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April 1, 2016

Via U.S. Mail and Email
(SGMPS@water.ca.gov)

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

Re: Draft GSP Emergency Regulations Public Comment

Dear Ms. Bisnett:

Thank you for the opportunity to comment on the Draft Groundwater Sustainability Plan Emergency Regulations (Draft Regulations). The California Farm Bureau Federation (Farm Bureau) recognizes DWR's incredibly challenging task to develop regulations within the timeframe required by the Sustainable Groundwater Management Act (SGMA). While DWR has done a remarkable job engaging stakeholders and developing Draft Regulations that are objective and thorough, for local communities to successfully implement SGMA, thoroughness must be balanced with flexibility and efficiency.

The Farm Bureau is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the state of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California's largest farm organization, comprised of 53 county Farm Bureaus currently representing more than 53,000 agricultural, associate and collegiate members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California's resources.

Local communities, working with and through Groundwater Sustainability Agencies (GSA) will struggle with challenging issues and make tough decisions over the next several years as GSPs are developed and implemented. Critical to success is

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ensuring the Draft Regulations allow sufficient flexibility for GSPs to be efficient and practically workable.

Of particular concern are costs. Costs of SGMA compliance will be challenging for local communities to justify if the regulatory requirements are not efficient and essential. Because there are limited resources available, as the cost of the GSP goes up, the funding available to implement projects will go down. This is particularly true for small districts and rural basins with few impacts where meeting excessively detailed or rigid requirements may be unduly onerous. While good planning is essential, the regulations must encourage maximum efficiency in order to reduce the burdens on communities of unnecessary planning costs.

These comments identify the elements of the Draft Regulations that are good and supported, as well as those areas where further improvements will help local communities successfully implement SGMA. The numbered topics below address general themes. Under each topic, specific sections of Draft Regulations are listed both that Farm Bureau supports, as well as changes to make the Draft Regulations more workable and efficient. Where possible letters and proposed changes by other commenters are referenced to simplify review by DWR.

1. Flexibility vs. Prescriptiveness

Finding the right balance between flexibility and sufficient guidance is key. While many elements of the Draft Regulations strike that balance correctly, the inclusion of excessive detail has made other provisions more prescriptive than necessary. The regulations must ensure that GSAs know what is expected and that a compliant GSP will achieve groundwater sustainability. But, ultimately, it is at least as important that local agencies have sufficient flexibility to make SGMA actually work for their communities.

The specific comments and recommendations below aim to ensure the regulations appropriately balance flexibility and clear guidance. Some aspects of Draft Regulations are helpful and important to retain, in other areas Farm Bureau recommends revisions or additions to simplify, increase local flexibility, or reduce the prescriptiveness of the current proposal:

§352.4 Best Management Practices: The requirements of this section to follow or develop “best management practices” go beyond what is required by SGMA. While it is appropriate for GSPs to include descriptions of the standards and procedures used “for management actions, data collection and analysis, and other necessary elements of the Plan,” these should not be mandated “best management practices.”

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Proposed Amendment: Farm Bureau supports the amendments proposed by Rural County Representatives of California (RCRC) and California Citrus Mutual, California Fresh Fruit Association, et al.¹

§352.6 Data and Reporting Standards: The data and reporting standards established in §352.6 are more rigid and prescriptive than is necessary to ensure local agencies can achieve and maintain sustainable groundwater management. While the desire for coordinated and uniform data may be technically desirable, the benefits of DWR receiving such information are outweighed by the practical burdens on local agencies of providing this information.

Local agencies should not be forced to deplete limited resources studying the details of a problem, when those resources could be better used actually fixing the problem itself. The Draft Regulations should be amended to reduce the specificity of information required and instead allow local agencies to provide a rationale for the data available to the agency and actually used. DWR can then review whether that rationale is likely to achieve sustainability on the basis of the information itself.

Proposed Amendment: Farm Bureau supports the amendments to § 352.6 proposed by RCRC and California Citrus Mutual, California Fresh Fruit Association, et al.

§354.14 Hydrogeologic Conceptual Model: The requirements for hydrogeologic models are excessively detailed and specific, increasing the burdens and constraining the flexibility of local agencies, rather than focusing efficiently only on that information that is the most essential to sustainable management. Additionally, some of the requested information is sensitive to landowners and could create suspicion and conflict that only hinders effective local management.

