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April 1, 2016

**Via Email To:**  
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California Department of Water Resources  
Attn: Sustainable Groundwater Management Section  
P.O. Box 942836  
Sacramento, CA 94236

Re: Sustainable Groundwater Management Act Draft Emergency Regulations  
for Groundwater Sustainability Plans and Alternatives

Kern County Water Agency (KCWA) appreciates this opportunity to provide comments to the California Department of Water Resources (DWR) on the Sustainable Groundwater Management Act Draft Emergency Regulations for Groundwater Sustainability Plans and Alternatives (Draft Regulations), released for comment on February 18, 2016.

KCWA serves as the local contracting entity for the State Water Project and participates in a wide scope of related activities to preserve and enhance Kern County's water supply, including the provision of a supplemental water supply for portions of the Metropolitan Bakersfield area. The KCWA Board of Directors is comprised of representatives from seven Divisions within Kern County. Although these comments are submitted on behalf of KCWA, it is anticipated that the Kern Groundwater Authority and other entities will submit separate comments on the Draft Regulations. Such comments are necessary to reflect the diversity of Kern County entities and the diverse local hydrologic conditions as well as the extensive review required for the proposed fifty-seven pages of Draft Regulations.

KCWA is providing general comments on the Draft Regulations, followed by specific comments and recommendations on a section by section basis in an effort to clarify and or improve the Draft Regulations. References are to the February 18, 2016 draft regulation sections, unless otherwise indicated.

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## **General Comments**

### Stakeholder Input

KCWA appreciates the level of outreach and input afforded by DWR in the development of the Draft Regulations. KCWA recognizes the significant level of effort by DWR to accommodate and incorporate the thoughts of diverse interests throughout the state. We believe this has resulted in generally supportable Draft Regulations that provides a framework for sustainable groundwater management, recognizing that additional public comment will help in addressing issues prior to finalizing the regulations.

### Flexibility

KCWA is supportive of the substantial compliance and adaptive management provisions within the Draft Regulations and understands that the flexibility afforded by those measures does not compromise the sustainability requirement or goal but is intended to recognize the temporal and spatial dynamics of groundwater, climate variability geology/geography and the evolving technologies available for measuring, monitoring and managing water resources.

### Local Management

The Draft Regulations are structured in a manner that requires each Groundwater Sustainability Plan (Plan) to achieve sustainability for the entire basin (350.2(a) and elsewhere). This premise is counter to the statute allowing for multiple Plans within a basin as provided at Water Code Section 10727, and inconsistent with Water Code section 10735.2(e) which provides exclusion from probationary status those portions of the basin which are compliant with the sustainability goal. As currently drafted it appears that each Plan within a basin is responsible for ensuring the sustainability goals are met throughout the basin. Since Groundwater Sustainability Agencies (GSA) cannot exercise authority outside of their boundaries, such a requirement is both unreasonable and unworkable.

The Draft Regulations introduce the concepts of a “Coordinating Agency” and “Submitting Agency” as required for each basin to act as the “*authorized entity that represents two or more Agencies or Plans for a basin and is the sole point of contact with the Department*”. To the extent that this “Coordinating/Submitting Agency” “represents” the other GSA’s within the basin, it has in effect become the GSA for the entire basin in the eyes of DWR. This requirement is not envisioned in the Sustainable Groundwater Management Act (SGMA or Act) and defeats the purpose of allowing for multiple GSA’s within a basin. KCWA recommends that the coordination agreement act as the vehicle to accomplish the unification of data and reporting from within a basin, (as envisioned and articulated in Water Code Section 10727.6) and has provided suggested language for consideration. KCWA could support allowing a Coordinating Agency or Submitting Agency to act as an acceptable substitute for a coordination agreement, but neither should automatically become the GSA for a basin.

## **Specific Comments and Recommendations**

### **Article 1. Introductory Provisions**

We recommend 350.2(g) be clarified as follows so it is not inferred a Plan may be reviewed “at any time” after it has been determined to be adequate: “The Department may evaluate at any time whether a Plan [] is being implemented in compliance with the Plan, the Act and this Subchapter.”

## Article 2. Definitions

KCWA recommends the definition of Coordinating Agency be modified as follows:

- (i) “Coordinating ~~agency~~ Entity” refers to a groundwater sustainability agency or other authorized entity that represents two or more Agencies or Plans for a basin and is the sole point of contact with the Department. A Coordinating Entity may be identified in and appointed through coordination or other agreement among multiple Agencies and/or multiple Plans within a basin. The Coordinating Entity shall have no authority other than to collect, disseminate and report data on behalf of the various Agencies/Plans within the basin unless otherwise authorized in the coordination of other agreement appointing it.

