



## **Kings County Water District**

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### **Board of Directors**

**Ernest A. Taylor**  
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**Michael Murray**

### **General Manager**

**Dennis Mills**

California Department of Water Resources  
Attn: Lauren Bisbett, Draft GSP Emergency Regulations  
Public Comment  
P.O. Box 942836  
Sacramento, CA 94236

Dear Mr. Gutierrez,

Kings County Water District (District) appreciates the Department of Water Resource's (DWR's) effort to produce the Draft Groundwater Sustainability Plan (GSP or Plan) Regulations early this year so that there is an opportunity to consider the draft and provide comment prior to the adoption of regulations later this year. The District represents landowners in roughly 150,000 acres split between the Kings, Kaweah and Tulare Lake subbasins within the northeastern part of Kings County. This area is highly agricultural and our local communities are all economically tied to the dominant industry. Even though these regulations are being fashioned in Sacramento, I would encourage you to remember that it will be landowners in economically disadvantaged areas like this District that will have to implement them. There are several things that appear could be improved to reduce unnecessary burdens and increase local flexibility. It is the District's hope that you would consider these comments and implement as many as practicable. The following is a list of the District's primary concerns, followed by a list of comments on specific sections:

1) These regulations appear to go beyond what is required in the 2014 Sustainable Groundwater Management Act in several places.

2) SGMA compliance and by extension, these regulations, are unfunded mandates that appear to have been developed without any serious consideration about the financial burden being placed on communities and landowners in the most disadvantaged areas of the State.

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3) Local agency groundwater monitoring networks have been sufficient for DWR to conclude that long-term overdraft is occurring and therefore that SGMA implementation should be a priority in these areas. However the draft regulations require significant improvements beyond what most agencies in the southern San Joaquin Valley have for the majority of their monitoring networks. This will impair local management by requiring significant investment in newly constructed facilities and force the use of monitoring readings that will not be historically comparable to existing long-term records.

4) The regulation require that in areas where multiple GSAs exist that there be on one point of contact for DWR for the subbasin. While this might be expediant for DWR, it was not required in SGMA and will lead to governance and coordination issues in larger subbasins.

5) Given that there do appear to be significant revisions needed in the Draft GSP Regulations, it is the District's hope that DWR would take all the time needed to work through apparent issues rather than charge forward withouth resolution. DWR and local GSAs will live with these regulations for many years to come, so it would seem worth the investment not to rush.

Again, I appreciate your willingness to receive and review Kings County Water District's comments on the draft GSP regulations. We look forward to continued discussion with you on all of these matters.

Sincerely,

Dennis Mills, PE  
General Manager



## **General Comments**

Comment G1: These regulations appear to go beyond what is required in SGMA in several places. It is suggested that DWR revise the GSP regulations to more closely adhere to the 2014 legislation.

Comment G2: In the southern San Joaquin Valley many groundwater subbasins are connected and are merely sub-regions separated by historic jurisdictional lines. Kings CWD is a District that covers portions of three subbasins. Due to existing jurisdictional overlap issues, the District did not pursue a basin boundary adjustment and will participate in at least two adjacent GSAs. The Draft GSP Regulations are almost silent on coordination between subbasins, even when they share groundwater. There will undoubtedly be issues during implementation (post January 2020) where adjacent subbasins impact each other. This issue needs to be addressed in the revised GSP Regulations.

Comment G3: The draft Regulations do not describe the process for a GSA with a GSP that is found to be inadequate by DWR, triggering State Board consultation, to eventually achieve adequacy through a revised or amended GSP or other efforts. This issue needs to be addressed in the revised GSP Regulations.

