FINDING OF EMERGENCY

(Gov. Code, § 11346.1, subd. (b); Cal. Code Regs., tit.1, § 50.)

Demonstration of Emergency

On September 16, 2014, the Governor signed into law a three-bill legislative package Assembly Bill (AB) 1739 (Dickinson), Senate Bill (SB) 1168 (Pavley), and SB 1319 (Pavley). These laws are collectively known as the Sustainable Groundwater Management Act (SGMA). SGMA defines sustainable groundwater management as the management and use of groundwater in a manner that can be maintained during the planning implementation horizon without causing undesirable results.

Among other things, SGMA provides the following:

- Requires critically-overdrafted high and medium priority basins to be managed under a Groundwater Sustainability Plan (GSP) by January 31, 2020;
- Requires all other groundwater basins designated as high or medium priority basins to be managed under a GSP by January 31, 2022;
- Gives Groundwater Sustainability Agencies (GSA) the financial and enforcement authority to carry out effective local sustainable groundwater management; and
- Provides an opportunity for local agencies to submit Alternatives to GSPs by January 1, 2017.

The Department of Water Resources (Department or DWR) plays a significant role in the implementation of SGMA. By June 1, 2016, DWR is required to adopt emergency regulations for the evaluation and implementation of GSPs, coordination agreements and alternatives. (Wat. Code §10733.2.) These will be referred to as "GSP Regulations." Subdivision (d) of Water Code section 10733.2 expressly directs DWR to adopt these regulations as emergency regulations and deems the adoption an emergency necessary for the immediate preservation of public peace, health and safety, or the general welfare.

Need for the Proposed Regulation to Effectuate the Statute Being Implemented

As indicated above, Water Code section 10733.2 directs DWR to develop the emergency GSP Regulations and requires that the GSP regulations do the following:

- Identify the necessary plan components of Water Code sections 10727.2, 10727.4, and 10727.6 and other information that will assist local agencies in developing and implementing groundwater sustainability plans and coordination agreements;
- Identify appropriate methodologies and assumptions for baseline conditions concerning hydrology, water demand, regulatory restrictions that affect the availability of surface water, and unreliability of, or reductions in, surface water deliveries to the agency or water users in the basin, and the impact of those conditions on achieving sustainability, and
- Evaluate alternatives submitted pursuant to Water Code section 10733.6.

These emergency GSP Regulations are necessary to effectuate SGMA governing GSP development, evaluation and implementation.

Technical, Theoretical, and/or Empirical Studies, Reports, or Documents Relied Upon

The Department relied on the following studies and documents in proposing this emergency rulemaking action:

[DWR] California Department of Water Resources. 2003. California's Groundwater. Bulletin 118 – Update 2003. Oct 2003.

[DWR] California Department of Water Resources. 2003. California's Groundwater. Bulletin 118 – Update 2003. Oct 2003.

[DWR] California Code of Regulations. 2015. Title 23. Water, Division 2. Department of Water Resources, Chapter 1.5. Groundwater Management, Subchapter 1. Groundwater Basin Boundaries.

[DWR] California Department of Water Resources. 2013. California Groundwater Water Plan Update 2013

Sustainable Groundwater Management Act. 2014. [And Related Statutory Provisions from SB1168 (Pavley), AB1739 (Dickinson), and SB1319 (Pavley) as Chaptered].

AUTHORITY AND REFERENCE

(Gov. Code, § 11346.5, subd. (a)(2))

Water Code section 10733.2, subdivision (d), provides authority for these emergency regulations. The Department proposes this emergency rulemaking action pursuant to the authority vested in the Department pursuant to Water Code section 10733.2 and to implement, interpret, or make specific SGMA provisions, as identified in each section of the proposed regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

(Gov. Code, § 11346.5, subd. (a)(3))

Description of Existing Laws

Water Code Section 10750 et seq. outlines the groundwater management legislation that was in effect prior to the Sustainable Groundwater Management Act of 2014. In Section 10750, the Legislature declares groundwater to be a valuable natural resource in California and that should be sustainably managed. The Legislature further intended in SGMA to encourage local agencies to work cooperatively to manage groundwater resources within their jurisdictions. The Legislature also finds and declares that additional study of groundwater resources is necessary to better understand how to manage

groundwater effectively to ensure the safe production, quality, and proper storage of groundwater in this state.

