

Topic 8: State Agency Coordination

*Department of Water Resources & State Water Resources Control Board
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1.0 PURPOSE

The purpose of this paper is to provide information to advance the discussion with stakeholders and the public as the Department of Water Resources (DWR) considers the approach to the development of emergency regulations as required in the Sustainable Groundwater Management Act (or SGMA). DWR identified a series of ten topics related to the development of Groundwater Sustainability Plan (GSP) regulations and Alternatives to GSP regulations that were deemed of special interest to further discuss with stakeholders and the public. Specifically covered within this paper is information related to Topic 8: State Agency Coordination.

There are numerous provisions pertaining to state agency coordination included throughout SGMA. A primary component is provided in Chapter 11 – State Intervention, commencing with Water Code §10735. Select provisions of the Water Code are provided in Section 3.0 of this document.

2.0 BACKGROUND

In 2014, legislation was passed to provide a statewide framework for sustainable groundwater management in California (Senate Bill [SB] 1168, Assembly Bill [AB] 1739, and SB 1319). This legislation is referred to as SGMA and is intended to support local groundwater management through the oversight of groundwater sustainability agencies (GSAs) and the implementation of their management activities. Only local agencies can elect to be a GSA. To avoid intervention by the State Water Resources Control Board (SWRCB), SGMA requires that all areas of a high- or medium-priority basin (or subbasin) be covered by one or more GSAs by June 30, 2017. SGMA then requires GSAs to develop GSPs by January 2020 or 2022, and to achieve sustainability goals by 2040 or 2042. In addition, SGMA allows the SWRCB to intervene where GSPs are incomplete or found to be inadequate by DWR. The exceptions to these requirements include the adjudicated portions of groundwater basins referenced in Water Code §10720.8 and local agencies that have submitted an alternative to a GSP that has been approved or is pending approval by DWR.

This document presents preliminary draft information to promote discussion and is subject to revision. Furthermore, because this discussion paper addresses a variety of issues raised by individuals and entities outside of DWR or the SWRCB, inclusion of the issues in this document does not constitute an endorsement of any particular issue. DWR invites comment and input on the preliminary draft information and questions presented in this document. Comments should be submitted to sgmps@water.ca.gov.

3.0 SELECT CALIFORNIA WATER CODE SECTIONS

Relevant California Water Code sections are provided below and grouped by broad topics related to state agency coordination. While there are many sections of SGMA that may involve interagency coordination, the sections below are intended to highlight the differing roles within the DWR/SWRCB partnership. The intent is to foster stakeholder discussion on how interagency coordination and State oversight can support successful implementation of SGMA at the local level.

3.1 Water Code – DWR Review of Sustainability Plan and Implementation

§10733.4 – Submittal of Plans to Department for Evaluation

- (a) *Upon adoption of a groundwater sustainability plan, a groundwater sustainability agency shall submit the groundwater sustainability plan to the department for review pursuant to this chapter.*
- (b) *If groundwater sustainability agencies develop multiple groundwater sustainability plans for a basin, the submission required by subdivision (a) shall not occur until the entire basin is covered by groundwater sustainability plans. When the entire basin is covered by groundwater sustainability plans, the groundwater sustainability agencies shall jointly submit to the department all of the following:*
 - (1) *The groundwater sustainability plans.*
 - (2) *An explanation of how the groundwater sustainability plans implemented together satisfy Sections 10727.2, 10727.4, and 10727.6 for the entire basin.*
 - (3) *A copy of the coordination agreement between the groundwater sustainability agencies to ensure the coordinated implementation of the groundwater sustainability plans for the entire basin.*
- (c) *Upon receipt of a groundwater sustainability plan, the department shall post the plan on the department's Internet Web site and provide 60 days for persons to submit comments to the department about the plan.*
- (d) *The department shall evaluate the groundwater sustainability plan within two years of its submission by a groundwater sustainability agency and issue an assessment of the plan. The assessment may include recommended corrective actions to address any deficiencies identified by the department.*