Comment G4: The draft GSP Regulations appear to envision all groundwater aquifers as small and unconfined. In areas of the State with large regional confined aquifers, issues like addressing reduction in groundwater storage, minimum thresholds and milestones are very difficult to interpret through the current draft. In our area the confined aquifer below the Corcoran Clay is pumped by landowners in the Westside, Kings, Tulare Lake, Kaweah and Tule subbasins while the forebay that pressurizes that confined aquifer is understood to reside only in portions of the Kings, Kaweah and Tule subbasins. It is difficult to see how an individual GSA could be responsible for hitting annual groundwater level milestones within its jurisdiction while a significant component of influence (the pressurizing level in the forebay) is miles outside of its control. This issue needs to be addressed in the revised GSP Regulations.

Comment G5: Words like “adequate” and “complete” are used throughout the regulations, but it’s seldom clear what such descriptors mean. I recommend applying a “substantial evidence” standard to agency determinations made under the regulations. This could be accomplished through a simple statement somewhere in Article 1.

Comment G6: The word “all” appears an excessive number of times throughout the regulations and in many instances is problematic from a practical standpoint. The use of such absolute language may lead to unnecessary difficulty associated with relatively minor

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administrative issues. Incorporation of the “substantial compliance” standard is requested.

Comment G7: The level of documentation and justification required in the draft GSP Regulations in many cases goes beyond what is required for DWR to evaluate SGMA compliance and requires additional cost and effort for a variety of perceived reasons (uniform data valuable for State evaluations and research, State priority of transparency, limited State funds for DWR’s oversight). However landowners and agencies that will be financing local GSAs to produce information to document SGMA compliance should not be asked to bear the financial burden of the State.

Comment G8: SGMA Compliance (through these regulations) is an unfunded mandate that appears to have been developed without much serious consideration about the financial burden being placed on landowners in the most disadvantaged areas of the State. Local efforts have estimated that it might take a newly formed GSAs over \$4 million from 2016 - 2020 to comply with these draft regulations to develop a robust management structure and develop a GSP for submittal to DWR. Much of these resources will come from existing local agencies supporting newly formed GSAs as revenue streams are developed and voted on by landowners. This is being asked of many agencies that have been hard hit by the drought over the last several years (very low revenues from water sales to growers) and during a time of historic dissatisfaction with and mistrust of the Government. I would suggest that DWR communicate to the Governor's administration that significant state funding will likely be necessary to successfully comply with the draft GSP Regulations.

## **Article 1 – Introductory Provisions**

### **§350.2 General Principles**

(a) “The Plan must achieve the sustainability goal for the entire basin within 20 years of Plan implementation without adversely affecting the ability of an adjacent basin to implement their Plan or achieve their sustainability goal.”

Comment 1-1: The notion that a Plan must achieve the sustainability for “the entire basin” is inconsistent with the statute allowing multiple GSPs within a basin and the “good actors” provision at Water Code §10735.2(e). A GSA cannot be responsible for areas beyond its jurisdiction. This approach is throughout the draft and needs to be revised.

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



Comment 1-2: The authority for DWR to evaluate a Plan “at any time” for compliance is inappropriate and inconsistent with SGMA and other provisions of the Draft GSP Regulations (i.e. DWR will make a determination of sufficiency within two years). There is another regulation at §355.6 describing when and under what circumstances a plan may be subject to review by DWR, there is provision for approval at the outset, annual reporting, five year reporting, and review by DWR when a plan amendment is proposed. There has to be some certainty that a GSP is adequate, as a GSA moves forward, investing significant time and financial resources to implement an approved GSP.

## **Article 2 – Definitions**

### **§351 Definitions**

Comment 2-1: The word “Basin” is used quite often in the Draft GSP Regulations and its definition may be similar to what is used in SGMA, but that is never stated. This leads to significant concern about what is being required connected with basins. For those of us in subbasins, this definition is extremely important.

(e) ““Baseline” or “baseline conditions” refer to historic information used to project future conditions for hydrology, water demand, and availability of surface water and to evaluate potential sustainable management practices of a basin.”

