

April 1, 2016

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

Submitted via Email to: SGMPS@water.ca.gov

RE: Public Comments on Draft Groundwater Management Act Draft Emergency Regulations for Groundwater Sustainability Plans and Alternatives

The Nature Conservancy (Conservancy) appreciates the opportunity to comment on the Department of Water Resources' (the Department) "Draft Emergency Regulations on Groundwater Sustainability Plans and Alternatives" (Draft Emergency Regulations) pursuant to the Sustainable Groundwater Management Act (SGMA). This letter is intended to supplement recommendations we made previously in our letters dated October 20, 2015, December 16, 2015, and December 31, 2015. We appreciate the extraordinary effort the Department has made to conduct an open and transparent process in developing the Draft Emergency Regulations.

The Conservancy is a global, nonprofit organization dedicated to conserving the lands and waters on which all life depends. We have over 100,000 California members and seek to achieve our mission through science-based planning and implementation of conservation strategies. For several years, our staff studied groundwater basins in different regions of the state and documented significant overdraft conditions in many areas. This research also demonstrated the adverse impact of groundwater overdraft on surface water streams and lakes and, in turn, our economy, environment, and communities. The Conservancy was part of a stakeholder group formed by the California Water Foundation in early 2014 to develop recommendations for groundwater reform and actively worked to shape and pass the landmark reforms contained in SGMA.

Our reason for engaging in this monumental legislation, and now on its implementation, is simple: California's freshwater biodiversity is highly imperiled. We have lost more than 90 percent of our native wetland and river habitats, leading to precipitous declines in native plants and the populations of animals that call these places home. These natural resources are intricately connected to California's economy providing direct benefits through industries such as fisheries, timber and hunting, as well as indirect benefits such as clean water supplies. Given the inextricable connection between groundwater and surface water, SGMA must be successful for a sustainable future in California.

California continues to use more water than nature provides. While surface water rights and access to surface water may be curtailed, the balance of water consumed is coming from groundwater – an estimated 60-70% of water consumed in California during the

drought was supplied by groundwater. As noted on the Department's website: "there are between one to two million water wells scattered throughout the State. On the average, 10,000 to 15,000 more wells are added to this total each year...."¹ The continued pace of groundwater depletion is not sustainable and ultimately threatens to undermine the feasibility of SGMA. For these reasons, this regulatory initiative takes on additional importance, and we greatly appreciate your due consideration of our comments.

We offer general comments here, followed by specific comments and suggestions:

- Definitions are the building blocks of the entire program. As such, it is important that they are clear and inclusive. We offer specific comments below.
- The draft regulations generally strike the right balance with being specific enough to guide planning, management and enforcement, while respecting local discretion, diversity and decision-making. While this balance is difficult to strike, the Conservancy recommends erring on the side of specificity because the lack of regulation is precisely the reason we have a groundwater crisis in many parts of the state. The costs of our mismanagement are huge, with land subsiding, water quality declining, water levels falling and rivers and wetlands disappearing.
- Planning for sustainable groundwater management is new and involves a large degree of uncertainty. The uncertainty will be exacerbated by a changing climate. Where uncertainty is high, management actions should be conservative, erring on the side of preserving our groundwater resources.

In addition, we offer the following Specific Comments on the Draft Emergency Regulations:

New or revised language is shown in **bold text.**

ARTICLE 1: INTRODUCTORY PROVISIONS

1. Section 350.2 General Principles – Add a precautionary principle.
 - a. Recommended text: Add Section 350.2**(i) "Plans shall increase the level of conservatism in proportion with the degree of uncertainty of information or data and the extent to which impacts could be irreversible."**
 - b. Rationale: As a new regulation, groundwater sustainability is being planned and implemented with varying levels of data and uncertainty. When data is lacking or there is a high degree of uncertainty, planning, objectives and actions should reflect this uncertainty by erring toward the conservative as cumulative groundwater impacts may take twenty years to materialize. As better data becomes available, planning and actions can be more specific. This principle will ensure that uncertainty does not lead to undesirable

¹ <http://water.ca.gov/groundwater/wells/index.cfm>

results and provides an incentive to improve the level of data and certainty.

