

GROUNDWATER SUSTAINABILITY PLAN REGULATIONS – MAJOR CONCERNS

PUBLIC ENGAGEMENT DEFAULTS TO STATUTORY REQUIREMENTS WITH NO GUIDANCE.

The May 10 revision has significantly reduced the public participation and engagement requirements that were part of the original draft regulations. We understand that staff has chosen not to duplicate requirements found in statute, but we find that to be a confusing and problematic option, with water managers forced to interpret statute *and* conform to these regulations. We urge the Commission to direct staff to instead incorporate all public process requirements into the regulations.

Key issues: required content of Communications Plan; tribal engagement requirements; a commitment by the Department to post materials to their website

LAND USE COORDINATION REQUIREMENTS HAVE BEEN WEAKENED

The May 10th revision substantially amended the “Plan Area” section, weakening the link between land use and groundwater management that is necessary to the success of SGMA. This link is critically important yet extremely difficult link to establish, as we’ve seen in the IRWMP program.

Key issue: Require identification of and coordination with land use and planning agencies in the basin. Ensure that review of land use plans is included as part of the plan update (currently not specifically included in evaluation section)

DATA TRANSPARENCY COMPROMISED

The May 10th revision significantly weakens data transparency by exempting all pre-existing models from the requirement to use open source models. It then compounds the problem by requiring that data regarding the models be made available to the Department only upon request. This eliminates the ability of NGOs, academia and local stakeholders to independently review the adequacy of models in many if not most of the basins that have some form of groundwater plan.

Public domain models and data are needed to: 1) provide a shared local understanding by both public agencies and interested stakeholders, 2) improve the assessment of neighboring basin impacts, and 3) facilitate state understanding and enforcement. When models are proprietary they require often expensive user licenses and are sometimes accompanied by data transparency restrictions. This means that the law simply will not work as intended if data and models remain black boxes.

Key issues: retain open source model requirements, as well as the requirement to make input, output and calibration data public. Require monitoring networks to provide robust information.

HUMAN RIGHT TO WATER NOT CONSIDERED

The requirement to consider the Human Right to Water applies to State Agencies, so we understand the why the reference was moved from the plan evaluation criteria to the Principles section. However, the regulations continue to lack key measures to protect that right and that *is* the responsibility of the department. Two additions can help; 1) requiring well location data to include well depth, and 2) requiring the plan to address by its impacts on disadvantaged communities. Information on well depth is needed to identify specific communities or residents that are vulnerable to falling groundwater levels. Additionally, if a GSA determines that a certain groundwater level is sustainable, they can provide mitigation to communities affected by that decision only if they’ve been able to identify them.

PROPOSED GSP REGULATIONS: 2 WAYS THE FINAL REGULATIONS LIMIT PUBLIC ENGAGEMENT AND TRANSPARENCY AND NGO RECOMMENDATIONS (Recommended revisions are underlined throughout.)

PUBLIC ENGAGEMENT

§ 353.4 REPORTING PROVISIONS

Proposed revision:

Reinstate (c) All materials submitted to the Department shall be posted on the Department's Internet Web site within 30 days of receipt

§ 354.6. AGENCY INFORMATION

Proposed additional bullet (e) (5) How the decision-making processes of the Agency allow for the consideration of the interests of all beneficial uses and users of groundwater.

§ 354.10. NOTICE AND COMMUNICATION

New bullet (a) (1) The description of beneficial uses and users shall include the identification of California Native American tribes both within and outside the basin who are or may be impacted by implementation of the Plan and how they have been consulted in the establishment of the Agency and/or development of the Plan.

Amended bullet (e) (1) An explanation of the Agency's decision-making process and how the input of interested persons, beneficial users, and the public is incorporated into that process.

§ 354.18 Water Budget

Reinstate deleted bullet (fg): Information provided by the Department pursuant to this Subchapter shall be provided on the Department's Internet Web site.

§ 355.6. Periodic Review of Plan by Department

New Bullet (c) (5) Whether Plan provides an updated communications plan and has responded to input from the public, beneficial users and interested persons.

