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April 1, 2016

Delivered by e-mail to: SGMPS@water.ca.gov

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

Subject: "Draft GSP Emergency Regulations Public Comment"

Dear Ms. Bisnett:

The Association of California Water Agencies (ACWA) appreciates this opportunity to provide comments to the Department of Water Resources (DWR) on the Draft Groundwater Sustainability Plan Emergency Regulations (Draft GSP Regulations). ACWA represents over 430 public water agencies which are responsible for delivery of over 90% of the water that serves residential, commercial and agricultural needs throughout California. Many ACWA member agencies are "local agencies" which are or will be members of the Groundwater Sustainability Agencies (GSAs) that will be responsible for preparing and implementing Groundwater Sustainability Plans (GSPs) pursuant to the Sustainable Groundwater Management Act (SGMA).

The importance of sound GSP Regulations cannot be overstated. GSAs need to properly scope, prepare, and implement locally effective GSPs that have strong local support, and which will collectively deliver on the promise of sustainable groundwater management in basins throughout the state. Well-conceived and authoritative regulations will serve as the "rules of the road" for GSA preparation and implementation.

We appreciate the process that DWR staff used to frame the scope of these Draft GSP Regulations and solicit early input from a wide variety of stakeholders before preparing the draft proposal. ACWA has been engaged and has provided recommendations to inform this drafting process. We believe this early consultation has resulted in a generally well-crafted, if overly prescriptive, draft that is a valuable tool for soliciting public comments.

However, ACWA believes this draft of the GSP Regulations is too expansive and overly prescriptive and would likely result in significant and unnecessary burdens on GSAs in many basins. We believe that substantial revisions are needed to bring the Draft GSP Regulations into consistency with SGMA. Following are general comments on the Draft GSP Regulations, a summary of comments and requested changes organized by Article, and an attached track changes version of the Draft GSP Regulations which provides specific suggested text to implement the needed changes. If adopted, we believe these changes will bring the regulation into alignment with both the provisions and intent of SGMA.

General Comments

1. Revise the Regulations to Reduce State Prescription and Support Local Management of Groundwater

A fundamental principle of SGMA groundwater management is that management is performed at the local level. One of the primary goals of SGMA is to “manage groundwater basins through the actions of local government 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” (California Water Code, § 10720.1(h)). DWR recognizes the importance of local control, stating in the Draft GSP Regulations that “local control and management is a fundamental principle of SGMA.” Yet, the Draft GSP Regulations are overreaching in places, too prescriptive at times, and certain sections seem to be structured to uniformly manage groundwater basins from a “top down” State level instead of at the local level. Many of these prescriptive requirements appear to be intended to drive local GSAs to prepare one GSP per basin, although such a requirement was explicitly rejected during the legislative process that resulted in SGMA.

Although ACWA recognizes the need for the Draft GSP Regulations to prescribe certain consistent standards which can assist GSAs (and DWR) in plan preparation and review, we have identified many which are unnecessarily restrictive. Some of the more significant examples are noted in the following sections of this letter and are identified in the attached track changes version, where revised text is proposed to resolve specific cases.

2. Strengthen the Concept of “Substantial Compliance”

ACWA strongly supports the concept of “substantial compliance” proposed by DWR in the Draft GSP Regulations in the context of Criteria for Plan Evaluation (§ 355.4.) in Article 6. As each high- and medium-priority basin has its own unique characteristics, not all information or the same level of detail will be needed in all basins. This proposed standard for evaluation helps connect the standards and requirements of the Draft GSP Regulations as they are applied in specific GSPs to locally unique basin conditions and management priorities. The Draft GSP Regulations should be amended to include a definition of “substantial compliance” (§ 351) in Article 2, and a new narrative description of this standard as an overriding General Principle (§ 350.2.) in Article 1. We also propose adding related language in Article 1 to clarify that GSAs are able to exercise discretion regarding required GSP provisions and coordination agreements based on findings of substantial evidence related to achieving the sustainability goal of SGMA. A proposed definition and narrative descriptions are included in the attached track changes version.

3. Eliminate the Requirement for a “Coordinating Agency” and Clarify Provisions for Multiple GSAs and GSPs in a Basin

The Draft GSP Regulations propose to require a “Coordinating Agency” (also called “Submitting Agency”) in basins where there are several GSAs. Beyond serving as the “sole point of contact” for DWR, this proposed entity is to be tasked with synthesizing and interpreting all basin plans and resolving all

disputes among GSAs within the basin (§ 355.10.). This conceptual “super agency” is not authorized or envisioned by SGMA. Each GSA must be able to independently manage and communicate with DWR. SGMA allows more than one groundwater sustainability agency to manage groundwater in each basin (Water Code, § 10727(b)(3)). SGMA also allows the groundwater sustainability agencies to develop more than one plan per basin (Water Code, § 10727(b)(3), § 10727.6). Again, the model of “one GSA with one GSP per basin” may be adopted by local GSAs, but SGMA authorizes and provides for multiple GSAs and GSPs within a basin, and this option needs to be preserved and supported in the Draft GSP Regulations. Proposed text deletions or revisions to eliminate the requirement for a “Coordinating Agency” are included in the attached track changes version.

