

April 1, 2016

VIA E-Mail: <sgmps@water.ca.gov>

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Re: North San Joaquin Water Conservation District's Comments on the Draft GSP
Emergency Regulations

Please accept the following comments by North San Joaquin Water Conservation District ("NSJWCD") on the Department of Water Resources' ("Department") Draft GSP Regulations. NSJWCD is a water conservation district encompassing 150,000 acres overlying portions of the Consumnes subbasin and Eastern San Joaquin subbasin.

Thank you for the work in preparing the draft regulations and for the opportunity to comment.

I. Concurrence with Comments of ACWA, CSAC/RCRC and San Joaquin County

NSJWCD generally concurs with the comments provided by the Association of California Water Agencies, CSAC/RCRC and San Joaquin County's Eastern San Joaquin County Groundwater Basin Authority, and provides these additional specific comments.

NSJWCD is concerned that parts of the currently drafted regulations attempt to micro-manage the planning process in a way that undermines local control, knowledge and expertise. NSJWCD is also concerned that parts of the regulations add substantive requirements that expand legal obligations beyond SGMA. Given the very new concept of SGMA and GSPs, NSJWCD encourages DWR to avoid expanding the GSP requirements. Local agencies should be given the time and space needed to create durable and meaningful local plans. If, in the future, there is a need for more specific regulations to deal with problems identified as plans are reviewed, they can be added at that time when both DWR and the local agencies will have more experience to draw from in crafting regulatory requirements.

II. It Is Unclear if the Substantial Compliance Standard Applies When the Phrases “Adequate” and “Sufficient” Appear in Article 5

Although section 355.2(e) specifically states that the substantial compliance standard applies when the Department is performing its initial review of a Groundwater Sustainability Plan (“Plan”), it is unclear if that standard applies to individual components of the Plan that must be found “adequate” or “sufficient” by the Department. For example:

- Section 354.14(c)(1) requires “[t]opographic information, of adequate scale,”
- Section 354.18(b)(2)(B) requires a “quantitative assessment of the historical water budget . . . as is sufficient to adequately calibrate and reduce the uncertainty of the tools and methods used to estimate and project future water budget information,”
- Section 354.18(g) permits GSAs to “utilize other data . . . if the Agency is able to demonstrate that the data is of sufficient quality,”
- Section 354.32 requires that “[t]he monitoring network shall promote the calculation of data of sufficient quality, frequency, and from sufficient locations to adequately characterize surface water and groundwater conditions in the basin.”

This is not an exhaustive list, but it demonstrates that these phrases appear frequently in Article 5 and create confusion and internal inconsistency with the substantial compliance standard. NSJWCD strongly agrees with other commenters that DWR staff’s subjective determination of “adequacy” and “sufficiency” should not be the standard upon which the review of GSPs is based. NSJWCD also agrees that “substantial compliance” should be defined and supports the definition offered by CSAC/RCRC.

III. There is an internal conflict in Section 355.2 regarding consultation with the Board

Subsection e(3) states that DWR will consult with the Board to determine if a Plan is inadequate. Subsection (g) states that DWR will determine a plan is inadequate and then consult with the Board. This conflict should be resolved so that it is clear that the adequacy determination must be made by DWR first.

IV. Monitoring Requirements for Critical Parameters Should be Relaxed if a Minimum Threshold is not Required Pursuant to 354.28(e)

Under 354.28(e), a Groundwater Sustainability Agency (“Agency”) can determine that minimum thresholds are not required for four of the six critical parameters: (1) seawater intrusion, (2) land subsidence, (3) depletions of interconnected surface water, and (4) water quality. However, pursuant to section 354.34(b), the “monitoring network shall be designed to ensure adequate coverage of critical parameters.” Although section 354.36(a) permits representative monitoring of critical parameters using groundwater elevation, it does not specifically exempt an Agency from monitoring critical parameters that have been shown to be non-problematic in their basin. An Agency should not be required to install monitoring stations or develop methodologies for representative monitoring of critical parameters that are not present in their basin. As a result,

please consider the following amendments:

§ 354.36. Representative Monitoring

Each Agency may designate a subset of monitoring sites as representative of conditions in the basin or an area of the basin for the purposes of establishing specific minimum thresholds, measurable objectives, and related interim milestones, as follows:

(a) Representative monitoring sites may be designated by the Agency as the point at which critical parameters are monitored, and for which quantitative values for the minimum threshold, measurable objective, and interim milestones are defined.