Comment 2-2: The definition of “baseline” needs to be modified to: (i) tie to Water Code §10727.2 of SGMA “The plan, may, but is not required to, address undesirable results that occurred before, and have not been corrected by, January 1, 2015,” and (ii) in the context of surface water supplies, “baseline. . .shall include the historic average reliability and deliveries” (Water Code §10733.2(b)(2)).

(i) ““Coordinating agency” refers to a groundwater sustainability agency or other authorized entity that represents two or more Agencies or Plans for a basin and is the sole point of contact with the Department.”

Comment 2-3: There is no reference to a Coordinating Agency within SGMA. Disputes between GSAs within a subbasin are to be dealt with through the framework of their coordination agreement. References to a Coordinating Agency need to be removed to be consistent with SGMA.

(j) ““Critical parameter” refers to chronic lowering of groundwater levels indicating a depletion of supply if continued over the planning and implementation horizon, reduction of groundwater storage, sea water intrusion, degraded water quality, land subsidence that substantially interferes with surface land uses, and depletions of surface water



that have adverse impacts on beneficial uses of surface water that may lead to undesirable results, as described in Water Code Section 10721(x).”

Comment 2-4: “Critical parameter” would be better characterized as “sustainability conditions” and in any event the definition must incorporate “significant and unreasonable” to be consistent with Water Code §10721(w).

(w) ““Plan manager” is an employee or authorized representative of a groundwater sustainability agency who has been delegated management authority for submitting the groundwater sustainability plan and serving as the point of contact between the groundwater sustainability agency and the Department.”

Comment 2-5: There is no reference to a Coordinating Agency or Plan manager within SGMA. Disputes between GSAs within a subbasin are to be dealt with through the framework of their coordination agreement rather than through a Plan manager. References to a Plan Manager need to be removed to be consistent with SGMA and to allow for multiple GSPs.

(x) ““Principal aquifers” refer to aquifers or aquifer systems that store, transmit, and yield significant or economic quantities of groundwater to the wells, springs, or surface water systems.”

Comment 2-6: The uses of the words “significant” and “economic” in this requirement area very vague. Also, at the beginning of GSP implementation it may not be possible to fully account for how much water is being pumped from each aquifer in any location. Therefore determination of “Principal” aquifers may be difficult and evolving.

### **Article 3 – Technical and Reporting Standards**

§352.6 (b) (3) (D) “A list of all casing perforations, borehole depth, and total well depth.”

Comment 3-1: This requirement, associated with wells used to monitor groundwater conditions, essentially excludes many “open bottom” wells in our area. These wells would be excluded due to their lack of casing perforations. This requirement would also force significant investigation into many existing production wells used for monitoring to investigate and determine precise casing perforations. It is suggested that this requirement be loosened to allow for the use of zones or the allowance for various well types (not just gravel packed wells with perforations) that would be reflective of the groundwater levels that well owners experience.

§352.6 (b) (4) “If an Agency relies on wells that lack casing perforations, borehole depth, and total well depth information to monitor groundwater conditions as part of an initial Plan, the Agency shall describe a schedule for acquiring monitoring wells with the



necessary information, or demonstrate to the Department that such information is not necessary to understand and manage groundwater in the basin..”

Comment 3-2: Local agency groundwater monitoring networks have been sufficient to conclude that long-term overdraft is occurring and therefore that SGMA implementation should be a priority in these areas. However the draft regulations require significant improvements beyond what most agencies in the southern San Joaquin Valley have for the majority of their monitoring networks. This will require significant investment in newly constructed facilities. To give you some perspective, my District installed two multiple completion monitoring wells this last year. Due to their depth and the competition for well drillers each well cost roughly \$100,000 to construct. I would suggest the relaxation of specified requirements on monitor wells and a longer period to improve monitor well networks to this new standard.

§352.6 (c) “Maps submitted to the Department shall meet the following requirements:

(1) Each map, including all data layers, shapefiles, geodatabases, and other information used to create the map, shall be submitted electronically to the Department in accordance with Article 4.”

