surface supplies (such as streams, creeks, and rivers) may already be subject to existing third-party rights and outside the jurisdictional boundaries of one or more GSAs within a basin. A GSA should not be required to monitor surface supplies belonging to another GSA's property owner.

354.40 and 352.8: Although these sections allow a GSA to create a data management system, section 354.40 dictates how data must be transmitted to DWR (DWR's data standards), and therefore how such data is likely stored. "All" monitoring data may be expansive and unduly burdensome (please see comments to 354.34 and 354.36). Section 354.40(b) requires an Agency to make all monitoring data available throughout the year as collected. Does this mean daily, weekly, monthly, or yearly? This is burdensome and creates data dumps that are unusable and unrealistic. The Agency should only be required to provide annual data.

354.44: Requires a description and list of all projects and management actions "adopted". It may be too soon to determine all potential projects and management actions that may be needed to obtain sustainability, especially with regard to issues of permitting and regulatory processes, benefits, and financial requirements that are seemingly required in the plan. Subsection (b)(1) requires a "contingency project" for each "project" -- this is unclear. Such contingency projects are apparently to be implemented in the event "undesirable results" occur. WC 10721(x) defines undesirable results as a condition that occurs "throughout the basin." What occurs when/if only a portion of the basin has an undesirable result, and it is outside the jurisdictional boundaries of a particular GSA/GSP?

355.2: What happens regarding water management during the two-year review period given to DWR, and is a GSA expected to expend funds if the Plan may ultimately be determined to be inadequate? Also, 355.2(d) references Board jurisdiction under WC 10735.2; however WC 10735.2 only references when the Board may declare a basin "probationary", which is different than when the Board may exercise jurisdiction (see for example, WC 10735.4 which allows a cure period of at least 180 days before jurisdiction occurs.)

355.4(a): This seemingly indicates the minimum Plan compliance requirements. However, as stated elsewhere, the draft regulations appear to cover matters and issues well beyond the statutory language of SGMA. For example, 355.4(a)(3) requires each Plan to cover the entire basin. This requirement is contrary to SGMA, which clearly and specifically allows multiple plans (see for example, WC 10727(b)(3)).

355.4(b): This section authorizes “evaluations” by the Department, including the authority to determine feasibility of projects, management actions, and contingency projects. This seems contrary to the concept of “local control” and apparently allows the Department to substitute its opinion for the local opinion. There is also a reference to “coordination agreements” [355.4(b)(7)], although SGMA clearly authorizes multiple plans within a basin, coordinated by a single coordination agreement. The Department’s evaluation should consider sustainability under the area managed by a particular GSA and GSP, and not allow lack of compliance in one GSA’s Plan area to cause rejection of other Plans within a basin.

355.6(b)(6): This section authorizes the Department to request “any information”. There should be reasonable limitations as to what the Department may request (such as - reasonably necessary; or, information readily available to the GSA). This concept of reasonableness also relates to 355.10 and any other DWR request for information.

355.10(a): This regulation appears to have created an entirely new and unique agency, the “Coordinating Agency”, which is not mentioned nor hinted at within the SGMA legislative language. SGMA specifically indicates it is not intended to modify water rights, but this regulation, and specifically subsection (a), provides that intrabasin disputes are to be the responsibility of the Coordinating Agency. What types of disputes are these regulations intending to address? How will WC 10735.2 (e) be applied? The applicability of subsection 355.10(d) and the finding that one or more plans is inadequate must be based upon good faith and upon the Plan in question, and not be based upon arbitrariness or capriciousness, or upon the fact that two or more GSAs do not agree. DWR should not determine as inadequate any reasonable plan that provides for sustainability within its own GSA.

How will the Department address a situation where there are undesirable results in an area of a basin, but that are not occurring throughout the basin?

## **REPORTS;**

356.4(a): Please see comments regarding 353.4.

356.4(b)(1)-(5): This section includes the requirement to include information from all monitoring wells in the monitoring network. As indicated in comments to 354.34, monitoring networks should be based upon the geographic area of a particular GSP – not the entire basin. These sections also require reporting a vast level of information on an annual basis. Is it all necessary (please see comments to 354.36)? Is this cost-effective (especially considering smaller GSAs)?

356.4(b)(3)(4): References surface water supplies used or available for use. How does the Department deal with a situation where an owner of a surface water right uses such supplies for the benefit of the owner (or owner's landowners) – which is different than making such supply available to the entire basin?

356.10(e): References a “hydrogeologic conceptual model”. SGMA does not require groundwater modeling, and the cost of a model could be prohibitive (especially for smaller GSAs and/or disadvantaged communities).

356.12: It is unclear how an Agency may adopt a plan, and thereafter “modify” the Plan without formally adopting an amendment. What is the intended difference between a Plan modification and a Plan amendment? Both seem to be changes to an adopted Plan.

#### **COORDINATING AGREEMENTS:**

357.4(a): This section provides for an agreement to “ensure that the Plans are developed and implemented utilizing the same data and methodologies...” WC 10727.6 requires the Plans “utilize the same data and methodologies for [certain listed] assumptions.” The WC does not require that independent GSAs within a basin agree to a coordination agreement as to the “implementation” of their plans. This provision goes beyond SGMA legislation.

357.4(b): This creates an entirely new and unique agency, the Submitting Agency, which is not mentioned or even contemplated within SGMA. This regulation appears to have created a “Super GSA” that will be responsible to (1) compile data, (2) rectify data, (3) make interpretations regarding basin conditions, and (4) produce a single report synthesizing and summarizing that information into a coherent and credible account of basin conditions. This “Super GSA” is also tasked with explaining how the “Plans have been integrated” [see 357.4(d)(2)], and possibly with the resolution of disputes (see 355.10). Nowhere within the SGMA legislation does it create such an agency nor mandate that coordination agreements shall be used to resolve GSA disputes (as contained within 357.4(h)). These regulations appear to vastly expand upon the SGMA statutory language and intent regarding coordination agreements (as contained in WC 10727.6).

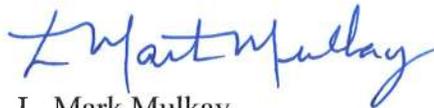
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Use of a Submitting Agency (or Super GSA) is not contemplated in SGMA, is not authorized, and runs the risk of limiting reports, data, and interpretation of data developed by individual GSAs. Is the "Submitting Agency" intended to be the same as the "Coordinating Agency" - neither of which is authorized or required in SGMA?

Each GSA must be entitled to unrestricted individual access and dialog with DWR.

Thank you for your time and attention to this matter. If you would like to discuss any or all of the foregoing, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "L. Mark Mulkey". The signature is written in a cursive, flowing style.

L. Mark Mulkey  
General Manager  
Kern Delta Water District