(b) Groundwater elevations may be used as a proxy for monitoring other critical parameters if the Agency demonstrates the following.

(1) A substantial correlation exists between groundwater elevations and the critical parameters for which groundwater elevation measurements serve as a substitute.

(2) Measurable objectives established for groundwater elevation shall include a reasonable margin of operational flexibility taking into consideration the basin conditions required to avoid undesirable results for the critical parameters for which groundwater elevation measurements serve as a substitute.

(c) The designation of a representative monitoring site shall be supported by technical evidence demonstrating that the site adequately reflects general conditions in the area.

(d) If, pursuant to section 354.28(c), an Agency determines that a minimum threshold is not required for seawater intrusion, land subsidence, depletions of interconnected surface water, or water quality, then that Agency will not be required to report monitoring data for that critical parameter in the Plan.

V. Sections 354.34(g) and 354.40(a) Have Minor Errors That Affect Readability

A. Section 354.40(a) Should be Rephrased to Provide Additional Clarity

Section 354.40(a) should be amended because the “and, or” at the end of that subsection does not add any clarity and will only create confusion. The regulation already makes clear that the Agency can submit data to the Department “in one of the following methods.” As a result, the “and, or” at end of subsection (a) appears to be typo from an earlier draft. In that the case, it should simply be deleted. However, if the Department actually intended to include an “and/or” following subsection (a), then please consider an alternative phrasing that would provide greater clarity:

354.40: All monitoring data shall be stored in the data management system developed pursuant to Section 352.8. A copy of that data shall be submitted electronically on forms provided by the Department according to the Department’s data standards, in one or both of the following methods:

(a) Each Agency shall compile and include all monitoring data in each Annual Report ~~and,~~

of.

(b) The Agency shall make all monitoring data available to the Department throughout the year, as collected or measured by the Agency.

B. Section 354.34(g) Contains a Typo

The first sentence in section 354.34(a) contains a typo near the end of the first sentence. The words “on the” appear to have been inserted on accident:

(g) The best management practices developed by each Agency shall include a description of technical standards, data collection methods, and other procedures or protocols pursuant to Water Code Section 10727.2(f) for all monitoring sites or other data collection facilities to ensure that the monitoring network utilizes ~~on the~~ comparable data and methodologies. Best management practices related to construction and completion standards for wells or other monitoring sites developed for this purpose shall apply prospectively.

VI. Passive/Active Voice and Positive/Negative Drafting

Some requirements of the regulations are written in the passive voice, which creates ambiguity because the entity required to perform the described action is not identified. The active, rather than the passive voice should be used. For example, section 352.4(b) states that best management practices shall be reviewed at least every five years. It would be clearer to state that each Agency shall review the best management practices in their Plan every five years.

Section 355.4(a) states that a Plan will be deemed inadequate unless if satisfied certain identified conditions. This negative phrasing should be deleted and replaced with a clear statement that Plans that substantially comply with the requirements of the code and regulations and meet the following criteria, will be deemed adequate. In short, the “default” finding for DWR should not be that a plan is inadequate. Rather, the default should be that a Plan that substantially complies with the code and regulatory requirements will be adequate.

VII. Clear and Convincing Evidence Standard

The regulations use the “clear and convincing evidence standard” in a few places, such as sections 354.28(e), 354.30(d). This standard is not defined and does not appear logical in the context of a substantial compliance review or in the context of deference to local control. We suggest that the reference to a standard of review be deleted.

VIII. Single Point of Contact for Multi-plan Basins

SGMA expressly allows for multiple GSAs and Plans within a Basin. The regulations should not materially modify this local control concept by requiring a single point of contact Submitting Agency for basins with multiple GSAs and plans. See section 357.4(b). While this may end up being the end-result in some basins, it should not be forced upon local GSAs who are otherwise able to and wanting to deal with DWR directly regarding their coordinated plans.

IX. Conclusion

Thank you for considering NSJWCD's comments on the Draft Regulations, we appreciate the opportunity to participate in this process.

Very truly yours,

A handwritten signature in blue ink, reading "Jennifer L. Spalletta". The signature is written in a cursive style with a prominent initial "J".

JENNIFER L. SPALETTA
Attorney at law