

March 30, 2016

California Department of Water Resources
Attn: Lauren Bisnett, Draft GSP Emergency Regulations Public Comment
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Via e-mail to: SGMPS@water.ca.gov

Subject: Draft GSP Emergency Regulations Public Comment

The Santa Clara Valley Water District (District) appreciates the opportunity to comment on the Draft Emergency Regulations for Groundwater Sustainability Plans (GSPs) and Alternatives (draft regulations). We acknowledge the significant challenge faced by the California Department of Water Resources (DWR) to develop effective regulations while respecting local control and management, a fundamental principle of the Sustainable Groundwater Management Act (SGMA). We also appreciate the effort made by DWR staff to meet with stakeholders during this process.

Our community has experienced the effects of unsustainable groundwater conditions firsthand. The District was formed in 1929 to address undesirable results that persisted for several decades, including groundwater overdraft, up to 13 feet of land subsidence, and salt water intrusion. Due to locally-driven investments in programs and facilities to import, store, recharge, and treat water, local groundwater has been sustainable since the early 1970s. Over many decades, the District has established comprehensive conjunctive water management programs to help ensure sustainable groundwater supplies in the heart of Silicon Valley now and in the future. It is from this perspective that we offer the following comments on the draft regulations.

1) The draft regulations are overly prescriptive in many instances, in contrast with the fundamental SGMA principle of local management and control.

By prescribing all components that *may* be needed, the draft regulations appear to be written to address the worst case scenario. During the development of SGMA, it was clear that a one size fits all approach would not be practical or successful. Overly prescriptive regulations force a consistent approach regardless of what may be most effective locally.

Perhaps most concerning are the overly prescriptive requirements for minimum thresholds and measurable objectives in Subarticle 3. As an example, the minimum threshold for groundwater storage reduction must be the volume of groundwater that can be taken out of storage without causing undesirable results. However, a different metric, such as the total volume of groundwater in storage may be more appropriate and meaningful locally. Similarly, the minimum threshold for seawater intrusion must be the location where it is considered significant and unreasonable, when a rate of change may be more significant locally. Local agencies must have the flexibility to identify what constitutes an undesirable result based on local conditions.

Other examples of draft requirements that reduce local control and flexibility include:

- a) Technical and reporting standards in Article 3 for monitoring points and models, such as the requirement to use public domain open source software, which could result in existing data sources and tools no longer being acceptable for use in groundwater management
- b) Requirements that local agencies must use DWR data on precipitation, land use, and other factors in developing local water budgets regardless of the availability of local data (Section 354.18)

While the concept of substantial compliance is acknowledged in the draft regulations, the related language should be clarified to provide *local* agencies with adequate flexibility to develop locally-appropriate basin assessments, define what constitutes an undesirable result, and identify how progress will be measured. The District also recommends that the draft regulations be revised to address minimum requirements for GSPs in keeping with the language in SGMA. More detailed components can provide useful guidance to local agencies in the form of Best Management Practices (BMPs).

2) Data and reporting requirements in the draft regulations are excessive and will divert attention from actions to maintain or achieve sustainability.

Section 354.40 requires each agency to submit “all monitoring data” to DWR. Other sections are similarly daunting, such as Section 352.6, which requires submittal of all data layers, shapefiles, and databases used to create each map in the GSP. The District’s database contains over 40,000 individual records for groundwater level and quality records in any given year. In addition, we use pumping data from thousands of wells to evaluate the groundwater budget and project future conditions. Providing thousands of records to DWR for review and/or posting on the DWR website is not practical, and will potentially be overwhelming for both DWR and the public.

Local water managers are best-equipped to evaluate and synthesize large amounts of basin data. The “data dump” approach in the draft regulations will divert attention and resources from local basin assessment and the implementation of groundwater management projects. The draft regulations should be revised to defer to the expertise of local agencies in interpreting raw data and presenting the findings in a representative and meaningful way. Rather than being overwhelmed by the management and review of data, this reduced reporting would allow DWR to focus its resources on providing technical assistance in the areas of greatest need.

3) The draft regulations should be revised to generally defer to the judgment and expertise of local agencies, applying more stringent and prescriptive requirements only when a local agency has not demonstrated appropriate good faith efforts.

