



IRVINE RANCH WATER DISTRICT

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March 31, 2016

Submitted Via Electronic Mail to SGMPS@water.ca.gov

Lauren Bisnett
Public Affairs Office
California Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

Re: **Comments on the California Department of Water Resources' Draft Groundwater Sustainability Plan Emergency Regulations**

Dear Ms. Bisnett:

Thank you for the opportunity to review and comment on the draft Groundwater Sustainability Plan Emergency Regulations dated February 18, 2016, ("Draft Regulations") proposed by the California Department of Water Resources ("DWR").

The Irvine Ranch Water District ("IRWD") is an urban water supplier serving Central Orange County. IRWD provides high-quality drinking water, reliable wastewater collection and treatment, groundbreaking recycled water programs, and environmentally sound urban runoff treatment to more than 380,000 residents and a daytime population of 500,000. As part of its efforts to ensure a reliable water supply, the District has been engaged in groundwater production, storage and banking for many years. IRWD is active within two groundwater basins; the Orange County Groundwater Basin managed by the Orange County Water District ("OCWD") and the Kern County sub-basin of the San Joaquin Valley Groundwater Basin where we own land and operate sustainable water banking projects and programs.

IRWD strongly supported the Sustainable Groundwater Management Act ("SGMA") because it created a much-needed foundation for *local* and *sustainable* management of California's critical groundwater resources. SGMA respected entities like OCWD, as well as adjudicated basins, while giving local governments, special districts and landowners in unmanaged groundwater basins adequate time (as well as reasonable extensions), tools and technical assistance to develop and adopt their own governance and Groundwater Sustainability Plans ("GSPs").

While we appreciate DWR's development of comprehensive Draft Regulations on GSPs, as written, the Draft Regulations go beyond what was envisioned in SGMA. They propose an overly prescriptive and unrealistic approach to GSPs contrary to the approach enacted which granted local agencies the discretion to implement sustainable management that best fits their community and basin's unique characteristics. *We ask that the Draft Regulations be amended to refocus the requirements for GSPs on providing flexibility to Groundwater Sustainability Agencies ("GSAs") so that they can develop a solid, customized pathway to meet their locally-driven sustainability criteria as provided for in SGMA and to move the Draft Regulations away from the one-size, one-GSP-per-basin approach, which was rejected in the Act.* Furthermore, we ask that DWR revise the data and reporting requirements contained in the Draft Regulations, which are excessive and will divert attention

away from the actions need to maintain and achieve sustainability, to more accurately reflect the level of data needed by the Department to review and determine compliance with local-driven sustainability criteria.¹

Like the Association of California Water Agencies, whose comments we largely support, we also ask that DWR clearly identify the purpose and need for any portion of the Draft Regulations that exceed the strict reading of SGMA. This includes identifying the purpose and need for the expansive provisions relating to the role of a coordinating agency; coordination agreements; the level of data required in GSPs; the use of DWR developed best management practices; evaluation of water quality impacts due to future land uses; and contingency projects and actions.

Given IRWD's engagement in the development of SGMA and IRWD's involvement in two groundwater basins, we have a strong interest in the Draft Regulations. We offer the following more specific comments for your consideration:

A) Provisions of the Draft Regulations relating to alternative plans must be revised to reflect the intent of SGMA rather than compelling alternative plans to mirror the requirements of GSPs.

Water Code Section 10733.6 provides that if a local agency believes that an alternative satisfies the objectives of SGMA that it may submit an alternative to DWR for evaluation and assessment. IRWD appreciates DWR including specifics related to alternative plans in the Draft Regulations; however, the Draft Regulations require that alternative plans be a functional equivalent to GSPs rather than providing a functional equivalence to the requirement of the Act to achieve and demonstrate sustainability. This type of approach will require long-standing groundwater managers, which are recognized in SGMA for their sustainable management, to utilize the same methods and standards required by GSPs. The Draft Regulations will require that significant resources be expended by these effective groundwater managers to explain the functional equivalences of certain metrics and data as opposed to a focused analysis on whether their alternative plan satisfies SGMA's sustainability objectives.

We concur in the Orange County Water District's comments related to the alternative plan provisions, but we want to highlight the following issues of concern:

- 1) **Section 358.4— Alternatives to Groundwater Sustainability Plans:** The requirements in Section 358.4(c)(3) require an agency to demonstrate that no undesirable results have occurred between January 1, 2005, and January 1, 2015. This extends beyond the requirements of Water Code Section 10733.6(b)(3), which requires that an analysis be provided demonstrating that the basin has operated within its sustainable yield over a period of at least 10 years. Section 358.4(c)(3) should be revised to be consistent with Section 10733.6(b)(3). It should be revised to read:

¹ For example, Section 354.18 requires that a GSP contain the water budget for the entire basin using the best available information and best available science. This implies that GSAs must undertake a greater level of quantitative analysis than would be required to manage the portion of the basin covered by its GSP. SGMA does not require a water budget for a GSP, but rather only for a Coordination Agreement. It seems more appropriate to eliminate the need for each GSP to have a basin water budget and provide that the GSP be coordinated with the other GSPs within the basin. We concur with the Kern Groundwater Authority's comments on this topic.

