



# South Tahoe Public Utility District

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California Department of Water Resources  
Attn: Lauren Bisnett  
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RE: Comments on Sustainable Groundwater Management Act Draft Emergency  
Regulations for Groundwater Sustainability Plans and Alternatives (released February  
18, 2016).

To Whom It May Concern:

The South Tahoe Public Utility District ("District") presents these comments regarding the Department of Water Resources' ("DWR") Draft Emergency Regulations for Groundwater Sustainability Plans and Alternatives ("Draft Regulations"). These comments were prepared by the District's engineering staff in conjunction with the District's legal counsel, Brownstein Hyatt Farber Schreck, LLP. The District appreciates the opportunity to submit comments on the Draft Regulations.

The District is a public utility district formed and operating under the provisions of the California Public Utility District Act and has authority to exercise powers related to groundwater management. The District's territory overlies most, but not all, of the unadjudicated Tahoe Valley South Basin (designated basin number 6-5.01 in the DWR groundwater basin system), herein referred to as the TVS Basin. Community water systems are the primary purveyors of groundwater from the TVS Basin which is utilized to meet the needs of their customers. The District is committed to sustainable management of the local groundwater resource as demonstrated by, among other actions, its adoption of a Groundwater Management Plan for the TVS Basin in December 2014 and creation of a Stakeholder Advisory Group to participate in the implementation of the plan. Subsequently, the District was selected by DWR to be the Groundwater Sustainability Agency (GSA) for the TVS Basin.

Below, we provide both general comments and comments on specific articles and sections included in the Draft Regulations. The District's comments are not all encompassing, but are illustrative of issues and suggestions to improve the Draft Regulations.

## **GENERAL COMMENTS.**

Overall, the Draft Regulations are too expansive, overly prescriptive, and would likely result in significant unnecessary costs and other significant and unnecessary burdens on GSAs in many basins. Substantial revisions are needed to bring the Draft Regulations into conformity with SGMA. If our suggested revisions are adopted by DWR, we believe these changes will bring the Draft Regulations into closer alignment with both the provisions and intent of SGMA.

In general, the Draft Regulations are overly detailed and burdensome on local agencies already tasked with bringing the state's groundwater basins into sustainable management over the next two decades. As an example, the Draft Regulations require many types of data, analysis, interpretation, and reporting. In an effort to respond, the GSAs will need to increase their workforce and/or hire consultants and develop funding and finance plans to pay for the additional efforts. Some of the GSAs may have great difficulty complying given their limited resources. In addition to placing an additional burden on DWR to undertake such specific review of the multiple detailed submissions, the Draft Regulations have the misguided incentive of forcing a GSA to focus its time and resources on complying with detailed reporting requirements, rather than investing those resources in implementing its Plan, developing projects, and working towards reaching its sustainability goal.

Local control and management is a fundamental principle of SGMA. However, the Draft Regulations are overreaching and seem to be structured to uniformly manage groundwater basins from a "top down" state level. Many of these prescriptive requirements appear to be intended to drive GSAs to prepare one Groundwater Sustainability Plan (GSP) per basin, although such a requirement was not a requirement of SGMA. While it is important to have consistent standards, the Draft regulations should be revisited to ensure control is maintained at the local level, as intended by SGMA.

The Draft Regulations lack specificity regarding the scope of GSPs with regard to data collection and analysis regarding groundwater contamination sources, plumes and historic waste discharges. The Draft Regulations should be revised to allow GSAs coordinate with water quality regulatory agencies and utilize information provided by those agencies. It should also be made clear that GSAs are not responsible for establishing minimum criteria for contaminated sites and groundwater plumes that fall under water quality laws and regulations and thus are not required to manage or remediate these sites. Similarly, the Draft Regulations should clarify that GSAs are not responsible for developing minimum thresholds for naturally occurring contaminants such as arsenic. While the Draft Regulations require development of minimum thresholds for depletions of interconnected surface water, as required by SGMA, it is unclear how to address situations where diverters with appropriative or riparian water rights (surface water or well diversions) are the cause of depletions of interconnected surface water but are not within the jurisdiction of SGMA.

