



April 1, 2016

*Delivered by email to: [SGMPS@water.ca.gov](mailto:SGMPS@water.ca.gov)*

California Department of Water Resources  
Attn: Lauren Bisnett  
P.O. Box 942836  
Sacramento, CA 94236

**Subject: Draft Groundwater Sustainability Plan Emergency Regulations Public Comment**

Dear Ms. Bisnett:

Eastern Municipal Water District (EMWD) appreciates this opportunity to provide comments to the California Department of Water Resources (DWR) on the draft Groundwater Sustainability Plan Emergency Regulations (GSP Regulations). EMWD will be involved as a Groundwater Sustainability Agency (GSA) within the San Jacinto Basin, and will be responsible for preparing Groundwater Sustainability Plans (GSP) in compliance with the GSP Regulations to manage groundwater sustainability, as required by the Sustainable Groundwater Management Act (SGMA).

We appreciate the process that DWR staff used to frame the scope of the GSP Regulations and solicit early input from a wide variety of stakeholders before preparing the draft GSP Regulations. EMWD has been engaged and has provided recommendations to inform DWR during this drafting process. We believe this early consultation has resulted in a generally well-crafted, although expansive, draft that is a valuable tool for soliciting public comments.

However, EMWD believes the GSP Regulations are overly prescriptive and would likely result in burdensome and unnecessary costs. EMWD recommends that substantial revisions be made to bring the GSP Regulations into conformity with SGMA. Attached are general comments on the GSP Regulations, in addition to a summary of comments and requested changes organized by Article. If adopted, EMWD believes these changes will bring the GSP Regulations into closer alignment with both the provisions and intent of SGMA.

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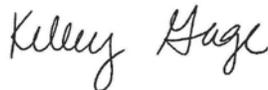
Thank you for considering these comments. EMWD looks forward to continuing to work closely with DWR as the GSP Regulations are revised as necessary to more effectively support preparation of GSPs that are well-suited to local management of diverse groundwater basins statewide, as envisioned by SGMA.

If you have questions, I am available at [jonesp@emwd.org](mailto:jonesp@emwd.org) or (951) 928-3777.

Sincerely,



Paul D. Jones II, PE  
General Manager



Kelley Gage  
Sr. Director of Water Resources Planning

MDN:mdn

Attachment

## **General Comments**

### **1. Revise the Regulations to Reduce State Prescription and Support Local Management of Groundwater**

A fundamental principle of SGMA groundwater management is that management is performed at the local level. One of the primary goals of SGMA is to “manage groundwater basins through the actions of local government agencies to the greatest extent feasible, while minimizing state intervention to only when necessary to ensure that local agencies manage groundwater in a sustainable manner” (Water Code, § 10720.1(h)). DWR recognizes the importance of local control, stating in the GSP Regulations that “local control and management is a fundamental principle of SGMA.” Yet, this draft of the GSP Regulations is overreaching in places, too prescriptive at times, and certain sections seem to be structured to uniformly manage groundwater basins from a “top down” state level instead of from the local level. Many of these prescriptive requirements appear to be intended to drive local GSAs to prepare one GSP per basin, although such a requirement was explicitly rejected during the legislative process that resulted in SGMA.

Although EMWD recognizes the need for the GSP Regulations to prescribe certain consistent standards which can assist GSAs and DWR in plan preparation and review, we have identified many which are unnecessarily restrictive. Some of the more significant examples are noted in the following sections of this letter.

### **2. Strengthen the Concept of “Substantial Compliance”**

EMWD strongly supports the concept of “substantial compliance” proposed by DWR in the GSP Regulations in the context of Criteria for Plan Evaluation (§ 355.4.) in Article 6. As each high- and medium-priority basin has its own unique characteristics, not all information or the same level of detail will be needed in all basins. This proposed standard for evaluation helps connect the standards and requirements of the GSP Regulations as they are applied in specific GSPs to locally unique basin conditions and management priorities. A more complete definition of “substantial compliance” will significantly mitigate the concerns EMWD has with the prescriptive nature of the balance of the GSP Regulations (although, as stated above, we believe DWR should significantly revise the regulations to reduce unnecessary prescriptions as well). The GSP Regulations should be amended to include a definition of “substantial

compliance” (§ 351) in Article 2, and a new narrative description of this standard as an overriding General Principle (§ 350.2.) in Article 1. We also proposed adding related language in Article 1 clarifying that GSAs are able to exercise discretion regarding required GSP provisions and coordination agreements based on findings of substantial evidence related to achieving the sustainability goal of SGMA.

