

April 1, 2016

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

Re: Comments of the Merced Irrigation District Concerning Draft Emergency Regulations for Groundwater Sustainability Plans and Alternatives

Dear Ms. Bisnett,

These comments are submitted by the Merced Irrigation District (“MID”) regarding the Department’s Draft Emergency Regulations for Groundwater Sustainability Plans and Alternatives (“Draft Regulations”). These comments should be read in addition to the letter sent by MID concerning its objection to the proposed Draft Regulation on interbasin coordination. For your convenience a copy of that letter is attached, and those comments are summarized in this letter.

MID appreciates the opportunity provided by the Department of Water Resources (“Department”) to review the Draft Regulations and to be part of the involved stakeholder community seeking to achieve sustainability of our groundwater basins.

The intent of the Sustainable Groundwater Management Act (“SGMA”) is to provide local agencies with optimal ability and flexibility to achieve sustainable groundwater management by weighing various influencing factors. MID supports this goal as it has been one of the goals of MID for several decades. However, a review of the Draft Regulations reveals that the Department has taken a “cookbook-like” approach regarding the types of information that must be provided by Groundwater Sustainability Agencies (“GSA”). The information gathering mandated by the Department is onerous, costly and largely unnecessary. Aside from MID’s concerns regarding interbasin coordination, MID believes that the goal of achieving sustainable groundwater management, locally, is better served by allowing GSA’s to determine the types of information that they need in order to achieve sustainability. The Department should prescribe a pass/fail approach to sustainability and only require detailed necessary information in those cases where a GSA has proven itself unable to implement its Groundwater Sustainability Plan (“GSP”).

MID offers the following specific comments concerning the draft regulations.

The introduction to the regulations contains helpful descriptions of the intention of the regulations. For instance, key elements of a GSP include achieving sustainability within 20 years, identifying when and where groundwater conditions cause problems, project and management actions that will be implemented to prevent problems and milestones to track progress. In other words, the problems a GSA are having in achieving sustainability and how will it resolve those problems.

The Department recognizes that “local control and management is a fundamental principle of SGMA; the draft regulations preserve the role of local agencies in managing their basins and achieving sustainability.” The Department indicates that local agencies have flexibility in defining the problems and achieving measurable objectives and results. Yet, despite all of this good language, it appears the Department is using this opportunity to collect a great deal of information and to try to second-guess local agencies. Rather than a pass/fail approach, the Department appears to be looking for massive amounts of largely unhelpful information in order to second guess GSAs.

§ 350.2. General Principles.

(a) Sustainability is the goal for the entire basin within 20 years of plan implementation without adversely affecting the ability of an adjacent basin to implement its plan. *This is fodder for conflict between basins that have differing views of safe yield. While the Department and State Water Board are authorized to resolve a dispute, it would be far more useful to have greater guidance regarding how to resolve interbasin conflicts.*

(c) DWR is to evaluate the adequacy of all plans and modifications thereto. *It would be helpful to have specific criteria by which plans will be evaluated.*

(e) Sustainability may be achieved through an adaptive management approach. *How will this work? If a GSA proposes an adaptive management approach then almost by definition their GSP will not be adequate. How will the Department afford flexibility within the confines of an acceptable GSP?*

(g) The Department may evaluate a Plan at any time, for compliance with the Act and this Subchapter. *Section 355.6 describes the periodic review of GSPs. Once a GSP is approved, the GSAs should be allowed to implement the plan without arbitrary reviews by DWR.*

§ 351. Definitions.

(J) “Critical parameter” is one of the key issues for consideration and refers to the chronic lowering of groundwater levels indicating a net depletion of supply over the planning horizon and may include any of the following factors: a reduction in storage, seawater intrusion, degraded water quality, significant subsidence, and depletions of surface water that have adverse impacts on beneficial uses of surface water that may lead to undesirable results as described in W.C. § 10721(x). *These are the exact same factors just defined as critical parameters.*

Section 352.4. Best Management Practices. Each GSA may define their own best management practices or rely on the BMPs developed by DWR. *MID is supportive of this position, but seems in conflict with the Department's demand for massive quantities of information. A better approach is to let the GSAs develop their BMPs and implement the GSPs. If it all works, great. If not, only then examine what the GSA is doing. BMPs are adaptive by nature and the local GSAs should be permitted to make changes as needed without returning to DWR or SWRCB for permission to make changes, as long as the basin is substantially sustainable.*

Section 352.6. Data and Reporting Standards.

(b)(3) Wells used to monitor groundwater conditions shall be constructed according to standards described in DWR Bulletin 74-90....