2. Section 350.2 General Principles – Add a sustainability principle:
 - a. Recommended text: Add Section 350.2(j) **“To achieve sustainability, the Plan must consider cumulative impacts to current and future generations of beneficial uses and users.”**
 - b. Rationale: There should be long term focus for groundwater management. Sustainability should consider beneficial uses and users now and into the future.

ARTICLE 2: DEFINITIONS

3. Section 351 – Add a definition of “Beneficial use.”
 - a. Recommended text: **“Beneficial use” refers to all designations identified in Bulletin 118-Update 2003, Appendix E, or as amended.**
 - b. Rationale: The Draft Emergency Regulations contain a general reference to the definitions in SGMA and Bulletin 118 but Bulletin 118 contains multiple definitions of beneficial use. “Beneficial use” is a critical term that should be clearly defined so there is no confusion about what uses must be identified, monitored, managed for, and protected. A clear definition will ensure that all stakeholders have a common understanding of the term and that GSAs do not expend resources on misdirection resulting from the lack of a clear definition.
4. Section 351 - Add definition of “Groundwater dependent ecosystems”:
 - a. Recommended text: **“Groundwater dependent ecosystems” refers to ecological communities that require direct or indirect access to groundwater, or rely on the interconnection between groundwater and surface water, for some or all of their water requirements.**
 - b. Rationale: Groundwater dependent ecosystem is a scientific term for a system of natural species that are dependent on groundwater for their continued existence. Since the term is not part of the common vocabulary, it is important that a definition be provided so that so that Agencies can fulfill the intent of SGMA and avoid misdirected effort and expense. Water Code, Section 10727.4 requires Agencies to identify “groundwater dependent ecosystems” in their Plans and Section 354.16(f) of the Draft Emergency Regulations requires identification of groundwater dependent ecosystems. A definition will provide necessary guidance and clarity to Agencies so that they can avoid “undesirable results” in the implementation of their Plans.
5. Section 351(m) - Revise the definition of “Interconnected surface water”
 - a. Recommended text: “Interconnected surface water” refers to conditions where surface water and the underlying aquifer are hydraulically connected

by a continuous saturated zone and ~~the overlying surface water is not completely depleted where some portion of the surface water body interacts with the saturated zone.~~

- b. Rationale: California's summer-dry climate and periodic droughts result in some surface streams ceasing surface flow and/or going subsurface for some portion of many years. Also, some pooled surface water bodies may dry for a portion of many years. During these periods a continuous saturated zone may not always exist. Nonetheless, these streams and pooled surface water bodies often support important groundwater dependent ecosystems and provide surface water supplies that are commonly utilized during the early part of the water use season. The definition should be revised so that it does not exclude these seasonal surface water bodies because they support beneficial uses of the interconnected surface water.
6. Section 351(ah) - The Conservancy supports retaining the definition of "Water use sector" as drafted.
 - a. Recommendation: Do not change Section 351(ah).
 - b. Rationale: The recognition of "managed wetlands" and "native vegetation" as "land uses to which water is applied" is factually accurate and consistent with the sustainability provisions of SGMA, as well as the legal definition of a "beneficial use."

ARTICLE 3: TECHNICAL AND REPORTING STANDARDS

7. Section 352.4(a) – Revise the description of best management practices:
 - a. Recommended text: "Each Plan shall include best management practices adopted by the Agency for management actions, data collection and analysis, and other necessary elements of the Plan. The Agency may rely on best management practices developed by the Department or shall adopt their own best management practices. **An Agency shall justify the use of an alternative best management practice to demonstrate that it will achieve the same outcome as a best management practice developed by the Department.**
 - b. Rationale: Alternative best management practices should be held to the same performance standard as those developed by the Department and, therefore, alternative best management practices should be justified to demonstrate compliance with the intent of SGMA and the Emergency Regulations to the Department and stakeholders.
8. Section 352.6(e) – The Conservancy supports the requirement for the use of public domain open source software with one correction:
 - a. Recommended text: "Groundwater 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 that meets the following requirements:”

