



Association of California Water Agencies

Since 1910

Leadership • Advocacy • Information • Service

September 5, 2015

Delivered by e-mail to: sgmps@water.ca.gov

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

Subject: Comments on Draft Emergency Regulation for Basin Boundary Modifications

The Association of California Water Agencies (ACWA) appreciates this opportunity to provide comments to the California Department of Water Resources (DWR) on the Draft Emergency Regulation for Basin Boundary Modifications (draft regulation), released for comment on July 17, 2015.

ACWA represents over 430 public water agencies which are responsible for delivery of over 90% of the water that serves residential, commercial and agricultural needs throughout California. Many ACWA member agencies are "local agencies" which may need to request basin boundary modifications as one means to successful implementation of the Sustainable Groundwater Management Act (SGMA).

We are providing general comments on the draft regulation, and then specific comments and recommendations on a section-by-section basis which we believe will improve the draft regulation.

General Comments

Support for regulatory process

We appreciate the process that DWR staff used to frame the scope of these regulations and solicit early input from a wide variety of stakeholders of several weeks before preparing the draft proposal. ACWA has been engaged and has provided recommendations to inform this drafting process. We believe this early consultation has resulted in a well-crafted and generally supportable draft, that is a valuable starting point for the process of considering public comments and finalizing the regulations.

Use of the terms "basin" and "basin or subbasin"

The slightly different ways that the term "basin" is used in the SGMA and in Bulletin 118, create some confusion in the draft regulation. The terms "basin" and "basin or subbasin" are inconsistently used throughout the draft regulation. DWR should clarify throughout that the provisions of the draft regulation apply to all basins and subbasins in Bulletin 118 (i.e. "basins" in SGMA).

Principle of deference to local agencies

The draft regulation includes important recognition of the role of local public agencies in implementing SGMA. This is reflected, for example, in Section 344.8, which acknowledges that local support will be

based on the support of other local agencies, rather than individuals or special interest groups. Similarly, Section 343.12, which requires that protests be held to the same standards as the original request, properly protects the interests of local agencies in the process. However, we believe the draft regulation needs to more fully defer to local agencies' determinations that a revised basin boundary will lead to more effective and timely sustainable management of groundwater. Local agencies are in the best position to adequately consider the technical, legal, political, and institutional issues that will present either opportunities or obstacles.

The draft regulation contains a number of provisions that may be unnecessarily burdensome to local agencies requesting a boundary modification. Specific examples (presented in more detail below) include Section 343.6, requiring all boundary revision requests affecting a basin to be combined, and Section 344.8, requiring unanimous support, as demonstrated by resolutions from the governing boards of all affected agencies and water systems. Local agencies are governed by boards of elected officials that are accountable to the public. Local agencies are also ultimately responsible for the successful implementation of SGMA. The basin boundary adjustment regulations should avoid being unnecessarily prescriptive but instead be viewed as a tool to empower local agencies to meet this challenge.

Specific Comments and Recommendations

1. Affected Basin (Page 2 -§341(d))

The definition of "affected basin" in 341(d) does not clearly include the basin that is actually proposed for revision.

Recommendation:

Rewrite to read, "'affected basin' means a basin or subbasin that is the subject of a basin boundary revision request and any a basin where the ability to achieve..."

2. Clarify eligibility to request a boundary modification (Page 7 - §343.2)

The draft lacks clarity on an agency's eligibility to request a boundary modification. An agency outside the basin or subbasin should not be entitled to request a change.

Recommendation:

Change the language to read, "A request for a boundary modification may be initiated by a local agency whose jurisdiction lies within or borders the existing or proposed basin or subbasin for which boundary modification is sought."

3. Make combination of requests discretionary for requesting agencies (Page 7 - §343.6)

The requirement to combine all boundary modification requests affecting a basin or subbasin is overly burdensome, and the statute (Water Code Section 10722.2) does not contemplate the need for such a requirement. There may be a number of reasons that requests could be submitted independently, for

example, the requests may be geographically separated at the extremes of a large basin, one request may be ready to be presented before another, or there may be potentially conflicting requests. DWR has the ability to consider the degree of coordination with others in evaluating and approving boundary modification requests (for example in §344.8. Local Support).