A well with good data should not be ruled out as a viable monitoring well because it wasn't constructed to a standard. The well may still provide meaningful historical data. Suggest rewording so that this states, "New wells used to monitor groundwater conditions..."

(f) *One issue that arises under this section concerns studies and data relied on by the GSA in developing its plan. It specifies that proprietary data and reports do not have to be disclosed unless they are requested by DWR to resolve interbasin disputes. This is potentially a problem if DWR is not held to keep this proprietary data confidential. This section mistakenly cites to Section 355.12, which actually should be Section 355.10, which indicates that DWR may require proprietary data from the GSA. Neither section, however, obligate DWR to keep this proprietary data confidential. Under the Public Records Act, proprietary data may be kept confidential. These regulations should be amended accordingly.*

Section 352.8. Data Management and Recordkeeping. Each GSA must develop a coordinated data management system capable of storing, maintaining and reporting all relevant information related to the development and implementation of the GSP. *There is no definition of what a coordinated data management system is. The obligation to establish this coordinated data management system is an extremely complicated and onerous task, and it becomes essentially useless if a GSA has successfully implemented its GSP. The GSA should be permitted to decide what level of data is kept and how. If a GSA then proves incapable of meeting its GSP obligations, the Department could then follow up with requests for additional information. The regulations could provide for this follow-up request and give the broad categories where it has authority to request information.*

Section 353.4. Reporting Provisions. This section sets forth a requirement that all materials will be submitted electronically through an online reporting system. *Of concern is that all materials submitted to the Department will be posted on the Department's Internet website. To the extent this includes subsequently requested proprietary data, it is a non-starter.*

Section 354.6. Agency Information. Subsection (E) requests a description of anticipated revenues and costs of implementing the plan, including programs, projects, contracts, administrative expenses and other expected costs. Apparently, this information is requested in order to demonstrate that the GSA has the necessary financial ability to implement the plan. *Revenues and expenditures of public agencies and investor-owned utilities are public*

information, unless proprietary information is included. To require all of this as part of the GSP is duplicative, unnecessary and burdensome. An agency could be required to certify that it has sufficient resources to implement the plan, but certainly in the case of an irrigation district, this information again seems duplicative, excessive and unnecessary, particularly since irrigation districts have an independent obligation to be financially viable. Only in the case of a GSA that appears to be failing should this detailed level of information be requested.

Section 354.8. Description of Plan Area. This regulation requires the submittal of a tremendous amount of detailed data. Among the data required are maps showing the distribution of all agricultural, industrial and domestic water supply wells in the basin (Section 354.8(a)(5)); an identification and assessment of proposed land use activities that may pose a risk to groundwater quality or quantity (*id.* at (g)(3)); a summary of land use plans outside the basin that the GSA determines may be linked to the hydrology of the basin covered by the GSP (*id.* at (5)). *The Department cites as the authority for requiring all of this information to certain sections of SGMA. Reviewing those sections, they do not compel this level of data collection or analysis. Further, providing this detailed information into a public forum raises critical infrastructure safety concerns/issues. The requirement to collect this data will necessitate the hiring of consultants, and unnecessary expenditure of public funds absent proof that this information is necessary in order to judge the effectiveness of a GSP. Again, until it is demonstrated that a GSA is incapable of implementing its GSP, none of this information should be required. It should be left to the GSA to determine how they will monitor their groundwater basins and determine sustainability.*

Section 354.14, et seq. Hydrogeologic Conceptual Model. Requires a hydrologic model of the basin and substantial accumulation of data regarding basin conditions. *Same comment as to section 354.8.*

More specifically,

354.14(a)(5) Other relevant information required by the Department as necessary to evaluate the Plan. *Unclear. How is the GSA to know what other information will be required by the Department? Suggest specifically identifying the items DWR requires or consider removing this item.*

354.14(c)(5) Surface water bodies with water supply diversions greater than 10 acre-feet per year, storage facilities with a capacity greater than 100 acre-feet. *Seems excessive for a GSP, particularly in certain watersheds. Alternatively, surface water bodies with diversions greater than 100 or 1,000 acre-feet per year, depending upon the characteristics of the watershed.*

Section 354.18. Water Budget. This regulation requires a tremendous of information regarding water use in the basin. For example, it requires an accounting and assessment of the total annual amount of groundwater and surface water entering and leaving the basin, all sources of percolation, all water demands, including evapotranspiration, groundwater pumping, groundwater discharges to surface water sources, and subsurface groundwater outflow, all water supplies by source, water demands by water source type and water use sector, a quantitative evaluation of the historical surface water supply reliability based on the most recent ten years of

information, an assessment of the historical water budget extending back ten years, etc. *Once again, the cited sections of SGMA do not compel this level of information. Again, this is WAY more information than is necessary for the Department to assess GSP's at this point. Consistent with prior comments, the Department should wait until it proves necessary before requesting this type of information. Further, the wording implies that the basin is not being managed sustainably.*

354.18(b)(3)(A) Hydrology: Projected hydrology shall utilize 50-years of historical precipitation, evapotranspiration, and streamflow information as the baseline hydrology...