- b. Rationale: By requiring that hydrologic models “consist of public domain and open source software” and be underpinned by “publically available supporting documentation [Section 352.6(e)(1)], the Draft Emergency Regulations will foster stakeholder and public agency involvement in plan development and allow these same entities to better understand whether or not GSAs are implementing their plans in a manner that will lead to achieving the sustainability goal. The deletion of the word “be” is a minor correction.
9. Section 352.8 – Revise to specify an “electronic” data management system and to require public access.
 - a. Recommended text: “Each Agency shall develop and implement a coordinated **electronic** data management system that is capable of storing, maintaining, and reporting all relevant information related to the development or implementation of the Plan. **The data management system shall provide for public access to information.**”
 - b. Rationale: The Draft Regulations should explicitly require an “electronic” data management system to foster transparency and accessibility. Furthermore, public access to data is critical for transparency, buy-in, and success.

ARTICLE 4: PROCEDURES

10. Section 353.8(c)(3) – Revise to clarify that the section should not preclude comments from stakeholders that lack similar scientific and technical resources.
 - a. Recommended text: “The level of detail provided by public comment need not be as comprehensive as that contained in the proposed or adopted Plan, but should rely on similar scientific and technical information, including the reliance upon the best available information and best available science. **This section should not, however, be interpreted to preclude the consideration of comments from stakeholders that do may not have access to the same scientific and technical resources utilized in development of the Plan.**”
 - b. Rationale: The Draft Emergency Regulations implies too high a bar for the level of technical detail required of public comments. All stakeholders should be able to participate in the development of a Plan regardless of their level of technical expertise. It could be interpreted to preclude consideration of public comments from sources that lack the same technical resources as those that supported the development of the Plan.

ARTICLE 5: PLAN CONTENTS

SUBARTICLE 1: ADMINISTRATIVE INFORMATION

11. Section 354.8(a)(4) – The Conservancy supports the requirement to designate existing land uses and each water use sector and water use type.
 - a. Recommendation: Do not change Section 354.8(a)(4).
 - b. Rationale: The Conservancy supports the description of the plan area including a full disclosure of land uses, water use sectors and water source types that must be considered as part of the development of the Plan. This information will be critical to the development of an adequate water budget for the basin and the evaluation of potential undesirable results.
12. Section 354.8(a) – Add the mapping of surface water features.
 - a. Recommended text: **“Surface water features including but not limited to surface streams, including ephemeral streams, springs, seeps, lakes and seasonal wetlands.”**
 - b. Rationale: The identification of surface water features is an important information component of the Description of the Plan Area because these features must be evaluated for the existence of interconnected surface water and potential impacts on groundwater dependent ecosystems and other beneficial uses as part of the development of the Plan.

SUBARTICLE 2: BASIN SETTING

13. Section 354.14(c) – Add subsection to require the inclusion of interconnected surface waters and groundwater dependent ecosystems within the basin.
 - a. Recommended text: **“(7) Interconnected surface waters and groundwater dependent ecosystems within the basin. Each Agency shall utilize data available from the Department, as specified in Section 353.2, or the best available information.”**
 - b. Public trust values and environmental uses of groundwater must be identified in the conceptual model in order for the model to be accurate and for an Agency to avoid “undesirable results.”
14. Section 354.16(f) – The Conservancy supports the requirement to include interconnected surface waters and groundwater dependent ecosystems in the description of Basin Conditions.
 - a. Recommendation: Split into subsections (f) and (g) and add a requirement to provide maps for both. Interconnected surface water systems and groundwater-dependent ecosystems are reliant on groundwater and are an important part of sustainability.
 - b. Recommended text: 354.16 (f) Identification of interconnected surface water systems ~~and groundwater dependent ecosystems~~ within the basin, **including maps depicting where the surface water system is gaining water from groundwater, losing water from groundwater, or losing and disconnected from the groundwater system.** Each Agency shall utilize

data available from the Department, as specified in Section 353.2, or the best available information.