### **3. Eliminate the Requirement for a “Coordinating Agency” and Clarify Provisions for Multiple GSAs and GSPs in a Basin**

The draft GSP Regulations propose to require a “Coordinating Agency”, also called “Submitting Agency”, in basins where there are several GSAs. Beyond serving as the “sole point of contact” for DWR, this proposed entity is tasked with synthesizing and interpreting all basin plans and resolving all disputes among GSAs within the basin (§ 355.10.). This conceptual “Coordinating Agency” that appears in the draft GSP Regulations is not authorized or envisioned by SGMA. Each GSA must be able to independently manage and communicate with DWR. SGMA *allows* for more than one groundwater sustainability agency to manage groundwater in each basin (Water Code, § 10727(b)(3)). SGMA also allows the groundwater sustainability agencies to develop more than one plan per basin (Water Code, § 10727(b)(3), § 10727.6). Again, the model of “one GSA with one GSP per basin” may be one option adopted by local GSAs, but SGMA specifically authorizes and provides for multiple GSAs and GSPs within a basin. This option needs to be preserved and supported in the final GSP Regulations, and revisions to the draft regulations are required.

### **4. Clarify Scope of GSPs Regarding Water Quality Regulations and Interconnected Surface Waters**

The GSP Regulations lack specificity regarding the scope of GSPs with regard to data collection and analysis with respect to groundwater contamination sources, plumes and historic waste discharges. The GSP Regulations should be revised to require that GSAs coordinate with water quality regulatory agencies and utilize information provided by those agencies, and to clarify that GSAs are not responsible for establishing minimum criteria for contaminated sites and groundwater plumes that fall under water quality laws and regulations and thus are not required to manage or remediate these sites. Similarly, the GSP Regulations should clarify that GSAs are not responsible for developing minimum thresholds for naturally occurring contaminants such as arsenic.

Additionally, although the GSP Regulations require development of minimum thresholds for depletions of interconnected surface water as required by SGMA, it is not clear how to address situations where (1) diverters with appropriative or riparian water rights (surface water or well diversions) are the cause of depletions of interconnected surface water and are not within the jurisdiction of SGMA; and (2) in most areas, boundary between surface water rights and groundwater are now understood or are subject to change through time. EMWD looks forward to working with DWR and other stakeholders to address these policy issues, which are dependent on unique facts within each basin and cannot be resolved in the abstract in the GSP Regulations.

#### **5. Eliminate Contingency Plan Requirement**

The requirement that a GSA have “contingency projects and actions” ready to implement if the first set of actions do not achieve sustainability is not required by SGMA, sets a tone of presumed failure for GSPs, and will be unworkable in many cases. The GSP Regulations appear to require that GSAs evaluate, negotiate, and fund two sets of projects and action solutions. In working to achieve sustainability, GSAs must be given latitude to modify and adapt projects based on local conditions and needs. Given annual reporting and regular plan assessments, this contingency plan requirement is unnecessary.

#### **6. Clarify “Adverse Effect” Determination and Responsibilities**

While SGMA requires DWR to evaluate whether a GSP adversely affects an adjacent basin, it does not contemplate that DWR resolve conflicts, nor find a GSP inadequate if it affects a neighboring basin. It also does not empower DWR to deem that a GSP is adversely affecting a neighboring basin’s GSP. The GSP Regulation should be amended to conform to the statutory framework that defers resolution of “adverse effect” between basins to the responsible GSPs.

#### **7. General Water Quality Comment**

Throughout the proposed GSP Regulations, there are multiple requirements to include plans to compile water quality data, management plans, and monitoring programs. Most of the requested plans exist and are required and approved by other agencies, such as the Regional Water Quality Control Boards. EMWD understands the plans are necessary but it is burdensome and unnecessary for these plans to be regulated by two regulatory agencies,

especially if the approval process is different for each. The GSP Regulations need to clearly specify the single governing regulatory agency for each requirement, and provide one set of regulations for each.

## **Summary of Comments and Requested Changes Organized by Article**

### **Article 1. Introductory Provisions**

Two significant changes in the Introductory Provisions are proposed to address fundamental purposes of SGMA regarding local basin management:

§ 350.2 Add substantial compliance standard as a new general principle, where GSAs determine what information is needed to substantially comply and waiver provisions are added.