KCWA recommends the term “Coordinating Agency” be replaced throughout the Draft Regulations with the defined term “Coordinating Entity”.

- (w) “Plan manager” is an employee or authorized representative of a groundwater sustainability agency, or agencies if appointed through a coordination or other agreement, who has been delegated management authority for submitting the groundwater sustainability plan and serving as the point of contact between the groundwater sustainability ~~agency~~ agencies and the Department.

KCWA recommends the addition of a definition of Groundwater Recharge or Recharge to be consistent with the 2015 SGMA amendments (Stat. 2015, c 666; AB 617) and to clarify when used in the Regulations, as follows:

“Recharge” is the augmentation of groundwater, by natural or artificial means, including ‘in-lieu’ use of surface water by a person that could otherwise extract groundwater that has the effect of leaving groundwater in the basin.

## Article 3. Technical and Reporting Standards

### 352.4 Best Management Practices

KCWA understands best management practices (BMPs) to be voluntary actions and subject to the discretion of the Agency adopting or implementing them. It is inappropriate to be adopting or referencing in these Regulations BMPs that have not yet been developed, in the that Act contemplates the Department may “update” these regulations later to incorporate BMPs (Water Code Section 10733.2(b)(1)). To the extent BMPs are addressed in these Regulations, we suggest the following edits:

Change 352.4 (c) to read:

Without limiting an Agency’s right to adopt its own best management practices, if best management practices developed by the Department are modified, an Agency ~~shall not~~ may amend the Agency’s best management practices ~~until the next five year review~~ at the next five year review subsequent to the date of modification.

### 352.6 Data Reporting and Standards

Overall KCWA generally agrees with the standards of data reporting identified within this section. However, to avoid exclusion of certain wells that may not have certain data available but are still valuable for monitoring and reporting purposes and to avoid costly assimilation of data that may have little value, we suggest the following:

At the end of 352.6 (a)-(e), there should be added language such as “to the extent it can be included in the Plan without unreasonable expense” to avoid excessively costly efforts that yield little benefit for a particular Plan area.

Change 352.6(a)(2) to read:

Groundwater, surface water, and land surface elevations shall be measured and reported in feet relative common datum for the basin, to an accuracy defined in the Agency practices and procedures that is appropriate for the purpose of each data type.

Change 352.6(b)(3)(D) to read:

A list of all casing perforations, borehole depth, and total well depth, to the extent reasonably available.

A groundwater model, calibrated to within industry standards, has been identified as a requisite for understanding and managing the groundwater basin. KCWA contends that having such a model should demonstrate that missing well depth or completion intervals within certain wells is not required for compliance. KCWA suggests the following addition:

Change 352.6 (b) (4) to read:

If an Agency relies on wells that lack casing perforations, borehole depth, and total well depth information to monitor groundwater conditions as part of an initial Plan, the Agency shall describe a schedule for acquiring monitoring wells with the necessary information, demonstrate that the Agency has access to and is utilizing a groundwater model calibrated to within industry standards, or demonstrate to the Department that such information is not necessary to understand and manage groundwater in the basin.

## **Article 5. Plan Contents**

### 354.8 Description of Plan Area

Change the last sentence of 354.8 (a) (5) to read:

Each Agency shall utilize data available from the Department, as specified in Section 353.2, or the best available existing information.

354.8 (g) (1) – (7)

There are a number of provisions within this section that require an Agency to evaluate and even speculate on land use planning issues. While it is appropriate to identify and address existing water quality issues known to the Agency, it is beyond the preview of an Agency to evaluate and/or limit land use planning decisions unless that Agency has land use regulatory authority (i.e., a city or county).

Section 354.8 (g) (8)

This section requires an analysis of land use planning documents outside of one's basin and in order to comply requires an understanding of the groundwater basin within which those plans are administered. This requirement effectively ties the entire central valley into one Plan and imposes an unreasonable and unnecessary burden on Agencies.

KCWA recommends elimination of Section 354.8 (g).

