

Topic 3 - Land Use and County Involvement

*Department of Water Resources - Sustainable Groundwater Management Program
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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) 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 and Alternatives to GSP regulations that were deemed of special interest to further discuss with stakeholders and the public. This paper covers information related to Topic 3 – Land Use and County Involvement.

2.0 BACKGROUND

In 2014, the SGMA legislation (Senate Bill [SB] 1168, Assembly Bill 1739, and SB 1319) established a framework for groundwater management to occur at the local level through the actions of Groundwater Sustainability Agencies (GSAs) and local agencies. The SGMA requires GSAs to develop GSPs by 2020 or 2022 that, when effectively implemented, are to achieve sustainability within a groundwater basin/subbasin by 2040 or 2042. Importantly, there shall be direct coordination between the GSAs and the overlying land-use agencies, such as cities and counties, if those agencies with land use planning responsibilities have not elected to be the GSA. In addition, SGMA includes a presumption that the county, a key land use agency, will be the GSA for an area of a basin not otherwise managed by another local agency pursuant to the provisions of SGMA.

This document focuses on a variety of issues raised by individuals and entities outside of DWR to promote discussion. Inclusion of the issues in this document does not constitute an endorsement by DWR of any particular viewpoint with respect to that 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 related to *Land Use and County Involvement* issues and challenges that should be considered for SGMA implementation. DWR will consider these *Land Use and County Involvement* issues and challenges during the GSP regulation development process. The following represents some of the identified *Land Use and County Involvement* issues and challenges presented by stakeholders and advisory groups to DWR.

- Both counties and water agencies identified a mutual need for more ongoing communication. It was suggested that in many areas there is currently very little, if any, ongoing or routine communication between counties and water agencies at this time.
- Concerns about the reality of implementing land use changes by GSAs that do not involve counties.
- Concerns that not only counties, but in many areas cities, need to be more engaged with local agencies and water agencies.
- Issues surrounding land use authority – land use agencies need to have a seat at the table; special districts with no land use authority need to work with counties, who do have land use authority.

4.0 SELECT CALIFORNIA CODE SECTIONS RELATED TO LAND USE AND COUNTY INVOLVEMENT

This part identifies sections of the SGMA that relate to land use plan and county involvement. Code sections are found in the Government Code and the Water Code.

4.1 Government Code Section 65350.5. Review and Consideration of Groundwater Requirements

Before the adoption or any substantial amendment of a city's or county's general plan, the planning agency shall review and consider all of the following:

(a) An adoption of, or update to, a groundwater sustainability plan or groundwater management plan pursuant to Part 2.74 (commencing with Section 10720) or Part 2.75 (commencing with Section 10750) of Division 6 of the Water Code or groundwater management court order, judgment, or decree.

Questions and Considerations:

- What is the appropriate level of involvement between each GSA and the planning agency prior to publishing a notice of intent for a city or county general plan update?
- What is the nature and extent of review of a GSP by the planning agency, such as a city or county, if those agencies are not part of a GSA?
- How should the planning agency's consideration of a GSP be reflected in the general plan document in terms of policies and land use?
- Will consideration of a GSP result in new land use designations in the general plan that are protective of the groundwater basin (e.g., recharge area, well head protection area, etc.)?
- Can GSA(s) within the city or county general plan area propose specific water resources policies and provide project-level conditions in direct support of a GSP's implementation?

4.2 Government Code Section 65352. Referral of Proposed General Plan Updates to Other Agencies

(a) Before a legislative body takes action to adopt or substantially amend a general plan, the planning agency shall refer the proposed action to all of the following entities:

(1) A city or county, within or abutting the area covered by the proposal, and any special district that may be significantly affected by the proposed action, as determined by the planning agency.

(8) Any groundwater sustainability agency that has adopted a groundwater sustainability plan pursuant to Part 2.74 (commencing with Section 10720) of Division 6 of the Water Code or local agency that otherwise manages groundwater pursuant to other provisions of law or a court order, judgment, or decree within the planning area of the proposed general plan.

Questions and Considerations:

- What is the effect of general plan policy and land use recommendations by a GSA in support of their GSP?
- What is the appropriate role for GSAs outside the general plan area, but within the same groundwater basin who have adopted a GSP?
- What is the best time to bring GSAs into the general plan process?

4.3 Government Code Section 65352.5. Requirement to Provide Water-Related Documents to a General Plan Agency

(a) The Legislature finds and declares that it is vital that there be close coordination and consultation between California's water supply or management agencies and California's land use approval agencies to ensure that proper water supply and management planning occurs to accommodate projects that will result in increased demands on water supplies or impact water resource management.

(b) It is, therefore, the intent of the Legislature to provide a standardized process for determining the adequacy of existing and planned future water supplies to meet existing and planned future demands on these water supplies and the impact of land use decisions on the management of California's water supply resources.