Additionally, our previous conversations with DWR led us to believe that the Draft Regulations would address minimal fringe areas of a groundwater basin are outside of a GSA's jurisdictional boundary. The Draft Regulations, however, are silent on this issue. In light of the detailed

requirements set forth in the Draft Regulations, we recommend that DWR develop provisions that provide additional flexibility to basins that may not present complicated management situations—both in terms of local agency coordination and controlling undesirable results.

### **COMMENTS ON SPECIFIC ARTICLES AND SECTIONS.**

We also provide the following specific comments on each article in the Draft Regulations.

#### **Comments on Article 1 (Introductory Provisions)**

**§ 350.2 General Principles.** The statement in subsection (a) that a Plan must achieve sustainability for “the entire basin” is inconsistent with SGMA’s approval of multiple Plans covering single basin and with the “good actors” provision codified in section 10735.2(e) of the Water Code. SGMA specifically limits a local agency’s jurisdiction in forming a groundwater sustainability agency (“GSA”) and implementing a Plan; therefore, it cannot require a GSA to be responsible for areas beyond its jurisdiction. This approach appears in multiple sections throughout the Draft Regulations and should be revised to be consistent with SGMA.

Subsection (c) states that DWR “shall evaluate the adequacy of all Plans, including subsequent modifications to Plans, and report periodic evaluations based on a substantial compliance standard.” However, ambiguous terms such as “adequate” and “complete” are also used throughout the Draft Regulations. In order to provide clarity to these Draft Regulations, we recommend replacing these terms with the substantial compliance standard article in this section and in Article 6.

Subsection (g) provides that DWR “may evaluate a Plan at any time.” This authorization is inconsistent with both SGMA and other provisions of the Draft Regulations requiring DWR to make a determination of Plan sufficiency within two years. It is necessary to have some certainty that a Plan is adequate after a certain amount of time, otherwise it will be difficult to incentivize local agencies to invest additional time and resources (including significant amounts of public money) into implementing the Plan. This same comment is applicable to section 355.6.

We also recommend that in order to be consistent with SGMA’s legislative intent (and language) the substantial compliance standard be more broadly applied to all agency decisions and determinations made under the Draft Regulations, except where the Draft Regulations call for decisions to be supported by clear and convincing evidence.

**Additional Comments on Article 1.** We also recommend inclusion of an additional principle to this section that reflects the legislative intent of SGMA (see Water Code sections 113 10720.1(d), etc.) that groundwater management is best accomplished at the local level.

#### **Comments on Article 2 (Definitions)**

**General Comments:** There are many important definitions provided in the Water Code Section 10721 that are used in the Draft Regulations, but not included in Article 2; such as Sustainable Yield, Planning Horizon and De minimis extractor. The District recommends that DWR consider adding definitions for all terms defined in Section 10721 to Article 2 of the Draft Regulations for sake of consistency with SGMA.

Poorly understood terms used in the Draft Regulations also need to be defined in Article 2. For instance “groundwater-dependent ecosystems” is used in Section 354.16, but is not defined under Article 2.

The Draft Regulations should be amended to include a definition of “substantial compliance” in Article 2, and a new narrative description of this standard as an overriding General Principle in Article 1.

**§ 351(e) Baseline or Baseline Conditions.** This definition is inconsistent with the statement in section 10727.2(b)(4) of the Water Code, which provides that a “[P]lan may, but is not required to, address undesirable results that occurred before, and have not been corrected by, January 1, 2015.” Water Code section 10733.2(b)(2) also provides that, in the context of surface water supplies, “baseline . . . shall include the historic average reliability and deliveries.” We recommend that this definition be revised in order to be consistent with SGMA.

**§ 351(j) Critical Parameter.** We recommend that this definition is revised to include the “significant and unreasonable” standard in order to be consistent with section 10721(w) of the Water Code.

**§ 351(m) Interconnected Surface Water.** We recommend that this definition be revised to be consistent with California case law and existing provisions in the Water Code. There may be surface water source areas within a watershed where surface water is perennial, ephemeral, and/or has not been connected for years. All three conditions may occur; so it is unclear what is meant by “not completely depleted.”

