

Memorandum

Date: October 15, 2015

To: California Water Commission

From: **Department of Water Resources**

Subject: Proposed revisions to the Groundwater Basin Boundary Emergency Regulations based on public comments received on the July 17 draft.

In September 2014, the Governor signed into law the Sustainable Groundwater Management Act (Act). The Department of Water Resources (DWR) has developed a program and is currently implementing the new and expanded responsibilities identified in the Act. One of these responsibilities is developing emergency regulations for local agencies to request DWR modify groundwater basin boundaries.

The Act directed DWR to adopt emergency regulations that specify the information required to comply with Water Code 10722.2, which outlines the process that local agencies shall follow when requesting modifications to existing boundaries of groundwater basins and subbasins or the creation of new subbasins. The emergency regulations also identify the methodology and criteria that will be applied by DWR when reviewing and approving the boundary modification requests. The Act used the existing groundwater basin and subbasin boundaries in California established by Bulletin 118, a comprehensive report on California groundwater resources that is periodically updated by DWR.

From the beginning, public input has been integral to the creation of the emergency regulations. In developing the draft emergency regulations, DWR held more than 40 focus group meetings, three public listening sessions and sought extensive input from stakeholder advisory groups representing over 500 public agencies and organizations. On July 17, 2015, DWR released an initial public draft of the emergency regulations, inviting public review and comment through September 4, 2015, and held three additional public meetings around the state.

DWR reviewed and made revisions to the July 17 draft, illustrated in the current strike-out version, based on the public comments submitted by 38 local agencies, organizations, and individuals. The majority of the comments were from local agencies that, if they request a boundary modification, will be responsible for compliance with the emergency regulations. Non-governmental and other organizations comments were also provided and identified potential stakeholder feedback opportunities that improved the level of information needed to determine a requests potential for sustainability. DWR has also considered comments received from the California Water Commission (Commission) throughout the emergency regulation development.

Most of the changes are relatively minor with the goal of improving clarity and consistency of terminology. Substantive changes were made to a few provisions as described below, most of which were discussed and commented on by the Commission at the September meeting.

Proposed Revisions to the Emergency Regulations

Definitions (Article 2)

July 17 Draft: The initial draft of the regulations referenced existing Bulletin 118 definitions for groundwater basin, subbasin and alluvial aquifer and did not explicitly include these definitions in the regulations.

Public Comment: A number of comments noted that the lack of explicit definitions of these terms led to confusion in understanding the regulations in the following areas;

- The slightly different ways that the term basin is used in the Act and in Bulletin 118, created some confusion and led to the inconsistent use of these terms throughout the July 17 draft regulations.
- The existing Bulletin 118 definitions of basin, subbasin and alluvial aquifer are not definitive and there is a need for clarification of these terms. In particular, the definition of alluvial aquifer may be too restrictive and may limit sustainable groundwater management if only alluvial aquifers are managed.

October 8 Revisions: DWR determined that the comments identified important issues that needed to be addressed. As a result, the regulations have been revised to clarify the intent that the provisions of the regulations apply to all basins and subbasins in Bulletin 118 and include specific definitions for the terms basin, subbasin, and aquifer. The term aquifer was defined and used instead of alluvial aquifer to acknowledge that the entire three-dimensional aquifer system with need to be considered and transition away from the potentially narrow interpretation of alluvial aquifer which may limit sustainable groundwater management to the upper, alluvial portion the aquifer.

Combination of Requests (Section §343.6)

July 17 Draft: This section describes the requirement to combine boundary modification requests for the same basin or subbasin. The July 17 draft proposed, *“requesting agencies shall combine all boundary modification requests that affect the same basin or subbasin.”*

Public Comment: There were a number of comments, some in favor and many opposed to requiring all boundary modification requests in the same basin or subbasin to be combined and submitted together. Among those opposed to the original language, several comments noted that the requirement would be both burdensome and counter-productive for the following reasons:

- May preclude modification requests that are likely to result in sustainable groundwater management from being submitted to DWR.
- Local agencies may have different timelines on when they submit boundary modification requests.
- Local agencies may have differing local objectives on boundary modification requests.

October 8 Revisions: DWR determined that the comments identified important issues that needed to be addressed. As a result, this section was modified to allow requests to be submitted individually where that is the most practical course of action, rather than requiring all local agencies in a basin to combine requests into a single submission. The coordination of requests is still clearly preferred, but DWR was concerned that the original language would have precluded the submission of desirable boundary modifications because different local agencies may have different timelines for submitting requests, and those with different objectives regarding boundary issues may be unwilling to cooperate. Where modifications are either in conflict or are coincident, or affect one another in any way, DWR can require coordination to resolve conflicts at the local level.

Initial Notification (Section §343.9)

July 17 Draft: This section was added as a result of public comments.

Public Comment: There were a number of comments on stakeholder involvement and adequate notification of boundary modifications.

October 8 Revisions: DWR determined that the comments identified important issues that needed to be addressed. As a result, DWR added this section to establish a process by which a local agency provides early notice to DWR, other local agencies, and the public of its potential interest in requesting a boundary modification. Early notification allows other agencies and the public a greater opportunity to review and make substantive comments on a proposed boundary modification, thereby providing more information to DWR for consideration during review of a request. DWR will post the initial notification on its website within 10 days of receiving such notification. This provides easy public access to boundary modification information.

Protest Provision Revised to Public Input (Section §343.12)

July 17 Draft: The initial draft established a protest provision whereby any person could provide scientific or technical information to DWR to aid in the evaluation of boundary modification requests.

