

Comment received at SGMA Basin Boundary Public Workshop
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I appreciate the opportunity to provide comments here. I appreciate the fact that the staff has worked hard to put these regulations together in short order, that the timeframes in SGMA were aggressive, and the fact that there's been a lot of hard work put in by staff over a very short period of time. We particularly appreciate the process of vetting the concepts and then working down to the idea of draft regulations. We anticipate that it will be a successful approach in subsequent regulatory processes – that's an important high-level process comment. We also appreciate the fact that you're teeing up some live opportunities to provide oral comments prior to the deadline for the written comments – we also think that's a successful strategy. It will be necessary of course to identify that you're going to get somewhat high level comments here, and that's what I intend to do, and then more detailed comments in writing. That's probably the most successful strategy in terms of getting good comments that you can provide action on.

In general, we have some changes we're going to be offering up to the regulations. We do believe that you've generally captured the scope required by SGMA and that you're properly providing some backstops on the process to make sure that there is some discipline about changing these boundaries. We don't want to see arbitrary and capricious changes that are counterproductive to the planning processes coming up. However, we do think it's important to recognize that some changes are going to be necessary and that there's a concept of deference to the local agencies and their planning processes. As these agencies are forming their GSA's (Groundwater Sustainability Agencies), part of their process – one of the first aspects – is going to be their boundaries and what's a practical and manageable approach to doing planning. In fact, the boundaries that we inherited through this process were not anticipated to be used in this way. We all recognize the fact that these boundaries used for the basins have been in place for a long time and have evolved over a long period of time and are not necessarily, either technically or jurisdictionally, sound in all cases.

We do anticipate that after the regulations are adopted, and hopefully with the changes that we're going to be recommending, and others will be recommending to improve them, that there will need to be some sort of administrative discretion exercise by the staff that in not all cases can a regulation be as explicit as it needs to be. So even though we're going to drive for better regulations, we do anticipate the need for the staff to exercise a lot of discretion in how they make judgments about some of the material that will be submitted and some of the processes that they'll be coming into – into very specific evaluations. Essentially that they'll have to be doing about processes yet to be determined. In some cases, these basin organizations are just now kind of figuring out how they're going to get this work done. So there needs to be again a lot of discretion in deference to local judgement.

At the highest levels, some of the overriding concerns that we have is that the terms "basin" and "sub basin", although big efforts have been made to make sure there is a consistent use throughout this regulation, that there are some places in which that needs to be improved. That there is, and I think the slides were helpful in showing an illustrative approach to the idea of basin and then sub basins being tiered in, that it's an extremely important concept in SGMA. So we're going to be offering up some opportunities throughout the regulation for clarifying how those terms are being used. Also the fact that, properly, the regulation recognizes the fact that local agencies, as defined in SGMA, are responsible for making these determinations about basin boundary adjustments, and that individuals don't have access, essentially, to this process yet these local agencies represent elected boards and

entities that are properly empowered to do groundwater management and that those agencies can hear and should be hearing from diverse stakeholders within their areas. But we caution again that the department not put its own judgement about the status of organization ahead of the reality of the local agencies on the ground and what their process is for vetting stakeholder interest.

In general, we are a little concerned about some of the burdensome aspects that we believe are built into the regulations, process requirements that may not be necessary. We know we're feeling our way into this process and we recognize the fact that staff, in sort of an abstract way, determined what might be problems and may have built processes to deal with problems that may or may not occur. We encourage the department to consider removing some of the burdensome procedural aspects in the regulations and we will identify those. Two specific ones are the idea of the historical sustainable management and the idea that the department needs evidence to determine whether there's a pattern or capability on the part of the locals to do sustainable management – in fact, that is the point of SGMA. We need to be forward looking about the idea of doing sustainable management and we're not there yet in many cases. So again, this is an example where deference will be called for.

There does need to be a track record and some evidence of capabilities on the part of the locals to do the work; but we are uneasy about the possibility, particularly for fragmentation type or subdivision type basin boundary adjustments, that those have a higher level of scrutiny, and we are a little concerned about that – that they ought to have an equal level of scrutiny to all basin boundary adjustments. And the idea of the unanimous support required – we believe that that is just an insurmountably high standard and unrealistic and unnecessary to ensure success. Unfortunately, California water, and all of California governance, is full of lots of differences of opinion about how things get done, and lots of entities that have a difficult time cooperating; and there's some concern that this idea of unanimous support will be used as a leverage tool to essentially thwart the kinds of work that we need to be doing on a broader context. So we believe that the story ought to be evident that the due diligence has been performed by the entities, as they're asking for basin boundary adjustments, that they have checked with all the various interests, including the local agencies that might be involved; but the veto of one local agency should not be sufficient to torpedo the idea of a subdivision type basin boundary adjustment.

In conclusion, just the idea of deference and the idea of empowerment – the idea that local agencies need to be empowered for success, that these regulations do provide some bright lines for testing adequacy. There are some helpful concepts - we support those. We'll be asking for some changes to makes sure we don't overburden this process out of the gates. That would be the conclusion of my comments. Thank you.