Proposed Amendment: Section 354.14 should be simplified to be less prescriptive. Specifically, subdivision (c) should be amended to read [reflected in RCRC's comments]:

(c) Physical characteristics of the basin shall be represented on one or more maps that depict the following:

(1) Topographic information, of adequate scale, derived from the U.S. Geological Survey or another qualified source.

(2) Surficial geology ~~derived from a qualified map~~ including the locations of ~~basin-wide~~ cross-sections required by this Subarticle.

¹ Where possible Farm Bureau refers to specific edits proposed by other commenters in an attempt to simplify DWR's review of comments.

(3) Soil characteristics such as ~~hydraulic conductivity or other water transmitting permeability and other relevant properties~~ as described by the appropriate Natural Resources Conservation Service (NRCS) soil survey or other applicable studies.

(4) Delineation of existing recharge areas that substantially contribute to the replenishment of the basin and significant discharge areas, ~~potential recharge areas, and discharge areas, including active springs, seeps, and wetlands within or adjacent to the basin.~~

(5) Surface water bodies that are significant to the management of the basin, ~~with water supply diversions greater than 10 acre-feet per year, storage facilities with a capacity of greater than 100 acre-feet.~~

(6) The source ~~location, distribution system, and point of diversion~~ for imported water supplies.

§354.16 Basin Conditions and §354.18 Water Budget: The requirements for the Basin Conditions and Water Budget are more comprehensive than is necessary for DWR to determine that a GSP is likely to achieve sustainability. While it is important for a GSP to describe existing conditions and provide a water budget, without reasonable limitation, requirements for these elements could result in analyses that far exceed that which is useful, cost-effective, and actually necessary.

Proposed Amendment: Farm Bureau supports the amendments to §354.16 and §354.18 proposed by RCRC and California Citrus Mutual, California Fresh Fruit Association, et al..

§354.20 Management Areas: Management areas are an important tool to provide local agencies flexibility to focus resources in the areas of a basin where they are needed most. This section should be maintained, and possibly expanded. For example, §354.20(a)(3) suggests, positively, that there may be flexibility in monitoring for different management areas; however, because of the stringent language of §352.6 and 354.34, the degree to which monitoring can actually vary is not clear.

§354.26 Undesirable Results: Farm Bureau generally supports the Draft Regulations' conceptual structure of "critical parameters," "minimum thresholds" and "undesirable results" in §354.26 and elsewhere (subject, however, to our comments on the term "critical parameter" in topic 4 below). Additionally, it is important to maintain the provisions of §354.26 (d) clarifying that multiple minimum thresholds may be evaluated in determining whether and to what extent an undesirable result is occurring.

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§354.28 Minimum Thresholds and §354.30 Measurable Objectives: The central idea of SGMA is that sustainable groundwater management is best defined and implemented locally. The substance of this process occurs in the definition of “minimum thresholds” and “measurable objectives.”

Farm Bureau supports §354.28 and §354.30 providing that minimum thresholds and measurable objectives are to be developed locally. This is essential to ensuring local agencies shape GSPs appropriately in relation to local conditions and communities.

Farm Bureau specifically supports the provisions of §354.28(e) clarifying that local agencies need not establish minimum thresholds for parameters that are non-essential to sustainable groundwater management of a basin. Although Farm Bureau encourages DWR modify some aspects of the “minimum threshold” standard (see topic 5 below), this feature of the current approach should be retained.

While retaining the flexibility in §354.28 and §354.30 is important, there are changes that can further improve the functionality of these sections.

Proposed Amendment: Farm Bureau supports the amendments to §354.28 and §354.30 proposed by RCRC.

§354.30 Measurable Objectives: The clarification in §354.30(c) that failing to achieve a measurable objective is not grounds for finding a GSP is inadequate is important and should be retained.

§354.34 Monitoring Network: The method and amount of monitoring identified in the regulations is important to ensure an appropriate balance between efficiency and effectiveness. Many elements of the Draft Regulations related to monitoring allow for efficiencies and are supported by Farm Bureau. However, amendments to §354.34 are needed to allow local agencies to rely on existing systems and information without costly investments in monitoring not essential to achieving groundwater sustainability.

Proposed Amendment: Farm Bureau supports the amendments to §354.34 proposed by RCRC and California Citrus Mutual, California Fresh Fruit Association, et al.

§354.44 Projects and Management Actions: The requirement to include contingency actions is overbroad. The detail and specificity of the content relating to “contingency actions” under §354.44(b) should be reduced and made permissive. Contingency actions should be not be mandatory because not all areas will have a significant risk of one or more undesirable results occurring in a basin.