Assembly Bill 3030 (AB 3030)

The passage of AB 3030 in 1992 encouraged local agencies to prepare and adopt plans for managing their local groundwater resources, whether or not their groundwater basin exhibited overdraft conditions. AB 3030 provided a systematic approach for local agencies to follow when developing a groundwater management plan in the basins defined by DWR's Bulletin 118. This legislation was significant in that it greatly increased the number of local agencies authorized to develop a groundwater management plan, and set forth a common framework for voluntary management by local agencies throughout California.

Senate Bill 1938 (SB 1938)

In 2002, the Legislature passed SB 1938, which expanded groundwater management plan requirements related to groundwater levels, groundwater quality, inelastic land subsidence, and surface water-groundwater interaction, and required local agencies to develop and adopt plans so groundwater projects could be eligible for receiving public funds. The law required any public agency seeking State funds administered through DWR, for the construction of groundwater projects or groundwater quality projects, to prepare and implement a groundwater management plan with certain components within a specified timeframe. New requirements included establishing basin management objectives, preparing a plan to involve other local agencies in a cooperative planning effort, and adopting monitoring protocols that promote efficient and effective groundwater management.

Assembly Bill 359 (AB 359)

AB 359, introduced in 2011, made changes to the California Water Code that, among other things, required local agencies to provide a copy of their groundwater management plans to DWR, and required DWR to provide public access to those plans. AB 359 required local agencies to provide a map of recharge areas to local planning agencies and notify DWR and other interested persons when a map was submitted. Prior to the passage of AB 359, which went into effect on January 1, 2013, local groundwater management planning agencies were not required to submit their groundwater management plans to DWR.

Other Local Groundwater Management Efforts

Another method of managing groundwater is through ordinances adopted by local governments, such as cities or counties. Many counties in California have adopted groundwater-related ordinances that address some or all of the following activities: groundwater management; forming advisory committees; establishing basin management objectives; controlling the export of groundwater by requiring permits for transferring groundwater out of the basin or county; encouraging groundwater recharge; well construction policies; and well abandonment or destruction requirements.

When the demand for groundwater has exceeded a basin's safe yield and caused overdraft, landowners and other parties have turned to the courts to determine through adjudication, how much groundwater could rightfully be extracted by each user. The primary objective of an adjudication is to apportion available groundwater among users within the basin so it can be extracted without having adverse effects on existing groundwater supplies. Environmental concerns were not considered when most of the judgments were written. Many groundwater adjudications have been resolved with a court-approved negotiated settlement called a stipulated judgment. For each adjudicated groundwater basin, the court usually appoints a watermaster to oversee the court judgment. Many groundwater basin adjudications impose extraction limits and/or initiate management actions in the event of declining groundwater levels or water quality degradation.

The Department has existing authority under Water Code section 12924 to identify the state's groundwater basins. (All references, unless otherwise specified, are to the Water Code.) The Department has defined groundwater basins and associated subbasins in "California's Groundwater: Bulletin 118" (Bulletin 118). These basin definitions have been documented through a series of updates based on improved groundwater management and scientific understanding of geologic, hydrogeologic, and hydrologic conditions, and where practical political or jurisdictional boundaries.

The Sustainable Groundwater Management Act (SGMA) defines a groundwater "basin" as a basin or subbasin that is identified and defined in Bulletin 118, updated in 2003, or as subsequently updated in accordance with Water Code section 12924 or as provided for in SGMA. (§ 10721, subd. (b), (c).) SGMA applies to all basins defined in Bulletin 118, and specifically requires that high or medium priority basins adopt Groundwater Sustainability Plans or approved alternatives. These regulations apply to all Bulletin 118 groundwater basins, regardless of priority. While section 12924 authorizes the Department to identify basins and subbasins, these are the first regulations that establish a formal process for local agencies to request consideration by the Department to modify previously defined basin boundaries, based upon either new scientific information or for the purposes of compliance with SGMA.