354.14 Hydrogeologic Conceptual Model

The use of a groundwater model can be an important tool to analyze the behavior of a groundwater basin and to develop strategies for achieving sustainability. However, a groundwater model is not always necessary to accomplish sustainable management and nothing in SGMA requires the use of a groundwater model. In some basins – particularly smaller basins – development of a model may be too costly and/or unnecessary. It is suggested the Draft Regulations be modified to make clear that the use of a groundwater model, either conceptual or a computer model, is not a requirement for the adequacy of a GSP. In particular, it is proposed to provide an alternative means to analyze groundwater basin behavior and amend the following sections so that the term “Hydrogeologic Conceptual Model” is changed to include the broader concept of “Basin Setting & Description,” (and that additional cross references in the Draft Regulations be modified)

§ 354.14 Hydrogeologic Conceptual Model Basin Setting & Description

(a) Each Plan shall include a description of the basin and its setting ~~hydrogeologic conceptual model of the basin~~ consisting of a written description, map, and cross-sections, based on technical studies or qualified maps. The written description shall include a discussion of the following:

(b) The ~~hydrogeologic conceptual model~~ basin shall be represented graphically by at least two scaled cross-sections, approximately perpendicular to one another and extending the length and width of the basin, that display the information required by this section.

§ 354.18(e): The Department shall provide the California Central Valley Groundwater-Surface Water Simulation Model (C2VSIM) and the Integrated Water Flow Model (IWFIM) for use by Agencies in developing the water budget. Each Agency may choose to use a different flow model or an alternative method or tool to evaluate projected water budget conditions.

§ 354.26(a)(4): A description of the cause of groundwater conditions that would lead to undesirable results based on information developed in the basin setting and description ~~hydrogeologic conceptual model~~, basin conditions, water budget, and other data or models as appropriate.

§ 354.28(a)(1): The information and criteria relied upon in establishing minimum thresholds for each critical parameter. The justification for the minimum threshold shall be supported by information from the hydrogeologic conceptual model basin setting and description, basin conditions, water budget, and other data or models as appropriate.

§ 356.10(e): An evaluation of the hydrogeologic conceptual model basin setting and description, basin conditions, and the water budget in light of new information or changes in water use.

§ 356.10(f)(4): Elements of the Plan, including, but not limited to, ~~the hydrogeological conceptual model~~ basin setting and description, groundwater conditions, management areas, water budget, or the identification of undesirable results and the setting of minimum thresholds and measurable objectives, shall be reconsidered and revisions proposed, if necessary, for the second five-year assessment by the Department.

§ 357.4(f)(d)(2)(A): ~~Hydrogeologic conceptual models~~ Basin setting and description, as described in Section 354.12.

### 354.18 Water Budget

It is unclear as to why any given Plan must contain the water budget for the whole basin when the actions contained within the Plan are only able to access and utilize the resources available to the Agency preparing the Plan. SGMA does not require a water budget for a Plan, but rather only for a coordination agreement. It seems more appropriate to eliminate the need for each Plan to have a basin water budget and provide that the Plan be coordinated with the other Plans within the Basin.

KCWA recommends the following additions if this section is retained (and there would need to be other conforming changes throughout the Regulations):

Change 354.18 to read:

The Plan shall include a water budget, that has been coordinated with all other Plans within the basin, that provides an accounting and assessment of the total annual amount of groundwater and surface water entering and leaving the Plan area, ~~basin~~, including historical, current and projected water budget conditions, and the change in the amount of water stored. Water budget information shall be reported in tabular and graphical form.

Change 354.18 (b) to read:

The Plan shall quantify the current, historical, and projected water budget for the ~~basin~~ Plan area as follows:

We also note that 354.18(b)(3)(C) is inconsistent with Water Code Section 10733.2(b)(2) baseline requirements and needs to be modified consistent with the statute.

Change 354.18 (c) to read:

The Plan shall rely on the best available information and best available science to quantify the water budget for the ~~basin~~ Plan area in order to provide an adequate understanding of historical and projected hydrology, water demand, water supply, land use, population, climate change, sea level rise, groundwater-surface water interaction, and subsurface groundwater flow. If a groundwater-surface water model is not used to quantify and evaluate the projected water budget conditions and the potential impacts to beneficial uses and users of water, the Plan shall identify and describe an equally effective method or tool to evaluate projected water budget conditions, or identify provisions for developing a groundwater-surface water model capable of quantifying projected water budget conditions no later than the first five-year assessment.

