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

**Subject: Public Comment on the Sustainable Groundwater Management Act Draft
Emergency Regulations for Groundwater Sustainability Plans and Alternatives**

Dear Ms. Bisnett:

Semitropic Water Storage District ("Semitropic") appreciates the opportunity to submit the following comments to the California Department of Water Resources ("DWR") on the Draft Emergency Regulations for Groundwater Sustainability Plans and Alternatives ("Draft Regulations"), released for comment on February 18, 2016.

Semitropic is a member of the Kern Groundwater Authority (KGA) and the Association of California Water Agencies (ACWA) and we wish to emphasize our support for the comments prepared by the *KGA and ACWA*.

Semitropic further offers these additional comments and recommendations that it believes will improve the Draft Regulations to better reflect the goals and purposes of the Sustainable Groundwater Management Act ("SGMA") and more effectively facilitate the local development of Groundwater Sustainability Plans ("Plans" or "GSPs") with the ultimate goal of sustainably managed groundwater basins throughout the state.

GENERAL COMMENTS

In enacting SGMA in 2014, the Legislature declared that groundwater resources are "most effectively" managed at the local or regional level. Semitropic commends DWR's commitment to preserving the role of local agencies as the primary managers of California's groundwater basins under SGMA. The unique geographic, geologic, and hydrologic conditions of each groundwater basin require that local and regional agencies have a variety of options at their disposal to best manage their groundwater resources. While the Draft Regulations rightfully acknowledge that local flexibility is paramount to the achievement of statewide basin sustainability goals, certain sections should more clearly express that statutory directive and clarify that DWR's evaluation of GSPs will ultimately be guided by the overarching goal to

achieve sustainability. To accomplish this, Semitropic recommends that DWR acknowledge in the General Principles of the Draft Regulations that the Draft Regulations will defer to the judgment and expertise of local Groundwater Sustainability Agencies (“GSAs”) regarding appropriate basin criteria. Where a GSA has failed to demonstrate good faith efforts, only then would more stringent requirements be appropriate.

In certain areas, the Draft Regulations create standards that go beyond what SGMA requires. DWR should clearly identify the purpose and need for any element of GSP content that exceeds a strict reading of the statute. For instance, requirements for “contingency projects and actions” proposed in the Draft Regulations are unnecessary and start with the presumption that a GSP will fail. Under the framework SGMA provides, GSAs must be allowed to modify and adapt projects based on changing local conditions and needs.

SPECIFIC COMMENTS

§ 350.2 GENERAL PRINCIPLES

Section 350.2 describes DWR’s guiding principles by which it proposes to evaluate GSPs under SGMA. These general principles establish the scope and purpose of the regulations, and therefore should explicitly highlight the importance of local management and flexibility.

Recommendation: Section 350.2(c) should be amended to read:

The Department shall evaluate the adequacy of all Plans, Plan amendments, and all reports and periodic evaluations based on a standard of substantial compliance with the Act and this subchapter, provided that the goals of the Act are satisfied. Notwithstanding the provisions of this subchapter, the Department may waive any specific requirement under this subchapter where it determines that such waiver is consistent with the intent of the Act. An agency may request a waiver, or the Department may waive any specific requirement based on its own initiative.

Best management practices (“BMPs”) are referred to throughout the Draft Regulations in a manner that suggests BMPs will have the same compliance requirements as the regulations themselves. It would be helpful if DWR more clearly distinguished BMPs, which are still under development, from the minimum standards established by the regulations. While DWR is free to incorporate BMPs in subsequent versions of the regulations, the BMPs should not be binding until that point. (*See* Wat. Code, § 10733.2(b)(1).)

Recommendation: Section 350.2(d)(2) should be amended to read:

The specific actions and projects that will bring the Plan into compliance within minimum standards ~~and best management practices~~ on a reasonable schedule.

§ 350.4 LOCAL MANAGEMENT OF BASINS AND PLANS

Recommendation: Add Section 350.4 that will articulate the primacy of local management of groundwater basins as envisioned by SGMA:

(a) In enacting the Sustainable Groundwater Management Act, the Legislature stated its intent “[t]o 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.”

(b) Consistent with the Legislature’s intent, an Agency may vary or omit from its Plan or related reports any provisions in Articles 3, 5 or 7 if the Agency determines, based on findings supported by substantial evidence, that the inclusion of the provision or provisions would not materially contribute to the Agency’s ability to manage the basin to achieve the sustainability goal and that the Plan is in compliance with the Act.