- c. Recommended text: 354.16 **(g) Identification of interconnected surface water systems and groundwater-dependent ecosystems within the basin, including maps depicting the location and type of ecosystem, such as perennial wetlands, seasonal wetlands, riparian forests, rivers, lakes, seeps, and springs. Each Agency shall utilize data available from the Department, as specified in Section 353.2, or the best available information.**
 - d. Rationale: Both interconnected surface waters and groundwater dependent ecosystems are critical components of sustainability and therefore must be included in the characterization of basin conditions. The regulations must clearly state the need to identify and manage for groundwater dependent ecosystems which can be impacted by both chronic lowering of groundwater levels and depletions of interconnected surface water, therefore, leading to an undesirable result.
15. Section 354.18(a)(4) - The Conservancy supports requiring the development of a comprehensive water budget.
- a. Recommended text: “All water demands by water source type and water use sector, **and water demands for interconnected surface water and groundwater dependent ecosystems.**”
 - b. Rationale: The direction to include all water demands by water type and use sectors, especially managed wetlands and native vegetation, is necessary to develop an accurate water budget and Plan that will allow an Agency to make management decisions that result in achievement of its sustainability goal. In addition, water demands for interconnected surface waters and groundwater dependent ecosystems are necessary to ensure a comprehensive water budget that avoids causing undesirable results.
16. Section 354.18(b)(1), (2) and (3) – Add text to direct that the water budget should indicate information developed by water use sector.
- a. Recommended text: Section 354.18(b)(1): Current water budget information shall quantify present-day supply and demand **by water use sector** using the most recent hydrology and land use information.
 - b. Recommended text: Section 354.18(b)(2)(C): A description of how historical conditions concerning hydrology, water demand **by water use sector**, and surface water supply reliability have impacted the basins ability to achieve sustainable yield.
 - c. Recommended text: Section 354.18(b)(3), first sentence: Projected water

budgets shall be used to estimate future supply, demand **by water use sector**, and aquifer response to Plan implementation, and to identify the uncertainties of these projected water budget components.

- d. Rationale: A water budget is critical to sustainably managing groundwater and the Conservancy supports this being included as part of the analysis of a groundwater basin. Further clarification should indicate that the water budget must take into account all water demands in a basin by water use sector.

17. Section 354.18(b)(3)(A) – The Conservancy supports retaining the 50-year record of information to project hydrology in conjunction with projections of climate change.

- a. Recommendation: Do not change Section 354.18(b)(3)(A).
- b. Rationale: It is critical that water budgets utilize a long term data set of hydrologic records as well as climate change projections in order to incorporate the best information and best characterize the hydrologic conditions in the basin.

SUBARTICLE 3: SUSTAINABLE MANAGEMENT CRITERIA

18. Section 354.24 – Revise to disclose data behind the sustainability goal.

- a. Recommended text: “Each Agency shall establish a sustainability goal for the basin. The Plan shall include a description of the sustainability goal, including **the analysis and data used to establish the goal**, a discussion of the measures meant to ensure that the basin will be operated within its sustainable yield, and an explanation of how the sustainability goal will be achieved within 20 years of Plan implementation. The Agency will show that it has achieved the sustainability goal by demonstrating that the management and use of groundwater in the basin can be maintained through the planning and implementation horizon without causing undesirable results.

(1) The sustainability goal shall be translated into a range of groundwater elevations throughout the basin based on water year.”

- b. Rationale: The proposed definition is too subjective. An agency should explain how it determined its sustainability goal and lay out clear metrics so that the Agency, the Department, and other interested parties can determine whether or not the basin is on track to achieve its sustainability goal. The Agency should also determine the groundwater levels that are required to sustain interconnected surface water and groundwater dependent ecosystems.

19. Section 354.26 – Revise the description of undesirable results to clarify the

occurrence of within the basin.