Comparison to existing comparable Federal Regulation

No comparable federal regulations were found that provide for the definition of groundwater basins and the subsequent modification of a basin definition.

Broad Objectives and Benefits

On January 1, 2015, California began implementing the Sustainable Groundwater Management Act (SGMA). This landmark law empowers local agencies to implement groundwater sustainability plans tailored to the needs of their communities. California depends on groundwater for a significant portion of its annual water supply, particularly during times of drought. Current drought conditions illustrate the need for reliable and resilient water supplies. The long-term planning required by SGMA will ensure that groundwater is a buffer against drought and climate change, and contributes to reliable water supplies regardless of weather patterns in the State.

The regulations describe the required plan elements and the criteria that DWR will use to evaluate the plans and require local public agencies to define a course to achieve sustainable groundwater management within 20 years of plan implementation. Plans must identify when and where groundwater conditions cause problems, such as seawater intrusion; the specific projects and management actions that local agencies will implement to prevent the problems; and milestones to track plan progress. Plans must also describe how local agencies will monitor groundwater and how monitoring data will be used to improve conditions in the basin. Groundwater management can be complicated and technically challenging; the regulations set standards and a framework for local agencies to organize their plans and submit them to DWR for evaluation. Technical and financial assistance will be available to help local agencies develop their plans.

Local control and management is a fundamental principle of SGMA; the draft regulations preserve the role of local agencies in managing their basins and achieving sustainability. Local agencies have flexibility in defining the problems in their basins, establishing minimum thresholds, setting measurable objectives, and determining the projects and management actions that will be required to achieve sustainability in their basins. The draft regulations also recognize that adaptive management is an important tool for local agencies, and they allow for continued adaptation and changes to a plan based on new information and data. Local agencies will have wide authority to address plan uncertainties and use adaptive management techniques to improve groundwater management over time.

The regulation contains nine articles; the following describes the general objectives and benefits of each article with certain sections explained in more detail, where clarification of the rationale behind the section will aid in understanding the overall process. Within the GSP emergency regulations and the article descriptions provided below, a GSA is referred to as an Agency and a GSP are referred to as Plan.

Article 1 – Introductory Provisions

This article provides the authority for the Department to establish the regulation, the general intent, and principles governing the content and implementation Plans and Alternatives. The regulations are written as though a single Agency is adopting a single Plan for a basin or subbasin, but also apply to a Plan developed and implemented by multiple Agencies, and to multiple Plans implemented by multiple Agencies, and, with limited exceptions, to Plan Alternatives.

This article also describes the general principles that guide the Department's evaluation of Plans and Alternatives submitted in compliance with the regulations, in light of the priorities in the Act establishing a process for local agencies to achieve sustainable groundwater management over a period of time, and recognizing that the path to sustainability will vary between basins as a function of local conditions.

Article 2 – Definitions

This article provides a compendium of the specific terms and definitions of these terms used in the regulations. These terms are critical in that they provide the context and limits of the technical requirements used in the regulation. The defined terms are specific to the regulation. In addition to the defined terms listed in this article, the definitions in the Sustainable Groundwater Management Act, Bulletin 118, and Subchapter 1 of this Chapter, also apply to these regulations. The benefit of defining these terms is to reduce ambiguity and provide clear explanation of the reach and use of each defined term.

Article 3 – Technical and Reporting Standards

This article describes the use of best management practices and minimum standards for monitoring sites and other technical matters appropriate to develop or monitor the implementation of a Plan.

The sections within this article establish statewide standards for consistently managing and reporting data which will enable the Department to make Plan specific technical evaluations of sustainability and analysis of regional and statewide conditions. The use of consistent technical and reporting standards will also aid in the ability for determination of a plan's potential adverse effects to adjacent basins.

Section 352.2 includes a requirement for an Agency to adopt monitoring protocols for data collection and management.

Section 352.4 includes a requirement for an Agency to develop data and reporting standards for surface flow, water volumes, surveying, well construction, maps, hydrographs, and groundwater and surface water models.

