

# WEST KINGS SUBBASIN SGMA MOU GROUP

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California Department of Water Resources  
Attn: Lauren Bisnett  
P.O. Box 942836  
Sacramento, CA 94236

Subject: Draft GSP Emergency Regulations Public Comment

Dear Ms. Bisnett:

On behalf of the West Kings Subbasin SGMA MOU Group, thank you for the opportunity to comment on the Draft Groundwater Sustainability Plan (GSP) Emergency Regulations. We offer the following comments for your consideration:

## General Comments:

- We believe the proposed draft GSP Regulations would result in significant unnecessary costs and other significant and unnecessary burdens on GSAs in many basins, including the West Kings Subbasin. We believe that substantial revisions are needed to bring the GSP Regulations into conformity with the intent of SGMA.
- A fundamental principle of SGMA groundwater management is that management should be performed at the local level. One of the primary goals of SGMA is to “*manage groundwater basins through the actions of local government agencies to the greatest extent feasible, while minimizing state intervention to only when necessary to ensure that local agencies manage groundwater in a sustainable manner*” (Water Code, § 10720.1(h)). DWR has recognized the importance of local control, stating in the GSP Regulations that “*local control and management is a fundamental principle of SGMA.*” Yet, this draft of the GSP Regulations is overreaching in places, too prescriptive at times, and certain sections seem to be structured to aim to uniformly manage groundwater basins from a “top down” state level instead of from the local level.
- Rather than be prescriptive, we believe the GSP regulations should be framed as guidance that will assist local agencies in developing and implementing groundwater sustainability plans and coordination agreements and provide

regulations for evaluating the groundwater sustainability plans and coordination agreements as intended and provided for in the Act.

- Extreme words and words of totality such as the word “all” appear throughout the draft regulation and in many instances is problematic from a practical standpoint and in some cases impossible to achieve.
- Other words like “adequate” and “complete” are used throughout the draft regulations, but it’s seldom clear what such descriptors mean. A defined legal standard with which attorneys and planners are familiar would be helpful.
- The draft regulations should describe a conflict resolution mechanism if GSAs find themselves in disagreement with not just local agencies, but also with DWR on its review of Plans, coordination or progress towards sustainability.
- Clarification is needed with respect to instances of “formal” vs. “informal” consultation from the State Water Resources Control Board. Define clear thresholds. For example, OSHA can be consulted with or without inviting intervention.
- Development of new monitoring infrastructure, such as constructed monitoring wells, to the quality and at the resolution presently required in the draft regulations will be extremely expensive. DWR should consider realistic, phased approaches to monitoring network development and should communicate to the Governor’s Office that significant funding assistance will be needed.

#### Article 1. General Provisions

- 350.2.(a) The notion that a Plan must achieve the sustainability for “the entire basin” is inconsistent with the statute allowing multiple GSPs within a basin and the “good actors” provision of WC Sec 10735.2(e); where a GSA cannot be responsible for areas beyond its jurisdiction. This approach is throughout the draft and needs to be revised.
- 350.2.(g) The ability of DWR to evaluate a Plan “at any time” for compliance is inappropriate and inconsistent with SGMA and other provisions of the draft regulations (sections 355.2 and 355.6) that DWR will make a determination of sufficiency within two years. There should be some certainty that a GSP is adequate, as a GSA moves forward, investing significant time and money to implement an approved Plan.
- We suggest adding as a principle, consistent with the Legislative Intent of SGMA (WC 10720.1(d)) and the Governor’s signing statement, that groundwater management is best accomplished at the local level and local GSAs are principally in charge of developing and implementing SGMA.

#### Article 2. Definitions

- 351.(e). The definition of “baseline” should be modified to: (i) tie to WC 10727.2 of SGMA “The plan, may, but is not required to, address undesirable results that occurred before, and have not been corrected by, January 1, 2015,” and (ii) in the context of surface water supplies, “baseline...shall include historic average reliability and deliveries” (WC 10733.2(b)(2)).
- We suggest adding a definition for “groundwater recharge”, that it includes direct augmentation of groundwater and “in-lieu” recharge, consistent with the attempt to clarify SGMA through AB 617 in 2015.
- We suggest adding definitions for “basin” and “subbasin”, or, include reference to Bulletin 118 definitions.”
- 351.(i). “The term “Coordinating Agency” raises issues elsewhere in the regulations and should be eliminated or modified.

### Article 3. Technical and Reporting Standards

- Many of these standards are prescriptive and may not be realistic or consistent with existing local practices. For instance at 352.6.(a)(2), measuring groundwater elevations within 0.1 feet accuracy is not appropriate. It is also inappropriate to require GSAs to convert all spatial data to coordinate systems that are preferred by DWR.
- 352.6.(b)(3)(A) We suggest revising this subarticle so that it is not misinterpreted as a new requirement that wells monitored as part of SGMA must also be reported to the CASGEM program which is not required by statute.
- 352.6.(b)(3)(D) and 352.6.(b)(4) Many wells are open bottom design and do not have perforations. Many more lack other well construction information. Deeming such wells inadequate as sources of data disqualifies a significant number of Central Valley wells that would need to be replaced with costly new, constructed monitoring wells. Furthermore, we believe it to be hypocritical that wells not meeting standards described in the draft regulations were apparently adequate enough for the State to determine which basins and subbasins will be regulated under the Act, but those same wells are now appear to be inadequate for use by GSAs for GSP implementation.
- 352.6.(c) “These map and spatial data requirements are beyond what is contemplated in the Act and should be removed.
- 352.6.(e) There is no requirement that groundwater and surface water models used must consist of public domain, open-source software.
- 352.6.(f) The exception that “proprietary data and reports need not be disclosed unless requested by the Department to resolve...disputes” conflicts with words like “all” and types of information outlined in other Plan and reporting Articles and Subarticles.

