



March 29, 2016

Via Email To:

[sgmps@water.ca.gov](mailto:sgmps@water.ca.gov)

Department of Water Resources  
Attn: Sustainable Groundwater Management Section  
P.O. Box 942836  
Sacramento, CA 94236

**Re: Sustainable Groundwater Management Act Draft Emergency Regulations for  
Groundwater Sustainability Plans and Alternatives**

To Whom It May Concern:

Sun World and our affiliated companies have significant operations in Wheeler Ridge Maricopa Water Storage District, Arvin Edison Water Storage District, Cawelo Water District, North Kern Water Storage District, Shafter Wasco Irrigation District and Semitropic Water Storage District – all within the Kern Groundwater Authority (KGA). We appreciate this opportunity to provide comments on the Sustainable Groundwater Management Act Draft Emergency Regulations for Groundwater Sustainability Plans and Alternatives (Draft Regulations), released for comment on February 18, 2016.

We recognize and support the KGA as being the appropriate organization to establish a framework for the active, comprehensive and cooperative management of the San Joaquin Valley portion of the groundwater basin underlying Kern County to preserve and maintain local control and provide long-term surety for all basin users.

We have reviewed the February 18 draft regulation and also the comments and recommendations from the KGA (attached). We agree with KGA's comments and recommendations, and have the following additional, recommendations.

**Excerpt from 352.6**

*"352.6 (a) (2) Groundwater, 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."*

*"(3) Reference point 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, and the method of measurement described."*

Draft Section 352.6 (a)(2) proposes that water and land elevations should be measured and reported to an accuracy of at least 0.1 feet. However, Draft Section 352.6 (a)(3) proposes that reference point elevations should be measured and reported to an accuracy of at least 0.5 feet. Since water surface elevations are typically computed by measuring the vertical distance between the reference point and the water surface, if the reference point has an accuracy of 0.5 feet, the computed water surface elevation



cannot be accurate to 0.1 feet. We suspect that you intended to use the phrase, "to a precision of at least 0.1 feet."

In addition, in areas with deep water levels in wells (and especially those equipped with pumps), it is impractical and un-necessary to specify a precision of 0.1 foot for water level measurements for the following reasons:

- Standard industry water level meters, well head conditions and downhole conditions make an accuracy of 0.1 feet impractical in any irrigation well with water levels deeper than 100 feet;
- As indicated above, water level measurement precision that is greater than the reference point elevation provides an erroneous impression of the computed water level elevation accuracy;
- As the depth to water increases, a measurement precision of 0.1 foot becomes extreme. For example, if the depth to water is 500 feet, a 0.1 foot precision would be 0.02% of the total measurement; and
- In agricultural areas well water levels fluxuate considerably on a daily basis during the irrigation season. In recognition of this "noise", hydrogeologists focus on trends measured in multiple feet.

**Based on these comments, we recommend that groundwater level measurements be accurate to 1% of the total depth (to a maximum precision of 0.1 feet) and that surface water and ground surface elevations be accurate to 2 feet.**

For ease of reference, we have attached comments and recommendations from the KGA, with which we agree. Again, thank you for considering our comments and for your work to refine the Draft Regulation so that it may serve as a workable and effective tool for local agencies to sustainability manage their groundwater. If you wish to discuss, please call me at any time (832-212-4589).

Best Regards,

A handwritten signature in cursive script that reads "David Dorrance".

David Dorrance  
Sun World International

Cc:

Robert Kunde, Wheeler Ridge Maricopa WSD  
Dana Munn, Shafter Wasco ID  
David Ansolabehere, Cawelo WD  
Eric Averett, Rosedale Rio Bravo WSD  
Jason Gianquinto, Semitropic WSD  
Richard Diamond, North Kern WSD  
Steve Collup, Arvin Edison WSD



## Comments and Recommendation from the Kern Groundwater Authority

### General Comments

#### **Stakeholder Input**

The KGA appreciates the level of outreach and input afforded by DWR in the development of the Draft Regulations. The KGA has been engaged in a number of the stakeholder working groups providing input to DWR over the past year and 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 a generally supportable Draft Regulation that provides a framework for sustainable groundwater management, recognizing that additional public comment will help in addressing issues prior to finalizing the regulations.