(c) Consistent with the Legislature’s intent, the Agencies that are parties to a coordination agreement may vary or omit from their agreement or related reports any provisions in Article 8 of these regulations if all of the Agencies determine, based on findings supported by substantial evidence, that the inclusion of the provision or provisions would not materially contribute to the Agencies’ ability to manage the basin to achieve the sustainability goal and the Plan is in compliance with the Act.

(d) The Department may review the determinations of the Agency or Agencies under subdivision (b) or (c) as part of its review of the Plan or Plans under Section 355.2.

§ 351. DEFINITIONS

The general definitions contained in Article 2 of the Draft Regulations should be revised to more accurately reflect the language in SGMA.

Recommendation: Provide clarification for the “baseline” definition to better reflect the assurances of section 10727.2 of SGMA, which grants GSAs discretion as to whether they set measurable objectives and the timeframes for achieving any objectives for undesirable results that occurred before, and have not been corrected by, January 1, 2015. Amend Section 351(e) to read:

“Baseline” or “baseline conditions” refer to historical information, including information about the sustainability condition metrics, as defined by the Agency based on substantial evidence in the administrative record and used to project future conditions for hydrology, water demand, and availability of surface water and to evaluate potential sustainable management practices of a basin.

Recommendation: Replace the term “Critical parameter” with “Sustainability condition” throughout the Draft Regulations and provide the following definition in Section 351(j):

“Sustainability condition” refers to those general surface water, groundwater, water quality, land elevation, or seawater intrusion conditions in a basin that may potentially lead to undesirable results as defined in Water Code section 10721(x). The Sustainability Conditions are to be measured using specific metrics chosen by the Agency in its discretion, which shall not be subject to oversight by DWR provided that the metrics are supported by substantial evidence.

§ 352.6. DATA AND REPORTING STANDARDS

Many of the reporting requirements under this section appear to be overbroad and either unavailable or unnecessary. Some of the requirements, as currently drafted, would require the creation of a new industry to address various data deficiencies. The Draft Regulations state that groundwater and surface water models shall be developed from public domain open-source software. However, this does not necessarily promote use of the best scientific practices in the development of GSPs and unjustly burdens communities that have already invested resources into proprietary models.

Recommendation: Revise Section 352.6(e) to include the use of acceptable proprietary software as follows:

(e) Groundwater and surface water models developed or utilized as part or in support of a Plan shall ~~be consist of public domain open source software that~~ meet the following requirements . . .

§ 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. Therefore, the commenter suggests that 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, Semitropic suggests the following revisions to the regulations:

Recommendation: Include 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.”

§ 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 plan area shall be represented graphically by at least two one or more 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 (IWFM) for use by Agencies in developing the water budget. Each Agency may choose to use a different flow model or an alternative methodology, tool or method to develop the water budget.

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

§ 354.16. BASIN CONDITIONS

The Draft Regulations are required to identify appropriate methodologies and assumptions for baseline conditions. (Wat. Code, § 10733.2(b)(2).) However, SGMA also affords GSAs the discretion to determine whether to set measurable objectives for undesirable results that occurred before 2015. (Wat. Code, § 10727.2(b)(4).)

Recommendation: The flexibility of SGMA should be incorporated into the regulations regarding identification of the appropriate baseline as follows:

§ 354.16: The Plan shall characterize current and historical groundwater conditions in the basin. The Plan shall rely on the best available data to characterize historical conditions prior to January 1, 2015, and may include basin conditions believed to represent sustainable basin conditions prior to 2015. The description of historical basin conditions

shall specifically include conditions that existed as of January 1, 2015 or basin conditions believed to represent sustainable basin conditions prior to 2015, and a comparison with present conditions. . . .

§ 354.28. MINIMUM THRESHOLDS & § 354.30 MEASURABLE OBJECTIVES

To establish a representative minimum threshold for groundwater elevation, the Draft Regulations state that a GSP must show by “clear and convincing evidence” that the representative minimum threshold is a reasonable and effective surrogate for multiple individual minimum thresholds. This runs counter to the “substantial evidence” standard of proof that most commonly applies in administrative proceedings. The clear and convincing standard is typically reserved for instances such as professional license revocation hearings, which require a higher burden of proof. (*See, e.g., Ettinger v. Board of Medical Quality Assurance* (1982) 135 Cal.App.3d 853, 856.)

Recommendation: Amend Section 354.28 and Section 354.30 to change the standard of proof from “clear and convincing evidence” to “substantial evidence.”