§ 356.4 Periodic Evaluation by Agency

New bullet (l); A description of any changes to the Communications Plan, including but not limited to an update on the identification of beneficial users, interested persons and the public and how they have been and will continue to be engaged in implementation of the communications plan

PLAN REQUIREMENTS AND DATA/MODEL TRANSPARENCY

§ 351. DEFINITIONS

(o) "Interconnected surface water" refers to conditions where surface water and the underlying aquifer that is are hydraulically connected at any point by a continuous saturated zone to the underlying aquifer and the where some portion of the overlying surface water body interacts with the saturated zone is not completely depleted.

§ 352.6 DATA AND REPORTING STANDARDS

(ef) Groundwater and surface water models used for a Plan shall meet the following standards:

(1) The model shall include publicly available supporting documentation, **following American Society for Testing and Materials standards for documenting groundwater flow models and making all datasets of input and output files publicly available in a geodatabase format.**

(2) The model shall be based on field or laboratory measurements, or equivalent methods that justify the selected values, and calibrated against site-specific field data.

(3) Groundwater and surface water models developed in support of a Plan ~~after the effective date of these regulations~~ shall consist of public domain open-source software.

(3) Data used in models shall be publically posted on the Agency's website within 30 days of receipt.

§ 354.8 PLAN AREA

(a)(5) The density and depth of wells per square mile, by dasymetric or similar mapping techniques, showing the distribution of all agricultural, industrial, and domestic water supply wells in the basin, including de minimis extractors, and the location and extent of communities dependent upon groundwater [Note: this is needed in order to identify specific communities or residents that may be disproportionately vulnerable to falling groundwater levels]

(f)(1) (1) A summary of general plans and other land use plans governing the basin including but not limited to Sustainable Communities Strategies, Municipal Service Reviews, and all other local or regional planning documents pertaining to land use and/or water management.

New bullet (h) A description of how the Agency is coordinating with local land use agencies in the development of the Plan and assessment of potential impacts.

§ 354.26. Undesirable Results

Revise bullet (b) (3) to read: (3) Potential effects on the beneficial uses and users of groundwater, on land uses and property interests, ~~and~~ other potential effects that may occur or are occurring from undesirable results and how the Agency plans to address those effects occurring after January 1, 2015.

§ 354.34. Monitoring Network

Reinstate prior language (c) (2) Reduction of Groundwater Storage. ~~Provide an estimate of the change in annual groundwater in storage. The monitoring network shall be capable of providing sufficient data to enable a reasonably accurate and detailed assessment of the change in annual groundwater storage.~~

Revise bullet: (c) (4) Degraded Water Quality. Collect sufficient spatial and temporal data from each applicable principal aquifer to determine groundwater quality trends for water quality indicators, ~~as determined by the Agency, to address known water quality issues identified in the relevant Basin Plan as~~ potential constituents of concern. An Agency may amend the indicators subject to trend monitoring subject to consultation with the Regional Board.

§ 355.2. Department Review of Initial Adopted Plan

Suggested revision: (e) (1) Approved. The Department shall approve a Plan that satisfies the requirements of the Act and is in ~~substantial~~ compliance with this Subchapter, based on the criteria described in Section 355.4.

§ 355.4. Criteria for Plan Evaluation

(b) 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 this subchapter, and has the overall effect of achieving the sustainability goal for the basin. substantially complies with the requirements of this Subchapter. Substantial eCompliance means that the Agency has provided supporting information that is sufficiently detailed and credible, and the analyses sufficiently thorough and reasonable, in the judgment of the Department, to evaluate the Plan, and the Department determines that any discrepancy would not materially affect the ability of the Agency to achieve the sustainability goal for the basin, or the ability of the Department to evaluate the likelihood of the Plan to attain that goal. When evaluating whether a Plan is likely to achieve the sustainability goal for the basin, the Department shall consider the following:

(4) 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 considered and addressed.

New bullet (b) (11) Whether the assumptions and findings used to set the sustainability goal and sustainable yield, including the water budget and minimum thresholds, are accurate and reasonable.

§ 355.6. Periodic Review of Plan by Department

(a) The Department shall periodically review an approved Plan to ensure the Plan, as implemented, remains consistent with the Act and in ~~substantial~~ compliance with this Subchapter, and is being implemented in a manner that will likely achieve the sustainability goal for the basin.

§ 356.4 Periodic Evaluation by Agency

Revised language (c) Elements of the Plan, including the basin setting, description of plan area, management areas, or the identification of undesirable results and the setting of minimum thresholds and measurable objectives, shall be reconsidered and revisions proposed, if necessary.