Comment 3-3: The requirement for all data layers, shapefiles, geodatabases, and other information used to create the electronic maps goes well beyond what is needed for DWR to evaluate the validity of most analyses. This requirement seems to flow out of requests from the academic community for as much open data as possible. However the landowners that support GSAs should not be required to spend the resources necessary to produce products and efforts not required under SGMA.

§352.6 (e) “Groundwater and surface water models developed or utilized as part of or in support of a Plan shall be consist of public domain open-source software that meets the following requirements:”

Comment 3-4: It appears the requirement should read “a Plan shall consist of public domain”.

#### **Article 4 – Procedures**

§353.4 (b) “All materials shall be accompanied by a transmittal letter signed by a person duly authorized under California law to bind the party submitting the report, and including the following certification:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly



responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete.” ”

Comment 4-1: This requirement is not in SGMA. It seems this certification could lead to issues because of the phrase “under my direction or supervision”. In subbasins with multiple GSAs the information/data folded into an annual report or other document likely won’t be prepared under the direction and supervision of only one person. It is suggested that the language be clarified to allow for multiple parties to sign the certification for their part of the effort.

Comment 4-2: It is not clear why a submittal to DWR would need to be accompanied with a certification “under the penalty of law”. Also, it isn’t clear what that phrase actually means in this instance.

### **Article 5 – Plan Contents**

#### §354.8 (g)

Comment 5-1: This subsection should be deleted from the GSP Regulations as GSAs should not be required to delve into and speculate about land use issues. These responsibilities remain with Cities and Counties, as SGMA does not supersede City and County planning authorities (Water Code §10726.8(f)).

§354.8 (g) (5) “A summary of land use plans outside the basin, for any area the Agency determines to be linked to the hydrology of the basin governed by the Plan.”

Comment 5-2: In the southern San Joaquin Valley it could be argued that much larger areas than groundwater subbasins are hydrologically linked. If this subsection is not deleted, it is suggested that this requirement be constrained to just the subbasin, or to require a very general description of land use plans outside the subbasin if hydrologically linked.

§354.8 (g) (8) “How implementation of existing land use plans outside the basin, including a description of how implementation of those land use plans could affect the ability of the Agency to achieve sustainable groundwater management, for any area the Agency determines to be linked to the hydrology of the basin governed by the Plan.”

Comment 5-3: In the southern San Joaquin Valley it could be argued that much larger areas than groundwater subbasins are hydrologically linked. If this subsection is not deleted, it is suggested that this requirement be constrained to just the subbasin, or to require a very general description of land use plans outside the subbasin if hydrologically linked.

#### §354.14 Hydrological Conceptual Model

(a) (3) “The definable bottom of the basin.”



Comment 5-4: In the southern San Joaquin Valley I am not aware of any previous widespread efforts to define the bottom to the aquifer or bottom of the basin. There is a mapped base of fresh water in the aquifers in this area that I would suggest be used to satisfy this requirement.

(a) (4) (D) “General water quality of the principal aquifers, which may be based on information derived from existing technical studies or regulatory programs.”

Comment 5-5: The issue with using existing water quality data from regulatory programs is that most records are of targeted at locations where there exceedances were identified and using this information would likely skew the description of regional water quality. The other issue here is whether general water quality is to be described for all drinking water constituents or for general ag suitability.

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

Comment 5-5: The use of “surface water bodies” is not defined. It would be the District’s suggestion to modify this requirement to read “Surface water diversion locations from distribution systems greater than 10 acre-feet per year and surface water storage locations with a capacity of greater than 100 acre-feet”.

(c) (6) “The source location, distribution system, and point of diversion for imported water supplies.”

Comment 5-6: The use of “imported water supplies” is not defined.

#### §354.14 Hydrological Conceptual Model

(b) (3) (A) “Hydrology: Projected hydrology shall utilize 50-years of historical precipitation, evapotranspiration, and streamflow information as the baseline hydrology over the planning and implementation horizon, while evaluating scenarios of future hydrologic uncertainty associated with projections of climate change and sea level rise.”