§ 354.28 (d): An Agency, after consultation with the Department, may establish a representative minimum threshold for groundwater elevation to serve as the minimum threshold value for multiple sustainability conditions, as appropriate. The Agency shall demonstrate that the representative minimum threshold is a reasonable and effective surrogate for multiple individual minimum thresholds based on substantial evidence in the administrative record before the Agency ~~and is supported by clear and convincing evidence in the Plan.~~

§ 354.28 (e): If the Agency determines that minimum thresholds are not required for seawater intrusion, land subsidence, depletions of interconnected surface water, or water quality, the Agency shall support this determination by relying upon substantial evidence in the administrative record to support a low potential for these types of undesirable results ~~with clear and convincing evidence.~~

§ 354.30 (d): Each Agency may use representative minimum thresholds for groundwater levels ~~developed pursuant to Section 354.26(d)~~, as the basis for defining a representative measurable objective that represents all critical parameters sustainability conditions. The Agency must demonstrate that the representative measurable objective for groundwater elevation is a reasonable and effective surrogate by means of substantial evidence in the administrative record for multiple individual measurable objectives supported by clear and convincing evidence in the Plan.

ARTICLE 6. EVALUATION AND ASSESSMENT

In further recognition of the flexibility afforded to local agencies in achieving the sustainability goal, the regulations regarding evaluation of GSPs should incorporate general language

regarding compliance with the requirements of the regulations. In addition, the regulations should reflect DWR's limited authority to evaluate plans and not to approve or disapprove plans.

Recommendation: Revise Section 355 as follows:

This Article describes the methodology and criteria for the evaluation and assessment of a Plan, which shall also be applied, as appropriate, to the periodic evaluation and assessment of Plans undertaken by the Agency or by the Department, as well as to any amendments to a Plan previously ~~approved~~ found by the Department to be adequate.

Recommendation: Revise Section 355.4 as follows:

The Department shall evaluate a Plan to determine whether the Plan has the overall effect of achieving the sustainability goal for the basin, complies with the Act, and is in substantial compliance with this Subchapter. Substantial compliance means that the ~~Agency has attempted to comply with these regulations in good faith,~~ Plan satisfies the goals of the Act and the Agency has determined that the Plan and the supporting information is sufficiently detailed and the analyses sufficiently thorough and reasonable, in the judgment of the Department, to permit evaluation of the Plan, and the Department determines that any discrepancy would not materially affect the ability of the Agency to achieve the sustainability goal or of the Department to evaluate the likelihood of the Plan to attain that goal. Notwithstanding the provisions of this subchapter, the Department may waive any specific requirement under this subchapter of its own volition or on the findings of an Agency.

ARTICLE 8. COORDINATION AGREEMENTS

SGMA specifically allows for the implementation of multiple GSPs by multiple GSAs in a single basin so long as those plans and agencies are coordinated by a single coordination agreement for the entire basin. (Wat. Code, § 10727(b)(3).) The Draft Regulations propose requirements that would eliminate this option for local agencies where multiple GSAs are each developing coordinated plans.

Recommendation: Revising the following sections will allow for local flexibility and still achieve the goal of coordinated management within each basin:

§ 350.2(a): The Plan individually or as a set of coordinated Plans must achieve the sustainability goal for the entire basin within 20 years of Plan implementation without adversely affecting the ability of an adjacent basin to implement their Plan or achieve their sustainability goal.

§ 351(i): "~~Coordinating~~Submitting agency" 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.

§ 351(u): "Plan" refers to a groundwater sustainability plan as defined by in the Act. As appropriate in these regulations, the term "Plan" also refers to a series of plans adopted

by Agencies pursuant to a coordination agreement. The status of a Plan may change as follows ...

§ 354.20: Each Agency may define one or more management areas within a basin if local conditions for one or more critical parameters differ significantly from those of the basin at large, and if the Agency has determined that subdivision into management areas will facilitate implementation of the Plan. Management areas may have different minimum thresholds and be operated to different measurable objectives than the basin at large, provided that the goal of the Plan or coordination agreement pursuant to Water Code section 10727.6 is to achieve sustainable management for the entire basin by the target date and that operation to different standards within a management area does not produce undesirable results elsewhere.

§ 355.4(a)(3): An initial Plan will be deemed inadequate unless it satisfies all of the following conditions . . . (3) The Plan covers the entire basin or is subject to a coordination agreement pursuant to Water Code section 10727.6 that covers the entire basin.

§ 355.10.(a): Disputes within a basin shall be the responsibility of the ~~Coordinating~~Submitting agency or other entity or entities responsible for managing Plans and alternatives within that basin.