As groundwater managers, we take our role in protecting groundwater resources for the community we serve very seriously. The draft regulations generally set a tone of mistrust in local agencies and presumption of failure in some cases. An example of the latter is the Section 354.44 requirement to identify contingency projects. This requirement does not provide local agencies needed flexibility to modify and adapt projects, and is impractical and unnecessary given regular assessments and reporting required by SGMA.

The District believes the draft regulations would be greatly improved by applying more stringent, prescriptive requirements *only* when an agency has shown an inability or unwillingness to take action toward achieving sustainability. This display of trust in local agencies could be reinforced by scaling back data and reporting requirements, clarifying the concept of substantial compliance, and including language that additional information may be required in the case DWR determines a GSP to be inadequate.

4) The draft regulations should clarify how GSPs should consider existing state and federal laws related to water quality.

Section 354.16 requires that local agencies provide information on groundwater contamination sources and plumes, including historical waste discharge requirements. There are hundreds of open contaminant release sites in Santa Clara County that are regulated by local, state, and federal agencies under separate laws. Although local agencies may have some related data, the draft regulations should clarify that local agencies are not responsible for the oversight and cleanup of these sites, nor are they responsible for establishing thresholds or objectives for contaminated sites or groundwater plumes regulated under state and federal water quality laws. Similarly, the draft regulations should clarify that local agencies are not responsible for developing minimum thresholds for naturally occurring contaminants.

5) Alternatives to GSPs must be tied to the intent of SGMA rather than the content and procedure of GSPs.

SGMA includes specific provisions for local agencies to submit an alternative to a GSP and requires the local agency to demonstrate that the alternative satisfies the objectives of SGMA. However, Section 358.4 of the draft regulations requires that a local agency explain the “functional equivalence of terms and concepts with the substantive and procedural requirements” of not only SGMA, but also the GSP regulations.

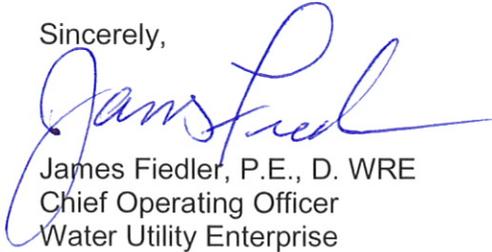
Given the prescriptive nature of the draft GSP regulations, the District believes that requiring “functional equivalence” with the regulations will foreclose local control and flexibility and essentially force alternatives to utilize the same methods and standards required for GSPs. At the very least, the requirement will result in the expenditure of significant time and effort explaining why a certain metric, well type, or data formatting is “functionally equivalent”, as opposed to focusing the analysis on whether the alternative plan satisfies SGMA’s objectives. Therefore, the District recommends that Section 358.4(e) be modified to read: “*A local agency submitting an alternative shall include adequate explanation, data, and analysis to demonstrate the alternative satisfies the objectives of the Act.*”

Similarly, the requirement in Section 358.4(c)(3) that an agency demonstrate that no undesirable results have occurred between January 1, 2005 and January 1, 2015 goes beyond the statute. Section 10733.6 (b)(3) of SGMA requires an analysis demonstrating the basin has operated within its sustainable yield over a period of at least 10 years, but does not require analysis of a specific time frame. The time period specified in the draft regulations is troubling as it includes several years of exceptional drought. Per SGMA, overdraft during a period of drought does not equate to an undesirable result if extractions

and recharge are adequately managed during other periods. In keeping with the statute, the District recommends that Section 358.4(c)(3) be revised to read: *“An alternative submitted pursuant to Water Code Section 10733.6(b)(3) shall demonstrate that the basin has operated within its sustainable yield as defined in the Act over a period of at least 10 years that are reflective of current groundwater management practices.”*

Thank you for the opportunity to comment on the draft regulations. Our staff will also be providing more detailed technical comments on the draft regulations. If you have any questions, please contact Vanessa De La Piedra, Groundwater Management Unit Manager, at (408) 630-2788 or vdelapiedra@valleywater.org.

Sincerely,

A handwritten signature in blue ink, appearing to read "James Fiedler", is written over the typed name and title.

James Fiedler, P.E., D. WRE
Chief Operating Officer
Water Utility Enterprise

cc: N. Camacho, G. Hall, V. De La Piedra, E. Soderlund, B. Kassab, G. Cook