



September 4, 2015

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 sent via electronic mail to: Steven.Springhorn@water.ca.gov

Re: Comments on Draft Basin Boundary Regulations

Dear Mr. Springhorn,

Please accept these comments on behalf of the above-listed groups, members of the NGO Groundwater Collaborative and the Karuk Tribe, on the Departments’ proposed Basin Boundary Regulations. In general, the regulations appear to be clear and well thought-out, and provide good guidance to local agencies about how and when to request a boundary change.

We are, however, concerned about the lack of stakeholder engagement included in the process to adjust basin boundaries. While these regulations apply to all basins, and not just those medium and high priority basins subject to SGMA, the need to consult with interested persons (WC 1023.4) or interested parties (WC 10723.8(4)) should not be limited only to basins covered

by those requirements. We agree with the Department that the significant amount of information and coordination is required to develop a basin boundary request; incorporating a robust public engagement process improves the chances for success. For high and medium priority basins, that process should occur as part of the GSA or GSP development process, but whether or not SGMA applies, such engagement is necessary.

Article 2. Definitions

We agree with the need for definitions of “affected agency,” “affected basin” and “affected system,” but believe that there is also a need to identify beneficial users and uses that may be impacted by the change but are not necessarily represented by a local agency, such as tribal beneficial uses. For instance, a property owner whose land would be affected by a basin boundary change would be considered to be directly impacted by the proposed change in a way that requires more than notification of a proposed public meeting or the opportunity to comment at the local Board of Supervisors. A basin change that removes or adds a portion of a surface water body that either feeds or is fed by the basin has a potential impact on the users of that resource, who may not reside within the existing or proposed basin boundaries.

Recommendation: insert new bullets f-h and renumber subsequent bullets accordingly

341 (f) “Affected property owner” means a person who owns property that, in whole or in part, would, as a result of a boundary modification, include more, fewer or different basins or subbasins than without the modification, and who is a de minimus user or a groundwater extractor.

341 (g) “Affected interested parties” means beneficial user or users of the basin or an interconnected surface water body whose use may be impacted by the boundary change.

341 (h) “Affected Tribe” means a Tribe located within, or that has trust resources that may be affected by, management of the groundwater in the basin or subbasin.

Article 4. Procedures for Modification Request or Protest

§ 343.6. Combination of Requests

We think the language as currently written does not clearly require that multiple boundary requests in a single basin or sub-basin be coordinated.

Recommendation:

Requesting agencies shall combine all boundary modification requests that affect the same basin or subbasin and shall coordinate with all other affected agencies, affected interests, affected property owners, affected tribes and affected systems, ~~as necessary~~, to present the information as a single request. The Department may consider or adopt all or any part of a combined basin modification request.

343.10 Status of Request

(b)(2) Evidence of local agency support. We have two concerns with this section; first, that there is no requirement to show support from the general public, interested parties (as identified in WC 10723.8(a) (4)), affected tribes or affected property owners; second, that the requirement that local support be part of the modification request can be delayed as long as the requesting agency affirms that such support is “likely to be forthcoming.” This seems like a weak approach to ensuring public support for a boundary modification. We understand that local agencies have approval processes that may not coincide with the timing of the submission, but current language seems to indicate that necessary outreach need not have occurred prior to submission.

Recommendation:

343 (b) (2)However, the Department may begin its evaluation before evidence of local support described in Section 344.8 has been made available if the requesting agency ~~affirms~~ provides information showing that the required support is likely to be forthcoming has been solicited through a public process and is scheduled for consideration.”

343.10 (d) The requesting agency shall, upon receiving notice that the request is complete, notify all ~~interested~~-affected local agencies, affected interested parties, affected property owners, affected tribes and public water systems and any other person or entity who has expressed an interest in receiving notification of the proposed modification to the requesting agency.

343.12. Protests

While we understand the wish to expedite the adoption of basin boundary changes, the draft proposal requires protestors to develop the same type of information as provided in the boundary proposal, but in half the time given to the agency requesting the boundary change – even less, since the Department plans to provide 60 days notice prior to opening a 60-day period for submitting basin boundary change proposals. Additionally, requiring the “same type” of information in the protest as in the proposal seems unnecessarily restrictive and may be difficult to accomplish unless all data and models used in developing the boundary change are made publicly available.

We also understand the Department's concern about its capacity to respond to multiple or complex protests, but believe that a response to a protest is needed in order to demonstrate that the protest materials have been fully reviewed and considered. Finally, these regulations do include a public approval process for basin boundary changes through the California Water Commission, and we think it is appropriate that protests also be heard and decided by the Commission if the Department plans to recommend the boundary change at issue.

343.12. Protests

(a) Any person, affected interested party, affected tribe or agency may protest a basin modification request as follows:

(1) Protests must be submitted electronically to the Department within ~~30~~ 60 days after receiving the notice required by Section 343.10(d), with a duplicate copy sent to the requesting agency the same day.

(2) The protest must include the name, address, and e-mail address of the protestant.

(3) The protest must include a clear statement of the protesting entity's objections.

