



April 1, 2016

VIA ELECTRONIC SUBMISSION

California Department of Water Resources
Director Cowin
ATTN: Laruen Bisnett, Public Affairs Office
P.O. BOX 942836
Sacramento, CA 94236
SGMPS@water.ca.gov

Re: Draft GSP Emergency Regulations Public Comment

Dear Director Cowin:

Wonderful Orchards LLC, on behalf of Wonderful Pistachios and Almonds LLC, Wonderful Citrus LLC, POM Wonderful LLC, JUSTIN Vineyards and Winery LLC, and Vintage Nurseries LLC (collectively "Wonderful") appreciates the opportunity to comment on the Draft Emergency Regulations for Groundwater Sustainability Plans and Alternatives ("Proposed Regulations") as published by the California Department of Water Resources ("DWR") on February 18, 2016.

Wonderful and its related entities farm and process several citrus varieties, almonds, pistachios, pomegranates, grapevine nursery stock and wine grapes across California. Proper management of groundwater resources in the state is central to the agricultural industry, and as such, it is imperative that these guiding principles be finalized in a manner that provides adequate assurances for basin stability while establishing a workable compliance framework for water users.

The Sustainable Groundwater Management Act ("SGMA"), passed by voters in 2014, requires DWR to establish and "adopt regulations for evaluating groundwater sustainability plans ("GSPs") and coordination agreements" submitted by overlying Groundwater Sustainability Agencies ("GSAs") (Water Code Section 10733.2). Wonderful respectfully requests that DWR consider the following comments when finalizing the Proposed Regulations.

1. Final GSP Regulations Must Be Consistent with SGMA

Basin-wide expectations must be consistent with SGMA - Section 350.2 of the Proposed Regulations indicates that GSPs must achieve sustainability for the "entire

basin” within 20 years. This requirement is inconsistent with SGMA. SGMA allows for multiple GSPs to be established within a basin, and specifies that a GSA cannot be responsible for areas beyond its jurisdiction. Water Code Section 10735.2(e) explicitly states that the “board shall exclude from probationary status, any portion of a basin for which a GSA demonstrates compliance with the sustainability goal”, implying that basins with multiple GSPs and GSAs may have varying degrees of sustainability at any one given time.

GSP contents must align with SGMA intentions – The Proposed Regulations require GSAs to include a water budget as part of the GSP. SGMA only requires a water budget in the context of a Coordination Agreement between multiple GSAs within the same basin. There is no justification for DWR to require a budget for all GSPs.

Similarly, as currently written, sections 354.18(b) and (b)(3)(C) of the Proposed Regulations require GSPs to include certain information related to water quality and supply, including pumping data and baseline surface water supplies, which is outside the scope of the requirements of SGMA. In addition, this data will be very difficult for GSAs to obtain by the GSP deadline because GSAs do not currently have the requisite authority to require pumping information from groundwater users until a GSP is adopted.

Lastly, the requirement in the Proposed Regulation for GSAs to use baseline surface water supplies to evaluate future water supply uncertainty is inconsistent with SGMA. Rather, SGMA provides that the baseline for measuring unreliability and reductions shall include historic average reliability and deliveries of surface water. This issue is a critical one and was heavily negotiated during the crafting of SGMA. The final GSP Regulations must be consistent with SGMA’s treatment of surface supplies for purposes of establishing compliance with the Act.

The reasons DWR may find a GSP “inadequate” must also be consistent with SGMA – Section 355.5(a) of the Proposed Regulations lists the requirements a GSP must meet in order to be considered complete and adequate. While we generally agree with the requirements listed under this section, DWR should also add the language in section 355.5(b)(1) of the Proposed Regulations to this list: “Whether the Plan (GSP) substantially complies with the requirements of this Subchapter”. This amendment will further align the GSP Regulations with SGMA’s requirements that GSP’s must be in substantial compliance - not perfect.