**§ 351(v) Plan Implementation.** We recommend that this definition be revised so that the date of Plan Implementation is the date the Plan is adopted by the GSA. It is also unclear whether a Plan can be implemented before it is approved by DWR. We recommend that DWR clarify this ambiguity to allow a Plan to be implemented after submission to DWR, but before it is approved. Requiring a GSA to wait an additional two years undermines SGMA’s goal of sustainable management within 20 years of Plan Implementation (see Water Code § 10727.2(b)(1).).

**§ 351(aj) Water Year Type.** The water year type classification system currently used by DWR is based on California River Indices estimated for the Sacramento and San Joaquin River Basins and the Colorado River. It is unclear which water year type would be appropriate to use as an index for each groundwater basin. For instance, the TVS Basin is situated within the Lake Tahoe Hydrologic Basin, and is part of the Truckee River

Watershed. Using long-term precipitation records, including snow pack, would provide a more useful definition of water year type than indexing to a river basin outside its hydrologic system. The District recommends that DWR consider allowing GSAs to define water year type for groundwater basins outside the Sacramento and San Joaquin River Basins and not crossed by the Colorado River.

**Additional Comments on Article 1.** We recommend adding the following definitions to Article 2:

**Base Hydrological Period.** Suggest adding a definition of a base hydrological period as it is already incorporated in SGMA for sustainable yield.

**Historical Conditions.** Multiple sections throughout the Draft Regulations refer to “historical conditions.” (See, e.g., 23 CCR 354.16, 354.18.) Section 354.16 of these Draft Regulations appears to define Historical Conditions as “conditions that existed as of January 1, 2015.” This definition is consistent with SGMA and should be added to Article 2 and/or combined with the current definition of “Baseline” or “Baseline Conditions.” Changes should be made throughout the document to ensure consistency with use of defined terms.

**Substantial Compliance.** The standard of substantial compliance is referenced in multiple articles and sections throughout the Draft Regulations. We recommend adding a definition for substantial compliance consistent with California case law.

### **Comments on Article 3 (Technical and Reporting Standards)**

**§ 352.4 Best Management Practices.** Remove all references to “Best Management Practices,” which is addressed in SGMA, but is inappropriately used in the Draft Regulations. This term should be replaced with “Agency Practices and Procedures.” SGMA is clear that Best Management Practices are not intended to be imposed as regulatory standards, and that methods and practices are to be selected and used at the discretion of the GSAs.

**§ 352.6 Data and Reporting Requirements.** There is a typo in subsection (e). The text currently states “[g]roundwater and surface water models developed or utilized as part of or in support of a Plan shall be consist of public domain open-source software.” (emphasis added.) This error should be corrected. If some GSA’s are required to obtain new software to meet the open-source requirement then this possesses a significant burden on the GSA as staff will require training, creation of input files, model calibration, running the model for analysis including predictions of conditions under different scenarios.

The Draft Regulations should be clearer regarding necessary data quality with details included in BMPs. The level of accuracy and precision required for determining conditions and measuring sustainability should be established on a basin by basin basis recognizing variation and complexity in each basin.

**§ 352.6 (a) (2);** The District uses publically available data from a number of different state and federal agencies for monitoring hydrologic conditions. This includes data from USGS gaging stations critical for monitoring lake stage and stream flows within and neighboring the TVS Basin. Many of these stations use gages that are referenced to older datums. For example, the vertical datum used for the USGS Lake Tahoe @ Tahoe City Gage 10337000 is described as “6220.00 ft. above the US Bureau of Reclamation datum 6218.86 ft. above NGVD29”. The District respectfully suggests that DWR change the requirement to require GSA’s to use established datums for data collection; and that elevation data reported by GSA’s to DWR be referenced relative to NAVD88.

**§ 352.6 (b);** The DWR has designated the District as the Monitoring Entity for the Tahoe Valley South Subbasin (6-5.01). As the Monitoring Entity, the District provided a Groundwater Elevation Monitoring Plan to DWR that provides the monitoring well information prescribed in the Draft Regulations. The Draft Regulations should not require this information a second time, as part of the GSP, if a monitoring plan is already on-file with DWR.