- a. Recommended text: “Undesirable results occur when significant and unreasonable effects for any of the critical parameters are caused by groundwater conditions occurring throughout the basin. **The phrase ‘throughout the basin’ should not be interpreted to mean an undesirable result must occur in every area of a basin.**”
 - b. Rationale: The draft wording “throughout the basin” can be misinterpreted to indicate that significant and unreasonable effects for any of the critical parameters that are caused by groundwater conditions must occur in the entirety of the basin in order for the effects to be considered an undesirable result. Many of the medium and high priority basins are very large areas that do not have homogenous conditions throughout the basin so that significant and unreasonable effects may commonly affect only a portion of a basin. A revision is required to clarify that significant and unreasonable effects that occur in a portion of a basin are unreasonable results.
20. Section 354.28(a)(4) – Revise the reference to minimum thresholds by adding a requirement for the Agency to describe how it will address the effects on beneficial uses
- a. Recommended text: “How minimum thresholds will affect the interests of beneficial uses and users of groundwater **including potential impacts and how the Agency will address those impacts.**”
 - b. Rationale: In addition to explaining how minimum thresholds will affect beneficial uses there should be an explanation of how the Agency, through the Plan, will deal with those impacts to prevent unreasonable and adverse impacts to those beneficial uses and users of groundwater.
21. Section 354.28(b)(1) – Add text to indicate that the Agency should take into account groundwater dependent ecosystems when developing the minimum threshold.
- a. Recommended text: “The minimum threshold for chronic lowering of groundwater levels shall be the groundwater elevation that indicates a significant and unreasonable depletion of supply **that adversely impacts beneficial uses.** Minimum thresholds for chronic lowering of groundwater levels shall be supported by the following:”
 - b. Rationale: Minimum thresholds should consider all beneficial uses, including groundwater dependent ecosystems, in the development of minimum thresholds related to chronic lowering of groundwater levels because lowering of groundwater levels can damage or destroy groundwater dependent ecosystems.
22. Section 354.28(b)(1)(A) – The minimum threshold for “chronic lowering of groundwater levels” should take into account vulnerable beneficial uses and existing impacts to beneficial uses.

- a. Recommended text: Section 354.28(b)(1)(A) – **“The rate of elevation decline calculated based on historical trends and projected water use in the basin, based on water year type-Depth or screened intervals of existing wells and the location and timing of current or historical wells that have gone dry.”**
 - b. Recommended text: Add subsection 354.28(b)(1)(D) – **“The location of groundwater dependent ecosystems, their groundwater requirements, and their connectivity with the aquifers used for water supply.”**
 - c. Rationale: Proposed Section 354.28(b)(1)(A) is not relevant to defining a significant and unreasonable depletion of supply and should be removed. Minimum thresholds should consider potential impacts to all water use sectors and beneficial uses, including impacts to wells and groundwater dependent ecosystems because lowering of groundwater levels can impact shallower wells and damage or destroy groundwater dependent ecosystems.
23. Section 354.28(b)(1)(C) – Revise to address short-term impacts of lower groundwater elevations.
- a. Recommended text: “Management of extractions and recharge to ensure that chronic lowering of groundwater levels or depletion of supply during periods of drought is offset by increases in groundwater levels or storage during other periods **to the extent that the temporary lowering or depletion does not result in undesirable results within that time period.**”
 - b. Rationale: Short term lowering of groundwater elevations must be managed to avoid undesirable results. In particular, while groundwater levels are variable, the continued pace of well development and groundwater extractions must be recognized as a significant threat to manage groundwater basins in a sustainable manner.
24. Section 354.28(b)(1) – Add a new subsection to reference existing laws and standards as minimum thresholds.
- a. Recommended text: Add subsection 354.28(b)(1)(E) **“The potential to result in significant and unreasonable adverse impacts on groundwater dependent ecosystems or the destruction of wetlands falling under the jurisdiction of the U.S. Clean Water Act or take of species listed pursuant to the U.S. Endangered Species Act or the California Endangered Species Act.”**
 - b. Rationale: The U.S. Clean Water Act establishes legal standards for the protection of wetlands. The U.S. Endangered Species Act and the California Endangered Species Act establish legal standards for the protection of species that are listed pursuant to the provisions of those Acts. These legally-established standards are applicable to the management of groundwater and potential conflict with those laws should be specifically cited as minimum

thresholds for undesirable results related to the chronic reduction of groundwater levels.

25. Section 354.28 (b)(6) – Add text to specify that groundwater dependent ecosystems should be considered as part of beneficial uses.

- a. Recommended text: “Depletions of interconnected surface water. The minimum threshold for depletions of interconnected surface water shall be the volume of surface water depletions caused by groundwater use that has significant and unreasonable adverse impacts on beneficial uses **(including groundwater dependent ecosystems)** of surface water.”
- b. Rationale: Agencies should take into account groundwater dependent ecosystems when developing minimum thresholds for the critical parameter “depletions of interconnected surface water.”