Public Comment: DWR received a large number of comments on the protest provision, many in favor and some opposed. Detailed comments included:

- This section should be expanded to also include information supporting a boundary modification request.
- Potential protestants should be narrowed from “any person” to a more limited group of entities.
- The requirement to provide the “same type of scientific and technical information” to protest is too onerous within the required 30 days

October 8 Revisions: DWR elected to revise this section so that its provisions are more closely aligned with the Local Agency Input section (described below), reflecting DWR’s interest in receiving all relevant comments. Although the Act does not require public input, DWR had determined that such input will significantly aid in evaluating the merits of a boundary modification request.

DWR recognizes that it may not be practical or possible for the public to provide the same amount of information as that provided by the requesting agency, but for any input to be of assistance to DWR it must be of a scientific and technical nature that is comparable to that utilized by the local agency. DWR determined that 30 days was a reasonable period of time within which public input must be filed, considering the similar level of the information that is required and the early opportunity to become aware of potential and actual boundary modification requests.

Local Support Revised to Local Agency Input (§344.8)

July 17 Draft: The initial draft required an escalating level of affirmative, formal support from local agencies and public water systems governing bodies in the basins or subbasins that are affected by the boundary modification request.

Public Comment: DWR received many comments on the type and level of local support required to submit a boundary modification request, some in favor and many providing alternative thresholds to achieve the same outcome. Detailed comments included:

- The type and level of local support required, particularly for basin subdivision, is too burdensome and needlessly onerous and may restrict many boundary modification requests that will promote sustainable groundwater management.
- Local agencies have existing processes and responsibilities to notify and take action on boundary modification requests in an existing open and transparent process.

October 8 Revisions: This section maintains the original regulatory intent of promoting local coordination of boundary modifications that are likely to result in sustainable groundwater management but was modified to reduce the number of agencies that are required to support a boundary modification request as a prerequisite for submission and evaluation by DWR. For most requests no level of formal support is required, although broad notification and coordination remains mandatory and is aligned with the Public Input section described above. For basin subdivision requests, however, the new language retains a high threshold; at least 75% of identified agencies and public water systems must affirmatively support the request for it to be considered by DWR. It should be noted that submitting a request to DWR does not guarantee approval of the boundary modification request. DWR will evaluate each boundary modification request to determine whether the request has the overall effect of promoting sustainable groundwater management and does not limit sustainable groundwater management of adjacent basins.

Basis for Denial (§345.2)

July 17 Draft: This section provided a general list of criteria by which a boundary modification request may be denied.

Public Comment: DWR received a large number of comments on this section including the following:

- The language should make clear that the grounds for denial represent factors for consideration rather than threshold issues.
- Under what standards DWR would deny a boundary modification request.
- The conditions that DWR could deny a request would give DWR broad, arbitrary powers at the expense of the local agencies. In particular, consideration of the history of sustainable groundwater management of groundwater levels should not be considered in the evaluation of future sustainable practices.

October 8 Revisions: This section was modified to clarify the language in the introductory statement, regarding the evaluation of modification requests, and added considerations for specially named agencies in the Act. The intent of the section is to provide a means to evaluate all of the information submitted to justify a modification request within the context of the criteria identified in the Act §10722.2 (c)(1)(2)(3).

The basis for denial section lists numerous factors that could lead DWR to deny a request. The factors described are not meant to be an exhaustive list of all possible grounds for denying a request. Conversely, the characteristics described in this section would not invariably result in the denial of a boundary modification request. Each request will be evaluated in the aggregate to determine whether the boundary modification would likely result in a sustainable condition

without adversely affecting the ability of adjacent basins to achieve sustainability. The evaluation of the entire package of supporting request information and rationale is critical for maintaining the flexibility for local agencies to accommodate the highly variable conditions of basins or subbasins across the state. Specifically with jurisdictional modifications, it is important for local agencies to provide a comprehensive package of their understanding of the basin and a rational plan for compliance with the Act.

Subsection (b) has been reworded to reflect the requirements of the Act. The Act requires DWR to assess whether there is a history of sustainable management in the basin. Whether a history of sustainable management is relevant to a particular basin modification request will depend on the particular circumstances of that request. The purpose for providing information relating the management of groundwater levels within the basin demonstrates a level of understanding commiserate with being able to identify and evaluate whether the proposed modification request could result in sustainable groundwater management and not limit adjacent basins from sustainable groundwater management. It is understood that many basins may not enter the program in sustainable conditions; however, a modification request should have a level of understanding of the basin conditions to support the request and not be arbitrary. What could be grounds for denial, however, is if the agency simply refused to provide any information one way or the other.

Subsection (g) has been added in recognition of the fact that certain entities have been given special responsibilities under the Act. Agencies that have legislatively defined boundaries and management requirements may have special concerns about modifications that affect those boundaries. Counties, which are presumed by the Act to manage areas not covered by a groundwater sustainability agency may have concerns about modifications that seek to partition off all manageable areas, leaving the County with only unmanaged or potential problem-prone areas. As with the other subsections in this section, objections raised by the listed entities will be considered in the context of all relevant information.

Basin Boundary Emergency Regulation Stakeholder Outreach

DWR plans to continue stakeholder outreach and engagement on the emergency regulations to identify any needed clarification and to assist DWR in the evaluation of statewide boundary modification implementation.

Later this year, DWR plans to hold a public workshop to provide guidance on the Basin Boundary Emergency Regulation Process.

If you have any questions or would like additional information, please have Executive Officer Landis contact me at (916) 227-9800.

A handwritten signature in dark ink, appearing to read "D. Gutierrez", with a horizontal line drawn through the end of the signature.

David Gutierrez, Executive Program Manager
Sustainable Groundwater Management Program

Attachment

cc: Arthur Hinojosa, Integrated Regional Water Management

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