Should identify 50-years of historical information if it is available. 50-years of historical information may not be available for all areas.

Section 354.26. Undesirable Results. The regulations allow for each GSA to apply different criteria and establish different definitions of groundwater conditions giving rise to undesirable effects in their management areas. An agency may determine that one or more critical parameters would not lead to undesirable results in the basin. Under such circumstances, they will not be required to conduct the analysis for those critical parameters. (*Id.* at (D)). *This approach is appropriate given the desire for local control. However, as with interconnected basins, it would be helpful if the regulations provided additional direction concerning resolution of undesirable results.*

Section 354.28. Minimum Thresholds. Each GSA may establish minimum thresholds for critical parameters and determine which conditions for a given critical parameter are significant and unreasonable. This determination will work in close coordination with the requirement under Section 354.26 that the GSA may determine that certain critical parameters are irrelevant to the sustainability of the basin. *Same comment as to section 354.26. This should not require consultation with the Department.*

354.30. Measurable Objectives

354.30(d) Each Agency may use representative minimum thresholds for groundwater levels developed pursuant to Section 354.26(d)...

Believe this should be 354.28(d).

Section 354.34. Monitoring Network. The Department requires collection and submittal of a large amount of data relating to the establishment of a monitoring network. *A qualified GSA should know how to monitor its groundwater basin. The regulations set forth a tremendous amount of specification regarding what must be measured. Again, submittal all of this information is unnecessary and burdensome. Also, once again, the sections of SGMA relied upon do not require this level of detail.*

In addition,

354.34(g) ...all monitoring sites or other data collection facilities to ensure that the monitoring network utilizes on the comparable data and methodologies...

Not clear what this was meant to say. Maybe "to ensure that the monitoring network utilizes comparable data and methodologies"?

354.34(h) The best management practices for monitoring developed by each Agency shall include the following minimum standards:

Suggest this be rewritten to address only those parameters determined relevant. May be reworded to state: "...standards for each relevant critical parameter determined by an Agency pursuant to 354.28(e):"

354.38. Assessment and Improvement of Monitoring Network

354.38(c) Each Agency shall describe steps that will be taken to fill any data gaps within the first five years of implementation of the Plan or before the next five-year assessment, including the location and purpose of newly added or installed monitoring sites. *What if the Plan is already in substantial compliance? Or the data gaps are identified as not preventing sustainability in the basin?*

Section 354.44. Projects and Management Actions. Again, the Department is requesting a tremendous amount of data. GSPs must include a description of the projects and management actions adopted to meet measurable objectives and prevent undesirable results. Among the information required are a list of all projects and management actions being proposed, with a description of the measurable objective expected to be derived; a summary of the permitting and regulatory process required for each project; the status of each project or management action; explanation of expected benefits; how the project or management action will be accomplished; the legal authority required for each project or management action; and the financial requirement for each project or management action. *The Department should stay at the 5,000 foot level, not on the ground with the GSA. Consistent with prior comments, the Department should not require this information until it is demonstrated to be necessary in order to assist a GSA with successful implementation of a GSP.*

355.2. Department Review of Initial Adopted Plan

355.2(e)(3) Inadequate.

Need to discuss concept for appeal/consultation process if DWR determines inadequate.. Different interpretation of data could be a major cause for DWR decision, maybe a third-party for dispute resolution need to be considered before reaching to the SWRCB.

355.4. Criteria for Plan Evaluation

355.4(a) An initial Plan will be deemed inadequate unless it satisfies all of the following conditions: (2) The Plan is complete and includes all information required by the Act and this Subchapter...

Suggest rewording to state: "...required by the Act and deemed necessary by the Department to comply with this subchapter..." This will reinforce the ability of DWR to consider substantial compliance.

355.4(a) An initial Plan will be deemed inadequate unless it satisfies all of the following conditions: (3) The Plan covers the entire basin.

If multiple GSPs are submitted through a coordination agreement, what happens if one Plan is determined to be inadequate? Suggest the regulations allow for a situation where a GSP does not cover the entire basin due to the inaction by some, but not to the detriment of complying GSAs. GSAs may not have jurisdiction to require their neighboring local agencies to act. MID

is aware of SB 13 introducing 10735.2(e) which provides that: “(e) The board shall exclude from probationary status any portion of a basin for which a groundwater sustainability agency demonstrates compliance with the sustainability goal.”

