

Mid-Kaweah GSA Comments re
DWR Draft Emergency Regulations for
Groundwater Sustainability Plans and Alternatives

The Mid-Kaweah Groundwater Sustainability Agency (MKGSA), a joint-powers authority comprised of the City of Visalia, City of Tulare and the Tulare Irrigation District, situated in the Kaweah Sub-Basin (#5-22.11), respectfully submits the following comments on DWR's Draft Emergency Regulations for Groundwater Sustainability Plans and Alternatives as released on February 18, 2016.

Background:

SGMA (or the "Act") allows for more than one GSA and GSP within a sub-basin, and provides some specifics on the required Coordination Agreement that is to accompany the submittal of Plans to DWR. The Coordination Agreement is to "ensure that the plans utilize the same data and methodologies" pertinent to addressing sustainability in the sub-basin.

Many sub-basins throughout the state have or are seeing the establishment of multiple Agencies, each contemplating the preparation of a Plan for submittal to DWR. Much attention is being devoted to the content of a Coordination Agreement with the objective of demonstrating that the collective Plans achieve sustainability within the SGMA-mandated time frame. These existing and would-be Agencies have anticipated that the DWR Regulations would set forth sufficient detail regarding the Coordination Agreement content to guide this important basin-wide effort, including means by which efficient communications and exchange of information may be ensured with DWR. It is in this context that the MKGSA articulates the general governance statement which follows.

General Governance Statement:

The MKGSA seeks clarification in the Draft Regulations in the many instances where the terms "Agency" and "Plan" are used in regards to Agency obligations and Plan contents. The editorial comments to follow address many, but not necessarily all, of these instances. The draft language is reasonably understood and clear when only one Agency and Plan are contemplated within a sub-basin, but ambiguities arise where multiple Agencies and Plans are

emerging. We assume that language in §350.2(f) of the General Principles is intended to provide this clarification and, in the aforementioned editorial comment listing, a suggested enhancement of this section is put forth.

The MKGSA also has concerns over the use of new terminology in the Draft Regulations such as "Coordinating Agency," "Plan Manager," and "Submitting Agency." These terms and their usage appear to further suggest that, in addition to a Coordination Agreement, DWR is asking for another sub-basin-wide agency, entity or person to manage the multiple Agencies and serve in some decision-making role with respect to Plan administration and Agency dispute resolution. This was not contemplated in SGMA, wherein it is the individual Agencies that will be empowered to carry out sustainability actions in accordance with their respective Plans. And they must do so on a sub-basin-wide basis as delineated in the required Coordination Agreement.

For efficiency in general communications with DWR and for information/data exchanges, a single term such as "Submitting Entity" would suffice, and local Agencies could define this means of communication and point of contact within the Coordination Agreement they must each execute. This entity, which may or may not be an Agency, would serve the primary purpose of submitting the collection of initial Plans and the corresponding Coordination Agreement, as well as future Annual Reports.

In addition to the new terminology referenced above, another new term, "Coordinated GSP," has also been used in the Draft GSP Emergency Regulations Guide. With adequate treatment in Article 8 of the Draft Regulations we feel that, through a Coordination Agreement, it can be demonstrated that multiple Plans, in the aggregate, can be shown to fully address the achievement of sustainability for the entire sub-basin. This serves the purpose of a Coordinated GSP and obviates any concern that DWR is asking for an amalgamated plan to encompass the entire sub-basin.

For multiple Plan sub-basins, it still remains DWR's responsibility under the Act to review each Plan and communicate with each Agency as to that Plan's adequacy, particularly with respect to Plans that are initially deemed to be "conditionally adequate." Having to make contact through an intermediate communication point for individual Plan evaluation at this stage would appear to be inefficient for all parties involved.

Later, as Plans are being implemented, and Annual Reports as well as five-year Agency periodic evaluations are forthcoming, the Submitting Entity could become the central point of contact. However, should an Agency at some point propose amendments to its Plan, or if DWR's periodic review of Plans necessitates a response, contact and interaction with the relevant Agency responsible for that Plan's preparation should be permitted.

Lastly, any changes made to the Draft Regulations should be reflected in the final version of the previously-referenced Draft GSP Regulations Guide.

Editorial Comments:

- §350.2(a) – This is the first example where a reference to a Plan, as defined in the Act, is tied to obligations and requirements for the whole basin or sub-basin, and where clarification is needed as expressed in our general governance statement.
- §350.2(f) – It is not entirely clear how this language helps clarify that the Regulations' use of the words Agency and Plan are meant to also include situations where more than one is in existence in a given basin. Suggested wording: "The processes for an Agency to develop and submit a Plan for evaluation by the Department and for Department evaluation, as described in these regulations, are made applicable to multiple Agencies developing multiple Plans providing coverage for the entire basin as evidenced by a Coordination Agreement, and to Alternatives as described in Article 9."
- §351(i) – The Act establishes an obligation for DWR to recognize all Agencies and Plans. The Regulations appear to create a new "Coordinating Agency," not contemplated in the Act, to "represent" the basin and to be "the sole point of contact with the Department." Rather, the framework for intra-basin coordination and communication with DWR should be left for development by the local Agencies and documented in the Coordination Agreement.
- §351(w) – As written may contradict with §351(i) in that there may be multiple Plan managers within a basin, each representing an Agency.
- §353.4 – Suggests that each Agency submits Plans, etc. to DWR without distinction between basins with one or more than one Agency/Plan.