**§ 352.6 (b)(1) (D);** The District’s monitoring network used for groundwater elevation monitoring has evolved over time using former water supply wells and test wells converted to observation wells, and sentinel wells that were originally installed for various project objectives. For many sites the standards that were used to install existing wells in the monitoring network are not available. Lack of this information should not be used to disqualify wells with adequate well construction information from being used in a monitoring network.

**§ 352.6 (b)(3);** Many of the well information required in this section appears to be duplicative of § 352.6 (b)(1). Combining these requirements under a single section would be helpful to clarify well information required to be reported under the Draft Regulations.

**§ 352.6 (c)(2);** Map detail requirement is ambiguous and subjective. If a GSA provides information to DWR that requires clarification; request for clarification should be provided by DWR during review. This requirement appears to be superfluous and should be deleted.

**§ 352.6 (d)(2);** Elevation of datum used, either ground or reference point, should be sufficient for reporting elevation data on hydrographs. Requiring hydrographs to report both datums is not essential and may be confusing.

**§ 352.6 (f);** The requirement for Agencies to provide DWR electronic copies of all reports, documents and materials used in developing the Plan would add unnecessary scanning/reproduction costs for GSP development. The District recommends that DWR consider changing this requirement by requiring GSAs to maintain on-file and available for public review copies of all supporting documents used in the development of their GSP.

**D. Comments on Article 4 (Procedures)**

**§ 353.4 Reporting Provisions.** Remove “Certification Under Penalty of Law” provision, which is excessive and unnecessary for GSA decision-makers who have professional certifications and/or are public agency officials.

**§ 353.8 (b) Public Comment.** The public comment period should have a maximum comment period otherwise plans could receive continual comments at any time for any reason, whether warranted or not.

**E. Comments on Article 5 (Plan Contents)**

**§ 354.6 Agency Information.** Subsection (d) requires a GSA to submit a copy of the legal authority under which it has the authority to implement the Plan. This requirement is both redundant and misplaced. Under SGMA, only a GSA is authorized to develop and implement a Plan. (Wat. Code § 10727(a).) Prior to becoming a GSA, a local agency (or multiple local agencies) submit their intent to DWR, which undertakes a completeness review of the documentation submitted to ensure that it is compliant with the requirements of SGMA. (Wat. Code § 10723.8.) Therefore, DWR already has all of the requested information.

Subsection (e) does not seem like a reasonable request, so we suggest that the GSA and Plan financial information requirements be deleted since they are excessive and could be extremely complex for multi-party GSAs, and which are not actionable in any case since SGMA does not provide for a determination by any third party concerning the financial capabilities of GSAs. A GSA is required to show, based on Measurable Objectives and interim milestones, what it is achieving. Each GSA should have the discretion to determine how to comply with the requirement of SGMA and fund those efforts.

**§ 354.8 Description of Plan Area.** Subsection (a)(5) requires that Plans include “[t]he density of wells per square mile . . . showing the distribution of all . . . water supply wells in the basin, including de minimis extractors.” Although requiring the registration of groundwater extraction facilities is a power provided to a GSA under SGMA, this authority is not triggered until after the GSA adopts and submits a Plan to DWR. (Wat. Code § 10725(a).) We recommend, therefore, that this requirement be revised to be consistent with SGMA.

Subsection (b) requires that Plans include “[a] written description of the Plan area, including a summary of jurisdictional areas.” “Jurisdictional areas” is not included as a defined term in the Article 2 (Definitions), nor is it clear what type of description is required. For example, do “jurisdictional areas” refer to the jurisdictional area of a GSA? Or was DWR intending to write “Management Areas,” which is defined in Article 2? We recommend that this ambiguity is clarified.

Subsection (d) is problematic as to predictions of how other programs and agencies could affect sustainability, the results seem highly speculative. The same is true for addressing potential effects.