Comment 5-7: In the southern San Joaquin Valley there are precipitation and streamflow records for the last 50 years, but I am not aware of any monthly evapotranspiration data sets over that period. The CIMIS data I am aware of only goes back to 1980. It is the District’s suggestion to significantly shorten this period to 25 years (i.e. 1990-2015).

Comment 5-8: In the southern San Joaquin Valley it would seem unnecessary to evaluate the significance of sea level change to develop a water budget view for the area’s hydrology. The District suggests including language to clarify that this will only be required if it could potentially impact the long-term view of hydrology.



#### §354.18 Water Budget

(b)(3)(C) “Surface Water Supply and Reliability: Projected water supply shall utilize the most recent water supply information as the baseline surface water supply over the planning and implementation horizon, while evaluating scenarios of future water supply uncertainty associated with historical surface water supply reliability, and projections of future local land use planning, future population growth, and climate change.”

Comment 5-9: This section is inconsistent with Water Code §10733.2(b)(2) in that it requires for baseline surface water supplies evaluating future water supply uncertainty and reliability, whereas the statute provides the “baseline for measuring unreliability and reductions shall include the historic average reliability and deliveries.”

(d) “The following information shall be provided by the Department and shall be used by Agencies in developing the water budget:

(1) Historical water budget information for mean annual temperature, mean annual precipitation, water year type, and central valley land use.”

Comment 5-10: This requirement appears to be specific for the Central Valley and as such should be revised to be applicable for implementation across the entire state.

#### §354.24 Sustainability Goal

“Each Agency shall establish a sustainability goal for the basin. The Plan shall include a description of the sustainability goal, including a discussion of the measures meant to ensure that the basin will be operated within its sustainable yield, and an explanation of how the sustainability goal will be achieved within 20 years of Plan implementation. The Agency will show that it has achieved the sustainability goal by demonstrating that the management and use of groundwater in the basin can be maintained through the planning and implementation horizon without causing undesirable results.”

Comment 5-11: This language seems confusing given instances where there are multiple GSAs. SGMA seems to require that a subbasin develop a common view of the sustainability goal for the subbasin and through a coordination agreement be responsible for portions of the goal. This language seems to be unclear in how it treats the number of agencies and seems to infer that all agencies are responsible for the entire sustainability goal regardless of how this is described in a coordination agreement.

Comment 5-12: The last sentence needs to reference “significant and unreasonable” prior to undesirable results. GSAs should not be held to a sustainability goal that eliminates all undesirable results. This would make the determination of “significant and unreasonable” meaningless.



### §354.26 Undesirable Results

“Each Agency shall describe the processes and criteria relied upon to define undesirable results applicable to the basin. Undesirable results occur when significant and unreasonable effects for any of the critical parameters are caused by groundwater conditions occurring throughout the basin.”

Comment 5-13: In a situation where there are multiple GSAs, this section seems to infer that “Each Agency” will have the ability to define what is significant and unreasonable within their portion of the subbasin and therefore to have different measures of significance & unreasonability throughout a subbasin (perhaps even by management area). Was that the intent?

### §354.28 Minimum Thresholds

Comment 5-14: Minimum thresholds, objectives, and milestones are particularly well suited for reliance on a “substantial evidence” standard. DWR previously explained to Counties in a webinar that it will defer to agency-identified targets if they are reasonable.

(b) “Minimum thresholds for each critical parameter shall be defined based on the following:”

Comment 5-15: In defining the “minimum thresholds”, the phrase “significant and unreasonable” is omitted under (2) reduction in groundwater storage and (5) land subsidence. These very important words are applied to all six categories in SGMA and the GSP Regulations should be consistent.

(b)(1)(C) “Management of extractions and recharge to ensure that chronic lowering of groundwater levels or depletion of supply during periods of drought is offset by increases in groundwater levels or storage during other periods.”