26. Section 354.28(b)(6) – Revise the text to ensure that the interconnected surface water threshold meets the same requirements as the other five critical parameters, while also acknowledging data challenges.

- a. Recommended text: “(A) The location, quantity, and timing of depletions of interconnected surface water. **If sufficient data to quantify depletions of interconnected surface water is not available, the Plan shall set a conservative minimum threshold following methods described in the best management practices manual.**

(B) A description of the **groundwater**-surface water model used to quantify surface water depletion. **If a groundwater-surface water model is not used to estimate surface water depletion, the Plan shall identify and describe an equally effective method or tool to accomplish this requirement, or identify provisions for developing a groundwater-surface water model capable of quantifying surface water depletion no later than the first five-year assessment.**”

- b. Rationale: It is unacceptable and inconsistent with the intent of SGMA to allow agencies to delay addressing an “undesirable results” for five additional years. The current state of groundwater overdraft in many areas is clearly impacting interconnected surface waters, converting gaining streams to losing streams and extending the temporal and spatial extent of dry reaches. These impacts are compromising surface water rights and important plants and animal species and systems.

Instead of providing an extension for insufficient data, a conservative threshold must be required. Requiring a conservative threshold will address the level of data uncertainty, which will ensure important interconnected surface waters are adequately managed while providing an incentive for agencies to improve the understanding of those systems.

27. Section 354.28 – Revise to correct subsection numbering.
- a. Recommended text: Section 354.28~~(d)~~(c) and Section 354.28~~(e)~~(d).
 - b. Rationale: Correction of subsection numbering.

SUBARTICLE 4: MONITORING NETWORKS

28. Section 354.30(c) – The Conservancy supports explicit provisions to enable and encourage agencies to set measurable objectives that exceed the reasonable margin of operational flexibility.
- a. Recommendation: Do not change Section 354.30(c).
 - b. Rationale: Agencies should be permitted, and encouraged, to go above and beyond the minimum standards required by SGMA and the Draft Emergency Regulations; this will help to insulate Agencies from future uncertainties such as severe and extended drought due to climate change.
29. Section 354.34(a) – The Conservancy supports requiring that Plans describe how monitoring networks will be developed and implemented.
- a. Recommendation: Do not change Section 354.34(a).
 - b. Rationale: A robust monitoring network, with sufficient monitoring over space and time, should include monitoring of surface and groundwater conditions and interconnected surface waters to ensure that agencies are meeting Plan objectives and avoiding undesirable results.
30. Section 354.34(h)(6) – Clarify that the monitoring network must monitor interconnected surface water.
- a. Recommended text: “Interconnected surface waters. The monitoring network shall be capable of monitoring surface and groundwater conditions where interconnected surface water **may** exists. Monitoring of interconnected surface water systems shall be sufficient to characterize the spatial and temporal exchanges between surface water and groundwater, ~~as necessary and appropriate~~, to adequately calibrate and apply the tools and methods selected to identify interconnected surface water systems.”
 - b. Rationale: If there is uncertainty about where interconnected surface waters exist, they must be monitored to help clarify the interconnection. The phrase “as necessary and appropriate” unnecessarily qualifies the need to monitor the exchanges between surface and groundwater. Agencies do not have discretion here as SGMA is clear that depletions of interconnected surface waters may constitute an undesirable result [Water Code, Section 10721(w)(6)]; hence, the standard here should simply be that “sufficient” monitoring capability is in place to determine whether or not this is occurring.
31. Section 354.34(h)(6)(2) – The Conservancy supports including the temporal and

spatial extent of ephemeral and intermittent streams in the monitoring network.

