

Topic 5: Boundaries – Overlapping and “Fringe” Areas

*Department of Water Resources - Sustainable Groundwater Management Program
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1.0 PURPOSE AND DEFINITION

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) develops regulations as required in the Sustainable Groundwater Management Act (SGMA). DWR identified a series of ten topics related to the development of Groundwater Sustainability Plan (GSP) regulations that were deemed of special interest to further discuss with stakeholders and the public. This paper covers information specific to Topic 5: Boundaries – Overlapping and “Fringe” Areas.

The topic of *Boundaries – Overlapping and Fringe Areas* is meant to directly or indirectly reference the provisions identified in California Water Code (Water Code) Sections (§) §10723, §10724, §10733, and §10735. Select provisions of the Water Code are provided and discussed in Section 4.0 of this document.

For the purpose of this discussion paper, the topic of *overlapping areas* includes both governance and planning considerations. *Overlapping governance* would occur if two or more local agencies intentionally form separate and potentially competing groundwater sustainability agencies (GSAs) for the same area of a groundwater basin. *Overlapping planning* situations would occur if those overlapping and potentially competing GSAs do not resolve their governance issues, or describe how the overlapping governance will be effective, and choose to develop two or more groundwater sustainability plans (GSPs) that apply to the same area of a basin. The concept of overlapping areas, which creates redundant spatial coverage, is illustrated on **Figure 1**. The overlapping areas could occur either (1) along the boundaries of two GSAs where some small areas overlap (possibly unintentionally), or (2) where one small GSA is fully embedded within the boundaries of one or more larger GSAs.

Fringe areas, as defined in this discussion paper, generally refer to unique cases where a relatively small portion of a basin or subbasin is not fully covered within the boundaries of a Special Act District (listed in Water Code §10723(c)) or a court-ordered groundwater rights adjudication (listed in Water Code §10720.8(a)). Fringe areas, as illustrated on **Figure 2**, are not intended to be unmanaged areas, and could represent either multiple minimal portions of a groundwater basin or substantial portions of a basin. In some cases, there may not be another GSA-eligible entity (other than the county) that can manage the fringe areas outside of a Special Act District or an adjudicated basin. This paper serves to address issues and questions associated with fringe areas and initiate conversation with advisory groups and the public on how to potentially manage these fringe areas. Both stakeholders and advisory groups have expressed issues related to these boundary-related topics.

FIGURE 1: Illustration of Overlapping Areas

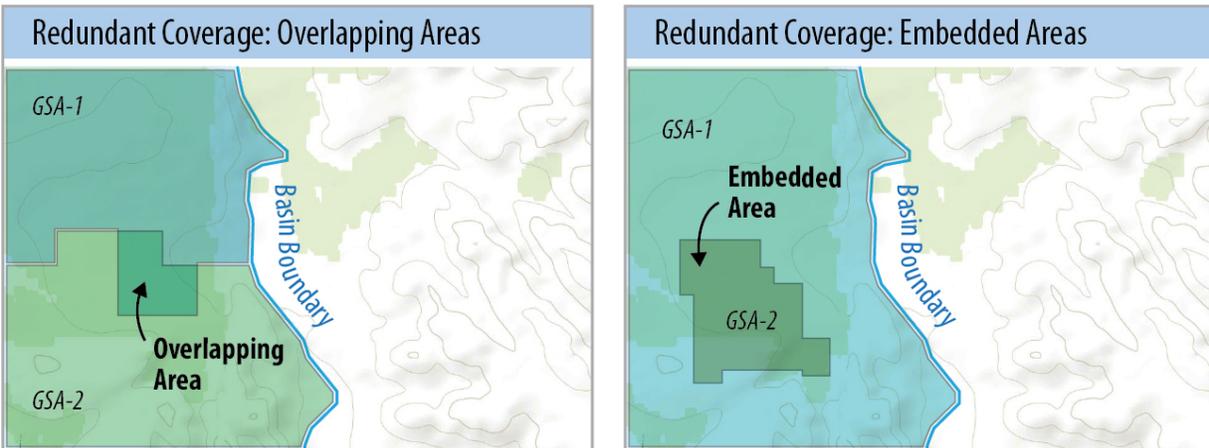
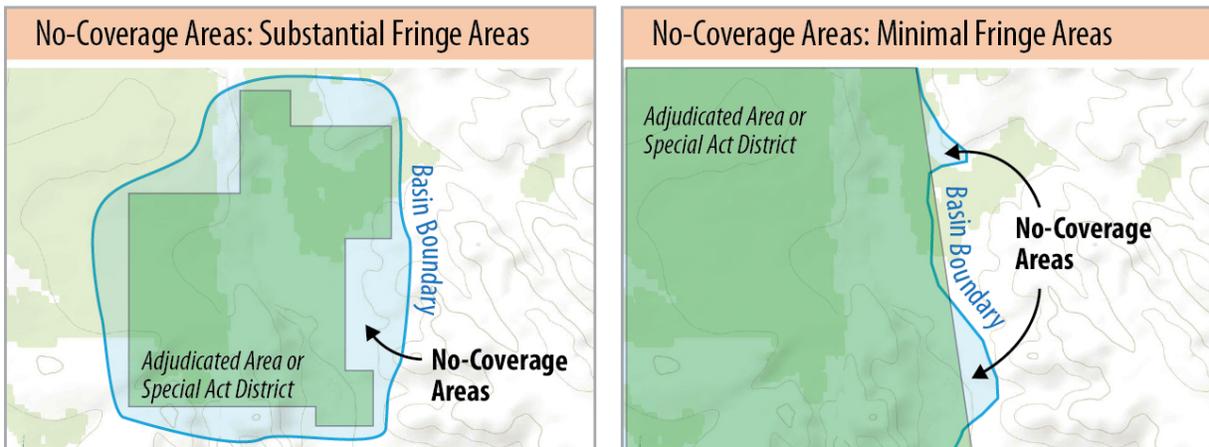


