

Comment received at SGMA Basin Boundary Public Workshop
Bakersfield Community College, Bakersfield, September 2, 2015
Comment by Ernest Conant, Young Wooldridge LLP

DATE BASIN BOUNDARY
REGULATION COMMENT
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Thank you, and welcome to Bakersfield. My name is Ernest Conant. I am with the Young Wooldridge law firm. We represent a number of districts and agencies, principally in the San Joaquin Valley. I've also been involved with several different basins on the coast. As I think you're generally aware, most of the basins in the central valley – or I should say *many* of the basins not *most* – many of the basins are going to be in need of jurisdictional changes because the Bulletin 118 boundaries don't necessarily follow water district and agency boundaries and that's how we envision that SGMA is going to be implemented – in large part based on district and water agency boundaries pulling themselves together as GSAs for a particular basin. So you're going to see a lot of those.

Then on the coast what we're finding is that most of the basins as described in Bulletin 118 follow the most recent scientific information that's available based on a number of studies that have been done since Bulletin 118 was first drawn. So you're going to see a number scientific based requests coming from the coast. And Atascadero is one example of that type of request you're going to see.

A number of individuals, as you may be aware, have been working through a committee in ACWA and they're going to be presenting comprehensive comments. I'm going to hit on just a few of the highlights so as to at least have some comments here today. Again I'm not intending to cover them all, just what I think are the more important ones.

The first would be – and I'll just call these out by section number and they go in order as they go through the draft regulations – the first would be 343.6. This purports to require that basin boundary modifications be done as a group for the whole basin as one. We don't think that the statute – that would be section 10722.2 requires that all requests be submitted together for a particular basin. There may be good reasons, particularly in a larger basin, where separate requests come in and they should not have to be consolidated in order to be considered.

The second – and some of these comments I have seem to be clarified by Steve's presentation and particularly that last chart you showed again, I think this one is in that category – would be section 343.8. The draft suggests that there would be one comment period, although it's not really clear. You've indicated that there will be a comment period of 90 days in the first part of 2016. We understand the reason for having groups and time periods, and particularly this first one is critical in order for people to meet the June 2017 deadline, but that shouldn't be the end of it. We don't think that it should necessarily be tied to Bulletin 118 updates. There may well be good reasons why sometime after March 31st of 2016 somebody discovers, as they're trying to put together their SGMA organization, that an additional boundary change is needed. So, I think you should have, in addition to this major one in early 2016, maybe you should have a short window in the latter part of 2016 and then maybe a short window each year. I don't think you should confine yourself to updates of Bulletin 118 because there may well be reasons that develop, as we try to organize into these different GSAs, for having further boundary changes beyond March 31st, 2016.

Again this one is clarified to some degree by the chart and I think the regulation needs some clarification – this would be section 344.8. This is the need (a gentlemen from Atascadero was alluding to this a moment ago) for formal resolutions and approval of all the effected agencies. I think your chart clarified that to some degree. We think that the draft regulations should require obviously notification of other effected agencies and water suppliers, but it should not necessarily require the approval of all of them and maybe the standard should just be a lack of significant opposition. Again I understand that there's a

difference between scientific and jurisdictional changes. I think that if the regulations were drafted closer to that chart rather they're written, then maybe that in large part takes care of this.

The next would be section 344.16 (again this is alluded to in the chart). There's an expectation in this section that a Water Management Plan already exists that meets standards. That shouldn't necessarily be a requirement. I think the same thing comes up again in section 345.2 where it says that the 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. That's not necessarily the case here in the Kern basin, but in some areas there's been no management. So you can't have a prerequisite that you have a demonstration of management in order to change a basin boundary. Rather, if you go back and actually read the statute more carefully to what was intended – I think it's intended to be one of the criteria you take into account – if there's a history of management in a particular area, that may be part of the justification for the change. I think that's the context (there is reference to that in the statute and I acknowledge that) but I think it's in that context, that that's one of the items taken into account, not that it's a reason to deny a change.

So I think those are some the highlights. Much more comprehensive comments will be submitted. I was encouraged by some of your charts which I think clarify some of these items. Obviously the language is going to have to be changed in some instances to more closely track your charts and presentation than the actual words on the page.