



## County Administrative Office

**Gregory C. Devereaux**  
Chief Executive Officer

May 17, 2016

Transmitted via email

California Water Commission  
P.O. Box 942836  
Sacramento, CA 94236

**Re: Final Draft GSP Emergency Regulations**

Dear Commissioners:

The County of San Bernardino (County) appreciates the opportunity to provide these comments to the California Water Commission (Commission), which is considering the adoption of the Final Draft Groundwater Sustainability Plan Emergency Regulations (Regulations) under the Sustainable Groundwater Management Act (SGMA) at its regular meeting on May 18, 2016 (Agenda Item No. 8).

County staff are concerned that Article 9 of the Regulations does not provide a reasonable and effective approach to managing small portions of groundwater basins otherwise managed by an adjudication.

Several adjudicated groundwater basins exempt from the Groundwater Sustainability Plan (Plan) requirement under the Act are located in the county. However, the adjudication boundaries are not coterminous with the State's Bulletin 118 basin boundaries. The discrepancy in basin boundaries results in what the Department of Water Resources (DWR) has described as "fringe areas" – areas that lie outside the adjudicated basin boundaries but within the Bulletin 118 boundaries.

For de minimis fringe areas, the Regulations impose an "all or nothing" approach that provides relatively little practical benefit to overall basin management, but at a significant potential cost to any local agency that would volunteer to manage a fringe area. Pursuant to the Regulations, a local agency has two options:

- (1) Serve as the Groundwater Sustainability Agency and potentially incur significant costs to its general fund to generate, implement, and manage a Plan for only that fringe area (Regulations § 354.20.), or
- (2) Potentially incur significant costs to its general fund to generate, implement, and manage an alternative plan for the entirety of the basin, including the adjudicated area. (Regulations § 358.2.)

County staff believe that no local agency will volunteer to manage a de minimis fringe area if there are no producers within the area who could be assessed. And, County staff believe it is very unlikely that the parties to an adjudication under the continuing jurisdiction of the Court will submit their management activities to State evaluation as part of an alternative plan for the entirety of a basin. If the County were to also opt not to manage a de minimis fringe area due to lack of funding for development and implementation of a Plan, a whole basin containing an

### BOARD OF SUPERVISORS

**ROBERT A. LOVINGOOD**  
Vice Chairman, First District

**JANICE RUTHERFORD**  
Second District

**JAMES RAMOS**  
Chairman, Third District

**CURT HAGMAN**  
Fourth District

**JOSIE GONZALES**  
Fifth District

**GREGORY C. DEVEREAUX**  
Chief Executive Officer

unmanaged fringe area would be at risk of being designated a probationary basin by the State Water Resources Control Board despite it being managed by the parties to an adjudication. Such a probationary designation would unfairly punish the local agencies within the basin by withholding of State grant and loan funding because the local agencies chose not to incur the costs of an unfunded State mandate.

In its written comments on the Regulations submitted on April 1, 2016, the County offered two additive provisions to Article 9. Adjudicated Areas and Alternatives of the Regulations to provide local agencies with the flexibility to effectively manage de minimis fringe areas and to adopt a presumption of sustainability for those portions of a basin subject to an adjudication action recognized in Water Code section 10720.8. (The County's proposed provisions are contained below as tracked changes to Article 9.)

Per DWR staff, the County's proposed revisions to Article 9 were not incorporated into the final draft Regulations, because Department staff were concerned how other basins in the state might abuse the County's suggested fix for de minimis fringe areas and did not believe the County's suggested language was permitted within the Act.

County staff request that the Water Commission consider and include the County's suggested revisions to Article 9 as falling within the statutory intent of the Act.

Please note that the County Board of Supervisors has not adopted an official position on the Regulations. However, to assist the Commission with its consideration of the Regulations, the County Administrative Office has provided the above comments.

We are available to provide any further assistance so that the Commission clearly understands the comments submitted by the County. Also, should you wish to discuss the County's comments, I can be reached at (909) 387-4384. Additionally, Josh Candelaria of the County Administrative Office's Legislative Affairs Unit may be reached at (909) 387-4821.

Sincerely,



Bob Page  
Principal Management Analyst, Special Projects  
County Administrative Office  
County of San Bernardino

## ARTICLE 9. Adjudicated Areas and Alternatives

### § 358. Introduction to Alternatives

This Article describes the methodology and criteria for the submission and evaluation of Alternatives.