~~“An alternative submitted pursuant to Water Code Section 10733.6(b)(3) shall demonstrate that no undesirable results are present in the basin or have occurred between January 1, 2005, and January 1, 2015 the basin has operated within its sustainable yield as defined in the Act over a period of at least 10 years reflective of current groundwater management practices. Each subsequent submission shall demonstrate that no undesirable results have developed are present in the basin since the last submittal or have occurred for the preceding ten-year period.”~~

- 2) **Section 358.5— Alternatives to Groundwater Sustainability Plans:** Section 358.5 should be revised to clarify that existing documents, such as a Groundwater Management Plan, may be sufficient if it meets the requirements of Water Code Section 10733.6(b). We recommend revising the text of Section 358.4 (e) as follows:

~~“A local agency shall include an explanation of the functional equivalence of terms and concepts used in the alternative with the substantive and procedural requirements of the Act and this Subchapter.”~~

- 3) **Section 358.6— Department Evaluation of Plan Alternatives:** Consistent with the comments above, Section 358.6 extends beyond the requirements of SGMA and should be amended to reflect a strict interpretation of the Act. It should be revised as follows:

~~“The Department shall evaluate an alternative to a Plan consistent with Article 6 of these regulations to determine whether the alternative satisfies the goal of the Act to achieve groundwater sustainability through local management and avoids future undesirable results, including to adjacent groundwater basins.~~

B) Plan coordination is important to sustainable groundwater management, but the Draft Regulations must recognize SGMA's authorized approach of allowing for multiple managers and plans per basin.

The Draft Regulations are structured in a manner that requires each GSP to achieve sustainability for the entire basin. (*See Section 350.2(a)*) This approach is contrary to SGMA's authorization that allows for multiple plans and managers in a basin as long as they have a coordinating agreement and agree to use similar measurement methods and data. (*See Water Code Section 10727*) As currently drafted, each GSP within a basin is responsible for ensuring that sustainability is achieved throughout the entire basin versus the portion of the basin covered by the plan. This should be changed.

The Draft Regulations also introduce a “Coordinating Agency” as being required to serve as an “authorized entity that represents two or more Agencies or Plans for a basin and is the sole point of contact with the Department”. IRWD agrees with other comments that to the extent that a Coordinating Agency “represents” the other GSAs within the basin, it has in effect become the GSA for the entire basin. This requirement was not envisioned by SGMA, and defeats the purpose of allowing for multiple GSAs within a basin. We ask 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. Towards this end, we ask that the word/terms “Submitting Agency” and “Coordinating Agency” be removed from the Draft Regulations.

C) SGMA recognized the importance of conjunctive use and underground storage; the Draft Regulations should reflect those provisions.

Water Code Section 10722.4 requires that a GSP include, "where appropriate and in collaboration with the appropriate local agencies... (f) Activities implementing, opportunities for, and removing impediments to, conjunctive use or underground storage." As proposed, the Draft Regulations only deal with conjunctive use projects in Section 354.8(f). Section 354.8(f) simply requires that a GSP include a description of conjunctive use programs and infrastructure in the basin. This is a lower standard than is required by SGMA. The Draft Regulations should be revised to reflect Water Code Section 10722.4's requirements that GSPs consider conjunctive use and underground storage, where appropriate and in collaboration with the appropriate local agencies.

D) The Draft Regulations should fully recognize DWR's authority to adopt a "substantial compliance" approach to deeming GSPs complete.

IRWD is supportive of the substantial compliance provisions within the Draft Regulations and understands that the flexibility afforded by those measures does not compromise the sustainability requirement. We recommend that the Draft Regulations further support "substantial compliance" and local responsibility for groundwater sustainably. Towards this end, the Draft Regulations should be revised to defer to the judgment and expertise of the local GSA. GSAs will rely on local geologists, engineers, scientists, and stakeholders to develop GSPs and alternative plans to demonstrate sustainability. DWR should only apply more stringent and prescriptive requirements when a GSA has not demonstrated good faith efforts. Provisions that negate a "substantial compliance" approach, such as Section 355.4(a)(2), should be modified to eliminate terms referencing "all" data and should reflect data sufficient to demonstrate sustainable groundwater management and compliance with SGMA.

In closing, IRWD appreciates the efforts that the Department of Water Resources has undertaken to develop the Draft Regulations and appreciate your consideration of our comments. We encourage the Department to continue to work with water agencies to ensure that SGMA can achieve its intended purpose of moving California towards sustainable groundwater management while maximizing flexibility for locally developed and adopted GSPs. Please do not hesitate to contact me at (949) 453-5590 or our Sacramento advocate, Maureen O'Haren, at (916) 498-1900 if you have questions regarding our comments.

Sincerely,



Paul A. Cook
General Manager