FIGURE 2: Illustration of Fringe Areas



2.0 BACKGROUND

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

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, 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 SUMMARY OF TOPIC ISSUES AND CHALLENGES

As part of the SGMA outreach effort, DWR continues to meet with various organizations and individual experts to receive input for issues and challenges related to *Boundaries – Overlapping and Fringe Areas*. The following represents some of the *Boundaries – Overlapping and Fringe Areas* issues, challenges, and general questions presented by stakeholders and advisory groups to DWR.

3.1 OVERLAPPING AREAS

The SGMA legislation requires that multiple GSAs within a given Bulletin 118 groundwater basin must coordinate. Specifically, Water Code §10727.6 requires that GSAs use the same data and consistent methodologies for the following technical assumptions when developing a sustainability plan(s): groundwater elevation data, groundwater extraction data, surface water supply, total water use, change in groundwater in storage, water budget, and sustainable yield.

The following represent some of the issues that have been heard by DWR related to overlapping areas.

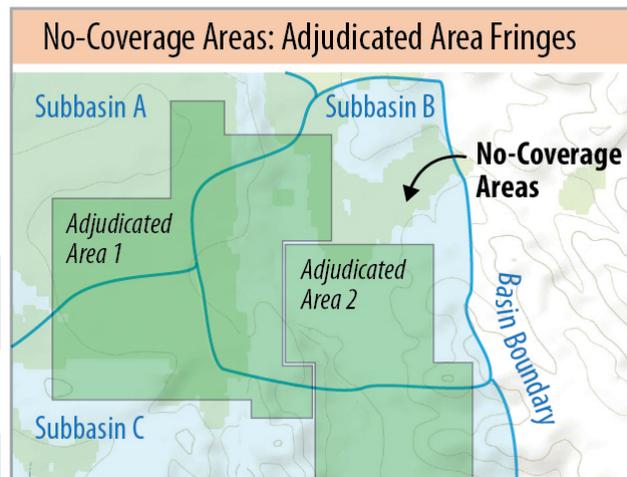
- What happens when two or more local agencies claim to be the GSA for the same area?
- The powers and authorities of a GSA are defined in Water Code §10725 *et seq.* and financial authorities are listed in Water Code §10730 *et seq.* If there are portions of a basin with overlapping GSAs, which GSA has authority and which GSA can assess fees?
- How would overlapping GSAs resolve potential duplicative and overlapping enforcement powers as defined in Water Code §10732?
- Is there a case for overlapping GSAs as long as there are no overlapping GSPs?
- Who will intervene and make a determination as to what local agency(s) is the “correct” or “recommended” GSA is for areas of overlap before June 30, 2017 (the final date of GSA formation)?
- After June 30, 2017, what is the role of the SWRCB with respect to resolving overlapping GSA scenarios?
- If a GSA boundary is the same as a basin boundary, and that boundary changes through the Basin Boundary regulations, does that GSA boundary automatically conform or get updated to the new boundary or would the GSA have to resubmit a new GSA notification to DWR?
- Should overlapping areas be resolved by the affected GSAs prior to submission of a single basin-wide GSP? Could the governance be resolved in an intra-basin coordinating agreement that is included with the GSP?
- Should DWR automatically determine a GSP to be inadequate if there are overlapping GSAs?