Note: Authority cited: Section 10733.2, Water Code.

Reference: Section 10733.2, Water Code.

### § 358.2. Alternatives to Groundwater Sustainability Plans

(a) The entity that submits an Alternative shall demonstrate that the Alternative applies to the entire basin and satisfies the requirements of Water Code Section 10733.6.

(b) An Alternative shall be submitted to the Department by January 1, 2017, and every five years thereafter. A local agency or party directed by a court that submits an Alternative based on an adjudication action described in Water Code Section 10737.4 may submit the adjudication action to the Department for evaluation after January 1, 2017.

(c) An Alternative submitted to the Department shall include the following information:

(1) An Alternative submitted pursuant to Water Code Section 10733.6(b)(1) shall include a copy of the groundwater management plan.

(2) An Alternative submitted pursuant to Water Code Section 10733.6(b)(2) that is not an adjudicated area described in Water Code Section 10720.8 shall include the following:

(A) Information demonstrating that the adjudication submitted to the Department as an Alternative is a comprehensive adjudication as defined by Chapter 7 of Title 10 of Part 2 of the Code of Civil Procedure (commencing with Section 830).

(B) A copy of the proposed stipulated judgment.

(3) An Alternative submitted pursuant to Water Code Section 10733.6(b)(3) shall provide information that demonstrates the basin has operated within its sustainable yield over a period of at least 10 years. Data submitted in support of this Alternative shall include continuous data from the end of that 10-year period to current conditions.

(d) The entity submitting an Alternative shall explain how the elements of the Alternative are functionally equivalent to the elements of a Plan required by Articles 5 and 7 of this Subchapter and are sufficient to demonstrate the ability of the Alternative to achieve the objectives of the Act.

(e) After an Alternative has been approved by the Department, if one or more Plans are adopted within the basin, the Alternative shall be revised, as necessary, to reflect any changes that may have resulted from adoption of the Plan, and the local agency responsible for the Alternative and Agency responsible for the Plan shall enter into an agreement that satisfies the requirements of Section 357.4.

(f) Any person may provide comments to the Department regarding an Alternative in a manner consistent with Section 353.8.

Note: Authority cited: Section 10733.2, Water Code.

Reference: Sections 10727, 10727.2, 10733, 10733.2, 10733.6, 10733.8, and 10737.4, Water Code.

#### § 358.4. Management of Areas Adjacent to Adjudicated Areas

The watermaster or local agency for an adjudicated area described in Water Code Section 10720.8 may demonstrate to the Department that areas immediately adjacent to an adjudicated basin have an insufficient volume of saturated alluvial to have material effect on sustainable groundwater management and, therefore, do not meet the threshold definition of an “aquifer” as set forth in Section 341(f) of these regulations. Such assessment must be based on available science and submitted to the Department by January 1, 2017, and every five years thereafter. Upon Department approval, such areas shall not be subject to separate management pursuant to Sections 354.20 or 358.4 of these regulations.

#### § 358.6. Department Evaluation of Alternatives

The Department shall evaluate an Alternative submitted in lieu of a Plan as follows:

(a) An Alternative must satisfy all of the following conditions:

- (1) The Alternative was submitted within the statutory period established by Water Code Section 10733.6, if applicable.
- (2) The Alternative is within a basin that is in compliance with Part 2.11 of Water Code (commencing with Section 10920), or as amended.
- (3) The Alternative is complete and includes the information required by the Act and this Subchapter.
- (4) The Alternative covers the entire basin.

(b) The Department shall evaluate an Alternative that satisfies the requirements of Subsection(a) in accordance with Sections 355.2, 355.4(b), and Section 355.6, as applicable, to determine whether the Alternative complies with the objectives of the Act.

(c) If the basin for which an Alternative is submitted pursuant to Water Code Section 10733.6(b)(3) includes an adjudicated area described in Water Code Section 10720.8 that is in compliance with Section 358.2, it shall be presumed that the portion of the basin that is within such adjudicated area has operated within its sustainable yield during the applicable preceding ten-year period.

Note: Authority cited: Section 10733.2, Water Code.

Reference: Sections 10733.2, 10733.6, and 10733.8, Water Code.