Subsection (g) is inconsistent with SGMA and should be deleted. Water Code section 10726.8(f) provides that SGMA “shall not be interpreted as superseding the land use authority of cities and counties . . . overlying the basin.” It is inappropriate to require a GSA to interpret and speculate about land use issues that are not within its jurisdiction. It is also inappropriate to require a GSA to include these descriptions and summaries in its Plan, which DWR then evaluates for approval, when the GSA has no authority to impact these land use decisions.

**§ 354.14. Hydrogeologic Conceptual Model.** This may require a lot of detail that may not be available in all basins. There should simply be a requirement to depict geologic conditions that comprise a hydrogeologic conceptual model for the basin.

**§ 354.18 Water Budget.** Subsection (b) requires that Plans include detailed water budget information. Although requiring groundwater extraction facilities to use water meters (and report their water use to the GSA) is a power provided to a GSA under SGMA, this authority is not triggered until after the GSA adopts and submits a Plan to DWR. (Wat. Code § 10725.8(a),(c).) Developing a water budget, therefore, may be better developed through implementation of a Plan. We recommend that this requirement be revised to be consistent with SGMA.

Subsection (b)(3)(A)- Requires use of 50-years of historical precipitation, evapotranspiration and stream flow information for developing the water budget. The 50-year requirement appears to be arbitrary, as water balances based on data collected over smaller time frames may be adequate and of better quality for many groundwater basins. For instance, the District has retained the UNR-Desert Research Institute (DRI) to develop hydrologic models for implementation of its Groundwater Management Plan. Using the best available science and information, DRI has calculated a water budget for the TVS Basin using a coupled Groundwater- Surface Water Model of the hydrologic system. Using best available data, the water budget for the steady-state model was calculated annually for the water years 1983 to 2014. Prescribing a 50-year use of historical data, would put this significant modeling work at risk and at a minimum create additional costs for the District to comply with a requirement that would not improve or benefit its existing model.

Subsection (b)(3)(C) is inconsistent with section 10733.2(b)(2) of the Water Code and should be revised accordingly. Water Code section 10733.2(b)(2) provides that “[t]he baseline for measuring unreliability and reductions [in surface water] shall include the historic average reliability and deliveries.” Subsection (b)(3)(C), on the other hand, requires the analysis of surface water and supply to include future water supply uncertainty and reliability. We recommend that this section is revised to be consistent with the requirements of SGMA.

Subsection (d)(1) requires that the water budget include “[h]istorical water budget information for mean annual temperature, mean annual precipitation, water type year, and central valley water use.” It is unclear what is meant by “central valley water use.” We request that DWR clarify this requirement. Requirements for consideration of central valley land use, sea level rise and water year type are either not applicable or superfluous to calculating a water budget for the TVS Basin and likely many other inland groundwater basins throughout California.

Subsection (g) requires GSAs to defend the use of data in lieu of or in addition to the data provided by DWR. However, GSAs should not have to defend the “sufficiency” of their data (relative to DWR or other models) when there are many acknowledgments of uncertainties associated with models and differences between the results from such models.

**§ 354.22 Introduction to Sustainable Management Criteria.** The first paragraph on this section recites the definition of “critical parameter.” Consistent with our comment above, we recommend that this definition is revised to include the “significant and unreasonable” standard in order to be consistent with section 10721(w) of the Water Code. Further, the introduction is not consistent with the SGMA in terms of sustainability and conditions in the management area related to the basin or related to subareas/subzones in the basin.

**§ 354.28 Minimum Thresholds.**

**General Comment:** Section 1027.2 of the Water Code (Required Plan Elements) require Measurable Objectives and Interim Milestones, but does not include a requirement for “Minimum Thresholds”. Section 354.28 should be removed from the Draft Regulations for consistency with the SGMA. DWR could include guidance for developing “Minimum Thresholds” as part of Best Management Practices (BMPs) to sustainably manage over drafted groundwater basins; but should not be used as a regulatory requirement for all managed basins.

Subsection (b)(1) provides that the “rate of elevation of decline” for the minimum threshold for chronic lowering of groundwater levels shall be “based on historical trends.” Under SGMA, however, a “[P]lan may, but is not required to, address undesirable results that occurred before, and have not been corrected by, January 1, 2015.” (Wat. Code § 10727.2(b)(4).) In order to be consistent with SGMA, therefore, the

calculation for this minimum threshold should only be based on trends dating back to January 1, 2015. We recommend revising this subsection accordingly.