Comment 5-16: This requirement, which provides that minimum thresholds for chronic lowering of groundwater levels must be supported by “management of extractions and recharge” is inappropriate. A GSP may at least initially require groundwater charges with tiered pricing and only extraction “management”. A GSP may also pursue the development of increase surface water deliveries or groundwater recharge infrastructure if those make sense for the GSA service area. Subsection (b)(1) needs to be consistent with SGMA which recognizes there aren’t necessarily “chronic lowering” groundwater levels because of groundwater level declines during droughts.

(e) “If the Agency determines that minimum thresholds are not required for seawater intrusion, land subsidence, depletions of interconnected surface water, or water quality, the Plan shall support this determination with clear and convincing evidence.”



Comment 5-17: This section requires that thresholds for the various undesirable results [except chronic lowering of groundwater] be supported by “clear and convincing evidence”. This is inappropriate, particularly since additional information will be developed through the GSP process after SGMA powers can be invoked. This requirement is not described in SGMA and it will likely invite legal challenges to local GSA efforts. This is a high standard, not typical of administrative proceedings, which typically use the substantial evidence standard.

#### §354.30 Measurable Objectives

“Each Plan shall include one or more measurable objectives for each critical parameter that has an established minimum threshold. The measurable objectives shall ensure that the basin is managed to avoid undesirable results within 20 years of Plan implementation and groundwater is sustainably managed over the planning and implementation horizon.”

Comment 5-18: The District would recommend revising the beginning of the second sentence to read “The measurable objectives shall attempt to ensure...”.

(c) “Each Agency may establish measurable objectives that exceed the reasonable margin of operational flexibility for the purpose of improving overall conditions in the basin, but failure to achieve those objectives shall not be grounds for a finding of inadequacy of the Plan.”

Comment 5-19: The phrase “the reasonable margin of operational flexibility for the purpose of improving overall conditions” is not clear. Please clarify.

#### §354.34 Monitoring Networks

(a) “Each Plan shall include a description of the monitoring network objectives for the basin, including an explanation of how the network will be developed and implemented to monitor surface water and groundwater conditions, and the interconnection of surface water and groundwater, with sufficient temporal frequency and spatial density to adequately evaluate the affects and effectiveness of Plan implementation. The monitoring network objectives shall be implemented to accomplish the following:

- (1) Demonstrate progress toward achieving measurable objectives described in the Plan.
- (2) Identify impacts to the beneficial uses or users of groundwater.
- (3) Identify changes in basin conditions relative to measurable objectives and minimum thresholds.
- (4) Quantify annual changes in water budget components.

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(5) Identify impacts to the ability of adjacent basins to meet the sustainability goal.”

Comment 5-20: This section requires monitoring network information across the Basin even though a GSA might have a much smaller jurisdiction area.

(d) (1) “Level of current and projected groundwater use.”

Comment 5-21: The District would recommend revising the second sentence to read “The amount and location of current and projected groundwater pumping”. An issue in our area is the use of well fields to pump large amounts of groundwater in concentrated areas that is then transported miles away for its ultimate use. An example of this would be a 40,000 acre district whose 8,000 acre well field pumps to develop supplies for the entire district. Or another example is a city whose wells are actually outside their water delivery area for groundwater quality reasons. Making sure the difference between the area of use (domestic, industrial or agricultural) is differentiated from the pumping location is often very important for understanding undesirable impacts.

#### §354.44 Projects and Management Actions

(b) (2) “The Plan shall describe emergency contingency projects or actions that will be implemented in the event that groundwater conditions in the basin have passed a minimum threshold or that undesirable results have occurred or are imminent. Emergency contingency projects or actions shall be designed to achieve immediate results such that the Agency is able to demonstrate that the emergency has been abated by or before the next annual report.”