Recommendation:

Revise the language to read “Requesting agencies *may* combine all two or more boundary modification requests that affect the same basin or subbasin, and in so doing shall coordinate...”

4. Clarify limits to DWR authority to approve or disapprove all or part of combined requests (Page 7 - §343.6)

In the case of combined requests, the draft specifies that DWR *may* adopt all or any part of the combined request and yet provides no criteria to inform such a decision. Water Code Section 10722 clearly envisioned a local agency-driven boundary modification process in which requesting agencies could expect either an approval or disapproval of the request but not a piecemeal decision left entirely to the discretion of DWR.

Recommendation:

The draft regulation should clarify that basin boundary revision process under Water Code Section 10722 et seq, is entirely separate from DWR authority under Water Code Section 12924 to revise boundaries, and therefore DWR will either approve or disapprove the request, giving its grounds for disapproval.

5. Establish annual review periods (Page 8 - §343.8)

The draft language improperly conflates the process of local agency-driven boundary revision requests (the subject of this regulation) with planned updates of Bulletin 118. Additionally, the draft contains no clarity about when local agencies could be expected to have opportunities to submit requests.

Recommendation:

Strike language referring to Bulletin 118 and add language requiring at least annual review periods. Rewrite as follows: “Prior to updating or revising Bulletin 118, DWR shall establish at least one review periods each calendar year during which boundary modification requests will be accepted and evaluated.”

6. Clarify that DWR is not subject to the 60-day window (Page 8 - §343.10(b))

The draft regulation provides for DWR to request additional information based on a review of the completeness of the request. The draft is silent, however, on the time allowed for DWR to make such a request or the time provided for responding.

Recommendation:

Draft additional language that clarifies that additional information requested by DWR is not subject to the 60-day window in §343.8.

7. Eliminate reference to “interested” local agencies (Page 8 - §343.10(d) and page 10 - §344.4 (b))

The draft regulation refers to “interested” local agencies and public water systems. However, there is no indication of how “interest” will be documented.

Recommendation:

Eliminate the modifier “interested” and replace with the defined terms “affected agency” and “affected system”.

8. Clarify the scope of protests (Page 9 - §343.12)

The draft lacks needed clarity concerning the scope of protests. The language needs to clarify that the content of the modification request remains under the control of the local agency, that protests should articulate objections to the proposal but are not a vehicle to propose a different boundary than that proposed by the requesting agency, and that the DWR role is to approve or disapprove this proposal.

Recommendation:

Rewrite §343.12(d) to read: “DWR shall give the requesting agency a reasonable opportunity to respond to protests, which may include, at the requesting agency’s discretion, providing additional information or changing the details of the request to address objections.”

9. Clarify that all supporting information is required (Page 10 - §343)

The draft refers to information that the requesting agency is “encouraged” to provide; however there is no indication that any of the supporting information specified in §343 is optional.

Recommendation:

Strike the words “or encouraged,” so that the regulation refers only to required elements.

10. Eliminate requirement for unanimity for demonstration of local support (Page 12 - §344.8)

The requirement of the draft regulation that the proposed boundary modification be supported by *each* affected agency and affected system is needlessly onerous and burdensome and is not required by SGMA. Unanimity is an unrealistic and unprecedented standard for local support and will likely to doom many proposed boundary modifications to failure before they are submitted, even if they widely supported and broadly beneficial to sustainable groundwater management. The regulations should be

revised to require notification of each affected agency or system and the lack of any significant opposition.

Recommendation:

Rewrite §344.8 as follows:

(a) A requesting agency shall demonstrate local support for a proposed jurisdictional boundary modification pursuant to Section 342.4 as follows:

(1) A request ~~that involves an internal boundary modification~~ shall provide information demonstrating that ~~the modification is supported by~~ each affected agency and affected system has been provided with information regarding the modification and provided with an opportunity to comment in support or opposition.

