



Water Resources ♦ Flood Control ♦ Water Rights

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April 1, 2016

Via electronic submittal

California Department of Water Resources
Attn: Lauren Bisnett, Public Affairs Officer
P.O. Box 942836
Sacramento California

Subject: Draft GSP Emergency Regulations Public Comment

Dear Ms. Bisnett:

Thank you for the opportunity to comment on the Sustainable Groundwater Management Act (SGMA) Draft Emergency Regulations (Draft Regulations) for Groundwater Sustainability Plans (GSP) and Alternatives released by the Department of Water Resources (DWR) on February 18, 2016. Our comments are presented in two parts: 1) overarching comments contained in this letter, and 2) an enclosed memorandum with detailed comments by section of the Draft Regulations.

As stated in the cover sheet to the Draft Regulations, local control and management is a fundamental principle of SGMA. This local control is provided to local agencies through the formation of Groundwater Sustainability Agencies (GSA). Although this principle is identified in the cover sheet, throughout the Draft Regulations there are requirements that indicate a level of doubt, in the form of excessive oversight by DWR, for the local agencies to achieve sustainable groundwater management. A local agency is required to justify and document its decision making process, its decisions arrived at through that process, and its interactions with local stakeholders. It appears that extensive resources would need to be expended by an agency in order to justify its actions to DWR to meet the requirements identified in the Draft Regulations, which could otherwise be allocated to implementing the GSP.

Specifically, the contents of a GSP outlined in Article 4 of the Draft Regulations include requirements for the description of the area, hydrogeologic conceptual model, basin conditions, and water budget. The level of detail required by the Draft Regulations appear to exceed the level of data collection and analysis indicated in SGMA; and it does not appear that all of this information is necessary for DWR to determine if an agency, through implementation of a GSP, would achieve sustainable groundwater management. We believe that DWR should consider the level of data required based on the existing conditions of a basin to achieve groundwater sustainability goals without expending resources unnecessarily, as indicated in our comments further below and in the accompanying memorandum.

In addition to the items above, the cover sheet to the Draft Regulations state that adaptive management is an important tool for local agencies. However, items such as contingency projects provide a tone that initial projects and management actions are assumed to fail and a local agency must have "contingency projects" in place. This contradicts the concept of adaptive management which implies that local agencies will continuously review new information and adapt to unexpected conditions as necessary. We believe the required annual reports and five-year assessments provide an adequate venue to address changes to projects and management actions.

Related to the observation above, we believe DWR could better facilitate local management and adaptive management through a concept of "adaptive oversight." It may not be necessary for every groundwater basin to be managed in the same manner or with the same oversight by DWR. The Draft Regulations state that GSPs may be approved if they are found to be in substantial compliance with the GSP regulations and SGMA. We believe this concept should be further expanded to allow for a local agency to determine if certain aspects of a GSP would not contribute to the agency's ability to manage the basin sustainably, and therefore, not include those provisions of the regulations into its GSP. Basins that are not currently experiencing issues with sustainability may then be evaluated under a lower standard of compliance than those basins which are not currently sustainable.

Please refer to the enclosed memorandum identifying comments regarding specific sections of the Draft Regulations. In advance, thank you for your consideration of our comments to the Draft Regulations. Please call if you have any questions or require additional information.

Sincerely,
MBK ENGINEERS



Darren Cordova

MBK ENGINEERS



Angela Bezzone

DC/AB
4877.9/FINAL COMMENT LETTER TO DWR DRAFT GSP REGS 04.01.2016

Enclosure



Water Resources • Flood Control • Water Rights

MEMORANDUM

DATE: April 1, 2016
TO: California Department of Water Resources
FROM: Darren Cordova and Angela Bezzone
SUBJECT: **Public Comments to Draft Groundwater Sustainability Plan
Emergency Regulations**

The purpose of this memorandum is to provide comments regarding the Sustainable Groundwater Management Act (“Act” or “SGMA”) Draft Emergency Regulations for Groundwater Sustainability Plans (“GSP”) and Alternatives released by the Department of Water Resources (“Department” or “DWR”) on February 18, 2016. The comments contained in this memorandum supplement our overarching comments provided in our letter transmitting this memorandum. The following identifies the article/section of the Draft Regulations to which a comment applies immediately below in italics.