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Proposed Amendment: Farm Bureau supports the amendments to §354.44 proposed by RCRC.

2. Proportionality

The regulations should clarify that the Department's evaluation of a GSP will be evaluated proportionately in relation to the conditions of the basin and the resources of the local agencies and groundwater users in the basin.

§350.2 General Principles: Language should be added clarifying that the Department may waive any specific requirement under the regulations if such waiver does not impair achieving the objectives of SGMA. This type of pressure relief is essential to ensure local agencies can comply with the regulations efficiently, based on specific local conditions.

Proposed Amendment: Add a new subdivision to §350.2 Principles to read as follows:

(x) In evaluating the adequacy of a local agency's GSP, the Department shall consider the quality and extent of the local agency's plan content in relation to the unique conditions and beneficial uses existing in the local basin and the capacity of the local agencies and water users to comply with the requirements of these regulations.

3. Alternatives

An important component of SGMA is possibility of alternative compliance under Water Code §10733.6. While the use of GSP alternatives will be limited, in certain circumstances the most efficient means to achieve the purposes of SGMA may be an alternative under Water Code §10733.6. Of particular concern to Farm Bureau is ensuring that the GSP Regulations accurately reflect the law pertaining to comprehensive adjudications.

Proposed Amendment: Section 358.4 and 358.6 would be amended to read:²

§ 358.4. Alternatives to Groundwater Sustainability Plans

² These changes are consistent with those proposed by California Citrus Mutual, California Fresh Fruit Association, et al..

(a) ~~A local agency that submits an~~ An alternative shall demonstrate that the alternative applies to the entire basin and satisfies the eligibility requirements of Water Code Section 10733.6, including an assessment that the alternative satisfies the objectives of the Act, and that the alternative is within a basin that is in compliance with Part 2.11 of the Water Code (commencing with Section 10920).

(b) An alternative shall be submitted to the Department by January 1, 2017, and every five years thereafter.

(c) ~~A local agency shall include the~~ The following information shall be included based on the type of alternative submitted:

(1) An alternative submitted pursuant to Water Code Section 10733.6(b)(1) shall include a copy of the groundwater management plan. The local agency submitting the alternative shall include an explanation of the functional equivalence of terms and concepts used in the alternative with the substantive and procedural requirements of the Act and this Subchapter.

(2) An alternative submitted pursuant to Water Code Section 10733.6(b)(2) that is not an adjudicated area described in Water Code Section 10720.8 shall do the following:

(A) Demonstrate that the adjudication submitted to the Department as an alternative is a comprehensive adjudication as defined by Chapter 7 of Title 10 of Part 2 of the Code of Civil Procedure (commencing with Section 830).

(B) Provide the Department with a copy of the adjudication order and any annual report submitted to the court pursuant to the adjudication.

(C) A local agency or party directed by a court submitting an alternative based on an adjudication action described in Water Code Section ~~10733.6~~ ~~(b)(4)(B)~~ 10737.4 may, notwithstanding Water Code Section 10733.6 (c), submit the adjudication action to the Department for evaluation after January 1, 2017.

(D) A party or group of parties proposing a stipulated judgment pursuant to subdivision (b) of Section 850 of the Code of Civil Procedure may submit the proposed stipulated judgment to the department for evaluation

and assessment pursuant to paragraph (2) of subdivision (b) of Section 10733.6.

(3) *An alternative submitted pursuant to Water Code Section 10733.6(b)(3) shall demonstrate that no undesirable results are present in the basin or have occurred between January 1, 2005, and January 1, 2015. Each subsequent submission shall demonstrate that no undesirable results are present in the basin or have occurred for the preceding ten-year period.*

~~(e) A local agency shall include an explanation of the functional equivalence of terms and concepts used in the alternative with the substantive and procedural requirements of the Act and this Subchapter.~~

(f) *If a local agency submits an alternative for a basin that includes areas outside its jurisdiction or service area, the local agency shall enter into agreements with any local agency or other entity from which information will be required to comply with reporting requirements for the alternative and to demonstrate that basin satisfies ongoing requirements of the alternative. An agreement shall include a list and map of all local agencies or entities that are party to the agreement.*

(g) *After an alternative has been approved by the Department, if one or more Plans are adopted within the basin, the alternative and any agreements shall be revised, as necessary, to reflect any changes that may have resulted from adoption of the Plan, and the local agency responsible for the alternative and Agency responsible for the Plan shall enter into an agreement that satisfies the requirements of Section 357.4.*

(h) *Any person may provide comments to the Department regarding an alternative in a manner consistent with Section 353.8.*

§ 358.6. *Department Evaluation of Plan Alternatives*

(a) The Department shall evaluate an alternative to a Plan submitted pursuant to Water Code Section 10733.6(b)(1) consistent with Article 6 of these regulations to determine whether the alternative satisfies the goals of the Act to achieve groundwater sustainability through local management and avoid undesirable results, including to adjacent groundwater basins.