(2) A request that involves a basin consolidation, ~~or~~ county basin consolidation, or internal boundary modification shall provide information demonstrating that ~~the requesting agency notified each affected agency and affected system and that a~~ majority of affected agencies and affected systems that provided comments support the boundary modification.

(3) A request that involves basin subdivision shall provide information demonstrating that the boundary modification is supported by three-fourths or more of the each local agencies ~~and by each~~ public water systems in the affected basin(s) that provided comments.

(4) The standards of local support in subsection (2) and (3) shall be measured on the basis of both:

(i) the number of responses in support or opposition, and

(ii) the population represented by the responding local agency or affected system.

(b) Evidence of local support or opposition from any local agency or public water system shall consist of one or more of the following:

(1) a copy of a resolution formally adopted by the decision-making body of the agency.

~~(c) Evidence of local support from any public water system shall consist of a copy of a resolution formally adopted by the decision-making body of the system or~~

(2) a letter of support or opposition signed by an ~~executive officer~~ official with appropriate delegated authority.

11. Modify requirement for water management plan (Page 15 - §344.16)

The draft regulation requires submittal of a “water management plan” that meets the requirements of Water Code Section 10753.7(a) or 10727. The purpose of a jurisdictional modification may be to more

expeditiously develop a groundwater sustainability agency and groundwater sustainability plan. The expectation that a water management plan already exists that meets certain standards should not be a requirement for a boundary modification. This requirement should be modified to provide for submission of any available water management plans that demonstrate water management capacity and will support achieving groundwater sustainability.

Recommendation:

Rewrite as follows:

(a) Each request for a boundary modification that involves a jurisdictional modification pursuant to Section 342.4 shall include the following:

(1) Any available water management plan(s) that cover all or a portion ~~or is in the immediate vicinity of the proposed basin or portion of the proposed basin and satisfies the requirement of that could contribute to meeting the requirements of Water Code Section 10753.7(a) or 10727, through one of including~~ the following:

(A) An adopted groundwater management plan, a basin wide management plan, or other integrated regional water management program or plan that meets the requirements of Water Code section 10753.7(a).

(B) Management pursuant to an adjudication action.

(C) One or more technical studies that cover the relevant portion of a basin or subbasin and adjacent areas.

(D) A valid Groundwater Sustainability Plan or alternative adopted pursuant to the Act.

12. Provide for additional justification for a proposed basin boundary modification (Page 15 - §344.16)

The draft regulation should provide an opportunity for the local agency to demonstrate that a jurisdictional boundary revision may provide opportunities or overcome obstacles without precluding sustainable management in an adjacent basin.

Recommendation:

The following language should be added as Section 344.16(a)(2): "A statement identifying any political, legal, institutional or other opportunities that would arise from or obstacles that would be overcome by the requested boundary modification."

In addition, move and renumber Section 344.16(b)(6) to 344.16(a)(3) so that it applies to all jurisdictional boundary change requests, not just subdivisions.

13. Clarify CEQA Compliance requirement (Page 16 - §344.18)

The Draft presupposes that DWR will be a responsible agency for CEQA purposes on a basin boundary revision. The local agency making a boundary modification request should determine for itself whether and to what extent CEQA applies, and to provide the information necessary to DWR to serve as a responsible agency only if the local agency determines that an environmental document is required (i.e., the request is non-exempt).

Recommendation:

Rewrite § 344.18. to read: “CEQA Compliance - A local agency requesting to modify a basin or subbasin shall satisfy all requirements of the California Environmental Quality Act (Public Resources Code Sections 21000 et seq.), including, if required, providing information necessary to enable the Department to satisfy the requirements of a responsible agency.”