Subsection (b)(1)(C) provides that “[m]inimum thresholds for chronic lowering of groundwater levels shall be supported by [among other things] [m]anagement of extractions and recharge.” Under SGMA, however, a GSA is not granted the authority to regulate “extractions from individual groundwater wells” until after adoption of a Plan and its submission to DWR. (Wat. Code §§ 10725(a), 10726.4(a)(2).) We recommend that this subsection be revised accordingly.

Subsection (b)(2) should be revised to be consistent with the definition of “undesirable result” in SGMA, which identifies an undesirable result as the “[s]ignificant and unreasonable reduction of groundwater storage.” (Wat. Code § 10721(x)(2).) We recommend that subsection (b)(2) of the Draft Regulations be revised to include the language “significant and unreasonable” in order to be consistent with the Water Code.

Subsection (b)(2)(A) provides that the “minimum thresholds for reduction of groundwater storage shall be supported by . . . [t]he annual sustainable yield of the basin, calculated based on historical trends. Consistent with our comment on subsection (b)(2), this requirement should be revised to be consistent with SGMA, which only requires a “[P]lan . . . to address undesirable results that occurred before, and have not been corrected by, January 1, 2015.” (Wat. Code § 10727.2(b)(4).)

Subsection (b)(5) should be revised to be consistent with the definition of “undesirable result” in SGMA, which identifies an undesirable result as the “[s]ignificant and unreasonable land subsidence.” (Wat. Code § 10721(x)(5).) We recommend that subsection (b)(5) of the Draft Regulations be revised to include the language “significant and unreasonable” in order to be consistent with the Water Code.

Subsection (b) (6) should be revised to enable the use of changes in base flow from stream hydrographs as a means for defining a minimum threshold for depletions of interconnected surface waters caused by groundwater pumping. This would alleviate the need of having to use complex hydrologic models to provide quantitative estimates of a seasonally fluctuating volume that may be difficult to use for its intended use.

**§ 354.30. Measurable Objectives.** Subsection (b) could use clarifying or replacing Operational flexibility since it is much more involved than operations under adverse conditions. Further, “Overdraft” is not a term for use during a period of drought since it is much more involved.

**§ 354.34 Monitoring Network.** The requirements under the Draft Regulations for Monitoring Networks are extremely onerous and unnecessarily create barriers for collection of the basic hydrologic data needed to sustainably manage a groundwater basin. For example the Draft Regulations require that the density of monitoring sites and frequency of measurements be based on projected groundwater use; ability of

adjacent basins to meet sustainability goals; and an understanding of aquifer response. The District's monitoring network has evolved over time using former water supply wells and test wells converted to observation wells, and sentinel wells that were originally installed for various project objectives. DWR has approved use of these former wells and the District believes that these wells provide sufficient data to monitor groundwater elevation changes across the groundwater basin. Having to satisfy these new requirements creates an unnecessary barrier that may hinder leveraging wells installed for multiple purposes that may also be adequate for groundwater elevation monitoring. We suggest making the monitoring topic more generic. Wells are a typical monitoring tool and are located at sites, however monitoring is not limited to wells and monitoring include additional aspects such as the timing and frequency of monitoring, and changing the monitoring.

Subsection (a)(5) states that "monitoring network objectives shall be implemented to [among other things] [i]dentify impacts to the ability of adjacent basins to meet the sustainability goal." Not all basins, however, will have the same sustainability goal. Therefore, it is not feasible to expect that managers in one basin will be familiar with (especially familiar enough to monitor for) the sustainability goals in all adjacent basins. We recommend deleting this requirement. This same comment is applicable to the requirement set forth in subsection (d)(3) of this same section, section 354.38(d)(4), section 355.4(b)(6), and section 355.6(b)(5)-(b)(6).

Subsection (e)(2) A GSA should not have to explain why BMPs are not necessarily consistent at each and every monitoring site since those sites in a basin could entail data collected and provided by others. A GSA's understanding of basin conditions will evolve over time with improved datasets and will over time develop core networks that serve the purposes of the SGMA.