ARTICLE 1. Introductory Provisions

350.2(e) Adaptive management may be employed as a tool for improving local and regional management of the state’s groundwater basins within 20 years of Plan implementation and over the planning and implementation horizon.

Adaptive management should be encouraged by DWR throughout the Regulations. However, many portions of the Regulations are too prescriptive to adequately allow adaptive management. Suggest revisions throughout Regulations to promote adaptive management, consistent with comments below.

350.2(g) The Department may evaluate a Plan at any time, for compliance with the Act and this Subchapter.

Section 355.6 describes the periodic review of GSPs. We believe that in order to provide a Groundwater Sustainability Agency (“GSA” or “Agency”) with stability and certainty in their groundwater management efforts, a GSA should be allowed to implement the GSP without reviews by DWR conducted on an arbitrary basis. Suggest deleting Section 350.2(g) or confirming the section to Section 355.6.

ARTICLE 3. Technical and Reporting Standards

352.6(b)(3) Wells used to monitor groundwater conditions shall be constructed according to standards described in DWR Bulletin 74-90....

This section appears to apply to any groundwater well used to monitor groundwater conditions under a GSP. We believe that a groundwater well with historical data should not be ruled out as a viable monitoring well if it was not constructed to the standards construction in DWR Bulletin 74-90. The well may provide meaningful historical data for comparison with data collected pursuant to a GSP. Numerous groundwater wells were constructed prior to development of the standards described in DWR Bulletin 74-90 and, in our experience, some wells constructed thereafter may also not meet those standards. Suggest rewording this section to state: “New wells used to monitor groundwater conditions...”

ARTICLE 5. Plan Contents

354.8. Description of Plan Area

We believe that the amount of data collection, analysis, mapping, and information requested in this section goes beyond the requirements provided in SGMA. Most of the information requested in this section would not be necessary for DWR to assess the effectiveness of a GSP or confirm compliance with SGMA. The collection of these data would be a difficult process, and we believe the resources applied to complete the requirements of this section would be better spent on implementation of sustainable groundwater management. Suggest significant revisions to this section in order to align with the intent of SGMA without unnecessary requirements that may not assist in achieving sustainable groundwater management.

354.14. Hydrogeologic Conceptual Model

Same comment as to Section 354.8. In addition, these requirements seem to far exceed those required for a Hydrogeologic Conceptual Model pursuant to Section 344.12. of the Basin Boundary Emergency Regulation. Suggest relying on Section 344.12. for these requirements.

354.14(a)(5) Other relevant information required by the Department as necessary to evaluate the Plan.

This section lacks clarity. A GSA would have no indication of what other information will be required by DWR. Suggest specifying items DWR requires or consider removing this section.

354.14(c)(5) Surface water bodies with water supply diversions greater than 10 acre-feet per year, storage facilities with a capacity greater than 100 acre-feet.

The thresholds identified in this section seem excessive for a GSP, particularly in certain watersheds. Suggest increasing these thresholds by orders of magnitude (i.e, 100 acre-feet, 1,000 acre-feet), perhaps tiered depending upon the characteristics of the watershed.

354.18. Water Budget

See comment above to Section 354.8. We believe the level of data collection, analysis, and information requested in this section outweighs the requirements of SGMA.

354.18(b)(2)(C) A description of how historical conditions concerning hydrology, water demand, and surface water supply reliability have impacted the basin's ability to achieve sustainable yield.

The wording implies that the basin is not being sustainably managed. Suggest modifying as follows:

A description ~~of how~~ historical conditions concerning hydrology, water demand, and surface water supply reliability relative to sustainable yield ~~have impacted the basin's ability to achieve sustainable yield.~~

354.18(b)(3)(A) Hydrology: Projected hydrology shall utilize 50-years of historical precipitation, evapotranspiration, and streamflow information as the baseline hydrology...

