



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

West Coast Region
777 Sonoma Avenue, Room 325
Santa Rosa, California 95404

May 17, 2016

Joseph Byrne, Chair
California Water Commission
P.O. Box 942836
Sacramento, California 94236-0001

Dear Chairman Byrne:

I am writing you today to comment on the Department of Water Resource's (DWR) final Groundwater Sustainability Plan regulations (Final Regulations), which were reviewed at the last California Water Commission (Commission) meeting and must be approved by the Commission prior to implementation. NOAA's National Marine Fisheries Service (NMFS) is responsible for conserving and recovering anadromous fish populations, including green sturgeon, salmon, and steelhead, listed under the federal Endangered Species Act, many of which are found throughout coastal California and the state's Central Valley. In light of this goal, we are keenly interested in helping local stakeholders and the state ensure that future groundwater management protects green sturgeon, salmon, and steelhead habitat. Based upon our understanding of the draft regulations and their likely influence on NMFS' ability to recover the imperiled species listed above, we offer the following comments.

Judging compliance with stated SGMA mandates

The Sustainable Groundwater Management Act of 2014 (SGMA), signed into law on January 1, 2015, seeks to address current sociological/ecological conflicts brought about by chronic groundwater over-drafting during the past century. Within all medium and high priority groundwater basins, local Groundwater Sustainability Agencies (GSA) must develop Groundwater Sustainability Plans (GSP) that achieve sustainable long-term use of groundwater while avoiding noted "undesirable results", which include chronic lowering of groundwater levels, reduced storage capacity, seawater intrusion, degraded water quality, land subsidence, and surface water depletions. Of note, SGMA elaborates further on the topic of surface water depletion by including "depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the surface water." Low instream flow is a common factor limiting salmonid survival and recovery throughout the state (see NMFS Recovery Plans, *e.g.*, NMFS 2012, 2013, 2014a, 2014b), and will likely intensify moving forward given the expected warming of California's climate. NMFS views the stated goals and



requirements contained within SGMA as a critical tool towards ensuring the survival and future recovery of salmon, steelhead and green sturgeon populations within the state, almost all of which are listed under the federal Endangered Species Act, California Endangered Species Act, or both.

As discussed above, SGMA requires GSA's to develop GSP's to achieve sustainable groundwater management, defined as the "management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results". With regard to the Criteria for Plan Evaluation (Section 355.4) in the proposed Final Regulations "*The Department shall evaluate a Plan that satisfies the requirements of Subsection (a) to determine whether the Plan, either individually or in coordination with other Plans, complies with the Act and substantially complies with the requirements of this Subchapter.*", NMFS feels that qualifying compliance with the term "substantial", may create confusion as to whether "undesirable results", which include "chronic lowering of groundwater levels, reduced storage capacity, seawater intrusion, degraded water quality, land subsidence, and surface water depletions" must be avoided. NMFS is concerned the qualifier 'substantial' may result in some GSPs being accepted that do not fully avoid undesirable results, but instead allow them to continue into the future at some "slightly improved" condition. In most basins, avoiding undesirable results will require local stakeholders to consider changes to the way they've extracted and used groundwater in the past. We recommend the Commission reconsider the use of the term substantial, when considering whether compliance has been met.

§ 355.4. Criteria for Plan Evaluation

Section (b)(4) states ... "Whether the interests of the beneficial uses and users of groundwater in the basin, and the land uses and property interests potentially affected by the use of groundwater in the basin, have been adequately considered." The Final Regulations add in the phrase "and the land uses and property interests potentially affected by the use of groundwater in the basin" to the original language, which is unnecessary -- "land uses and property interests potentially affected by the use of groundwater" are beneficial uses of groundwater, and are thus encapsulated with all the other beneficial uses (*e.g.*, cold freshwater habitat, freshwater replenishment, *etc.*). We feel this addition singles out one specific beneficial use over another.

§ 352.4 (f). Data and Reporting Standards

The Final Regulations have removed the draft language requiring a "public domain open-source software" groundwater model be used. NMFS believes requiring this type of software is important to ensure transparency and accountability when the public reviews future modeling results, and recommends the language be returned to the Final Regulations.

NMFS requests the Commission consider requiring DWR to incorporate the above comments and suggestions into the Final Regulations prior to Commission approval. NMFS appreciates the opportunity to comment on the Final Regulations being considered by the Commission, and we

look forward to working with DWR and SWRCB to ensure future SGMA implementation protects ESA-listed anadromous fish and their habitat. If you have any comments or concerns regarding this letter, please contact Mr. Rick Rogers in our California Coastal Office (707-578-8552 or rick.rogers@noaa.gov).

Sincerely,



Alecia Van Atta
Assistant Regional Administrator
California Coastal Office

cc. Trevor Joseph, DWR, Senior Engineering Geologist
Stafford Lehr, CDFW, Branch Chief – Inland and Anadromous Fisheries
Erik Ekdahl, SWRCB, Groundwater Management Program Manager
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