4. Clarify Scope of GSPs Regarding Water Quality Regulations and Interconnected Surface Waters

The Draft GSP Regulations lack specificity regarding the scope of GSPs with regard to data collection and analysis regarding groundwater contamination sources, plumes and historic waste discharges. The Draft GSP Regulations should be revised to require GSAs to: 1) coordinate with water quality regulatory agencies; and 2) utilize information provided by those agencies and to clarify that GSAs are not responsible for establishing minimum criteria for contaminated sites and groundwater plumes that fall under water quality laws and regulations, including water bearing zones that do not or are not expected to contribute to sustainability goals and thus are not required to manage or remediate these sites. Similarly, the Draft GSP Regulations should clarify that GSAs are not responsible for developing minimum thresholds for naturally occurring contaminants such as arsenic.

Additionally, although the Draft GSP Regulations require development of minimum thresholds for depletions of interconnected surface water as required by SGMA, it is not clear how to address situations where (1) diverters with appropriate or riparian water rights (surface water or well diversions) are the cause of depletions of interconnected surface water and are not within the jurisdiction of SGMA; and (2) in most areas, the boundary between surface water rights and groundwater are not well understood or are subject to change through time. ACWA looks forward to working with DWR and other stakeholders to address these policy issues, which are dependent on unique facts within each basin and cannot be resolved in the abstract in the Draft GSP Regulations.

5. Eliminate Contingency Plan Requirement

The proposed requirement that a GSP include “contingency projects and actions” ready to implement if the first set of actions do not achieve sustainability is not authorized by SGMA. It sets a tone of presumed failure for GSPs and would be unworkable in many cases. The Draft GSP Regulations appear to propose to require that GSAs evaluate, negotiate, and fund two sets of projects and actions. In working to achieve sustainability, GSAs must be given latitude to modify and adapt projects based on local conditions and needs. Given annual reporting and regular plan assessments, this contingency plan requirement is unnecessary.

6. 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 GSAs.

Summary of Recommended Amendments to the Draft GSP Regulations Organized by Article

ACWA recommends that the Draft GSP Regulations be systematically amended as shown on the attached track changes version, where deleted text is indicated in strikeout, and new text is underlined. Comments in the margins explain the rationale in many cases. The attached track changes version and the comments in the margins are hereby incorporated by this reference as part of this comment letter. The following section of this letter summarizes many of the most significant amendments.

Article 1. Introductory Provisions

Two significant changes in the Introductory Provisions are proposed to address fundamental purposes of SGMA regarding local basin management:

§ 350.2. Add the substantial compliance standard as a new general principle, where GSAs determine what information is needed to substantially comply and waiver provisions are added.

§ 350.4 (new) Add description of GSA authority to exercise discretion regarding required GSP provisions and coordination agreements based on findings of substantial evidence related to achieving the sustainability goal of SGMA.

Article 2. Definitions

Several changes to definitions are proposed, many to address overprescription. Several of the most significant include:

§ 351.(i) Redefine to eliminate “Coordinating Agency”

§ 351.(j) Redefine “Critical Parameter” as “Sustainability Condition”

§ 351.(ae) (new) Add definition of “Substantial Compliance”

§ 351.(u) Clarify that “Plan” refers to multiple Plans.

Article 3. Technical and Reporting Standards

A large number of changes are proposed to more narrowly craft data requirements and preserve local discretion according to basin conditions. For example, the word “all” is proposed to be used 48 times in reference to various types of data, which in most cases is neither necessary nor practical. The GSA

should be able to evaluate and report representative data. This “data dump” approach will divert attention and dollars away from implementation actions.

§ 352.4. Remove all references to “Best Management Practices” (which is addressed in SGMA but is mischaracterized in the Draft GSP Regulations). Replace with “Agency Practices and Procedures.” SGMA is clear that BMPs are not intended to be imposed as regulatory standards, and that methods and practices are to be selected and used at the discretion of the GSAs.

§ 352.6. Reduce excessively prescriptive requirements regarding surveying, well construction, public domain models, and specific metrics that local agencies must use to report groundwater data. For example, prescribing use of NAVD88 datum would require many GSAs to run expensive reference point elevation surveys even when the sustainability goals can be achieved in a basin by using existing datum.

Article 4. Procedures

§ 353.4. Remove “Certification Under Penalty of Law” provision, which is excessive and unnecessary for GSA decision-makers with professional certifications and/or are public agency officials, and is not required by SGMA.

Article 5. Plan Contents

§ 353.4. Delete GSA and Plan financial information requirements, which are excessive and could be extremely complex for multi-party GSAs, and which are not actionable in any case since SGMA does not authorize a determination by any state agency concerning the financial capabilities of GSAs.