For purposes of water budgets, KCWA assumes that water developed as the result of oil and gas recovery operations and regulated by the State and Regional Water Board(s) and the California Division of Oil and Gas and Geothermal Resources is from separate and distinct aquifers both hydrologically and geologically

disconnected from the aquifer(s) managed by the GSAs and therefore exempt from consideration and/or management by same. We suggest that be made express in the Regulations.

#### 354.28 Thresholds

354.28(a) should be qualified, in the context that all of these thresholds are subject to a “significant and unreasonable” standard as follows: “Minimum thresholds shall be numeric values that define conditions that, if exceeded could [reasonably be expected to] lead to undesirable results. . .”

354.28(d) and (e) contain an inappropriate and unreasonably stringent standard for such administrative determinations and “clear and convincing evidence” should be replaced by “substantial evidence.”

There is a clerical error in 354.28 (b)(2) and (5) in that the “significant and unreasonable” qualifier is omitted, as contrasted with the other subsections of (b).

Section 354.30, second sentence, is ambiguous as to when sustainability must be achieved and should be modified as follows: “The measurable objectives shall ensure that the basin is managed to avoid undesirable results [by the end of the] 20 years of Plan implementation . . .”

### **Article 6. Evaluation and Assessment**

#### 355.2 Department Review of Initial Adopted Plan

Section 355.2 (e) provides DWR two years to evaluate a Plan. During this two year period each Agency will likely be taking numerous actions to implement the Plan. It would be helpful for DWR to have a basic review that would provide for a six month or one-year “conditional approval” of the Plan in order to begin implementation of certain actions, such as investment in water management programs, assessment of fees or potential pumping curtailments. Full implementation of Plans will effectively be deferred until Agencies are comfortable expending funds, which will likely not happen until approvals have been received. Also, with respect to subparagraph (e)(3), language should be added if a Plan is determined to be inadequate that there be notice provided and an opportunity to cure.

#### 355.4 Criteria for Plan Evaluation

Several provisions within this section require an Agency’s Plan to manage at the basin level without any legislative requirement or legal authority to do so. KCWA recommends the following additions:

Change 355.4 (a) (3) to read:

The Plan covers the entire ~~basin~~ Plan area and is coordinated with all other Plans within the basin.

Change 355.4 (b) to read:

The Department shall evaluate a Plan that satisfies the requirements of Subsection (a) to determine whether the Plan is likely to achieve the sustainability goal for the ~~basin~~ Plan area. When evaluating whether a Plan is likely to achieve the sustainability goal, the Department shall consider the following:

Change 355.4 (b) (6) to read:

Whether the Plan will adversely affect the ability of an adjacent ~~basin~~ Plan(s) to implement their groundwater sustainability Plan(s) or impede achievement of sustainability goals within the basin or in an adjacent basin.

#### 355.10 Resolution of Conflicts by Department

This article implies that the “Coordinating Entity” is responsible for conflict resolution within a basin. The concept of a single entity acting as an arbiter of disputes within a basin is inconsistent with SGMA and there is no legal authority or mandate to form such an entity. As such, the KCWA recommends the following:

Change 355.10 (a) to read:

Disputes within a basin shall be the responsibility of the Coordinating Entity, identified and appointed through a basin coordination or other agreement, or other entities responsible for managing Plans and alternatives within that basin.

It is also suggested to add the following, which is declarative of existing law, as 355.10(e):  
“None of the foregoing shall affect any legal or equitable remedy that any entity may have.”

### **Article 8 – Coordination Agreements**

KCWA agrees that coordination agreements between Agencies in different basins (Interbasin) shall be voluntary and coordination agreements between Agencies in the same basin (Intrabasin) are mandatory. The inclusion of “Submitting Agency”, an undefined term, seems inconsistent with SGMA and fails to acknowledge the authority of each Agency to prepare, administer, implement and report on their respective Plans. Given the lack of authority to mandate a Coordinating Agency and/or Submitting Agency, the KCWA recommends striking the word “Submitting” and replacing with the word “Coordinating” Agency wherever found in Article 8, subject to our other suggestions relative to Coordinating and Submitting Agencies above.

Thank you for your consideration of these comments. KCWA looks forward to working to refine this Draft Regulation as necessary so that it may serve as a workable and effective tool for local agencies to sustainably manage their groundwater.

If you have any questions, please contact Holly Melton, Water Resources Manager, at [hmelton@kcwa.com](mailto:hmelton@kcwa.com) or (661) 634-1467.

Sincerely,



Curtis Creel  
General Manager

for