DWR needs to give guidance as to how 355.4(a) is supposed to work with the law set forth in SGMA. As written, the regulation appears in conflict, and the conflict could be significant in certain circumstances. The fewer number of GSA’s that are developed in an area, the more practical results get developed and the goal of sustainability is more achievable, but unless more clarifying language is developed in DWR’s regulation, the existing language promotes the development of multiple GSA’s rather than fewer. We suggest clarification potentially in the areas of management areas, and possibly make those areas a means of complying with the law and regulation.

355.10. Resolution of Conflicts by Department

355.10(a) Disputes within a basin shall be the responsibility of the Coordinating Agency or other entities responsible for managing Plans and alternatives within the basin.

Seems like an unnecessary burden on the Coordinating Agency. This may also establish a hierarchy among GSAs within a basin, and there may also be an instance where the Coordinating Agency is involved in the dispute. Suggest striking “the Coordinating Agency or” from the language.

356.4. Annual Report

356.4. Annual Report – Each Agency shall submit an annual report to the Department by April 1 of each year following the adoption of the Plan. The annual report shall include the following components:

The Annual Reports are to be for the preceding water year. Suggest the following clarifying language.

“Each Agency shall submit an annual report to the Department by April 1 of each year following the adoption of the Plan. The annual report is for the preceding water year and shall include the following components:”

356.4(b)(3) Surface water supply used, or available for use, for groundwater recharge or in-lieu use shall be reported based on quantitative data that described the annual volume and sources for the preceding year.

This is a requirement of the Annual Reports due to April 1 of each year. This seems very difficult to accomplish.

356.4(b)(4) Total water use shall be collected from the best available measurement methods and shall be reported in a table that summarizes total water use by water use sector, water source type, and identifies the method of measurement (direct or estimate) and accuracy of measurements. Existing water use data from the most recent Urban Water Management Plans or Agricultural Water Management Plans within the basin may be used, as long as the data are reported by water year.

Again the degree of reporting is burdensome and not necessary, especially for basins showing overall success in reaching sustainability. Such requests could be made if a basin continues to fail meeting its goals.

(5) Change in groundwater storage shall include the following:

(A) Change in groundwater storage maps for each principal aquifer in the basin

This is extremely burdensome and may not be achievable for at least five years. CASGEM should be an adequate stop gap for tracking groundwater levels in the apparent formations.

(B) A graph depicting water year type and cumulative change in groundwater storage for the basin based on historical data to the greatest extent available, but at a minimum from January 1, 2015, to the current reporting year.

Same as (A) above

356.10. Agency Evaluation and Assessment

356.10(f)(3) Gaps in data or data quality shall be remediated no later than the first five-year assessment by the Department.

This is very similar to Section 354.38(c). What if the Plan is in substantial compliance or the data gaps are identified as not preventing sustainability in the basin? It also may not be possible for a GSA to remediate all data gaps within the first five-years.

357.4. Intrabasin Coordination

The establishment of a Submitting Agency seems to establish a hierarchy among GSAs within a basin. This also creates a lot of additional work for the GSAs and the Submitting Agency. Is there a difference between Submitting Agency and Coordinating Agency? This should be clarified.

357.4(d) The Submitting Agency shall compile and rectify data and interpretations regarding basin conditions and produce a single report...

This is unnecessarily prescriptive. Coordination agreements should address how data from each GSA will be synthesized and summarized, but this should not be a requirement of the "Submitting Agency." The GSAs within each basin should be able to create their own method to submit a cohesive report to DWR.

This concludes the specific comments from MID. It appears to MID that the Department is prematurely requesting tremendous amounts of largely unnecessary information that are very costly and burdensome to produce. The information will only be necessary under those circumstances where a GSA is failing to implement its GSP or where there are unresolvable conflicts between GSA's regarding basin management. At this time, it seems unnecessary to collect this massive amount of information, especially given that local agencies are supposed to maintain control and that the role of the Department is to determine on a bigger picture whether the GSP is sufficient to achieve sustainability within 20 years. Since GSPs are subject to public comment and review every five years, the amount of data and analysis is unprecedented. One can contrast this with the history of the Department's review of urban water management plans or other similar plans that are not put under a microscope and second guessed. It would appear that the level of effort required by these regulations will result in considerable cost to each GSP.

Thank you for this opportunity to comment.

Respectfully,



Hicham Eltal
Deputy General Manager, Water Rights/Supply