Section 352.6 includes a requirement for an Agency to develop a data management system to capable of storing and reporting information relevant to the Plan.

Article 4 – Procedures

This article describes the procedures and notification requirements for the submission of Plans to the Department and public comment to those Plans.

This article establishes standardized procedures and an efficient and transparent process for an Agency to notify the public and transmit a Plan to the Department for evaluation.

Section 353.2 describes the obligations of the Department to provide information such as standard forms, instructions, and datasets that will be made available on the Department's Internet Web site for use by Agencies to promote statewide consistency.

Section 353.4 includes the reporting provisions such as Plan submittal requirement for Agencies.

Section 353.6 includes the process for Agencies to initially notify the Department when developing a Plan.

Section 353.8 includes procedures for any person to provide comments to the Department on a proposed or adopted Plan.

Section 353.10 includes procedures for an Agency to withdraw or amend a Plan.

Article 5 – Plan Contents

This Article describes the required contents of Plans, including administrative information, a description of the basin setting and characteristics of the aquifer system, sustainable management criteria, and a description of the monitoring network, reports, and projects and management actions.

Subarticle 1. Administrative Information

This Subarticle describes administrative and other general information required in a Plan about the Agency adopting the Plan, the area covered by the Plan, and other procedural matters.

Section 354.4 describes the requirement for general information including an executive summary to be provided in the Plan. The intent of the executive summary is to allow easy access to the complex planning documents with a succinct plain language summary of Plan contents.

Section 354.6 describes the requirement for an Agency to provide certain administrative information about the Agency demonstrating its ability to develop and implement a Plan, including an estimate of the cost of implementing the Plan and how the Agency plans to meet those costs. The Provision of the Agency's Plan implementation cost estimate enables the Department to further evaluate if the Agency has a plan to fund any projects and management actions described elsewhere in the Plan to reach the sustainability goal. The cost estimate provides some assurance to the Department that the implementation of the Plan is feasible.

Section 354.8(a) (5) requires an Agency to submit a description of the Plan area, including information about technical, administrative, or jurisdictional boundaries. In addition, the description of the Plan area, an Agency must include information about the density of wells per square mile and the distribution of agricultural, industrial, and domestic water supply wells in the basin for the purposes of understanding where pumping is occurring and what communities rely on groundwater. This information will aid in the Department understanding the distribution of the Agency's monitoring network and the need for management actions identified in the Plan. The location of the wells will provide insight on how the Agency has set the undesirable results, minimum thresholds, and measurable objectives for the basin or subbasin.

Section 354.10 describes the requirements for an Agency to notify and communicate with other agencies and interested parties regarding its Plan. Each Agency must provide a summary of outreach

conducted during Plan development that identifies interested parties and describes the process the Agency will use for communicating with those entities. The regulations require documentation of how outreach will continue during Plan implementation, in the form of a communication section of the Plan. The communication section of the Plan adopted by the Agency provides 1) an explanation of the Agency's decision-making process and how stakeholder input and public response will be used, 2) Identification of opportunities for stakeholder engagement, 3) a description of how the Agency encourages the active involvement of diverse social, cultural, and economic elements of the population within the basin, and 4) the method the Agency shall follow to inform the public about the progress of implementing the Plan, including the status of known projects or actions.

Subarticle 2. Basin Setting

This Subarticle describes the information about the physical setting and characteristics of the basin and current conditions of the basin to be included with each Plan. Information provided pursuant to this Subarticle is to be prepared by or under the direction of a professional geologist or professional engineer.

Section 354.14 describes the requirement for an Agency to provide a hydrogeologic conceptual model. This requirement is intended to be a narrative description of the hydrogeologic framework of the basin supported by figures, including at least two scaled cross-sections; topographic information; surficial geology; soil characteristics; delineation of existing recharge areas; surface water bodies with water supply diversions, source location, distribution system, and point of diversion for imported water supplies. The hydrogeologic conceptual model is not a numerical groundwater flow model, but it may be used as the building blocks for the hydrogeologic portion of an integrated numerical groundwater-surface water model. The Department believes that the hydrogeologic conceptual model is needed to achieve a fundamental understanding of the physical system to inform basin or subbasin management including the identification of monitoring networks and actions to reach sustainability. The value of providing this information allows for an understanding of aquifer systems and groundwater flow within the basin, between adjacent basins and subbasins, communication between local agencies, and communication to the Department.