This section should be clarified to request 50-years of historical information if it is available. In our experience 50-years of historical information may not be available for all areas.

354.28(d) An Agency, after consultation with the Department, may establish a representative minimum threshold for groundwater elevation to serve as the minimum threshold value for multiple critical parameters, as appropriate. The Agency shall demonstrate that the representative minimum threshold is a reasonable and effective surrogate for multiple individual minimum thresholds and is supported by clear and convincing evidence in the Plan.

The intent of SGMA is to provide GSAs with local control; therefore, we believe that the section should be revised to eliminate "after consultation with the Department".

354.34(h) The best management practices for monitoring developed by each Agency shall include the following minimum standards:

Suggest this section be revised to address only those parameters determined relevant. May be reworded to state: “...standards for each relevant critical parameter determined by an Agency pursuant to 354.28(e)”.

354.30(d) Each Agency may use representative minimum thresholds for groundwater levels developed pursuant to Section 354.26(d)....

It appears that Section 354.26(d) should be renumbered to 354.28(d).

354.34(g) ...all monitoring sites or other data collection facilities to ensure that the monitoring network utilizes on the comparable data and methodologies....

This section is unclear; therefore, we suggest revising possibly to state: “to ensure that the monitoring network utilizes comparable data and methodologies”.

354.38(c) Each Agency shall describe steps that will be taken to fill any data gaps within the first five years of implementation of the Plan or before the next five-year assessment, including the location and purpose of newly added or installed monitoring sites.

We question the need for a GSA to complete the efforts described in this section if a GSP is in substantial compliance or if any data gaps are identified as not preventing sustainability in the basin. Suggest revising the section to focus on conditions where data gaps prevent sustainable groundwater management.

354.44(b) Each Plan shall include contingency projects or actions as follows:

Suggest deleting the requirements of this section for contingency projects. The section presumes that projects and management actions are assumed to fail. Additionally, this requires potentially unnecessary resources to develop contingency projects which could be better applied to implementation.

ARTICLE 6. Evaluation and Assessment

355.2(e)(3) Inadequate.

We believe that a GSP should not be deemed inadequate without providing the GSA(s) an opportunity to incorporate changes to address the Department’s relevant concerns. As an alternative, if a submitted GSP is determined to not be adequate, it should be designated as

Conditionally Adequate and the GSA should be provided the opportunity to modify the GSP as provided for in Section 355.2(f). Suggest revisions to this section as follows (and see comment below to Section 355.4(a)(2)):

“Inadequate. The Department has determined that the Plan as submitted ~~is not complete and does not satisfy the requirements of Section 355.4(a), that the Plan contains significant deficiencies that preclude an adequacy determination, and those deficiencies cannot be rectified by the Agency in a timely manner, or that the Agency has failed to address deficiencies in a Plan previously classified as conditionally adequate through corrective action recommended by the Department as described in this Section. If the Department makes ~~any~~ either of the determinations described in this subsection, the Department shall seek consultation with the Board to determine whether the Plan is inadequate.~~”

355.4(a) An initial Plan will be deemed inadequate unless it satisfies all of the following conditions: (2) The Plan is complete and includes all information required by the Act and this Subchapter, including a legally adequate coordination agreement, if necessary.

Consistent with the preceding comment, suggest removing reference to whether the GSP is complete as follows:

“~~The Plan is complete and includes all information required by the Act and this Subchapter, including~~ ing a legally adequate coordination agreement, if necessary.”

355.4(a) An initial Plan will be deemed inadequate unless it satisfies all of the following conditions: (3) The Plan covers the entire basin.

In the case that multiple GSPs are submitted through a coordination agreement, it is unclear how the Department or GSAs within a basin proceed if one GSP is determined to be inadequate. Suggest the Regulations incorporate a reference to Water Code Section 10735.2(e).