- 352.8 SGMA does not require a “coordinated data management system” and this section implies the DMS will be Web connected to DWR. Such a requirement is prescriptive and should not be included in the regulations.

#### Article 4. Procedures

- 353.4.(b) The subarticle states that all materials must be accompanied by a “penalty of law” statement and that the person signing must make inquiry of the “persons who manage the system or those persons directly responsible for gathering the information”. This is not a requirement specified by SGMA and “penalty of law” is undefined. We request that this requirement be removed.

#### Article 5. Plan Contents

- 354.8.(a)(5) It is not appropriate to include mapping of all wells, including showing de minimis extractors, as part of the Plan, before SGMA powers are implemented. This could require registration of wells and SGMA powers are not provided for until a GSA has submitted a Plan. It would be more appropriate to require that a Plan provide for developing such information.
- 354.14.(a)(3) The “definable bottom of the basin” is difficult and in some cases impractical to identify (such as in confined aquifers) and is not required in most instances.
- 354.18.(b)(2)(B) The regulations should specify what happens if a basin does not possess sufficient data to go back the required “minimum of 10 years, or as is sufficient to adequately...estimate and project future water budget information...”
- 354.18.(d)(1). The term “central valley land use” is undefined. If the regulation is referring to the Central Valley it should be removed as an inappropriate reference to a specific region of the state.
- 354.28.(b) The term “significant and unreasonable” is omitted several times and should be identified each time it applies qualitatively to “critical parameters.”
- 354.28.(e) The subarticle requires that thresholds for the various undesirable results be supported by “clear and convincing evidence”. This is inappropriate, particularly since additional information will be developed through the Plan process after SGMA powers can be invoked, it is not provided by SGMA, and it will invite challenges to local efforts of GSAs.

#### Article 6. GSP Evaluation and Assessment

- The SGMA provision of two discretionary extensions of up to 5 years each beyond the 20-year sustainability timeframe upon a showing of good cause (CWC 10727.2) is missing from the draft regulations and should be added in.

- 355.4.(a)(3) An initial Plan should not be deemed inadequate if it does not cover the “entire basin”.
- 355.4.(a)(11) Insert the word “significantly” before “impair the right to...”
- 355.4. The subarticle refers to Section 10720.7 as a deadline to file a proposed Plan. However, Section 355.2 states that review will take up to two years. Perhaps the regulations should clarify that an agency should submit and begin to implement its plan by the deadline stated in Section 10720.7, but that DWR shall have up to two years to review and approve a plan and propose changes.
- 355.6.(b) Provided an agency is meeting its milestones, as determined through monitoring programs described in the agency’s DWR-approved plan, it seems unnecessary to audit other aspects of an agency’s performance. Local control is a key goal of SGMA, and agency resources should be expended implementing plans, not continually justifying plans to DWR.
- 355.8. Regarding consultation with the SWRCB, the subarticle cites as authority Water Code Sections 10735.2 and 10735.4, which in turn describe consultation by DWR as a precursor to placing a basin in probationary status. Section 355.8 should further clarify the times and circumstances when such consultation will be warranted, and should include some provision for notifying an agency and providing an opportunity to cure defects before consulting with the SWRCB.”
- 355.10.(d) As written this would indicate a lack of commitment to providing assistance to resolve disputes and ignores “bad actor” provisions of the Act.

#### Article 7. Reports, Assessments and Amendments

- 356.4. The requirements for the annual report are much more specific than the statute (WC sec 10728). In particular it requires summaries of groundwater extractions by water use sector and location of extractions (raw, discrete data instead of aggregated data as required by statute).”
- 356.4.(b)(5)(A) Change in groundwater storage maps for each principal aquifer is problematic for confined aquifers, such as those underlying the Corcoran Clay, since groundwater elevations are influenced by spatially variable change in head pressures.
- 356.6.(b) This subarticle is confusing. DWR may “provide recommended corrective actions to address any deficiencies in [an] annual report,” and shall treat the agency’s plan as conditionally adequate until the deficiencies are addressed. Are the recommended corrective actions then actually “recommended” if the agency shall be sanctioned until deficiencies are addressed? What is intended by this language?
- 356.10. The amount of information that an agency must compile seems appropriate in the case of a plan amendment, but not for a five year review. If milestones are not being met, then more information is appropriate. But

otherwise it should be sufficient for a GSA to prove that it is meeting its milestones.

#### Article 8. Coordination Agreements

- 357.4. For Intra-basin, the term “Submitting Agency” is introduced (which is not defined) but will be a “single point of contact with the Department” intended to “rectify data and interpretations regarding basin conditions”. Is a “Submitting Agency” the same as a “Coordinating Agency,” as used in sections 355.10(a) and 351(i)? If these terms are to remain in the regulations, clarification is requested.

Thank again you for your consideration of our comments.

Sincerely,

West Kings Subbasin SGMA MOU Group

Burrel Ditch Company

Clark's Fork Reclamation District

Crescent Canal Company

County of Fresno

Kings River Water Conservation District

Laguna Irrigation District

Liberty Canal Company

Liberty Mill Race Company

Liberty Water District

Raisin City Water District

Reed Ditch Company

Riverdale Irrigation District

Stinson Canal & Irrigation Company

Stinson Water District

Upper San Jose Water Company