Comment 5-22: SGMA requires sustainability to be achieved by the end of the 20 year implementation window, but does not require that predetermined milestones be achieved every year along that journey. This requirement seems to suggest that after the acceptance of the GSP emergency actions will be required if minimum thresholds are surpassed or undesirable results are imminent. This requirement for the implementation of emergency measures seems excessive given that the GSP has been described by DWR staff as incorporating adaptive management.

Comment 5-23: After a review of the 2014 SGMA legislation, there does not appear to be any requirement such as this in the law. The District views that this requirement should be made consistent with the legislative intent of the law as specified in Water Code §10720.1. (h) stating the Legislature’s intent “To manage groundwater basins through the actions of local governmental agencies to the greatest extent feasible, while minimizing state intervention to only when necessary to ensure that local agencies manage groundwater in a sustainable manner.”



## **Article 6 – Evaluation and Assessment**

### §355.4 Criteria for Plan Evaluation

(a) “An initial Plan will be deemed inadequate unless it satisfies all of the following conditions:”

Comment 6-1: As described in this section, a GSP is inadequate unless it includes all information require by SGMA and these Regulations. This section should incorporate the “substantial compliance” standard. The use of such absolute language may lead to unnecessary difficulty associated with relatively minor administrative issues.

(a) (1) “The Plan was submitted within the statutory period established by Water Code Section 10720.7, if applicable.”

Comment 6-2: The deadline for an agency to submit a plan for initial review by DWR is unclear. Water Code §10720.7 defines when an agency must begin to implement its plan. §355.4(a)(1) refers to §10720.7 as a deadline to file a proposed plan with DWR. However, §355.2 states that review will take up to two years. Perhaps the regulations should clarify that an agency should submit and begin to implement its plan by the deadline stated in §10720.7, but that DWR shall have up to two years to review and approve a plan and propose changes.

(a) (3) “The Plan covers the entire basin.”

Comment 6-3: This section requires that a GSP is “deemed inadequate” unless it “covers the entire basin”. This is obviously inappropriate and inconsistent with SGMA which allows for multiple GSPs within a basin or subbasin as long as they are subject to coordination agreements. Also section (b)(7) of the same section goes on to recognize coordination agreements.

(b) “The Department shall evaluate a Plan that satisfies the requirements of Subsection (a) to determine whether the Plan is likely to achieve the sustainability goal for the basin. When evaluating whether a Plan is likely to achieve the sustainability goal, the Department shall consider the following:”

(11) “Whether the Plan would impair the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.”

Comment 6-4: This language seems to be adopted from 2012’s AB 685 (Water Code §106.3). AB 685 only requires state agencies to consider the human right to water policy when engaging in administrative actions likely to impact the safety and affordability of water service. This issue has nothing to do with whether a local agency’s GSP will lead to achievement of the sustainability goal for a basin or subbasin. This language is not present in SGMA and should not be used as a criteria for GSP evaluation.

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#### §355.6 Periodic Review of Plan by Department

“The Department shall consult with the Board if any of the following occur:”

(b) “The Department shall consider the following in determining whether a Plan and its implementation is adequate:”

Comment 6-5: This section lists eight aspects of a plan that may be reviewed periodically by DWR, the first being whether the agency is meeting its DWR-approved interim milestones. Provided an agency is meeting its milestones, as determined through monitoring programs described in the agency’s DWR-approved plan, it seems unnecessary to audit other aspects of an agency’s performance. Local control is a key goal of SGMA, and agency resources should be expended implementing plans, not continually justifying plans.

#### §355.8 Consultation with Board

“The Department shall consult with the Board if any of the following occur:”

Comment 6-6: §355.8 should clarify the times and circumstances when consultation with the State Board will be warranted, and should include some provision for notifying an agency and providing an opportunity to cure defects prior to consulting.

Comment 6-7: §355.8 should clarify how an agency could reestablish GSP adequacy after DWR pursued consultation with the State Board.

(a) “The Department determines that a Plan may be inadequate.”

Comment 6-8: The language in this requirement should be changed from “may be” to “is” or “is substantially”. It does not seem reasonable for DWR to make a determination based on a suspicion.