- a. Recommendation: Do not change Section 354.34(h)(6)(2).
 - b. Rationale: Ephemeral and intermittent streams are common in California and monitoring is necessary to ensure that management actions do not increase the temporal or spatial extent of surface flow, which negatively impacts beneficial uses including plants and animals.
32. Section 354.34(b) – Revise to specify groundwater dependent ecosystems as part of monitoring network.
- a. Recommended text: “The monitoring network shall be designed to ensure adequate coverage of critical parameters **and groundwater dependent ecosystems.**”
 - b. Rationale: Groundwater dependent ecosystems are susceptible to destruction by the lowering of groundwater levels below root zones. Monitoring is required to ensure that groundwater dependent ecosystems and the related beneficial uses are protected through the management of groundwater.
33. Section 354.38 – Include the determination of how data gaps and uncertainties will be addressed.
- a. Recommended text: “Each Agency shall evaluate the monitoring network and include an assessment in the initial Plan and each five-year evaluation, including an assessment of **any uncertainty and** whether there are data gaps that could affect the ability of the Plan to achieve the sustainability goal.”
 - b. Rationale: To adaptively manage and improve the monitoring system over time, an Agency will need to explicitly identify areas of uncertainty, not just their “data gaps.”

SUBARTICLE 5: PROJECTS AND MANAGEMENT AREAS

34. Section 354.44(b)(2) – Include a requirement that emergency contingency projects or actions should be able to correct the undesirable result.
- a. Recommended text: The Plan shall describe emergency contingency projects or actions that will be implemented in the event that groundwater conditions in the basin have passed a minimum threshold or that undesirable results have occurred or are imminent. Emergency contingency projects or actions shall be designed to achieve immediate results **correcting the condition** such that the Agency is able to demonstrate that the **minimum threshold is no longer passed and that undesirable results are no longer occurring** ~~emergency has been abated~~ by or before the next annual report.
 - b. Rationale: Emergency contingency projects or actions should resolve the identified issue

ARTICLE 6: EVALUATION AND ASSESSMENT

35. Section 355.4 – Clarify the criteria for plan evaluation by removing unnecessary qualifiers.

- a. Recommendation: 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 e-Compliance means that the Agency has attempted to comply with these regulations in good faith,~~ that 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.
- b. Rationale: This section is a critical component of the regulations and must reinforce the Department’s authority to determine whether a plan is in compliance. The draft text contains unnecessary qualifiers that undermine this clarity and they should be deleted.

The term “substantial compliance” is unclear and it makes the standard for evaluation less precise and more subjective. Under the regulations and SGMA the Department has the authority to exercise its judgement as to whether or not a Plan is likely to achieve the sustainability goal for a given basin (Water Code, Section 10733). In addition, whether or not an Agency is acting in good faith is not an appropriate indicator of compliance with SGMA and this should be deleted from the section. Finally, it is clearer to simply require that “supporting information” be “detailed” and “analyses” be “thorough and reasonable” rather than “sufficiently” as this suggests a lesser standard.

36. Section 355.4(b)(1) – Remove the term “substantially”.

- a. Recommended text: “Whether the Plan ~~substantially~~ complies with the requirements of this Subchapter.”
- b. Rationale: See rational directly above.

37. Section 355.6(b) – Add a reference to consideration of public comments.

- a. Recommended text: “**(9) Public comment letters from interested parties.**”
- b. Rationale: Public comment allows for additional oversight and input from stakeholders over the course of Plan implementation and provides the Department with alternative perspectives on how a given Agency is doing in its Plan implementation.

ARTICLE 7: REPORTS, ASSESSMENTS, AND AMENDMENTS

38. Section 356.10 – Add a provision for consideration of public comments.
- a. Recommended text: **“(I) An Agency shall consider public comments in its periodic plan review.”**
 - b. Rationale: This will allow for continued engagement by interested stakeholders in a given basin to ensure that a Plan is being implemented and on a path to sustainable management.

ARTICLE 9: ALTERNATIVES AND ADJUDICATED AREAS

39. Section 358.6 – Plan Alternatives must be subject to public comment in a similar manner as Plans.
- a. Recommended text: 358.6 should incorporate language used in 353.8.
 - b. Rationale: Public comment is critical for transparency, buy-in, and success.

We appreciate the opportunity to provide these comments on the Draft Emergency Regulations and, again, commend the Department for its efforts in reaching out to various stakeholders for input. We believe this a good start to the implementation of this landmark legislation and would be happy to meet further to discuss any of our comments outlined above.

Sincerely,



Sandi Matsumoto
Associate Director, California Water Program
The Nature Conservancy



Jay Ziegler
Director, External Affairs & Policy
The Nature Conservancy