



Association of California Water Agencies

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December 18, 2013

Sent via e-mail to: eric.oppenheimer@waterboards.ca.gov

Eric Oppenheimer, Director
Office of Research, Planning and Performance
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Subject: Comments on Discussion Draft Groundwater Workplan Concept Paper

Dear Mr. Oppenheimer:

The Association of California Water Agencies (ACWA) appreciates the opportunity to provide the following comments on the State Water Resources Control Board (Board) Discussion Draft Groundwater Workplan Concept Paper, dated October 4, 2013 (Concept Paper). We are particularly appreciative of the way staff solicited informal input on the Concept Paper as it was being prepared, and that Board members and staff attended a “focus group” meeting with water agency leaders on October 31, 2013 at ACWA to discuss the Concept Paper. The following comments will underscore some of the points previously expressed during that focus group meeting, but they also will address the broader groundwater policy landscape and how the Board’s Workplan may ultimately make its contributions to other important and related groundwater policy initiatives.

We appreciate your indication during the focus group meeting that the Concept Paper was intentionally quite broad in scope to provide Board members with a context that is intended to inform a subsequent, more detailed Workplan that the Board will use to focus its efforts in coming years. The Concept Paper helps frame the Board’s role, while rightly acknowledging the key role of local and regional groundwater managers, as well as the role of other parts of state government in ensuring comprehensive and effective groundwater management in California.

We also appreciate the way staff and the Board have indicated familiarity with ACWA’s April 2011 policy document, “Sustainability from the Ground Up: A Framework for Groundwater Management in California,” (Groundwater Framework) which addressed the challenges facing groundwater managers in basins statewide and identified proactive steps to advance sustainable management based on local leadership. The Concept Paper acknowledges a key message conveyed by the Groundwater Framework that most groundwater basins in the state are under sound local and regional management, and that local management will continue to be the preferred approach, even where concerns have been raised about potentially unsustainable water level declines, local subsidence and degraded groundwater quality. ACWA continues to believe that, given the variety of circumstances across California (different hydrology, different lithography and stratigraphy in groundwater basins, differing institutional frameworks, and different levels of dependence on imported water) it is critical that the primary

authority for the management of groundwater be retained by local and regional agencies. As members of the SWRCB indicated during our October 31 meeting, it is only when local or regional agencies have the authority, knowledge and ability to manage groundwater and still fail to sustainably do so that, depending on the circumstances, it might be appropriate for the State of California to step in to prevent irrevocable harm to a groundwater basin.

Recommendation to Align With California Water Action Plan

The Administration released its draft California Water Action Plan on the very day of our focus group meeting on October 31, 2013. We have been actively engaged with the Administration to advocate for a broad action-oriented agenda for improved water resource management in coming years. In particular, ACWA supports the commitment to improving local and regional groundwater management capabilities as articulated in the Administration's draft California Water Action Plan, and we recommend that the Board revise the draft Workplan Concept Paper to align it with the draft California Water Action Plan, which we understand the Administration will finalize in early 2014.

During our discussion on October 31, members of the Board noted that the Water Action Plan is intended to guide the Administration's actions over the next five years by identifying actions that can be taken during that period and then holding the Administration accountable for achieving the actions identified in that plan. This type of accountability and transparency represents a good model for local and regional agencies charged with managing California's groundwater resources. However, as discussed below, ACWA believes that local and regional agencies require further tools in order to be able to perform this role in the most effective manner. We look forward to an ongoing dialogue with the Board and the Administration on these issues.

Additional comments on the Concept Paper

Using the structure provided by the five key elements of groundwater management identified in the Concept Paper, we offer the following observations, related questions, and suggestions. These comments echo many of those made during our focus group meeting.

Sustainable thresholds

We understand that the concept of "thresholds" needs to apply to both water quality as well as water quantity, but since these would in fact function as management goals we recommend that this section be retitled as "Sustainable Goals". These management goals should not be equated with "standards", or even water quality objectives as these are used in Basin Planning. Clearly it will be important for "sustainability" to be defined from a management perspective and in the specific context of local groundwater basins and water management goals.

Conjunctive Use

One fundamental vehicle to ensure sustainable groundwater management is to increase opportunities for robust conjunctive management of surface water resources. Many groundwater basins that are facing unsustainable overdraft conditions have been dependent upon once reliable surface water supplies that are no longer available; a significant number of which have lost those once conjunctively managed supplies primarily because they have been reallocated to serve instream regulatory requirements. Climate change will also present additional challenges related to management strategies, protocols, and expectations that have been developed based upon historic hydrological conditions that no longer accurately represent the likely future condition. The Board needs to identify ways it can reduce barriers to more water transfers, increased stormwater and recycled water recharge, and new surface and groundwater storage and conveyance projects statewide to help ameliorate and ideally reverse basin impacts arising from past, present and future regulatory constraints in the context of a climatic transformation. This is consistent with the Administration's draft California Water Action Plan.

Through a variety of regulatory actions, 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. In part, those exports of water were designed – as was the export of water to Southern California and the Bay Area – to remedy overdraft conditions recognized many years ago. Both the State of California and the United States, in operating the State Water Project and the federal Central Valley Project, respectively, have reduced exports and thus have severely diminished the supplemental supplies intended for conjunctive use in these areas. The SWRCB and the Administration cannot divorce groundwater conditions and management from overall state water policy or the various related regulatory actions implicating and stressing groundwater sustainability.