355.4(b)(1) Whether the Plan substantially complies with the requirements of this Subchapter.

Suggest modifying this section to state: “Whether the Plan substantially complies with the requirements this Subchapter the Act and the Agency, through implementation of the Plan, is likely to achieve the sustainability goal.”

355.10(a) Disputes within a basin shall be the responsibility of the Coordinating Agency or other entities responsible for managing Plans and alternatives within the basin.

This seems likely to place an unnecessary burden on the Coordinating Agency, which may establish a perceived or actual hierarchy among GSAs within a basin. There may also be

an instance where the Coordinating Agency is involved in the dispute. Suggest striking “the Coordinating Agency or” from the section.

ARTICLE 7. Reports, Assessments, and Amendments

356.4. Annual Report – Each Agency shall submit an annual report to the Department by April 1 of each year following the adoption of the Plan. The annual report shall include the following components:

The Annual Reports are to be filed for the preceding water year. Suggest clarifying this as follows:

“Each Agency shall submit an annual report to the Department by April 1 of each year following the adoption of the Plan. The annual report is for the preceding water year and shall include the following components:”

356.4(b)(3) Surface water supply used or available for use, for groundwater recharge or in-lieu use shall be reported based on quantitative data that describes the annual volume and sources for the preceding year.

The punctuation in this section introduces lack of clarity. Suggest inserting a comma after “used”. We believe this requirement may be difficult to accomplish by April 1 as many agencies will rely on data and analyses performed for water right reporting to the Board (annual water right reports are due by April 1 and July 1, depending on the right).

356.4(b)(4) Total water use shall be collected from the best available measurement methods and shall be reported in a table that summarizes total water use by water use sector, water source type, and identifies the method of measurement (direct or estimate) and accuracy of measurements. Existing water use data from the most recent Urban Water Management Plans or Agricultural Water Management Plans within the basin may be used, as long as the data are reported by water year.

Again, we believe this will be difficult to accomplish by April 1 as many agencies will rely on data and analyses performed for water right reporting to the Board (annual water right reports are due by April 1 and July 1, depending on the right) and farm-gate delivery reporting pursuant to AB 1404 (AB 1404 reports are due by June 30). Additional language should be included in the section to identify that the reported surface water use may be preliminary and will be included to the extent it is available.

In addition, we believe this requirement exceeds the intent of SGMA. The information required in the Annual Reports should focus on groundwater. Identifying total use by water use sector, water source type, and method of measurement and accuracy requires additional work

which does not have a clear benefit for the purpose of complying with SGMA. Suggest the regulations be revised accordingly to focus on sustainable groundwater management

356.10(f)(3) Gaps in data or data quality shall be remediated no later than the first five-year assessment by the Department.

As related to comments above to Section 354.38(c), any remediation seems unnecessary if a Plan is in substantial compliance or if the data gaps are identified as not preventing sustainability in the basin. It also may not be possible for a GSA to remediate all data gaps within the first five-years. Therefore, we suggest revising this section to limit the applicability of the section to those areas where data gaps prevent sustainability and/or if a GSA needs additional time to remediate data gaps due to lack of funding or resources.

ARTICLE 8. Coordination Agreements

357.4. Intrabasin Coordination

We believe the establishment of a Submitting Agency may create a hierarchy among GSAs within a basin. This also seems to create significant additional effort for the GSAs and the Submitting Agency. In addition, we suggest clarifying the regulations to identify the difference between Submitting Agency and Coordinating Agency, if a difference exists.

357.4(d) The Submitting Agency shall compile and rectify data and interpretations regarding basin conditions and produce a single report...

The requirement of this section appears is very prescriptive, and the basis of need is unclear. We believe coordination agreements should address how data from each GSA will be synthesized and summarized; however, this should not be a requirement of the "Submitting Agency." We suggest the section be revised to identify that the GSAs within each basin should be encouraged to create their own method for submitting a cohesive report to DWR.



Darren Cordova



Angela Bezzone