#### §355.10 Resolution of Conflict by Department

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

Comment 6-9: There is no reference to a Coordinating Agency within SGMA. Disputes between GSAs within a subbasin are to be dealt with through the framework of their coordination agreement. References to a Coordinating Agency need to be removed to be consistent with SGMA.

Comment 6-10: It should also be acknowledged that GSAs within a subbasin may have disputes that have little to do with SGMA compliance. This criteria is written to broadly.

(d) “If the parties are unable to resolves disputes that relate to fundamental issues of sustainable groundwater management, the Department may find the relevant Plan or Plans and alternatives to be inadequate.”



Comment 6-11: This requirement is not written in SGMA and therefore should be removed from the Draft GSP Regulations. Part of the intent of SGMA was to acknowledge “good actors” and not expose them to the same consequences as “bad actors” in a subbasin. This regulation washes DWR’s hands of any evaluation of the issue and seems inconsistent with the evaluations placed on the rest of the technical information required throughout the GSP. Also, there may be multiple GSAs in each subbasin, so the impacts of this action might affect several parties that are not directly involved in the conflict.

### **Article 7 – Report, Assessments and Amendments**

#### §356.4 Annual Report

(b) (5) (A) “Change in groundwater storage maps for each principal aquifer in the basin.”

Comment 7-1: This kind of information can be provided for unconfined and semi-confined aquifers, but it will mean little for confined aquifers. In the southern San Joaquin Valley there are significant regional confined aquifers that cross subbasin boundaries and will undoubtedly cross GSA jurisdictional boundaries. Please revise this requirement to include appropriate information for significant regional confined aquifers.

#### §356.6 Department Review of Annual Reports

(b) The Department may provide recommended corrective actions to address any deficiencies in the annual report or implementation of the Plan based on review of the annual report and shall treat the Plan as conditionally adequate, as described in Section 355.2, until the Agency takes appropriate actions to remediate any deficiencies.

Comment 7-2: This section states that DWR may “provide recommended corrective actions to address any deficiencies in [an] annual report,” and shall treat the agency’s plan as conditionally adequate until the deficiencies are addressed. Are the recommended corrective actions then actually “recommended” if the agency shall be sanctioned until deficiencies are addressed? What is intended by this language?

#### §356.10 Agency Evaluation and Assessment

Comment 7-3: The amount of information that a GSA must compile seems somewhat appropriate in the case of a plan amendment, but not for a five year review. The question at a five year review should be whether GSP implementation is consistent with DWR-approved five year milestones according to the approved monitoring program. If milestones are not being met, then more information is appropriate to help the GSA and



DWR understand what needs to be done differently. But otherwise it should be sufficient for the GSA to show compliance with milestones.

## **Article 8 – Coordination Agreements**

### **§357.4 Intrabasin Coordination**

Comment 8-1: Subsections (b)-(e) refer to a Submitting Agency. However there is also a Coordinating Agency referred to in §355.10 and §351(i). Neither of these constructs are referred to in SGMA and this kind of extra requirement in subbasins with multiple GSAs and/or GSPs would be very difficult to implement. From SGMA it appears that a coordination agreement should function in place of a Submitting or Coordinating Agency. Please remove references to Submitting or Coordinating Agencies.

Comment 8-2: There appear to be many requirements beyond what is required in SGMA for Intrabasin Coordination. In most cases, if Coordination Agreements are well organized and thorough, a GSA or group of GSAs in a subbasin should not be required to do more than simply show that the coordination agreement satisfies the requirements in Water Code §10727.6.

## **Article 9 – Alternatives and Adjudicated Areas**

### **§358.4 Alternatives to Groundwater Sustainability Plans**

Comment 9-1: §358.4(c)(2)(C) refers to Water Code §10733.6, subdivision (b)(4)(B). However, there is no subdivision (b)(4)(B) at §10733.6.