If multiple GSAs submit multiple GSPs with overlapping areas, should DWR reject the plans outright and require that the GSAs coordinate and resubmit their GSPs to show no overlapping areas?

3.2 FRINGE AREAS

For the purpose of this discussion paper, DWR is defining fringe areas as unique cases where relatively small portions, or potentially more substantial portions, of a basin or subbasin are not covered within the boundaries of a Special Act District or an adjudication (see **Figure 2**). Special Act Districts are listed in Water Code §10723(c) and the adjudicated basins are listed in Water Code §10720.8(a). A situation where multiple adjudications overly multiple groundwater basins is illustrated in **Figure 3**. In the scenario depicted in **Figure 3**, the areas of no-coverage, which would be considered unmanaged areas or “white spaces” in the basin, could be much more substantial than the fringe areas identified in **Figure 2**.

FIGURE 3: Illustration of Fringe Areas That Involve Multiple Adjudications Overlying Multiple Groundwater Basins



The SGMA legislation addresses unmanaged areas or “white spaces” within a groundwater basin through the presumption that the overlying county(s) will become the responsible GSA(s) for these areas (Water Code §10724(a)). If the overlying county(s) notifies DWR that it will not be the GSA for the “white spaces” per Water Code §10724(b), the unmanaged areas would be subject to intervention by the SWRCB.

The following represent some of the issues that have been heard by DWR related to fringe areas.

- In order to prevent the occurrence of “fringe areas” or “white spaces” in a basin, can a local agency or GSA expand its boundaries to include those areas? What if those areas are outside of the GSA’s jurisdiction?

- If a local agency knows that it could have fringe areas in its groundwater basin, should it submit to have its basin boundaries revised to match its jurisdiction during the basin boundary regulatory process?
- If the boundaries of a Special Act District generally align with the boundaries of a groundwater basin, but there are small areas of that basin located outside of the Special Act District that are not claimed by either a county or another local agency, are these areas considered unmanaged areas and subject to intervention by the SWRCB? Can they be “passively managed”?
- Could fringe areas use the annual reports submitted by a Special Act District(s) or Watermaster(s), since these entities likely represent the largest groundwater users in the basin and are likely informally managing the areas already? Could these areas be held to a different standard of management? (Note: This topic may be addressed in Topic 10: Adaptive Management and Focus Areas.)
- If fringe areas fall below a fixed threshold for either size of area or volume of groundwater extraction, could they be dropped from further consideration as a fringe area?
- If a local agency’s jurisdictional boundary is smaller than the basin boundary it overlies, may that agency become the GSA for the entire basin and adopt a plan regulating the entire basin to eliminate unmanaged or fringe areas? May that local agency regulate beyond its own jurisdictional boundary but within the overall basin?
- Will the SWRCB differentiate between a “fringe area” and an “unmanaged area” when considering probationary status?
- There are 26 basin adjudications listed in Water Code §10720.8(a); most of these are in Southern California and many groundwater basins contain multiple adjudications. If one or more of these adjudicated areas overlie the majority of a basin or multiple parts of a basin, and there is a portion(s) that does not have a GSA covering it, what then? It could be very difficult to sustainably manage a basin while considering multiple court-ordered adjudications. (Note: This concept is illustrated in **Figure 3**.)
- If fringe areas exist in a basin, and the county elects not to manage these areas, will DWR review the GSP(s) submitted?