(4) A protest must rely on ~~the same type~~ a similar level of scientific and technical information, and will be evaluated by the same criteria, as the particular basin modification request to which it is addressed.

(b) The Department shall post all protests on the Department's Internet Web site.

(c) ~~The Department is not required to respond to protests, but will consider protests as part of its evaluation of a request.~~ The Department shall consider the protest as part of its evaluation of a request. The Department shall provide a written response to the party submitting the protest at a date not later than the date the requesting agency is informed of the Department's decision in the boundary change. The petitioners may appeal the Department's determination to the California Water Commission.

Article 5. Supporting Information

344.4. Notice and Consultation

As we stated above, these regulations should mirror the language and requirements of SGMA. Section 10723.4 requires a groundwater sustainability agency (GSA) to establish and maintain a list of persons interested in receiving notices regarding plan preparation, meeting announcements, and availability of draft plans, maps and other relevant documents. Section 10723.8 (4) requires a prospective GSA to develop a list of interested parties and identify how their interests will be considered in the development and operation of a GSA and the

development and implementation of the agency's groundwater sustainability plan. Section 10727.8 states that a GSA shall encourage the active involvement of diverse social, cultural, and economic elements of the population within the groundwater basin prior to and during the development and implementation of the groundwater sustainability plan. We think it's wise to reiterate existing statutory language in order to ensure that public engagement requirements are consistent and complete.

Recommendation:

Each request for boundary modification shall include information demonstrating that the requesting agency consulted with all interested-affected local agencies, interested persons and public water systems in the affected basins including but not limited to, the following:

- a) A list of all local agencies, tribes, interested persons and public water systems in the affected basins.*
- b) An explanation of the methods used to identify ~~interested~~ all affected local agencies, interested parties, affected property owners, affected tribes and public water systems in the affected basins.*
- c) Information regarding the nature of consultation, including copies of two-way correspondence with between the requesting agency and affected local agencies, interested parties, affected property owners, affected tribes and public water systems and any other persons or entities consulted, as appropriate.*
- d) A summary of all public meetings at which the proposed boundary modification was discussed or considered by the requesting agency, a description of how the requesting agency encouraged the active involvement of diverse social, cultural, and economic elements of the population within the groundwater basin and a summary of any responses made by the requesting agency.*

344.8. Local Support

As noted throughout this letter, local support must include those members of the public or interest groups that have expressed an interest in being involved in the process or who are directly affected by the decision.

Recommendation:

(a) A requesting agency shall demonstrate local support for a proposed jurisdictional boundary modification pursuant to Section 342.4 as follows:

- (1) A request that involves an internal boundary modification shall provide information demonstrating that the modification is supported by ~~each~~ each affected local agencies, a*

majority of interested parties, affected property owners, affected tribes and each affected system.

(2) A request that involves a basin consolidation or county basin consolidation shall provide information demonstrating that the requesting agency notified ~~each~~ all affected local agencies, affected interested parties, affected property owners, affected tribes and affected system and that a majority of affected local agencies, affected interested parties, affected property owners, affected tribes and affected systems support the boundary modification.

(3) A request that involves basin subdivision shall provide information demonstrating that the boundary modification is supported by ~~each~~ all affected local agency agencies, and by ~~each~~ all public water systems in the affected basin(s).

(b) Evidence of local support from ~~any~~ all affected local agency agencies shall consist of a copy of a resolution formally adopted by the decision-making body of ~~the~~ each agency.

(c) Evidence of local support from ~~any~~ all affected public water systems shall consist of a copy of a resolution formally adopted by the decision-making body of the system or a letter of support signed by an executive officer with appropriate delegated authority.

(d) Evidence of local support from affected interested parties may take the form of a resolution adopted by an advisory committee such as one established under Water Code section 10727.8.

(e) Evidence of local support by affected property owners may take the form of a vote or the written approval of a majority of the affected property owners.

(f) Evidence of support from affected tribes may take the form of a resolution adopted by the council of each affected tribes.

344.16. Technical Studies for Jurisdictional Modifications

We know that the Department shares our concern that boundary adjustments not create undesirable results or limit the ability of a GSA to address those undesirable results or the state to achieve sustainability. We think that the best way to ensure this is to consider basin boundary changes only after a groundwater sustainability plan or its functional equivalent has been adopted.

Recommendation:

§ 344.16. Technical Studies for Jurisdictional Modifications

(a) Each request for a boundary modification that involves a jurisdictional modification pursuant to Section 342.4 shall include the following:

(1) A water management plan that covers or is in the immediate vicinity of the proposed basin or portion of the proposed basin and satisfies the requirement of Water Code sections 10753.7(a) or 10727, through one of the following:

(A) An adopted groundwater management plan, a basin wide management plan, or other integrated regional water management program or plan that meets the requirements of Water Code section 10753.7(a) and has been prepared for a low or very low-priority basin as identified in Bulletin 118.

(B) Management pursuant to an adjudication action.

(C) One or more technical studies that cover the relevant portion of a basin or subbasin and adjacent areas that have been identified as a low or very-low priority basin in Bulletin 118.