Section 354.16 describes the requirement for the Agency to characterize the current and historical groundwater conditions in the basin prior to January 1, 2015, and between January 1, 2015 and current conditions. The intent of this section is for the Agency to understand previous groundwater conditions within the respective basin or subbasin prior to the initiation of SGMA, at the date of initiation of SGMA (starting point at implementation), and to identify the current trajectory of groundwater conditions (trend for future conditions).

Section 354.18 Water Budget describes the requirements for the Agency to provide in its Plan an accounting of the total groundwater and surface water entering and leaving a basin including the changes in the amount of water stored.

Section 354.20 describes the option for each Agency to define one or more management areas within a basin or subbasin if the Agency has determined that subdivision into management areas will facilitate implementation of the Plan. The intent of this section is to provide Agencies with flexibility in how they address variable groundwater conditions within their respective basin or subbasin. The management area concept allows for targeted monitoring, management, and implementation of actions in areas of the basin or subbasin with greater uncertainty (i.e., targeted monitoring to fill data gaps) or need for improvement to reach sustainability (i.e., implementation of actions).

Subarticle 3. Sustainable Management Criteria

This Subarticle describes the process for an Agency to identify the conditions that define sustainable groundwater management for the basin, including processes for establishing a sustainability goal, defining undesirable results, and establishing specific minimum thresholds for groundwater operation and measurable objectives for the Plan. Sustainable management criteria are developed by an Agency based on technical information about the basin setting developed in Subarticle 2 and upon consideration of local conditions.

Section 354.24 describes the requirement that each Plan describe a goal for achieving sustainable groundwater management through measures that assure the basin is operated within its sustainable yield. The sustainability goal establishes an overall target to achieve sustainability groundwater management within 20 years of implementation of the Plan.

Section 354.26 describes the method for an Agency to identify and define conditions that would create undesirable results in the basin. Establishing that a basin is sustainably managed requires demonstrating that none of the six statutorily defined "undesirable results" are present in the basin. The regulations coin the phrase "sustainability indicators" as a shorthand descriptor for any of the six type of groundwater conditions that, if significant and unreasonable, are likely to lead to undesirable results in the basin. They might include for example, a chronic lowering of groundwater levels indicating a significant and unreasonable depletion of supply if continued over the planning and implementation horizon, a significant and unreasonable reduction of groundwater storage, seawater intrusion, degradation of water quality, or land substance that substantially interferes with surface land uses, and depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of surface water (Water Code 10721(x)). What constitutes significant and unreasonable conditions related to any of the sustainability indicators is a matter for an Agency to determine based on local conditions, and subject to Department review for whether the assumptions and findings are reasonable and supported by the best available information and best available science (*see* section 355.4 of these regulations).

Section 354.28 describes the requirements for identifying minimum thresholds for each sustainability indicator. Minimum thresholds quantify conditions at specific sites within the basin that serve as a gauge of groundwater conditions and may trigger undesirable results.

Section 354.30 describes the requirements for establishing measurable objectives, representing groundwater conditions the Plan is designed to achieve over the course of its implementation, and which will support sustainable yield of groundwater from the basin.

Subarticle 4. Monitoring Networks

This Subarticle describes the monitoring network to be developed for each basin, including monitoring objectives, monitoring site summary, monitoring frequency, monitoring protocols, and data reporting requirements. The monitoring network shall promote the collection of data of sufficient quality, frequency, and from sufficient locations to adequately characterize surface water and groundwater conditions in the basin, evaluate management actions, and assess progress toward achieving the sustainability goal.