4.0 SELECT CALIFORNIA WATER CODE SECTIONS RELATED TO BOUNDARIES – OVERLAPPING AND FRINGE AREAS

This part identifies select sections of the Water Code related to *Boundaries – Overlapping and Fringe Areas*. In order to address each Water Code section related to this topic, each identified Water Code section includes the relevant Water Code text and identifies questions and considerations specific to that section, where applicable.

4.1 OVERLAPPING BOUNDARIES

10723. Election of Groundwater Sustainability Agencies.

(a) Except as provided in subdivision (c), any local agency or combination of local agencies overlying a groundwater basin may elect to be a groundwater sustainability agency for that basin.

(c) (1) Except as provided in paragraph (2), the following agencies created by statute to manage groundwater shall be deemed the exclusive local agencies within their respective statutory boundaries with powers to comply with this part: [A-O lists the exclusive local agencies]

10723.6. Collective Action to Serve as Groundwater Sustainability Agency.

(a) A combination of local agencies may form a groundwater sustainability agency by using any of the following methods:

(1) A joint powers agreement.

(2) A memorandum of agreement or other legal agreement.

10723.8. Notification of Department and Posting by Department.

(b) Except as provided in subdivision (d), 90 days following the posting of the notice pursuant to this section, the groundwater sustainability agency shall be presumed the exclusive groundwater sustainability agency within the area of the basin the agency is managing as described in the notice, provided that no other notice was submitted.

(c) A groundwater sustainability agency may withdraw from managing a basin by notifying the department in writing of its intent to withdraw.

10733. Department Review of Plans.

(a) The department shall periodically review the groundwater sustainability plans developed by groundwater sustainability agencies pursuant to this part to evaluate whether a plan conforms with Sections 10727.2 and 10727.4 and is likely to achieve the sustainability goal for the basin covered by the groundwater sustainability plan.

(b) If a groundwater sustainability agency develops multiple groundwater sustainability plans for a basin, the department shall evaluate whether the plans conform with Sections 10727.2, 10727.4, and 10727.6 and are together likely to achieve the sustainability goal for the basin covered by the groundwater sustainability plans.

(c) The department shall evaluate whether a groundwater sustainability plan adversely affects the ability of an adjacent basin to implement their groundwater sustainability plan or impedes achievement of sustainability goals in an adjacent basin.

10733.4. Submittal of Plans to Department for Evaluation.

(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.*

10735.2. Designation of Probationary Basins by 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:

(1) After June 30, 2017, none of the following have occurred:

(A) A local agency has elected to be a groundwater sustainability agency that intends to develop a groundwater sustainability plan for the entire basin.

(B) A collection of local agencies has formed a groundwater sustainability agency or prepared agreements to develop one or more groundwater sustainability plans that will collectively serve as a groundwater sustainability plan for the entire basin.

(C) A local agency has submitted an alternative that has been approved or is pending approval pursuant to Section 10733.6. If the department disapproves an alternative pursuant to Section 10733.6, the board shall not act under this paragraph until at least 180 days after the department disapproved the alternative.

(d) If the board finds that litigation challenging the formation of a groundwater sustainability agency prevented its formation before July 1, 2017, pursuant to paragraph (1) of subdivision (a) or prevented a groundwater sustainability program from being implemented in a manner likely to achieve the sustainability goal pursuant to paragraph (3), (4), or (5) of subdivision (a), the board shall not designate a basin as a probationary basin for a period of time equal to the delay caused by the litigation.

(e) The board shall exclude from probationary status any portion of a basin for which a groundwater sustainability agency demonstrates compliance with the sustainability goal.

CONSIDERATIONS

Other than the adjudicated basins listed in Water Code §10720.8(a) and the exclusive local agencies listed in Water Code §10723(c)(1), any local agency or combination of local agencies overlying a groundwater basin may elect to be a GSA for that basin. The deadline for forming GSA's in high- and medium-priority basins is June 30, 2017.

For possibly a variety of reasons, some local agencies are electing to be the GSA for the same portion of a basin, effectively creating an *overlapping governance* structure. As defined (or not defined) in Water Code §10723 *et seq.*, DWR's responsibilities related to GSA formation is essentially serving as the public clearinghouse for GSA notifications and posting GSA notifications on its Web site.

