September 2, 2015

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

Re: Basin Boundary Emergency Regulations

Dear Sustainable Groundwater Management Section:

On behalf of the California State Association of Counties (CSAC) and the Rural County Representatives of California (RCRC), we thank you for the opportunity to comment on the draft Basin Boundary Emergency Regulations. CSAC and RCRC truly appreciate your efforts to engage counties early in the process. The draft regulations in many ways are reflective of our productive dialogue with DWR staff.

The following comments are based upon the feedback we received from the CSAC/RCRC SGMA Working Group and also include excerpts from individual county comment letters.

Article 1. Introductory Provisions

Section 340.4. Basin Boundaries (Page 1)

Comment: This section states the Draft Regulations apply to "revision of any basin boundaries or creation of new subbasins," which implies that designation of new basins or deletion of existing basins will not be considered in the boundary designation process. We recommend that DWR consider the definition of new basins as part of this process.

Article 3. Boundary Modification Categories

Section 342. Introduction to Boundary Modifications (Page 5)

Comment: As pointed out by the Butte County Department of Water and Resources Conservation (Butte County), the second paragraph of this section includes a description of the alluvial characteristics of groundwater basins. We agree with their statement that the description may create unnecessary confusion regarding which basins are subject to the regulation. We also support their suggestion that a concise approach would be to rely on the definition provided in Water Code for basins/subbasins that are subject to SGMA (§10721(b)).

Suggested Language:

For purposes of this Subchapter, a groundwater basin ~~**generally**~~ *refers to* ~~***an alluvial aquifer or stacked series of alluvial aquifers with a minimum thickness of 25 feet, with reasonably well-defined boundaries in a lateral***~~

> ~~***direction, based on features that significantly imped groundwater flow, and a definable bottom characterized by rock or sediment of low permeability or the base of fresh water, as further described or***~~ *a basin or subbasin defined in Bulletin 118* ***or as modified by this section****.*

Article 4. Procedures for Modification Request or Protest

Section 343.8. Review Periods (Page 8):

Comment: We support this section since it provides certainty.

Section 343.10. Status of Request (Page 8):

Comment: Section 343.10(d) requires the requesting agency to provide broad notification of DWR's determination that the request was "complete" rather than when it was "approved." We agree with Butte County's assertion that the initial consultation that local agencies are required to perform at the beginning of the process (Section 344.4) would provide interested parties with ample notice of the request, and we support their suggested language that would have local agencies provide notice to interested parties upon receiving approval of a boundary modification.

> Suggested Language:
>
> *(d) The requesting agency shall, upon receiving notice that the request is* ~~***complete***~~ ***approved****, notify all interested local agencies and public water systems and any other person or entity who has expressed an interest in receiving notification of the proposed modification to the requesting agency.*

Section 343.12. Protests (Page 9):

Comment: This section allows "any person" to protest a basin modification. Without some type of criteria for standing to submit a protest the process could become unwieldy. We suggest that DWR limit the protest option to potentially affected local agencies, as defined.

Article 5. Supporting Information

Section 344.6. Description of Proposed Boundary Modification (Page 11):

Comment: Butte County points out that the information required in Section 344.6(b) for a jurisdictional boundary modification may be difficult to produce. They noted that providing a comparative analysis of the likelihood of achieving sustainability under existing boundary conditions versus proposed boundaries may not be feasible or relevant. We agree with their statement that this provision should be addressed in the groundwater sustainability plan regulations and coordinated agreement regulations. We also support their suggested language reiterated below.

> Suggested Language:

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

(1) An explanation of how sustainable groundwater management ***would benefit from the proposed basin boundary modification****.* ~~***exists or could likely be achieved in the basin under the following circumstances:***~~

~~***(A) Under the existing basin boundaries.***~~

~~***(B)(1) Under the proposed boundary modification.***~~

~~***(2) An explanation of how the proposed boundary modification would affect the ability of adjacent basins to sustainably manage groundwater in those basins .***~~

*(3)(2) A historical summary of the sustainable management of groundwater levels in the proposed basin****, if applicable****.*

(4)(3) A discussion of ~~***potential impact***~~ ***how the*** ~~***to state programs resulting from the***~~ *proposed boundary modification* ***may affect state programs****, including, but not limited to the California Statewide Groundwater Elevation Monitoring (Water Code section 10920 et seq.), Groundwater Management Plans developed pursuant to AB 3030 (Water Code section 10750 et seq.), Groundwater Sustainability Plans developed pursuant to the Sustainable Groundwater Management Act (Water Code section 10720 et seq.), any applicable state or regional board plans, and other water management and land use programs.*

Section 344.8. Local Support (Page 12):

Comment: We agree that boundary modifications should be widely supported by those affected. We also agree with the statement by Butte County that the prescriptive approach in the regulations is problematic and that some evidence of support would be appropriate. We urge you to consider the following language offered by Butte County as it would appear to address DWR's interest in ensuring that there is a process of demonstrating there is local support without creating unrealistic hurdles.