§ 350.2 Add description of GSA authority to exercise discretion regarding required GSP provisions and coordination agreements based on findings of substantial evidence related to achieving the sustainability goal of SGMA.

### **Article 2. Definitions**

Several changes to definitions are proposed, many to address over prescription. Several of the most significant include:

§ 351 (i) Redefine to eliminate “Coordinating Agency”

§ 351 (j) Redefine “Critical Parameter” as “Sustainability Condition”

§ 351 (ae) Add definition of “Substantial Compliance”

§ 351 (u) Clarify that “Plan” refers to multiple Plans.

### **Article 3. Technical and Reporting Standards**

A large number of changes are proposed to more narrowly craft data requirements and preserve local discretion according to basin conditions. For example, the word “all” is used 48 times in reference to various types of data and most cases is neither necessary nor practical.

The GSA should be able to evaluate and report representative data. This “data dump” approach will divert attention and dollars away from implementation actions.

§ 352.4 Remove all references to “Best Management Practices”, which is addressed in SGMA, but is mischaracterized in the GSP regulations. Replace with “Agency Practices and Procedures.” SGMA is clear that BMPs are not intended to be imposed as regulatory standards, and that methods and practices are to be selected and used at the discretion of the GSAs.

§ 352.6 Reduce excessively prescriptive requirements regarding surveying, well construction, public domain models, and specific metrics that local agencies must use to report groundwater data. For example, prescribing use of NAVD88 datum would require many GSAs to run expensive reference point elevation surveys even when the sustainability goals can be achieved in a basin by using existing datum.

#### **Article 4. Procedures**

§ 353.4 Remove “Certification Under Penalty of Law” provision, which is excessive and unnecessary for GSA decision-makers with professional certifications and/or are public agency officials.

#### **Article 5. Plan Contents**

§ 353.4 Delete GSA and Plan financial information requirements, which are excessive and could be extremely complex for multi-party GSAs, and which are not actionable in any case since SGMA does not provide for a determination by any third party concerning the financial capabilities of GSAs.

§ 354.8 (c) This section requires a description of existing plans, such as, Groundwater Ambient Monitoring Assessment Program and Salt Nutrient Management Plans. These two plans are already prepared and submitted to the Regional Water Quality Control Board for approval, and the results are incorporated in the Basin Plan. Requiring these same reports in the proposed regulations are duplicative, the language needs to clarify what regulations govern this requirement and which regulatory agency is authorized to approve the plan. It is too

burdensome and unreasonable for a water agency to be regulated by two regulatory agencies for the same requirement.

§ 354.8 (g) (3) This section requires the identification and assessment of proposed land use activities that may pose a risk to groundwater quality or quantity in the basin. This is a duplicative requirement as the State Water Resources Control Board's Division of Drinking Water requires Drinking Source Water Assessment Plans for all wells. It is too burdensome, unreasonable and unnecessary for a water agency to be regulated by two regulatory agencies for the same requirement.

§ 354.8 Description of the Plan Area. Reduce some of the generally unnecessary or unavailable information requirements that contribute little to this overview section, are difficult and expensive to produce, such as the proposed well density map, and/or are outside the scope of SGMA, such as "summary or description of land use plans". For example, the regulations go beyond the statute in the area of groundwater quality, suggesting that GSAs would have to evaluate the impacts of future land uses on groundwater quality.

§ 354.14 Reframe requirement for "Hydrogeological Conceptual Model" to "Basin Setting and Description", and reduce prescriptive technical parameters. Add identification of data gaps. Reduce scope of land use coordination to that included in the statute, for example general plans outside the basin. Reduce information required and prescriptiveness, for example WDRs, proximity of wells to contamination of the Plan Area.

§ 354.16 Basin Conditions. Reduce scope and prescriptiveness of factors and timing upon which a local agency must define historical basin conditions.

§ 354.18 Water Budget. Reduce scope and prescriptiveness of water budget by deleting some elements and making some elements permissive. Exclusive use of DWR-prescribed water budget data and other requirements could unreasonably invalidate existing groundwater management data sources.

§ 354.20 Management Areas. EMWD strongly supports this concept, which provides a necessary recognition of the potential need to manage differently in recognition of different basin conditions and management requirements.