- §354.4 – Would be somewhat redundant for each Plan to provide a full overview and description of basin conditions in the case of multiple Plans. This should be dealt with in the accompanying Coordination Agreement. Perhaps each Plan could contain a summary of basin conditions as laid out in more detail in the Coordination Agreement.
- §354.8(e) – The Plan should include reference to the accompanying Coordination Agreement, in the case of more than one Plan in a basin.
- §354.12-14 – Same comment as for §354.4.
- §354.18(c) – The term groundwater-surface water model may mean many things. Is “model” meant to imply a computer simulation model? The term “equally effective” may need amplification as applied to water budget determinations in lieu of such a model. This section should make it clear that DWR is not requiring a computer simulation model depicting groundwater conditions in all basins.
- §354.22(e) – Suggested re-wording here and in many other places “to achieve, collectively with all other Plans in accordance with a Coordination Agreement, the sustainability goal in the basin within 20 years of Plan implementation...”
- §354.24 – Here the two 5-year extensions “for good cause” set forth in §10727.2(b)(3) of the Act could be acknowledged, although we recognize Plans ought not to rely on this provision of the Act in achieving the sustainability goal as established in the Plan. Further, the subject Regulations could make reference to or perhaps reiterate these “good cause” criteria contained in the Act in §355.6 re periodic reviews in cases where an extension has been requested by an Agency.
- §354.26 – Reference to a Coordination Agreement should be made in instances where more than one Plan is being developed.
- §354.28(b)(1)(C) – Rather than a minimum threshold, full elimination of chronic lowering of groundwater levels should be treated as a measurable objective. Further, its determination could be expressed as being based on a rolling-average basis.
- §354.28(b)(2)(A) – Rather than a minimum threshold, the annual sustainable yield should be identified as the measurable objective.
- §354.28(c) – Didn’t see a sub-section (c). Text went from (b) to (d).

- §354.34(a) – Inconsistency with use of terms Agency, Plan and entire basin, unless §350.2(f) is intended to override the apparent inconsistencies.
- §354.34(d) – “The density and locations of monitoring sites and ...”
- §354.34(g) – Sentence structure wording change in 4th line of this sub-section needed.
- §354.34(h)(1)(A) – Last word should be “aquifers” in the plural sense.
- §354.38(c) – Does this imply that, if data gaps are due to insufficient number of monitoring wells, a full array of new monitoring wells will be needed within 5 years? This would be a substantial undertaking within such a short time interval.
- §354.38(d)(4) – Not a circumstance as worded. Should say “Adverse impacts upon the ability of an adjacent basin to implement their Plan or impedance of the achievement of sustainability goals in an adjacent basin.”
- §354.44(b)(2) – Do such “emergency contingency” projects avoid the CEQA compliance process? Also, in the case of recovery of groundwater levels, the time necessary for abatement to be evidenced will likely be greater than the time left before the next annual report. The use of the word “addressed” rather than “abated” would be more applicable in this context.
- §354.44(b)(3) – Why is this support needed only for contingency projects? Shouldn't this apply to all projects and management actions?
- §354.6(c) – The use of the defined term “Plan Manager” seems redundant, and the term “Submitting Entity” as recommended herein should suffice in this regard.
- §355.2(d) – We assume this is the clause by which an Agency, who submits a Plan for a portion of a basin for which other Plans did not materialize or for which a Coordination Agreement was not forthcoming, may ultimately receive a Plan evaluation by DWR per §10735.2(e) of the Act.
- §355.4(a)(3) – A Plan need not cover an entire basin, and one must refer back to §350.2(f) for this to be applicable. The Coordination Agreement should evidence basin-wide coverage.

- §355.4(b)(5) – This should reference the likelihood that projects and actions will prevent undesirable results and ensure operation within the sustainable yield no later than the 20-year mandate, as may be extended, per the Act.
- §355.4(b)(7) – An observation: This is the first time that “Plans” is used in the plural sense.
- §355.4(b)(11) – An impairment to water access, in the context of future growth, may be unavoidable for basins in chronic overdraft.
- §355.10(a) – The Coordinating Agency (a term *not* recommended for the final Regulations) should *not* be empowered to settle disputes but, rather, the method of intra-basin dispute resolution should be determined by the Agencies in the Coordination Agreement.
- §355.10(d) – Should this determination by DWR be in deference to SWRCB per §10735.2(e) of the Act?
- §356.10(f)(3) – See comment re §354.38(c).
- §356.10(f)(4), (5) – These seem more appropriate as a new sub-section (g) rather than part of the survey of the monitoring network under (f).
- §356.10(j) – As between Agencies, this should tie to mandatory or voluntary Coordination Agreements where applicable.
- §357.4(b) – The term “Submitting Agency” is not defined in §351; however, “Coordinating Agency” and “Plan Manager” are. As per prior comments herein, we recommend the term “Submitting Entity.”
- §357.4(d) – Similar to the concern expressed under §351(i), this section implies a an over-arching Agency placed in an authoritative position vis-à-vis other such Agencies. The rectifying process referenced herein should happen first in negotiating a Coordination Agreement as among Agencies with multiple Plans, and should not be under the authority of any submitting agency/entity.
- §357.4(d)(4) – A submitting agency/entity may be submitting more than one Plan.