Suggested Language:

344.8. Local Support

(a) A requesting agency shall ***consult with local stakeholders and*** *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 ***evidence*** ~~***information demonstrating that the modification is***~~ ***of*** *support*~~***ed***~~ ***from***~~***by each affected***~~ *local agencies*~~***y***~~ *and affected systems.*

(2) A request that involves a basin consolidation or county basin consolidation shall provide information demonstrating that the requesting agency notified ~~***each affected***~~ *other local agencies* ***and stakeholders****.* ***The requesting agency*** *may* ~~***and affected system and that a majority of affected agencies and affected systems***~~ ***provide*** ***evidence of*** *support* ***for*** *the boundary modification.*

Section 344.12. Hydrogeologic Conceptual Model (Page 13):

Comment: As pointed out by Butte County, hydrogeologic conceptual models should be required for scientific boundary modifications and jurisdictional subdivisions. However, hydrogeologic conceptual models should not be required for basin consolidations, including county basin consolidation modifications. We agree with their assertion that unnecessary technical hurdles for basin consolidation modification requests may be counter-productive to creating larger SGMA management areas. We urge DWR to amend the following two sections of Article 5 to address these concerns.

> Suggested Language:
> § 344.12. Hydrogeologic Conceptual Model
> *Each request for* ***basin subdivision*** *boundary modification,* ~~***except for an internal boundary modification***~~ *pursuant to Section 342.4(c~~a~~), shall include a clearly defined hydrogeologic conceptual model demonstrating the following:*
>
> § 345.4. Criteria for Evaluating Supporting Information
> *(c) For jurisdiction modifications of* ~~***consolidation or county basin consolidation or***~~ *basin subdivision pursuant to Section 342.4*~~***(b) and***~~ *(c), the Department will evaluate the adequacy of a hydrogeologic conceptual model. The evaluation will assess the degree to which the model aligns 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.*

Section 344.14. Technical Studies for Scientific Modification (Page 14):

Comments: Section 344.14(a) requires each request for a scientific modification to include specified information regarding the extent of alluvial aquifer material, including a "qualified map". Clarification is needed as to whether the surficial map may be included by reference or whether a map must be included in the submittal. Subsurface data is also required "...that demonstrates the vertical thickness and relevant physical properties of the alluvial aquifer or stacked series of alluvial aquifers." Our members have indicated that in some areas the vertical thickness of basin fill in large deep basins may be difficult to assess and also that this data may not be relevant to groundwater management. DWR should consider such factors as relevance when evaluating a request for a scientific modification.

Section 344.18. CEQA Compliance (Page 16):

Comment: This section requires each request to modify a basin or subbasin to include information necessary to enable DWR to satisfy the requirement of a responsible agency pursuant to CEQA. It is the responsibility of the local agency to determine CEQA compliance at the local level. It is DWRs responsibility as a state agency/responsible agency to make its own determinations pursuant to CEQA. We suggest the deletion of Section 344.18.

Article 6. Methodology and Criteria

Section 345.2. Basis for Denial of Request for Boundary Modification (Page 17):

Comments: This section authorizes DWR to deny a request for a boundary modification if it identifies specific concerns or issues with the request. One reason for denial is, "(b) The requesting agency is unable to demonstrate a history of sustainable management of

groundwater levels in the existing or proposed basin." We agree with our members' assertions that the history of sustainable management (or lack thereof) in a basin should not be grounds for denial of a boundary modification. While a basin may have been managed unsustainably in the past, a proposed boundary revision is intended to facilitate sustainable management. We request that Section 345.2(b) be deleted.

Under Section 345.2(d), DWR may also deny a request for a boundary modification if, "The requesting agency has failed to provide all required information or information deemed necessary by the Department..." The regulations should provide for some type of consultation with requesting agencies early in the process so that expectations are understood. This would include specification of what information is "deemed necessary by the Department."

Article 7. Adoption of Boundary Modification

Section 346.2. Presentation of Draft Boundary Modifications (Page 21):

Comments: This section would appear to authorize DWR, after reviewing a request for a boundary change, to make changes to the proposed boundary change that differs from that proposed by the requesting agency. Authority to do so is not contained in Water Code Section 10722.2, the authority cited. Existing law provides that DWR can either approve or deny a proposed basin boundary change. The regulations should provide that if DWR believes that a proposed boundary change needs to be modified, DWR would confer with the requesting agency to attempt to reach agreement on a mutually acceptable change prior to presentation of the matter to the California Water Commission.

Section 346.6 Subsequent Modifications by Department (Page 22):

Comments: This section allows DWR to restore or revise the boundaries of a basin to the alignment that existed before the boundary modification. We request that DWR include language in the regulations that would require DWR to notify the requesting agency of such an action and a process that would provide them with an opportunity to respond prior the restoration of boundaries.

Thank you again for the opportunity to comment. Your consideration of our input is very much appreciated. Please feel free to contact us with any questions or concerns regarding our comments.

Sincerely,

Karen Keene, CSAC
Senior Legislative Representative

Kathy Mannion, RCRC
Legislative Advocate