#### **Flexibility**

The KGA 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.

#### **Local Management**

The Draft Regulations are structured in a manner that requires each Plan achieve sustainability for the entire basin (350.2(a) and elsewhere). This premise is counter to the statute allowing for multiple Plans within a basin as provided at Water Code Section 10727, and inconsistent with Water Code section 10735.2(e) which provides exclusion from probationary status those portions of the basin which are compliant with the sustainability goal. As currently drafted it appears that each Plan within a basin is responsible for ensuring the sustainability goals are met throughout the basin.

The Draft Regulations introduce a "Coordinating Agency" and "Submitting Agency" as required for each basin to act as the *"authorized entity that represents two or more Agencies or Plans for a basin and is the sole point of contact with the Department"*. To the extent that this "Coordinating Agency" represents the other GSA's within the basin, it has in effect become the GSA for the basin in the eyes of DWR. This requirement is not envisioned in the Sustainable Groundwater Management Act (Act) and defeats the purpose of allowing for multiple GSA's within a basin. The KGA has recommends that the coordination agreement act as the vehicle to accomplish the unification of data and reporting from within a basin, as envisioned and articulated in (Water code Section 10727.6) and has provided suggested language for consideration.

### Specific Comments and Recommendations



We recommend 350.2(g) be clarified as follows so it is not inferred a Plan may be reviewed "at any time" after it has been determined to be adequate: "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 KGA recommends the definition of Coordinating Agency be modified as follows:

- (i) "Coordinating ~~agency~~ Entity" refers to a groundwater sustainability agency or other authorized entity that represents two or more Agencies or Plans for a basin and is the sole point of contact with the Department. A Coordinating Entity may be identified in and appointed through a coordination agreement among multiple Agencies within a basin. The Coordinating Entity shall have no authority other than to collect, disseminate and report data on behalf of the various Agencies within the basin unless otherwise authorized in the Coordination Agreement.

The KGA recommends the term "Coordinating Agency" be substituted throughout the Draft Regulations with the defined term "Coordinating Entity".

- (w) "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 KGA recommends the addition of a definition of Groundwater Recharge or Recharge be included to be consistent with 2015 amendments and to clarify when used in the Regulations.

The KGA Recommends adding "Recharge" to the defined terms as follows:

"Recharge" is the augmentation of groundwater, by natural or artificial means, including 'in-lieu' use of surface water by person that could otherwise extract groundwater in order to leave groundwater in the basin.

## Article 3. Technical and Reporting Standards

### 352.4 Best Management Practices

The KGA understands best management practices to be voluntary actions and subject to the discretion of the Agency adopting or implementing them. As such, we suggest the following edits



Change 352.4 (c) to read:

If best management practices developed by the Department are modified, an Agency ~~shall not may~~ be required to amend the Agency's best management practices ~~until the next five year review~~ at the next five year review subsequent to the date of modification.

### 352.6 Data Reporting and Standards

Overall the KGA agrees with the standards of data reporting identified within this section. To avoid exclusion of certain wells that may not have certain data available but are still valuable for monitoring and reporting purposes, we suggest the following addition:

Change 352.6(b)(3)(D) to read:

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 KGA contends that having such a model should demonstrate that missing well depth or completion intervals within certain wells is not required for compliance. The KGA suggests the following addition:

Change 352.6 (b) (4) to read:

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, demonstrate that the Agency has access to and is utilizing a groundwater model calibrated to within industry standards, or demonstrate to the Department that such information is not necessary to understand and manage groundwater in the basin.

## **Article 5. Plan Contents**

### 354.8 Description of Plan Area

Change the last sentence of 354.8 (a) (5) to read:

Each Agency shall utilize data available from the Department, as specified in Section 353.2, or the best available existing information.

### 354.8 (g) (1) - (7)

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 prevue of an Agency to evaluate and/or limit land use planning decisions.



### Section 354.8 (g) (8)

This section requires an analysis of land use planning documents outside of ones basin and in order to comply with the requirements requires and understanding of the groundwater basin within which those plans are administered. This requirement effectively ties the entire central valley into one Plan.