§ 354.22 – 354.30 Sustainable Measurement Criteria. Generally reduce the scope and prescriptiveness of standards, or make some standards permissive for the definitions of relevant critical parameters. Replace “clear and convincing evidence” standard with “substantial evidence” standard. This section generally, and properly, avoids prescribing specific metrics by which the relevant critical parameters would be measured. SGMA is clear that such metrics need to be locally developed in the context of specific basin conditions and that an attempt to do so at a statewide level would subvert the goal of local groundwater management.

§ 354.28 (b) (4) Minimum Threshold for Degraded Water Quality. This requirement states “The minimum threshold for degraded water quality shall be the significant and unreasonable degradation of water quality...” It is not clear how to set a minimum threshold for groundwater basins that are already degraded due to impacts from historic land uses. For example, EMWD has two groundwater basins that are brackish and have been since well before the 1970s, even the water quality objectives for total dissolved solids (TDS) are set at more than two times the secondary drinking water standards for TDS of 500 mg/L. Even so, EMWD successfully utilizes the water for drinking water purposes after it is treated by desalination. Since the water must be treated to drinking water purposes, a better threshold would be to ensure the treated water always meets the Safe Drinking Water Act.

§ 354.34 Monitoring Network. Monitoring requirements that specify the density of monitoring sites and frequency of measurements are extremely onerous, financially challenging, or entirely impractical for many agencies. The GSP Regulations should be revised to require that data gaps be filled within the first five years if currently available monitoring networks are currently suboptimal. Provisions should be added to allow for reducing monitoring frequency and density if warranted. Criteria for monitoring of surface water interaction are excessive and unnecessary (§ 354.34 (h)(6)).

§ 354.44 (b) Contingency Actions and Projects. Redundant “contingency actions and projects” may not be needed in all basins, could be highly speculative, and could undermine support for local GSPs by diverting attention to the “Plan A” actions and projects. This should become a permissive element.

## **Article 6. Evaluation and Assessment**

§ 355.2 (e) (2) Conditionally Adequate. EMWD strongly supports a DWR determination of “Conditionally Adequate” for the specified in order to avoid a “pass/fail” situation where minor deficiencies can be addressed in the GSP and unnecessary and costly enforcement processes can be avoided.

§ 355.4. Criteria for Plan Evaluation. As stated above, EMWD strongly supports the concept of “Substantial Compliance” as a fundamental principle for plan evaluation. This section should be amended to defer to the revised description in § 350.2 and definition in § 351(ae). Some of the proposed criteria for adequacy that are not supported by a plain reading of SGMA should be deleted, especially evaluation of possible “adverse affect” on an adjacent basin, which must be addressed by the affected GSAs in the adjacent basins.

§ 355.10 Resolution of Conflicts by Department. This section should be deleted. Successful conflict resolution is a matter for local resolution, not subject to arbitration by DWR that is not authorized by SGMA.

## **Article 7. Reports, Assessments, and Amendments**

§ 356.6 Department Review of Annual Reports. Review of the annual report should not trigger periodic review of the Plan, and annual changes should not warrant a reassessment of adequacy of the plan.

§ 356.10 (f) (3) The GSP Regulations seem overly prescriptive with very tight deadlines for GSA compliance on currently undefined items. Specifically, the GSP Regulations reference that data gaps will be identified during the 5-year revision cycle and all data gaps will be filled within the next 5-year cycle. If a data gap is identified, there is no way to guarantee the GSA will have the funding, property, property access, time (if the data gap is identified as something requiring *more* than 5 years of data gathering), permits, nor coordination with other entities to fill the gap in the pre-determined amount of time. In order to address this concern, the language in the GSP Regulations should be revised for this to direct that planning be completed and a schedule provided for completing the action, and implementation is commenced when possible within the 5-year cycle to fill the data gaps or other deficiencies.

### **Article 8. Coordination Agreements**

§ 357.2 Interbasin Agreements. These agreements are voluntary and should include only elements at the discretion of agencies that are party to the agreement. Overly prescriptive requirements should be deleted.

§ 357.4 Coordination. As stated above, requiring a “Coordinating Agency”/“Submitting Agency” entity is not authorized by SGMA. Therefore, any references in this section should be deleted. Requirements for a Coordination Agreement should be reduced to align with the provisions specifically stated in SGMA.

### **Article 9. Alternatives and Adjudicated Areas**

358.4 (c) (3) The latest 10 year period is not likely to be representative in many basins due to the current drought. SGMA recognizes that water levels will drop during drought. This should be revised to require a period of at least 10 years which is reflective of typical groundwater management practices, which would be determined by the GSA according to basin conditions.