Subsection (h)(1)(A) is impractical and unreasonable to suggest that every GSA would need to meet this standard with dedicated monitoring wells by the next 5-year assessment or assessments afterwards. We suggest that the design of monitoring, including wells, be determined by each GSA to meet the intent of the Draft Regulations.

Subsection (h)(4) is unclear whether this calls for the GSA to establish and maintain its own network for water quality monitoring or if the GSA can collaborate/coordinate with other programs. While more certainty regarding well construction, aquifer-specific monitoring, and even better well location information are all desired, these data are generally very difficult to obtain for every well.

**§ 354.38. Assessment and Improvement of Monitoring Network.** In this section, the phrase "Data gaps" should be clarified as it may have many meanings. Further, rather than referring to "any" data gaps, the language should be changed to "significant" data gaps.

**§ 354.44. Projects and Management Actions.** In subsection (b)(1), contingency actions should be described generally as most will need to be developed to address specifics of a particular situation which may be unknown now; otherwise, a GSA could spend significant unnecessary time and effort to address situations that may never develop. Further, redundant “contingency actions and projects” may not be needed in all basins, could be highly speculative, and could undermine support for GSPs by diverting attention the primary focus of a GSP. This should become a permissive element

**F. Comments on Article 6 (Evaluation and Assessment)**

**§ 355.2 Department Review of Initial Adopted Plan.** Subsection (e) notes that DWR has two years to evaluate a Plan and issue a written assessment. Although this timeline is consistent with SGMA, it raises the question of what a GSA is supposed to do in the interim period between Plan adoption and final approval by DWR. Under SGMA, a GSA receives additional powers upon Plan adoption, however, it is unclear whether the GSA can start implementing the Plan prior to DWR approval. (Wat. Code § 10725(a).) Not allowing a GSA to begin to implement its Plan until DWR approval could also jeopardize the ability of the GSA to meet its 20-year sustainability goal, which is triggered by Plan adoption. (Water Code § 10727.2(b)(1).)

**§ 355.4 Criteria for Plan Evaluation.** The requirement in subsection (a) that “[a]n initial Plan will be deemed inadequate unless it satisfies all of the following conditions,” does not include the substantial compliance standard set forth earlier in the same section. In order to be consistent with earlier statements, we recommend that DWR include the substantial compliance standard applicable to Plan evaluation in this subsection.

Subsection (a)(3) states that an “initial Plan will be deemed inadequate unless . . . [t]he Plan covers the entire basin.” This is inconsistent with SGMA and should be revised to recognize SGMA’s acceptance of multiple Plans covering a single basin. (Wat. Code § 10727(b)(3).)

Subsection (b)(6) appears to be beyond the responsibility of the GSA as the GSA would need to have intimate knowledge of conditions and plans in the adjacent basin/GSA. This assessment is appropriate for DWR to make as it can evaluate all the plans and associated basins.

Subsection (c)(1) requirements appear to be beyond the scope of the SGMA’s sustainable water conditions to avoid the defined undesirable results.

**§ 355.10 Resolution of Conflicts by Department.** This section sets forth vague statements regarding how DWR shall address both interbasin and intrabasin disputes between GSAs. We recommend that DWR delete this section from the Draft Regulations, as it is outside of their jurisdiction and outside of the authority granted to them pursuant to SGMA. Additionally, intrabasin disputes should be addressed in a mandatory coordination agreement between parties, while interbasin disputes properly

fall within the jurisdiction of the courts unless there is a voluntary coordination agreement.

**G. Comments on Article 7 (Reports, Assessments, and Amendments)**

**§ 356.4 Annual Report.** Subsection (b) (5) requires change in groundwater storage maps for each principal aquifer and a graph depicting cumulative change in groundwater storage for the basin. A graph showing annual change in groundwater storage should be adequate to satisfy this requirement. Areas of over pumping within a groundwater basin can be discerned from groundwater elevation contour maps, as required under Subsection (b) (1). Maps showing changes in groundwater storage are redundant and should not be required.