Section 354.34 describes the requirement for developing a monitoring network capable of collecting sufficient data to demonstrate short-term seasonal and long-term trends in surface and groundwater conditions and that yields representative information about changes relative to the minimum thresholds and measurable objectives for the basin. The intent of this requirement is to ensure collection of adequate monitoring data to enable Agencies and the Department to evaluate the affects and effectiveness of Plan implementation. The Agency may choose to incorporate site information and monitoring data from existing sources and programs into the monitoring network (i.e., CASGEM, ILRP, etc.). The monitoring density and frequency would be based on groundwater use, aquifer characteristics, impacts to beneficial uses and users of groundwater and the ability of adjacent basins to meet the sustainability goal, and uncertainty of sustainability indicators.

Section 354.34 also describes the minimum standard requirements for the monitoring network to address each sustainability indicator. The intent of this requirement is to provide a consistent framework for the Department to evaluate the adequacy of the monitoring networks to assess the then current and future conditions of each sustainability indicator.

Section 354.36 describes an Agency's authority to designate a subset of monitoring sites as representative of conditions in the basin or an area of the basin or subbasin for the purposes of establishing specific minimum thresholds, measurable objectives, and related interim milestones. The intent of this section is to allow an Agency to select a key set of sites that would provide adequate information to monitor sustainability indicators in the basin or subbasin. The Department believes that representative monitoring sites may be a way of providing flexibility to Agencies by reducing the overall number of sites where sustainability indicators are monitored for quantitative values of minimum thresholds, measurable objectives, and related interim milestones, while still accomplishing the same goal. These representative monitoring sites may include sites measuring groundwater elevations that can be used as a proxy for other sustainability indicators (i.e., land subsidence, etc.).

Section 354.38 describes the evaluation of the monitoring network to be completed by an Agency, including an assessment in the initial Plan and during each five-year evaluation. The intent of the assessment is to require Agencies to identify data gaps in their monitoring networks, develop a plan to address the data gaps, and be accountable for completing the identified plans. The assessment of the monitoring network may also require that Agencies adjust monitoring frequency and density to provide greater detail about site-specific surface and groundwater conditions. The Department believes that effective management of basins or subbasins will require Agencies to adjust their monitoring networks as they become more knowledgeable about the aquifer response to various management actions within their respective basin or subbasin and within those basins or subbasins surrounding them.

Section 354.40 requires Agencies to compile all monitoring data in a single data management system and to provide all data electronically on forms provided by the Department to the Department.

Subarticle 5. Projects and Management Actions

This Subarticle describes the criteria for projects and management actions to be included in a Plan to meet the sustainability goal of the basin. The intent of this section is for Agencies to identify projects and management actions that can be taken to aid in restoring or creating more favorable groundwater conditions in an effort to meet measurable objectives (e.g., flooded fields, recharge basins, aquifer storage and recovery wells, conjunctive management, etc.). The Department believes that identifying specific implementable projects and management actions to restore groundwater conditions in areas where they are below an optimal management range will demonstrate a commitment by the Agency to the implementation of SGMA and desire to reach the sustainability goal. In addition, Section 354.44 requires that Agency's describe projects or management actions that would be implemented if overdraft conditions are identified in the basin or subbasin.

Article 6 – Evaluation and Assessment

This Article describes the methodology and criteria for the evaluation and assessment of a Plan, which also apply, 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 by the Department, and, as appropriate, to Alternatives.

The sections within this article provide a clear and transparent description of the Department's evaluation and assessment process of Plan review.

Section 355.2 describes the process the Department will follow after receipt of a Plan through the evaluation process, including the determination as to whether a Plan is Approved, Incomplete, or Inadequate.

Section 355.4 includes the criteria the Department will use for Plan Evaluation.

Section 355.6 and 355.8 describes the Department's process for periodically reviewing an approved Plan and Annual reports to ensure the Plan remains consistent with the SGMA and will likely achieve the sustainability goal for the basin.

Section 355.10 describes the Departments process for evaluating an Agency amended Plan to ensure it is consistent with the requirements of the SGMA and will likely achieve the sustainability goal for the basin.

Article 7 – Reports, Assessments, and Amendments by the Agency

This Article describes the procedural and substantive requirements for annual reports, the periodic evaluation and assessments of Plans, and any proposed amendments to an approved Plan prepared by an Agency.