(D) A valid Groundwater Sustainability Plan adopted pursuant to the Act or an alternative approved by the Department in accordance with Water Code 10733.6.

(b) Each request for a boundary modification that involves a basin subdivision pursuant to Section 342.4(c) shall provide a description and supporting documentation of historical and current conditions and coordination within the existing basin or subbasin on the following components, where applicable:

(1) Groundwater level monitoring programs, historical and current groundwater level trends, and areas of significant groundwater level declines, including a map of known impacted sites and their proximity to basin residents dependent upon shallow domestic or small water system wells.

(2) Groundwater quality issues within the proposed and existing basin that may impact the supply of usable groundwater, including a map of known impacted sites and areas, mitigation measures planned or in place, and a description of impact to water budget.

(3) Inelastic land surface subsidence within the proposed and existing basin including a map of known subsidence areas, historical trends within known land subsidence areas, and a description of impacts to the basin or subbasin water budget.

(4) Groundwater-surface water interactions in the proposed and existing basin, which may be demonstrated by a map identifying significant surface water bodies, and a contour map or detailed written description of the direction of groundwater movement relative to the water bodies, the location and nature of seeps and springs, and known water quality issues within the basin and in hydraulically connected adjacent basins. The map shall identify all impacted surface water bodies whether they lie within or outside the proposed and existing basin.

(5) A map identifying the recharge areas in the proposed and existing basin.

(6) A statement of the existing and planned coordination of sustainable groundwater management activities and responsibilities between the proposed and existing basin where required by the Act.

Article 6. Methodology and Criteria

345.2 Basis for Denial of Request for Boundary Modification

We agree with the criteria listed in this section, and are particularly happy to see language protecting disadvantaged communities from being carved out of a basin through this process. We recommend adding an additional criterion, after criterion (b), and renumbering all subsequent criteria:

Recommendation:

(b) ...

(c) The requesting agency fails to demonstrate adequate support from and/or coordination with affected local agencies, affected interested parties, affected property owners, affected tribes and affected systems.

345.4 Criteria for Evaluating Supporting Information

The Department should emphasize in these regulations the need to provide data in a compatible, publicly accessible format.

Recommendation:

(a) (1) Hydrogeologic models will be evaluated to determine the degree to which the models are compatible with publicly available, regional scale models and align with the known geologic framework, the known direction and movement of groundwater flow, and the general understanding of water budget components for the basin or subbasin.

...

(c) For jurisdiction modifications of consolidation or county basin consolidation or basin subdivision pursuant to Section 342.4(b) and (c), the Department will evaluate the adequacy of a hydrogeologic conceptual model. The evaluation will assess the degree to which the model is compatible with publicly available, regional scale models, the known direction and movement of groundwater flow, and the general understanding of water budget components for the basin or subbasin.

(d) For jurisdiction modifications of basin subdivision pursuant to Section 342.4(c), the Department will evaluate the adequacy of the description and supporting documentation of historical and current conditions, as well as coordination between the requesting agency and all affected local agencies in the existing basin, of the following: ~~where applicable:~~

...

(6) ~~Evidence of coordination between local agencies and public water systems within and between the proposed and existing basins or subbasins pertaining to water budgets, data collection, and other agreements designed to promote sustainable groundwater management, as appropriate.~~ Substantial evidence of coordination between the requesting agency and all affected local agencies and public water systems within and between the proposed and existing basins or subbasins pertaining to water budgets, data collection, and other agreements designed to promote sustainable groundwater management.

Article 7. Adoption of Basin Modification

We think it is important for the public and the Commission to have a clear understanding of any concerns that have been raised about a boundary modification they are being asked to approve. We suggest a few changes to ensure that this is the case.

§ 346.2. Presentation of Draft Boundary Modifications

(a) If the Department determines that a boundary modification is supported by adequate technical information and meets the requirements of this Subchapter, the Department shall post the draft revised basin boundaries, as well as any protest to the proposed change filed with the Department, on the Department's Internet Web site and hold at least one public meeting to solicit comments on the draft boundaries.

(b) The Department shall present a copy of the draft revised basin boundaries, as well as any protest to the proposed change, to the Commission to hear and comment on the draft revision.

Thank you for allowing us the opportunity to provide feedback on these draft regulations.

Sincerely,

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Jennifer Clary, Water Program Manager, Clean Water Fund

Kristin Dobbin, Regional Water Management Coordinator, Community Water Center

Peter Drekmeier, Policy Director, Tuolumne River Trust

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Caryn Mandelbaum, Staff Attorney and Fresh Water Program Director, Environment Now

Sandi Matsumoto, Associate Director, Integrated Water Management, The Nature Conservancy

Noe Paramo, Legislative Advocate, California Rural Legal Assistance Foundation

Carol Perkins, Water Policy Advocate, Butte Environmental Council

Juliet Christian-Smith, California Climate Scientist, Union of Concerned Scientists

Craig Tucker, Natural Resources Policy Advocate, Karuk Tribe