(d) Upon receiving, pursuant to Section 65352, notification of a city's or a county's proposed action to adopt or substantially amend a general plan, a groundwater sustainability agency, as defined in Section 10721 of the Water Code, or an entity that submits an alternative under Section 10733.6 shall provide the planning agency with the following information, as is appropriate and relevant:

(1) The current version of its groundwater sustainability plan or alternative adopted pursuant to Part 2.74 (commencing with Section 10720) of Division 6 of the Water Code.

(2) If the groundwater sustainability agency manages groundwater pursuant to a court order, judgment, decree, or agreement among affected water rights holders, or if the State Water Resources Control Board has adopted an interim plan pursuant to Chapter 11 (commencing with

Section 10735) of Part 2.74 of Division 6 of the Water Code, the groundwater sustainability agency shall provide the planning agency with maps of recharge basins and percolation ponds, extraction limitations, and other relevant information, or the court order, judgment, or decree.

(3) A report on the anticipated effect of proposed action to adopt or substantially amend a general plan on implementation of a groundwater sustainability plan pursuant to Part 2.74 (commencing with Section 10720) of Division 6 of the Water Code.

Questions and Considerations:

- Who will prepare the report on the anticipated effect of a GSP on a general plan?

4.4 Water Code Section 10723.2. Consideration of All Interests of All Beneficial Uses and Users of Groundwater

The groundwater sustainability agency shall consider the interests of all beneficial uses and users of groundwater, as well as those responsible for implementing groundwater sustainability plans. These interests include, but are not limited to, all of the following:

(d) Local land use planning agencies.

Questions and Considerations:

- What does “consideration of local land use planning agencies interests” mean in practice?
- How does a GSA (or multiple GSAs) provide consistent and objective criteria that define and quantify beneficial use?
- How does a GSA account for beneficial use involving private well owners, including agriculture and rural residential uses that lie within the general plan boundaries of the planning agency?
- How will local land use interests be reconciled with potentially incompatible GSP objectives?
- What is the potential effect on an existing GSP of evolving land use decisions?

4.5 Water Code Section 10724. Presumption That County Will Manage Areas Not Covered By a Groundwater Sustainability Agency; Extraction Reporting to State Board if County Does Not Manage Those Areas

(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.

Questions and Considerations:

- How will the counties approach the decision to decide on whether or not it will be the GSA for areas within the same basin but not covered by another GSA?

4.6 Water Code Section 10726.4. Additional Authorities of Groundwater Sustainability Agency

(a) A groundwater sustainability agency shall have the following additional authority and may regulate groundwater extraction using that authority:

(1) To impose spacing requirements on new groundwater well construction to minimize well interference and impose reasonable operating regulations on existing groundwater wells to minimize well interference, including requiring extractors to operate on a rotation basis.

(2) To control groundwater extractions by regulating, limiting, or suspending extractions from individual groundwater wells or extractions from groundwater wells in the aggregate, construction of new groundwater wells, enlargement of existing groundwater wells, or reactivation of abandoned groundwater wells, or otherwise establishing groundwater extraction allocations. Those actions shall be consistent with the applicable elements of the city or county general plan, unless there is insufficient sustainable yield in the basin to serve a land use designated in the city or county general plan. A limitation on extractions by a groundwater sustainability agency shall not be construed to be a final determination of rights to extract groundwater from the basin or any portion of the basin.

Questions and Considerations:

- Could limitations on groundwater extractions imposed, as a means to achieve sustainable groundwater goals, result in *de facto* land use restrictions?

4.7 Water Code Section 10726.8. Relationship of This Part to Other Laws

(f) Nothing in this chapter or a groundwater sustainability plan shall be interpreted as superseding the land use authority of cities and counties, including the city or county general plan, within the overlying basin.

Questions and Considerations:

- How will GSAs and land use agencies reconcile their different obligations to achieve sustainable groundwater management?

4.8 Water Code Section 10727.2. Required Plan Elements

A groundwater sustainability plan shall include all of the following:

(b) (1) Measurable objectives, as well as interim milestones in increments of five years, to achieve the sustainability goal in the basin within 20 years of the implementation of the plan.

Questions and Considerations:

- How will GSAs quantify where and when water reductions are necessary, and communicate these reductions to basin water purveyors and to land use agencies?
- What is the role of the GSA relative to land use agencies and water purveyors to establish a sustainability goal that may be implemented by the other agencies?

4.9 Water Code Section 10727.4. Additional Plan Elements

In addition to the requirements of Section 10727.2, a groundwater sustainability plan shall include, where appropriate and in collaboration with the appropriate local agencies, all of the following:

(k) Processes to review land use plans and efforts to coordinate with land use planning agencies to assess activities that potentially create risks to groundwater quality or quantity.

Questions and considerations:

- What role should GSAs have in planning activities governed by the Subdivision Map Act?
- Might a land use agency condition parcel and subdivision maps in accordance with GSP policies and programs?
- What happens if unresolved issues remain between land use planning agencies and GSAs after review and coordination between those agencies?
- In addition to what is already laid out in the SGMA for GSP requirements, what information will land use agencies need outlined in a GSP to be able to make land use decisions that could affect sustainable groundwater management?