Section 356.2 describes an Agency's obligation to submit an annual report on or before April 1 of each year after the adoption of a Plan and the Department review of such reports.

Section 356.4 describes the requirements for each Agency to evaluate and assess its Plan at least every five years and whenever Plans are amended. Article 8. Interagency and Coordination Agreements

This article describes voluntary interbasin agreements between agencies in adjacent basins and mandatory coordination agreements between agencies within a basin required under Water Code Section 10727.6.

Section 357.2 describes the recommended elements of an agreement between Agencies managing adjacent basins. The Department is required to evaluate whether a Plan adversely affects the ability of an adjacent basin to implement its Plan or impedes achievement of sustainability goals in an adjacent basin (Water Code section 10733), and whether a Plan will have such an impact is one of the criteria for Plan evaluation by the Department (*see* section 355.4 of these regulations). Agencies in different basins may establish agreed-upon groundwater conditions and thresholds of undesirable results that the Department will consider when evaluating adequacy of a Plan.

Section 357.4 describes the elements of coordination agreements required when multiple Agencies develop and implement multiple Plans in a single basin. The Act requires that multiple Plans implemented by multiple Agencies be coordinated pursuant to a single coordination agreement that covers the entire basin (Water Code section 10727(b)(3)). The regulations specify the contents of the agreement that will allow the Department to evaluate whether the Plans are operating to the same standards and criteria, and whether the Plans, implemented together, can achieve sustainable groundwater management for the entire basin.

Article 9. Alternatives and Adjudicated Areas

This article provides the process and technical requirements for an eligible entity to submit an Alternative to a Plan for consideration by the Department. The Act allows for a local agency to submit an Alternative to a Plan that is based on an existing groundwater management plan, management

pursuant to an adjudication action, or evidence that the basin has operated within its sustainable yield over a period of at least 10 years (Water Code section 10733.6). The deadline to submit an alternative is January 1, 2017 (Water Code section 10733.6(c)), although adjudicated actions entered into subsequent to this deadline may be submitted at a later date (Water Code section 10737.4(c)).

Alternatives are required by the Act to accomplish the same goals as a Plan, to achieve sustainable groundwater management without causing undesirable results in neighboring basins. To determine that the Alternative is able to satisfy these objectives, the Department requires evidence that the geology and hydrology of the basin is sufficiently understood, that reasonable interpretations have been based on that information, and that the potential for undesirable results is understood and that effects that might give rise to undesirable effects are avoidable. Alternatives must be able to demonstrate, among other things, adequate information about the basin setting, the potential for undesirable results, and the monitoring system used to obtain the data used to make these interpretations. Information provided in support of an Alternative is not required to be in the same format as that required of a Plan, but the entity submitting the Alterative must demonstrate that the information provided is the functional equivalent of the basic information required of each Plan.

Section 358.2. describes the information a local agency must submit to the Department in support of the various alternatives. The supporting information must be detailed and robust enough to allow to Department to evaluate if the Alternative is likely to achieve the objectives of the Act. In addition, the submitting entity must demonstrate how the elements of the Alternative are functionally equivalent to the applicable elements of a Plan required under Sections 355.2, 355.4(b) and 355.6 of the Regulations. If a submitting entity determines that a Plan element described in these Sections is not relevant to the Alternative, the submitting entity shall demonstrate why it is not relevant.

Section 356.4 describes a two stage process the Department will use to evaluate Alternatives. Stage 1 requires that the Alternative satisfy 4 conditions:

(1) Be submitted within the applicable statutory deadline;
(2) Be located within a basin that is in compliance with CASGEM;
(3) Be complete and supported by the information required by the Act and these regulations; and
(4) Cover the entire basin.

An alternative that satisfies these 4 requirements then will undergo a second stage of evaluation by the Department to determine if it meets the applicable requirements described in Sections 355.2, 355.4(b) and 355.6 of the regulations and complies with the objectives of the Act.

Consistency with existing state regulations

There are no identified inconsistent or incompatible existing state regulations. The proposed regulation is the first of its' kind authorizing the Department to evaluate Plans to sustainably manage groundwater in California.