**§ 356.6 Department Review of Annual Reports.** Subsection (b) authorizes DWR to treat a Plan as conditionally adequate if a GSA fails to comply with the detailed requirements for preparing and submitting an annual report. Such a result is not authorized under SGMA and places an overly heavy burden on GSAs. The Draft Regulations already specify that DWR has authority to evaluate a Plan at least every five years, as well as when it is amended. (23 CCR 355.6(a), 356.10.) Allowing DWR to determine that the Plan is inadequate on a yearly basis undermines a GSA's incentive to invest public money, time, and human resources in implementation of the Plan. We recommend that this authorization is deleted.

**H. Comments on Article 8 (Coordination Agreements)**

**§ 357.2 Interbasin Agreements.** The use of "shall" in (b)(4) is inconsistent with the earlier statement in the first paragraph of the section that interbasin agreements are voluntary and identifying information that participating GSAs may include. We recommend that this inconsistency be revised to reflect the voluntary nature of interbasin agreements. Further, the detailed list of the terms for an interbasin agreement should be deleted since it is a voluntary agreement. The terms should be determined by the GSAs entering into such an agreement.

**§ 357.4 Intrabasin Coordination.** Subsections (b),(c) and (d) propose to require identification of a Submitting Agency in basins where there are several GSAs. Beyond serving as the "sole point of contact" for DWR, this proposed entity is tasked with synthesizing and interpreting all basin plans and resolving all disputes among GSAs within the basin. This concept is not authorized or envisioned by SGMA. Each GSA must be able to independently manage and communicate with DWR. SGMA allows more than one groundwater sustainability agency to manage groundwater in each.

Subsection (j) provides that "[i]nteragency agreements shall be reviewed as part of the five-year assessment, revised as necessary, dated, and signed by all parties." Continual

review of a final, executed agreement undermines parties' expectations and could greatly burden a GSA in terms of repeated negotiations on the same agreement. We recommend deleting this provision. If DWR identifies a deficiency in a Plan, the parties to that Plan should be trusted to have the ability to address how that deficiency is resolved, whether through renegotiation or amendment of the coordination agreement.

**I. Comments on Article 9 (Alternatives and Adjudicated Areas)**

**§ 358.4 Alternatives to Groundwater Sustainability Plans.** Subsection (a) of section 358.4 states that “[a] local agency that submits an alternative shall demonstrate that the alternative applies to the entire basin.” This statement is confusing and requires clarification. For example, is the requirement that, in order to be eligible, the alternative must cover the entire basin as defined by the basin’s DWR Bulletin 118 boundaries? Or is the requirement that the alternative apply to the entire portion of the basin for which it is being submitted? Based on the language and requirement in subsection (f), we assume that DWR takes the latter interpretation. (See also 23 CCR 354.8(a)(3).) We agree with this latter interpretation and request that this ambiguity be clarified.

Subsection (c)(3) is inconsistent with section 10733.6 of the Water Code, which sets forth eligible alternatives. The Draft Regulations state that “[a]n 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.” (23 CCR 358.4(c)(3).) Section 10733.6(b)(3), however, only requires that the alternative include an “analysis of basin conditions that demonstrates that the basin has operated within its sustainable yield over a period of at least 10 years.” DWR appears to be requesting substantially more information than is authorized by the legislature under SGMA. We recommend that this section be revised to be consistent with SGMA.

Subsection (e) is unclear and should be revised to clarify the type of information that DWR is requesting with respect to an alternative.

**§ 358.6 Department Evaluation of Plan Alternatives.** This provision states that DWR “shall evaluate an alternative to a Plan consistent with Article 6” of the Draft Regulations. Article 6 sets forth very detailed requirements regarding DWR’s evaluation and assessment of Plans, many of which are not applicable or appropriate for the evaluation of alternatives. We recommend that this provision be revised to clarify that Article 6 shall only govern DWR’s review of alternatives to the extent that its required procedures and standards are applicable to the alternatives described in this section.

We appreciate your consideration of our comments and hope they lead to improved regulations. Please feel free to contact us if you have any questions regarding our comments or if you would like to discuss them in further detail.

Sincerely,



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