14. Eliminate unnecessarily restrictive grounds for denial (Page 17 - §345.2)

Some of the conditions under which DWR could deny a boundary modification request are too restrictive and not supported by statute. Specifically, §345.2(a)(4) identifies limiting the “use of consistent data and methodologies,” as grounds for denial. This provision of the statute (in Water Code Section 10727.6) specifically applies to multiple GSAs managing a basin or subbasin. It should not be applied for the purpose of evaluating basin boundaries.

Additionally §345.2(b) of the draft regulation indicates a request may be denied if “the requesting agency is unable to demonstrate a history of sustainable management of groundwater levels in the existing or proposed basin.” While the statute cites this criterion, it should be used as one line of evidence for supporting and approving a boundary modification, rather than the basis for denial. The condition would preclude a boundary modification that may be beneficial in moving a basin toward sustainability.

Recommendation:

Rewrite §345.2(a)(4) as follows: (4) Coordination of management activities and the sharing of data and information across basin boundaries. ~~and use of consistent data and methodologies by local agencies to evaluate groundwater elevation data, groundwater extraction data, surface water supply, total water use, change in groundwater storage, water budget, or sustainable yield.~~

Eliminate §345.2(b) as it is already included in §345.4.

15. Clarify hydrologic model evaluation criteria (Page 18 - §345.4(a)(1) and §345.4(c))

The draft regulation in §345.4(a)(1) identifies “hydrogeologic models”, which seems to refer to “hydrogeologic conceptual model” required under §344.12. This standard for evaluation is rather circular and unenforceable. The draft refers to “the degree to which the models align with the *known* geologic framework, the *known* direction and movement of groundwater flow, and the *general understanding* of water budget components for the basin or subbasin,” (emphasis added). While the requesting agency will provide substantial technical information supporting the request, it is unclear who will provide the “known” conditions and “general understanding” to which it will be compared.

Recommendation:

Modify §345.4(a)(1) to read,

“(1) Hydrogeologic conceptual models will be evaluated to determine the degree to which they apply technical information to the models align with the known describe the geologic framework, the ~~known~~ direction and movement of groundwater flow, and the components of the general understanding of water budget ~~components~~ for the basin or subbasin.

16. Provide for a local public meeting in the basin that is the subject of the boundary modification request (Page 21 - §346.2(a))

The draft regulation specifies that the department will hold at least one public meeting to solicit comments on the draft boundaries. DWR should provide for the opportunity to hold this public meeting in or in a location proximate to the basin that is the subject of the boundary modification request.

Recommendation:

Modify §346.2(a) to provide for the opportunity to hold a public meeting in or in a location proximate to the basin that is the subject of the boundary modification request.

17. Modify language referring to “substantial changes to a proposed boundary modification” (Page 21 - §346.2(d))

The draft refers to DWR making “substantial changes to a proposed boundary modification,” and resubmitting the proposed changes to the Water Commission. This again points to the need for clarification of the basin boundary changes made pursuant to Water Code Section 10722 vs. those made pursuant to Water Code Section 12924 and the process and requirements for each.

The intent of SGMA was to promote local groundwater management by providing a process for local agencies to request boundary revisions. If a proposed boundary changes as a result of the evaluation process, it should be with the concurrence of the requesting agency, or pursued under the Department's independent authority.

Recommendation:

Change §346.2(d) to read:

(d) If the Department ~~makes~~ determines that substantial changes to a proposed boundary modification are necessary after presentation to the Commission, the requesting local agency shall be entitled to modify the boundary modification request and resubmit it for consideration. ~~the Department shall resubmit the proposed changes to the Commission for further review consistent with the Act.~~

Thank you for your consideration of these comments. ACWA looks forward to working with DWR as the Department refines this draft regulation as necessary so that it serves as a viable tool for local agencies to modify basin boundaries where necessary and facilitate the needed planning and management of local groundwater resources as envisioned by SGMA.

If you have any questions, please contact me at daveb@acwa.com or (916) 441-4545.

Sincerely,



David Bolland
Special Projects Manager