§ 357.4(b): Intrabasin coordination agreements ~~shall~~may establish or identify a Submitting agency that ~~shall be~~ may serve as the single point of contact with the Department.

~~§ 357.4(e): Each Agency shall submit to the Submitting Agency all Plans, Plan amendments, supporting information, all monitoring data and other pertinent information, along with annual reports and periodic evaluations.~~

§ 357.4(d)(c): At the option of the participating agencies, ~~the~~ Submitting Agency shall compile and rectify data and interpretations regarding basin conditions provided by the Agencies and produce a single report synthesizing and summarizing that information into a coherent and credible account of basin conditions. ~~Reports produced by the Submitting Agency~~ Any Plan subject to a coordination agreement pursuant to Water Code section 10727.6, including any amendment, annual report or five-year assessment for such a Plan, shall include the following:

(1) An explanation of how the Plans implemented together satisfy the requirements of the Act and are in substantial compliance with this Subchapter.

~~(2) — An explanation of how the Plans have been integrated using the same data and methodologies to provide useful information regarding the following:~~

~~(A) — Hydrogeologic conceptual models, as described in Section 354.12.~~

~~(B) — State of the basin, as described in Section 354.14.~~

~~(C) — Water budgets, as described in Section 354.16.~~

~~(D) — Undesirable results, minimum thresholds, measurable objectives, as described in Subarticle 3 of Article 5.~~

~~(E) — Monitoring networks, and monitoring objectives, as described in Subarticle 4 of Article 5.~~

~~(F) — Projects and management actions, as described in Subarticle 5 of Article 5.~~

~~§ 357.4(d)(4): Reports produced by the Submitting Agency shall accompany the initial Plan, any amendment to the Plan, annual reports, and the five-year assessment by each Agency within the basin.~~

§ 357.4(e): Intrabasin coordination agreements shall describe the responsibilities of each Agency for meeting the terms of the agreement, the procedures for the timely exchange of information between Agencies and with the Submitting Agency, if applicable, and procedures for resolving conflicts between Agencies.

§ 357.4(g): The intrabasin coordination agreement shall be submitted to the Department together with the Plans for the basin and, ~~if approved~~, shall become part of the Plan for each participating Agency.

§ 357.4 (h): The Department shall evaluate the coordination agreement for compliance with the procedural and technical requirements of this section, ~~to assure that the Agreement is binding on all parties, and that provisions of the Agreement are sufficient to address any disputes between or among Agencies that are party to the agreement.~~

ARTICLE 9. ALTERNATIVES AND ADJUDICATED AREAS

SGMA allows a local agency to submit alternatives that satisfy the objectives of the Act and DWR should not require that those alternatives be effective equivalents of GSPs.

Recommendation: In order to allow true alternatives to the development of a GSP as provided by SGMA, the Draft Regulations should be revised as follows:

§ 358.4(a): A local agency that submits an alternative shall demonstrate that the alternative applies to the entire basin or is subject to a coordination agreement pursuant to Water Code section 10727.6 and satisfies the eligibility requirements of Water Code section 10733.6 . . .

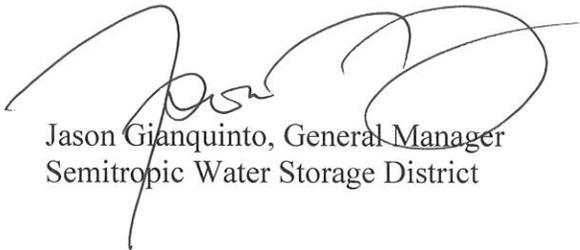
§ 358.4(c)(3): An alternative submitted pursuant to Water Code section 10733.6(b)(3) shall demonstrate that no undesirable results are present in the basin or have occurred between January 1, 2005, and January 1, 2015 for a period of at least 10 years prior to submittal of the alternative.

CONCLUSION

Semitropic recognizes that SGMA has tasked DWR with the important role to evaluate plans to determine whether a plan is likely to achieve the sustainability goal. DWR can effectively do so in a manner that also fulfills the legislative intent to manage groundwater “through the actions of local governmental agencies to the greatest extent feasible.” (Wat. Code, § 10720.1(i).) Semitropic provides these comments and recommendations in an effort to allow DWR to satisfy its obligations under SGMA in a manner that achieves statewide groundwater sustainability through local control and flexibility.

Thank you for your consideration.

Sincerely,



Jason Gianquinto, General Manager
Semitropic Water Storage District