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California Department of Water Resources
Attn: Lauren Bisnett, Public Affairs Office
P.O. Box 942836
Sacramento, CA 94236

Re: General Comments on Draft Emergency Regulations for Groundwater Sustainability Plans and Alternatives, Sustainable Groundwater Management Act

This letter provides comments by the Mendocino County Board of Supervisors and the Board of Directors of the Mendocino County Water Agency (MCWA) regarding the Sustainable Groundwater Management Act (SGMA) Draft Emergency Regulations for Groundwater Sustainability Plans and Alternatives (Regulations). Mendocino County has one medium priority groundwater basin (Ukiah Valley) subject to the requirements of SGMA. Accordingly, MCWA and the County of Mendocino have been working with several other local agencies to form groundwater sustainability agency(s) in the Ukiah Valley basin as a first step towards implementation of SGMA. We appreciate the Department of Water Resource's (DWR's) diligence in developing the draft Regulations. We recognize the difficulty of developing comprehensive draft Regulations given the complexity of the issues and the short timelines provided by SGMA. It is from this perspective that we offer the following general comments regarding the draft Regulations.

Substantial Compliance and Deference to Local Agency Decision-Making

SGMA specifies that *"Groundwater resources are most effectively managed at the local or regional level"* and *"Local and regional agencies need to have the necessary support and authority to manage groundwater sustainability"*. It is essential that the Regulations support local efforts to successfully implement SGMA by recognizing local knowledge and expertise while providing clarity regarding the extent of SGMA. Accordingly, DWR's review of groundwater sustainability plans (GSPs) should focus on substantial compliance with the statute and regulations, rather than DWR independently determining whether a GSP is likely to achieve the sustainability goal. To accomplish this, DWR should provide a "peer review" to ensure that GSPs are prepared using the best available information and analyzed in accordance with scientific and industry standards. So long as these standards are met, deference should be given to the GSA's determination that the GSP will achieve the sustainability goal. It is not necessary for DWR to substitute its judgment because SGMA contains several provisions that ensure that groundwater sustainability will be achieved. For example, if a GSA fails to form or adequately perform its duties, the State Water Resources Control Board will assume management of the basin. Also, as new information is obtained during implementation, SGMA provides for "course corrections" by GSAs through adaptive management.

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Relationship Between SGMA and State/Federal Laws

The draft Regulations lack specificity regarding how GSPs should consider other existing state and federal laws, regulations, and other jurisdictional agency policies, orders, and programs. For example, the draft Regulations specify several activities required of the GSAs pertaining to data collection and analysis regarding groundwater contamination sources, plumes and historic waste discharges. These sites are regulated by state and federal agencies under separate laws. Rather than requiring GSAs to perform these additional tasks, the draft Regulations should require that GSAs coordinate with water quality regulatory agencies and utilize information provided by those agencies. In addition, the draft Regulations should clarify that GSAs are not responsible for establishing minimum criteria for contaminated sites and groundwater plumes that fall under water quality laws and regulations and thus are not required to manage or remediate these sites. Similarly, the draft Regulations should clarify that GSAs are not responsible for developing minimum thresholds for naturally occurring contaminants such as arsenic, boron, and chromium.

The draft Regulations also do not adequately address how a GSP is to consider depletions of interconnected surface water. The State Water Resources Control Board regulates surface water rights and SGMA specifies that water rights and priorities will not be infringed upon. The draft Regulations require that minimum thresholds for depletions of interconnected surface water must be developed as part of the GSP, however it is not clear how a GSA will implement SGMA to ensure sustainability because: (1) diverters with appropriative or riparian water rights (surface water or well diversions) may in part be the cause of depletions of interconnected surface water and are not within the jurisdiction of SGMA; and (2) in most areas, there is not a clear understanding of the boundary between surface water rights and SGMA (these boundaries could also change over time or seasonally). In addition, it is not clear how SGMA interacts with the state and federal Endangered Species Acts and the SRWCB Frost Protection Regulation for the Russian River watershed. We are concerned that as written, the draft Regulations place GSAs in a position where despite their best efforts, GSAs will not be able to achieve sustainability related to depletions of interconnected surface water and could possibly incur regulatory and third-party liability.

Coordination with Land Use Management Agencies

SGMA emphasizes the need for GSAs to coordinate with local land use agencies. This ensures that groundwater management efforts use valuable information from local land use plans and that future implementation of both land use plans and groundwater sustainability plans is coordinated to the extent feasible. The draft Regulations includes several references to local land use plans, but these provisions should be more explicit to encourage active consultation and coordination between groundwater managers and land use planners. This coordination is particularly important in developing the current and future water budget for the basin and in developing a groundwater sustainability action plan that can be implemented in concert with local land use plans.

Regulations Based on Priority Level

As currently proposed, the Regulations make no distinction between medium, high, and very high priority basins with respect to the Administrative, Basin Setting, and Monitoring networks, and Representative monitoring requirements. We suggest the Agency reduce these requirements to “in consideration of basin priority such that the level of effort to develop a Groundwater Sustainability Plan is more aligned with the threat(s) to sustainability.”

Clarify “Adverse Effect” Determination and Responsibilities

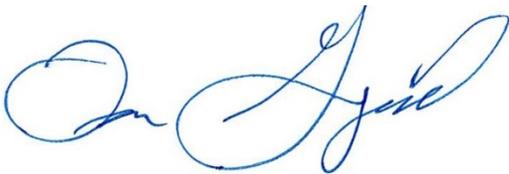
While SGMA requires DWR to evaluate whether a GSP adversely affects an adjacent basin, it does not contemplate that DWR resolve conflicts, nor find a GSP inadequate if it affects a neighboring basin. It also does not empower DWR to deem that a GSP is adversely affecting a neighboring basin’s GSP. The draft regulation needs to be amended to conform to the statutory framework that defers resolution of “adverse effect” between basins to the responsible GSPs.

Limited Opportunity for Review

We understand the short statutory deadline for DWR to finalize the Regulations, however given the complex and far-reaching significant issues that the Regulations need to address, we believe that they should not be rushed and that additional time is necessary to more fully develop the draft Regulations. The more informed the Regulations are, the better served the public will be and the more likely that SGMA will be successfully implemented. For these reasons, we request the public comment period be extended by 45 days.

On behalf of the Mendocino County Board of Supervisors and the Board of Directors of the Mendocino County Water Agency, we appreciate the opportunity to provide these comments. Please contact Sarah Dukett at 707-463-4441 or duketts@co.mendocino.ca.us if you have any questions regarding our concerns and comments.

Sincerely,



Dan Gjerde, Chair
Mendocino County Board of Supervisors
Mendocino Water Agency Board of Directors

cc: The Honorable Jim Wood, Assemblymember
The Honorable Mike McGuire, State Senator
California State Association of Counties (CSAC)
Rural County Representatives of California (RCRC)