Further, DWR has proposed that a GSP can also be deemed inadequate unless it “covers the entire basin” (Section 355.4(a)(3)). For reasons previously mentioned, we believe that this requirement is inconsistent with SGMA and should therefore not be included in the evaluation of a GSP.

Finally, the Proposed Regulations address what happens when a GSP is determined to be inadequate (Section 355.2), but fails to provide details on how DWR must proceed in these circumstances. When DWR determines that a GSP is noncompliant with SGMA, it should be required to provide information related to the deficiencies in the GSP and allow ample time for the GSA to cure the inadequacies.

2. The Roles and Responsibilities of DWR Must Be Clearly Identified

Conflict resolution guidelines must be consistent with SGMA - The Proposed Regulations provide DWR with an array of roles and responsibilities, including the power of dispute resolution between basins in conflict (Section 355.10(b)). We are not opposed to DWR having the ability to intervene in inter-basin conflicts, but request that additional clarity be provided on the protocol that DWR will follow to resolve such disputes.

Similarly, the Proposed Regulations require that intra-basin conflicts be resolved by the Coordinating Agency for the basin (Section 355.10(a)). SGMA does not include provisions describing one Coordinating Agency in a basin, and as a practical matter, it may not be the case that one single agency will preside over an entire basin. Rather than create new requirements under the GSP Regulations, DWR should require that disputes within a basin be handled according to statute by requiring that basins with multiple GSAs have adequate Coordination Agreements.

The frequency of GSP reviews should be clearly defined – There are multiple sections in the Proposed Regulations stating that DWR is required to review a GSP and annual report “at least every five years” (Section 352.4 and Section 356.6) to ensure compliance with SGMA. We agree that DWR should have the ability to conduct periodic reviews, but believe that the “at least” clause provides too much ambiguity as to when and how often DWR will carry out these reviews. The final GSP regulations should provide additional clarification regarding frequency of review and suggest that every five years is appropriate, unless special circumstances.

Groundwater quality issues should be determined locally – The Proposed Regulations require GSAs to determine the quality of their water supply, and structure the GSPs in a way so as to avoid the undesirable result of “degraded groundwater quality”. We agree with the general intent of this requirement, but in implementing SGMA DWR must take into account the fact that groundwater quality can vary significantly between basins. The final GSP regulations should recognize the potential for these types of variations and allow local agencies to properly manage groundwater quality in accordance with existing rules.

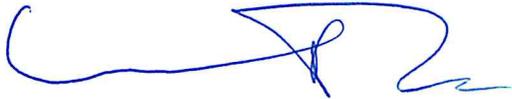
3. All Terms and Definitions Must Be Clearly Defined

The definitions used in the GSP regulations must be consistent with those in SGMA – The definition of “baseline” in Section 351(e), must be amended to bring it into alignment with SGMA. DWR should consider the following: SGMA states that the baseline for a GSP “may, but is not required to, address undesirable results that occurred before and have not been corrected by, January 1, 2015” (Water Code Section 10727.2); and as previously stated, SGMA requires that the “baseline shall include the historic average reliability and deliveries” (Water Code Section 10733.2(b)(2)), which is inconsistent with the definition provided in the Proposed Regulations.

The purpose of a “Submitting Agency” must be clearly defined – DWR introduces a new “Submitting Agency” under Section 357.4 related to intra-basin coordination, but does not provide a definition for such an agency, and there is no definition of this type of entity in SGMA. Furthermore, there is no discussion in the Proposed Regulations clarifying the difference between a Submitting Agency and a Coordinating Agency, as referred to in the Proposed Regulations. DWR should describe the roles and responsibilities of these two agencies, and provide clear delineations between the two agencies should they both need to be retained in the regulations.

Wonderful appreciates the opportunity to provide comments and supports DWR finalizing the Proposed Regulations in a manner that upholds the intention of SGMA, while remaining consistent with the statute passed by the Legislature in 2014. We are available to discuss these comments at your convenience.

Sincerely,



William D. Phillimore
Executive Vice President