§10733.6 – Alternative Submittals

- (a) *If a local agency believes that an alternative described in subdivision (b) satisfies the objectives of this part, the local agency may submit the alternative to the department for evaluation and assessment of whether the alternative satisfies the objectives of this part for the basin.*
- (c) *A local agency shall submit an alternative pursuant to this section no later than January 1, 2017, and every five years thereafter.*

§10733.8 – Department Review of Plans at Least Every Five Years

At least every five years after initial submission of a plan pursuant to Section 10733.4, the department shall review any available groundwater sustainability plan or alternative submitted in accordance with Section 10733.6, and the implementation of the corresponding groundwater sustainability program for consistency with this part, including achieving the sustainability goal. The department shall issue an assessment for each basin for which a plan or alternative has been submitted in accordance with this chapter, with an emphasis on assessing progress in achieving the sustainability goal within the basin. The assessment may include recommended corrective actions to address any deficiencies identified by the department.

3.2 Water Code – Consultation Prior to Probationary Designation

§10735.2 – Designation of Probationary Basins by the State Water Board

- (a) *The board, after notice and a public hearing, may designate a basin as a probationary basin, if the board finds one or more of the following applies to the basin:*
 - (3) *The basin is subject to paragraph (1) of subdivision (a) of Section 10720.7¹ and after January 31, 2020, the department, in consultation with the board, determines that a groundwater sustainability plan is inadequate or that the groundwater sustainability program is not being implemented in a manner that will likely achieve the sustainability goal.*
 - (5) *The basin is subject to paragraph (2) of subdivision (a) of Section 10720.7², and either of the following have occurred:*
 - (A) *After January 31, 2022, both of the following have occurred:*
 - (i) *The department, in consultation with the board, determines that a groundwater sustainability plan is inadequate or that the ground water sustainability plan is not being implemented in a manner that will likely achieve the sustainability goal.*

3.3 Water Code – Local Opportunities to Remedy Deficiencies

§10735.4 – Opportunity for Remedy of Absence of Local Governance Before State Water Board Prepares an Interim Plan

- (a) *If the board designates a basin as a probationary basin pursuant to paragraph (1) or (2) of subdivision (a) of Section 10735.2, a local agency or groundwater sustainability agency shall have 180 days to remedy the deficiency. The board may appoint a mediator or other facilitator, after consultation with affected local agencies, to assist in resolving disputes, and identifying and implementing actions that will remedy the deficiency.*
- (b) *After the 180-day period provided by subdivision (a), the board may provide additional time to remedy the deficiency if it finds that a local agency is making substantial progress toward remedying the deficiency.*
- (c) *The board may develop an interim plan pursuant to Section 10735.8 for the probationary basin at the end of the period provided by subdivision (a) or any extension provided pursuant to subdivision (b), if the board, in consultation with the department, determines that a local agency has not remedied the deficiency that resulted in designating the basin as a probationary basin.*

§10735.6 – Opportunity for Remedy of Plan Inadequacy or Lack of Plan Implementation Before State Water Board Prepares Interim Plan

- (a) *If the board designates a basin as a probationary basin pursuant to paragraph (3) of subdivision (a) of Section 10735.2, the board shall identify the specific deficiencies and identify potential actions to address the deficiencies. The board may request the department to provide local agencies, within 90 days of the designation of a probationary basin, with technical recommendations to remedy the deficiencies.*
- (b) *The board may develop an interim plan pursuant to Section 10735.8 for the probationary basin one year after the designation of the basin pursuant to paragraph (3) of subdivision (a) of Section 10735.2, if the*

¹ This references a basin identified by DWR to be in a condition of critical overdraft

² This references a basin not identified by DWR to be in a condition of critical overdraft

board, in consultation with the department, determines that a local agency has not remedied the deficiency that resulted in designating the basin a probationary basin