Water Code §10727 *et seq.* Water Code §10727(a)(3) states that a GSP can be, “multiple plans implemented by multiple GSAs and coordinated pursuant to a single coordination agreement that covers the entire basin.” In addition, Water Code §10733.4 discusses submittal of sustainability plans to DWR, specifically that “GSAs shall jointly submit a copy of the coordination agreement between the GSAs to ensure the coordinated implementation of the GSPs for the entire basin.” Therefore, if GSAs do not submit coordinated GSPs that cover the entire groundwater basin, then that GSP(s) could be considered inadequate.

It will be important to clearly describe in a basin-wide GSP, or collection of coordinated GSPs and plans, that the GSA(s) can successfully implement their respective plans and reach the collective sustainability goal of the entire basin. Overlapping GSAs with inconsistent governance within a basin could impede sustainable groundwater management, as GSAs may have competing measurable objectives, water budgets, and may create financial uncertainty to implement the GSP. A governance description could be used to address issues related to overlapping GSAs and GSPs.

QUESTIONS

- Hypothetically, is it possible that overlapping GSPs could be effective in a basin or subbasin, assuming each GSP includes identical measurable objectives, sustainability goals, and adheres to the coordination requirements defined in Water Code §10727.6 (i.e. sustainable yield, water budget, etc)?
- Would inclusion of a required GSP(s) section on GSA governance, allowing local agencies to describe how overlapping GSAs are recommended for the basin or subbasin support sustainable groundwater management?
- How would a GSA illustrate the technical, financial, and/or managerial capacity to implement their GSP in cases where overlapping GSA’s exist? Would a description of technical, financial, and/or managerial capacity in a GSP where multiple GSAs are participating to develop and implement a single GSP be useful?

4.2 FRINGE AREAS

10724. Presumption That County Will Manage Areas Not Covered by a Groundwater Sustainability Agency.

(a) In the event that there is an area within a basin that is not within the management area of a groundwater sustainability agency, the county within which that unmanaged area lies will be presumed to be the groundwater sustainability agency for that area.

(b) A county described in subdivision (a) shall provide notification to the department pursuant to Section 10723.8 unless the county notifies the department that it will not be the groundwater sustainability agency for the area. Extractions of groundwater made on or after July 1, 2017, in that area shall be subject to reporting in accordance with Part 5.2 (commencing with Section 5200) of Division 2 if the county does either of the following:

- (1) Notifies the department that it will not be the groundwater sustainability agency for an area.*
- (2) Fails to provide notification to the department pursuant to Section 10723.8 for an area on or before June 30, 2017.*

CONSIDERATIONS

Fringe areas, as defined in this discussion paper, generally refer to unique cases where a relatively minimal portion of a basin or subbasin is not fully covered within the boundaries of a Special Act District or court-ordered adjudication. Fringe areas are not intended to be unmanaged areas, but in many cases, the fringe areas exist in portions of the groundwater basin that either have no groundwater extraction wells or only have de minimis extractors, which are exempt from groundwater extraction reporting per Water Code §10725.8(e) and fee assessments per §10730(a). However, some fringe areas could be more substantial than others, as illustrated in **Figure 2**, and could include portions of a basin that are hundreds or several thousand feet off of a Special Act District's or adjudication's boundary.

QUESTIONS

- In cases where a Special Act District or an adjudication action covers the majority of a basin, especially if a basin includes both Special Act Districts and multiple adjudications, should these minimal “fringe areas” be allowed to conform to a lesser GSP standard?
- If the fringe areas only include de minimis extractors, which are generally exempt from groundwater extraction reporting and fee assessments, could these areas be informally managed by the appropriate local agency, GSA, or Watermaster through an adaptive management program?
- In many cases the “fringe areas” located adjacent to Special Act Districts or adjudicated areas do not include any pumpers and have little or no existing monitoring infrastructure (i.e. monitoring wells) to evaluate groundwater conditions. In these cases, could it be appropriate for a local agency to use the Special Act District's GSP, an Alternative GSP, or adjudication information to show compliance with the SGMA?
- If a local agency does not elect to change the boundaries of a basin because it does not have the information required to do so, but during the preparation of a GSP, information is gained that could have been used to request a revision, can that information be used in the GSP to justify why fringe areas are not being included in a GSP?