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File No. 82231.00003

December 18, 2013

VIA EMAIL TO ERIC OPPENHEIMER
ERIC.OPPENHEIMER@WATERBOARDS.CA.GOV

Eric Oppenheimer
State Water Resources Control Board
1001 "I" Street
Sacramento, CA 95814

Re: Comments re Proposed Groundwater Workplan

Dear Mr. Oppenheimer:

The Southern San Joaquin Valley Water Quality Coalition would like to make some general responses to the recently distributed discussion draft Groundwater Workplan. We find the State Water Resources Control Board groundwater framework to be impressively broad and very aggressive. It targets all groundwater issues, quality and quantity, without the usual constraints of clarifying the agency's statutory authority to initiate many of its concepts.

Response to Section 1: Managing California's Groundwater

We are very concerned when the regulating agencies start talking about "clean-up" of contaminated groundwater basins. This is especially true when dealing with nonpoint source contributions, which may be legacy and not able to be linked to particular discharges.

The State Board has long sought authority to control groundwater extractions, but the legislature has denied any such authority. We have been wary that with the Board's entry to nonpoint source groundwater quality, there would be attempts to link those efforts with the quantity issues and thereby venture forward without direct authority.

The reference in Section 2 that the Board may try to justify its authority on "constitutional" ground relative to the prevention of waste and unreasonable use of state water resources (groundwater) is without merit given the state's direct denial of such authority to the Board.



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Response to Section 2: Implementing the Vision

The paper also addresses the local and regional management of groundwater basins. It is quite proper to rely on such local groundwater authority. Local controls have legal authorization and are more appropriate rather than state-wide controls.

This section goes for beyond state statutory authority by advocating:

- “management of groundwater basins”
- “ensure groundwater quality and quantity is maintained at sustainable levels”
- “groundwater quality can also be impacted by pumping and declining water levels”
- “the greatest challenge for groundwater is overdraft”
- “therefore, an integrated approach to ground water management is needed”

As to water quality, the report specifically targets nitrate and salts, and categorically links these to “agricultural drainage,” but does so without any reference to percolation, or referencing the Irrigated Lands Regulatory Program (ILRP).

Response to Section 3.1: Management Sustainable Thresholds

This section calls for the state to “ensure a sustainable groundwater supply” and identifies that the basin plans and the Antidegradation Policy are the State Water Board tools to do so. It expressly references incorporating salt and nutrient (nitrate) standards in the basin plans is a primary regulatory avenue. The paper should also reference the ILRPs as additional tools to make our groundwater supplies sustainable. There is also reference to the Antidegradation Policy application to groundwater. The State Board is presently evaluating how the ADP should be interpreted to apply to groundwater. We fully support the ongoing efforts to clarify the Board’s Antidegradation Policy in respect to groundwater.

We understand that the concept of “thresholds” needs to apply to both water quality and well as water quantity, but since these would in fact function as management goals we recommend the referenced management goals should not be equated with “standards”, or even water quality objectives as these are used in Basin Planning. It would also be important for “sustainability” to be defined from a management perspective and in the specific context of local groundwater basins and water management goals.



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Conjunctive Use

To ensure sustainable groundwater management we should increase opportunities for robust voluntary conjunctive management of surface water resources. Many groundwater basins that are facing unsustainable overdraft conditions have been dependent upon reliable surface water supplies that are no longer available, largely due to instream regulatory requirements. The Board needs to identify ways it can reduce regulatory barriers to more water transfers, increased stormwater and recycled water recharge, and new surface and groundwater storage and conveyance projects statewide.

The export of water conveyed through the Delta to areas on the Westside of the San Joaquin Valley and the Tulare Basin has been greatly reduced over the past twenty years. The SWRCB and the Administration cannot divorce groundwater conditions and management from overall state water policy.

Monitoring Data

There needs to be a more robust discussion of the successes that local water management agencies have already achieved in the areas of monitoring and reporting.

Response to Section 3.2: Monitoring and Assessment

This paper carries forward some of the UCD/Harter legislative suggestions of 1) increased groundwater monitoring and public availability of data, 2) require property owners to monitor their water quality, and 3) the requirement to notify drinking water users of the quality of their water. Each of these issues is presently being addressed in the ILRP ag waivers and general orders.

Response to Section 3.3: Governance

- “In high use basins, groundwater management is necessary to insure thresholds for quality and quantity are not exceeded.” \
- “Managing groundwater levels requires maintaining a balance between pumping, depletion and recharge at the basin scale.”

The above concepts are undeniably true, but “need” does not trump “authority,” and local controls should be encouraged.



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This is very a “Board-centric” document, but should also address the unique roles of each state agencies, the Regional Boards, local agencies, and groundwater basin managers.

Response to Section 3.4: Funding

The document references present programs in this overall area (i.e., GAMA, stormwater) without referencing the Irrigated Lands Regulatory Program, and also without stating that all these water quality programs are actually being paid by stakeholders. Such stakeholder paid programs call out for greater involvement and influence by the paying stakeholders, which is not adequately occurring.

The document did appropriately reference the funding difficulties caused by Prop 218, which are often inappropriately disregarded by the Regional Boards.

The paper fell short of at least introducing the concept of having aquifer remediation and drinking water remedies to be paid by the broadest cross-section of the public, including the water users themselves, or general public. It also did not reference any federal participation.

The framework also failed to reference the work and work product of the Governor’s Drinking Water Task Force, which has already tackled some of the issues referenced in this framework. That is also true of the Harter UCD report. (i.e., DAC preference, addressing DAC’s application problems, prioritizing DAC’s projects).

Response to Section 5: Oversight

The workplan again tries to find legal authority by asserting “Constitutional authority to protect the public trust, prevent waste or unreasonable use of the state’s resources.” This is a desperate attempt to find indirect authority where direct authority has been denied.

The key question is, in what situations does the Board expect to step-in where local management is determined not to be working. The Board should focus its resources in groundwater basins that are most “at risk” due to conditions of long-term overdraft associated with increases in extractions resulting from population growth, changes in agricultural practices and/or reductions in imported water.

SUMMARY:

This framework paper certainly identifies important quantity, quality and elevation issues involving the state’s groundwater. Therefore, this will be an important document to initiate



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discussion on these topics; however, due to statutory authority limitations, this cannot serve as an action initiating regulatory document or workplan.

Sincerely,

A handwritten signature in blue ink, appearing to read 'W. Thomas', with a long horizontal line extending to the right.

William J. Thomas
for BEST BEST & KRIEGER LLP

WJT:lmg

CC: Tom Howard
Board Members