(b) The Department shall evaluate an alternative to a Plan submitted pursuant to Water Code Section 10733.6(b)(2) to determine whether the alternative satisfies

the objectives of the Act for the basin consistent with Water Code Section 10720.1.

(c) The Department shall evaluate an alternative to a Plan submitted pursuant to Water Code Section 10733.6(b)(3) to determine that no undesirable results are present in the basin or have occurred between January 1, 2005, and January 1, 2015. Each subsequent submission shall demonstrate that no undesirable results are present in the basin or have occurred for the preceding ten-year period.

4. “Critical Parameter”

The term “critical parameter” as defined in §551 and used throughout the Draft Regulations creates uncertainty.

Proposed Amendment: Replace “critical parameter” with “sustainability parameter.” The same definition and application could be used, but changing “critical” to “sustainability” reduces confusion and more accurately captures the fundamental purpose of SGMA (namely, to achieve “sustainable” management of groundwater).³

5. Standards of Review

The Draft Regulations contain two standards of review – “substantial compliance,” as defined in §355.4, and a “clear and convincing” standard used in §354.28 and §354.30.

§355.4 Substantial Compliance: The substantial compliance standard is appropriate and should be retained unaltered. While it may be helpful to include the definition of “substantial compliance” in §351, the language of the standard should be retained.

§354.28 & §354.30 Clear and Convincing: The legally significant term “clear and convincing” adds a level of confusion and uncertainty that is improper in this context, and not necessary to achieve the goals of SGMA.

Proposed Amendment: Farm Bureau supports the amendments to §354.28(e) and §354.30(d) proposed by RCRC. In addition, §354.28(d) should be amended to read:

An Agency, after consultation with the Department, may establish a representative minimum threshold for groundwater elevation to serve as the minimum threshold value for multiple sustainability parameters, as appropriate. The Agency shall

³ This amendment is consistent with RCRC recommendations.

demonstrate that the representative minimum threshold is a reasonable and effective surrogate for multiple individual minimum thresholds ~~and is supported by clear and convincing evidence in the Plan.~~

6. Bureaucratic Redundancy

The regulations do not optimally allow local agencies to efficiently utilize existing agency infrastructure, and instead require creation and expansion of new and existing bureaucracies without adding any essential component of compliance with SGMA. While many of these issues are addressed in “1. Flexibility vs. Prescriptiveness” above, the requirement to establish a coordinating agency for intrabasin coordination in §355.10 should also be removed.

Proposed Amendment: The definition of “Coordinating Agency” in §351(i) should be deleted and the reference in §355.10 removed. Where it is appropriate to identify points of contact or data coordination pursuant to a coordination agreement, the basic requirements of coordination agreements should be briefly described in a new subdivision in §357.4, with the details of actual compliance left up to local agencies to work out in the coordination agreement itself.

7. Expand Outreach to Pumpers

The regulations should encourage GSAs to outreach to groundwater pumpers who will be subject to requirements of the GSP. For example, if a GSP includes metering, fees, or pumping reductions, GSAs should include in the GSP a plan to contact those individuals directly.

Proposed Amendment: Add a provision to §354.10(d) that the communication plan adopted by the agency include directed outreach to groundwater pumpers who may be subject to fees, restrictions, measuring and reporting requirements, or other actions affecting fundamental rights and economic interests as part of the GSP development or implementation.

8. Practical Guidance

Although not technically part of the regulations, Farm Bureau compliments DWR on the timely development of the Draft GSP Emergency Regulations Guide. This guide was very high quality and extremely helpful to understanding the structure and function of the Draft Regulations. Farm Bureau thanks DWR for the Guide and encourages development of similar guidance for the final regulations when they are developed.

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Thank you for considering Farm Bureau's comments. Please contact Jack Rice with any questions at jrice@cfbf.com or (916) 561-5667.

Very truly yours,



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