OTHER MATTERS PRESCRIBED BY STATUTE

(Gov. Code, § 11345.5, subd. (a)(4))

SGMA provides a framework for long-term sustainable groundwater management throughout California. Under SGMA, local agencies in medium and high priority groundwater basins will form GSAs that prepare and implement local GSPs. The Department's tasks under SGMA include: (1) Developing regulations to revise groundwater basin boundaries [these regulations became effective in November 2015]; (2) Adopting regulations for evaluating and implementing GSPs and coordinating agreements; (3) Identifying basins subject to critical conditions of overdraft; (4) Identifying water available for groundwater replenishment; and (5) Publishing best management practices for the sustainable management of groundwater.

Water Code section 10733.2 requires that the Department do both of the following before adopting the GSP Regulations: (1) Hold three public meetings in different parts of the State to consider public comments; (2) Publish the draft GSP Regulations on its website at least 30 days before the public meetings. The Department complied with these statutory, procedural requirements of Water Code section 10733.2. On February 18, 2016, the Department published the draft GSP Regulations on its Internet Web site, and the Department conducted three public meetings to consider public comments on the draft GSP Regulations as follows: March 21, 2016 – Visalia, March 22, 2016 – Santa Ana, and March 25 – Sacramento.

LOCAL MANDATE DETERMINATION

(Gov. Code, § 11346.5, subd. (a)(5))

The Department has determined that these proposed emergency regulations do not impose a new mandate on local agencies or school districts for which reimbursement is required.

ESTIMATE OF COST OR SAVINGS

(Gov. Code, § 11346.5, subd. (a)(6))

The Department has developed a fiscal cost analysis of these emergency regulations on the state and local agencies. These costs include 1) costs to local agencies for preparing the GSPs required by the

regulation (local costs); and 2) costs to DWR and other State agencies to support the GSP process (State costs). Most local costs will be incurred by Groundwater Sustainability Agencies (GSAs).

The Administrative Procedures Act requires that fiscal costs of an emergency regulation be estimated for the current fiscal year which ended June 30, 2016, and the subsequent two fiscal years. Therefore, costs incurred through June 30, 2018 are provided as part of this analysis. More fiscal costs will be incurred in later fiscal years. This analysis estimates total local costs of preparing GSPs and the share of cost incurred before June 30, 2018. For State costs, the analysis also provides current information about future costs beyond the two-year requirement.

Local management agencies, primarily GSAs, will incur costs to implement their plans. This analysis does not provide any cost estimate associated with managing water use and supply as guided by the GSPs. The range of potential cost estimates would currently be uncertain. Furthermore, 1) the cost analysis of emergency actions does not require such cost estimates, 2) such costs will be incurred after plans have been developed and approved, which will be almost entirely after 2018, and 3) these costs are primarily caused by the statute, not the emergency regulation.

Fiscal costs include some of the costs of developing GSPs. Significant uncertainty associated with data and assumptions, in particular, the number and unit cost of GSPs to be developed, suggest that the range of potential fiscal cost is large. The low-end cost estimate assumes 160 GSPs and 5 alternative plans will be submitted by 2020. The high-end estimate assumes 260 GSPs and 5 alternative plans. Staff believes that the high-end number of GSPs is unlikely, but presents the estimate for completeness.

The analysis provides a summary of the quantified State and local costs of complying with and implementing the GSP regulation. The median expected cost for local agencies is $51 million, and for the State, $24 million, for a total of $75 million. The average cost per year for the current and next two fiscal years is $25 million. Between adoption of the emergency regulations and the end of the current 2015-16 fiscal year, about $2 million in local agency costs are estimated to be incurred.

These emergency regulations will not affect federal funding.

THESE EMERGENCY REGULATIONS DO NOT EXPIRE

The proposed emergency regulations do not expire 180 days from the effective date of the regulation pursuant to express statutory authority. Water Code section 10733.2, provides that “notwithstanding the Administrative Procedure Act, emergency regulations adopted by the department pursuant to this section shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised by the department.” These emergency regulations will not, therefore, expire in 180 days and will remain in effect until revised by the Department.