The KGA recommends elimination of Section 354.8 (g) (8).

### 354.18 Water Budget

It is unclear as to why any given Plan must contain the water budget for the whole basin when the actions contained within the Plan are only able to access and utilize the resources available to the Agency preparing the Plan. It seems more appropriate to eliminate the need for each Plan to have a basin water budget and provide that the Plan be coordinated with the other Plans within the Basin.

The KGA recommends the following additions if this section is retained:

Change 354.18 to read:

The Plan shall include a water budget, which has been coordinated with all other Plans within the basin, that provides an accounting and assessment of the total annual amount of groundwater and surface water entering and leaving the Plan area, ~~basin~~, including historical, current and projected water budget conditions, and the change in the amount of water stored. Water budget information shall be reported in tabular and graphical form.

Change 354.18 (b) to read:

The Plan shall quantify the current, historical, and projected water budget for the ~~basin~~ Plan area as follows:

We also note that 354.18(b)(3)(C) is inconsistent with Water Code Section 10733.2(b)(2) baseline requirements and needs to be modified consistent with the statute.

Change 354.18 (c) to read:

The Plan shall rely on the best available information and best available science to quantify the water budget for the ~~basin~~ Plan area in order to provide an adequate understanding of historical and projected hydrology, water demand, water supply, land use, population, climate change, sea level rise, groundwater-surface water interaction, and subsurface groundwater flow. If a groundwater-surface water model is not used to quantify and evaluate the projected water budget conditions and the potential impacts to beneficial uses and users of water, the Plan shall identify and describe an equally effective method or tool to evaluate projected water budget conditions, or identify provisions for developing a groundwater-surface water model capable of quantifying projected water



budget conditions no later than the first five-year assessment.

354.28(e) contains an inappropriate standard for such administrative determinations and "clear and convincing evidence" should be replaced by "substantial evidence."

## Article 6. Evaluation and Assessment

### 355.2 Department Review of Initial Adopted Plan

Section 355.2 (e) provides DWR two years to evaluate a Plan. During this two year period each Agency will likely be taking numerous actions to implement the Plan. It would be helpful for DWR to have a basic review that would provide for a six month or one-year "conditional approval" of the Plan in order to begin implementation of certain actions, such as investment in water management programs, assessment of fees or potential pumping curtailments.

### 355.4 Criteria for Plan Evaluation

Several provisions within this section require an Agency's Plan to manage at the basin level without any legislative requirement or authority to do so. The KGA recommends the following additions:

Change 355.4 (a) (3) to read:

The Plan covers the entire ~~basin~~ Plan area and is coordinated with all other Plans within the basin.

Change 355.4 (b) to read:

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 ~~basin~~ Plan area. When evaluating whether a Plan is likely to achieve the sustainability goal, the Department shall consider the following:

Change 355.4 (b) (6) to read:

Whether the Plan will adversely affect the ability of an adjacent ~~basin~~ Plan(s) to implement their groundwater sustainability Plan(s) or impede achievement of sustainability goals within the basin or in an adjacent basin.

### 355.10 Resolution of Conflicts by Department

This article implies that the "Coordinating Entity" is responsible for conflict resolution within



a basin. The concept of a single entity acting as an arbiter of disputes within a basin is inconsistent with SGMA and there is no legal authority or mandate to form such an entity. As such, the KGA recommends the following:

Change 355.10 (a) to read:

Disputes within a basin shall be the responsibility of the Coordinating Agency, identified and appointed through a basin coordination agreement, or other entities responsible for managing Plans and alternatives within that basin.

### **Article 8 – Coordination Agreements**

The KGA agrees that coordination agreements between Agencies in different basins (Interbasin) shall be voluntary and coordination agreements between Agencies in the same basin (Intrabasin) are mandatory. The inclusion of “Submitting Agency”, an undefined term, seems inconsistent with SGMA and fails to acknowledge the authority of each Agency to prepare, administer, implement and report on their respective Plans. Given the lack of authority to mandate a Coordinating Agency and/or Submitting Agency, the KGA recommends striking the word “Submitting” and replacing with the word “Coordinating” Agency wherever found in Article 8.