§10735.8 – Interim Plans

- (g) (1) *After the board adopts an interim plan under this section, the board shall determine if a groundwater sustainability plan or an adjudication action is adequate to eliminate the condition of long-term overdraft or condition where groundwater extractions result in significant depletions of interconnected surface waters, upon petition of either of the following:*
- (A) *A groundwater sustainability agency that has adopted a groundwater sustainability plan for the probationary basin or a portion thereof.*
 - (B) *A person authorized to file the petition by a judicial order or decree entered in an adjudication action in the probationary basin.*
- (2) *The board shall act on a petition filed pursuant to paragraph (1) within 90 days after the petition is complete. If the board, in consultation with the department, determines that the groundwater sustainability plan or adjudication action is adequate, the board shall rescind the interim plan adopted by the board for the probationary basin, except as provided in paragraphs (3) and (4).*

4.0 SUMMARY OF TOPIC ISSUES AND CHALLENGES

Three broad topics which encapsulate some of the issues related to state agency coordination are discussed below. The intention is to stimulate input from stakeholders and identify additional key areas of uncertainty and concern. This will greatly aid both DWR and SWRCB as they work to develop the necessary processes and framework associated with SGMA implementation.

4.1 DWR / SWRCB Consultation and Communication

There are numerous references in SGMA to interagency consultation between DWR and SWRCB. In addition to the consultations specifically defined by SGMA, both agencies will need to communicate effectively to ensure a consistent approach to implementation. The following are a selection of questions and considerations related to interagency communication:

Considerations:

- SGMA provides both DWR and SWRCB roles in identifying local deficiencies, with proper implementation involving an interagency partnership based on effective communication.
- SWRCB and DWR have differing respective roles within the interagency partnership. In general, DWR is responsible for reviewing plan adequacy, implementation of GSPs, and coordination agreements, while SWRCB is responsible for intervening in the basin’s management if DWR determines non-compliance with emergency regulation requirements. While DWR is required to identify non-compliance, SWRCB has discretion on how the state intervention process is applied once non-compliance is identified.

Questions:

- What does it mean when SGMA requires DWR or the SWRCB to conduct an activity “in consultation with” the other agency?

- What do stakeholders expect the DWR/SWRCB consultation process to entail, and what are their primary concerns?

4.2 DWR / SWRCB Data Consistency and Coordination

There will be numerous instances of data collection and dissemination by both DWR and SWRCB during SGMA implementation. Considerations related to data coordination depend on each agency's respective role in supporting local sustainable management. Both agencies will need to rely on consistent data sources and methodologies. The following are a selection of questions and considerations related to data coordination:

Considerations:

- A key area of data overlap is related to water budgets. DWR will need to consider water budgets when reviewing GSPs, while SWRCB will need to determine water budgets when identifying long-term overdraft and during development of interim plans.
- Data collection should be coordinated, but the types of data collected will be driven by each agency's SGMA role. DWR data needs are related to ensuring adequate GSP implementation, while SWRCB must collect extraction data from individual pumpers and other information necessary for development of interim plans.

Questions:

- Duplicative reporting requirements are an important issue that both agencies want to avoid. What data do stakeholders believe is currently available through other existing state agency programs? What is the quality and coverage of this data and how can its integration be leveraged to support implementation of SGMA?
- In addition to data related to water budgets, what are important classes of data that state agencies should focus on during coordination efforts?

4.3 Coordination between State and Local Agencies

State and local SGMA activities will benefit from effective coordination between differing levels of government. Below are questions to solicit input on how stakeholders would like coordination between local and state agencies to occur.

- How can DWR and SWRCB be responsive to requests for assistance or input in implementing SGMA?
- Can the SWRCB or DWR provide informal reviews or input for SGMA-related concepts or project proposal to aid in local assessments of feasibility?
- How can the SGMA-related programs within DWR and SWRCB facilitate coordination between local agencies and other state programs with a water supply or water quality nexus?