§ 354.8. Description of the Plan Area. Reduce some of the generally unnecessary or unavailable information requirements that contribute little to this overview section, are difficult and expensive to produce (such as the proposed well density map), and/or are outside the scope of SGMA (such as “summary or description of land use plans”). For example, the regulations go beyond the statute in the area of groundwater quality, suggesting that GSAs would have to evaluate the impacts of future land uses on groundwater quality.

§ 354.14. Reframe requirement for “Hydrogeological Conceptual Model” to “Basin Setting and Description,” and reduce prescriptive technical parameters. Add identification of data gaps. Reduce scope of land use coordination that is not required in the statute, for example general plans outside the basin. Reduce information required and prescriptiveness, for example WDRs, proximity of wells to contamination of the Plan Area.

§ 354.16. Basin Conditions. Reduce scope and prescriptiveness of factors and timing upon which a local agency must define historical basin conditions.

§ 354.18. Water Budget. Reduce scope and prescriptiveness of water budget by deleting some elements and making some elements permissive. Exclusive use of DWR-prescribed water budget data and other requirements could unreasonably invalidate existing groundwater management data sources.

§ 354.20. Management Areas. ACWA strongly supports this concept, which provides a necessary recognition of the potential need to manage differently in recognition of different basin conditions and management requirements.

§ 354.22 – 354.30. Sustainable Measurement Criteria. Generally reduce the scope and prescriptiveness of standards, or make some standards permissive for the definitions of relevant critical parameters. Replace “clear and convincing evidence” standard with “substantial evidence” standard. This section generally, and properly, avoids prescribing specific metrics by which the relevant critical parameters would be measured. SGMA is clear that such metrics need to be locally developed in the context of specific basin conditions and that an attempt to do so at a statewide level would subvert the goal of local groundwater management.

§ 354.34. Monitoring Network. Monitoring requirements that specify the density of monitoring sites and frequency of measurements are extremely onerous, financially challenging, or entirely impractical for many agencies. The draft regulations should be revised to require that data gaps be filled within the first five years if currently available monitoring networks are currently suboptimal. Provisions should be added to allow for reducing monitoring frequency and density if warranted. Criteria for monitoring of surface water interaction are excessive and unnecessary (§ 354.34 (h)(6)).

§ 354.44 (b) Contingency Actions and Projects. Redundant “contingency actions and projects” may not be needed in all basins, could be highly speculative, and could undermine support for local GSPs by diverting attention away from the “Plan A” actions and projects. This should become a permissive element.

Article 6. Evaluation and Assessment

§ 355.2 (e)(2). Conditionally Adequate. ACWA strongly supports a DWR determination of “Conditionally Adequate” as proposed in the Draft GSP Regulations in order to avoid a “pass/fail” situation where minor deficiencies can be addressed in the GSP and unnecessary and costly enforcement processes can be avoided.

§ 355.4. Criteria for Plan Evaluation. As stated above, ACWA strongly supports the concept of “Substantial Compliance” as a fundamental principle for plan evaluation. This section should be amended to defer to the revised description in § 350.2 and definition in § 351(ae). Some of the proposed criteria for adequacy that are not supported by a plain reading of SGMA should be deleted, especially evaluation of possible “adverse affect” on an adjacent basin, which must be addressed by the affected GSAs in the adjacent basins.

§ 355.10. Resolution of Conflicts by Department. This section should be deleted. Successful conflict resolution is a local matter, not subject to arbitration by DWR and not authorized by SGMA.

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Article 7. Reports, Assessments, and Amendments

§ 356.6. Department Review of Annual Reports. Review of the annual report should not trigger periodic review of the Plan, and annual changes should not warrant a reassessment of adequacy of the Plan.

Article 8. Coordination Agreements

§ 357.2. Interbasin Agreements. These agreements are voluntary and should include only elements at the discretion of agencies that are party to the agreement. Overly prescriptive requirements should be deleted.

§ 357.4. Coordination. As stated above, requiring a "Coordinating Agency"/"Submitting Agency" entity is not authorized by SGMA and references in this section should be deleted. Requirements for a Coordination Agreement should be reduced to align with the provisions on SGMA.

Article 9. Alternatives and Adjudicated Areas

358.4(c)(3) The latest 10 year period is not likely to be representative in many basins due to current drought. SGMA recognizes that water levels will drop during drought. This should be revised to require a period of at least 10 years which is reflective of current groundwater management practices, which would be determined by the GSA according to basin conditions.

Thank you for considering these comments. ACWA looks forward to continuing to work with DWR as the Draft GSP Regulations are revised as necessary to more effectively support preparation of GSPs that are well-suited to local management of diverse groundwater basins statewide, as envisioned by SGMA.

If you have questions, I am available at daveb@acwa.com or (916) 441-4545.

Sincerely,



David Bolland
Special Projects Manager

Attachment: Track Changes Version of Draft GSP Regulations

cc: Mr. David Gutierrez, Executive Program Manager, Department of Water Resources
Mr. Trevor Joseph, Senior Engineering Geologist, Department of Water Resources
Mr. Timothy H. Quinn, Executive Director, ACWA
Ms. Cindy Tuck, Deputy Executive Director for Government Relations, ACWA