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. ACWA will provide some supporting information for the Board's consideration. A primary first step associated with monitoring data should be identifying problem areas and focusing limited resources on those areas. We need to identify existing data gaps and work on "connecting the dots" between information and data provided by groundwater management agencies. Part of this effort will be creating more robust reporting requirements. Investments in resources should be prioritized to support building local capacity to manage and maintain data management and reporting systems where reporting should be accessible to the public, in contrast with centralized systems managed at the State level (such as the Groundwater Ambient Monitoring & Assessment (GAMA) program and the California Statewide Groundwater Elevation Monitoring (CASGEM) program). Reporting should generally be accessible to the public, but not as reporting to Water Boards. We believe there may be some value in identifying active management areas but better criteria need to be developed to define these areas.

However, monitoring and reporting really do not address the bigger picture with regard to how California manages its groundwater resources. As mentioned above, there are some intensively used groundwater basins where there are sophisticated models of the basin that are based on decades of technical and scientific research. There are other groundwater basins that are (or shortly will be) used

in much the same manner where the technical data are lacking. The State of California last completed an update to Bulletin 118 in 2003, and it is now overdue for a complete revision that should broaden its scope to address the concerns that are identified in the Concept Paper and show how local agency plans and actions address groundwater sustainability basin-by-basin statewide. It is important for the Administration to devote the resources either to develop and maintain the basic technical data relating to groundwater levels and quality in California or to provide local and regional agencies with the resources to undertake that task. If the Administration chooses the latter course, then perhaps a discussion of a potential program modeled on the Delta Levees Subvention Program, wherein local agencies do work and are reimbursed for 75% of their costs, could become the basis of fostering a partnership between the State of California and local/regional agencies.

Further, the data developed about groundwater basins need to be, as mentioned above, appropriately accessible so that stakeholders can participate in governance discussions about groundwater basins. Such transparency is particularly important for basins that are “at risk,” i.e., where extractions are increasing and supplies are dwindling with no plan on the horizon to reverse that trend.

Governance structures and management elements

In general, we see this as a very “Board-centric” document, which is not surprising but which could be addressed by considering the governance and management as more of a “framework for sustainability” in which the unique roles of state agencies and the Regional Boards can be used to empower local agencies and groundwater basin managers. This again depends on a clearer understanding of what local agencies do, what authorities and tools they currently have available or those they may need, and what other management tools can be brought to the table. To this end, ACWA has formed a Board-level Groundwater Sustainability Task Force, which will be addressing such questions as what current and new tools and authorities may be needed by local agencies. We anticipate that this group will be developing suggestions for the Board’s consideration in coming months.

Funding

We clearly need adequate funding mechanisms to implement actions and solutions going-forward. Although the emphasis may be on lack of funding, we should identify ways we can do more effective work within current budget parameters. ACWA opposes the water user fee concept discussed in the Nitrates Report, but we want to work with the Board and the Administration to identify alternative ways to help ensure safe drinking water for communities currently at risk. In addition, ACWA appreciates the recognition of constraints that local agencies face in raising fees for needed water management investments more generally (e.g. Proposition 218), and we are committed to a dialog about sustainable and integrated financing.

Oversight/enforcement

The key questions raised by this element, are (1) in what situations does the Board expect to step-in where local management is determined not to be working, and (2) over what time frame does the Board

anticipate allowing locals to make progress before it does so? Moreover, how is “not working” going to be defined and when would an “intervention trigger” be pulled, especially considering that such determinations must be specific to the location and reflective of the unique situation pertaining to the basin in question?

Although the Board has outlined its general authorities and described many of its existing regulatory programs and enforcement tools, they must be used judiciously and as part of a wider management-based initiative. These authorities generally seem to be sufficient, and if aligned with commitments to performance-based management as described above, we do not see the need to propose new or intrusive initiatives in this regard. In regards to the time frame for ultimate Board actions consistent with its enforcement tools, it should be underscored that groundwater basins in duress fell into this condition only after many decades of extensive water resource development and usage, and achieving sustainable goals may likewise take considerable time.

With regard to the role of the Board for oversight and enforcement, ACWA believes that the Board should focus its resources in groundwater basins that are most “at risk” due to conditions of long-term unmanaged or unsustainable overdraft associated with increases in extractions resulting from, new wells outside any management jurisdiction, population growth, changes in agricultural practices, and/or reductions in imported water. Conceptually, such groundwater basins might be identified as those in which 20-year average groundwater levels are in decline and that this trend will likely continue without an active program to reverse this decline. In these basins, the Board should work collaboratively with regional and local water managers and other agencies in these basins to ensure they have sufficient authority to manage extractions and/or increase imported water, have sufficient resources (technical and monetary) to understand the nature of the problem and then seek proper remedial action, and – perhaps most important of all – sufficient political support from the State of California to make the often-hard choices needed to preserve the groundwater basin. Only if all of the above factors are present and a local/regional agency still refuses to move toward preservation of a groundwater basin might the Board be justified in considering intervention as a fail-safe.

As acknowledged in the Concept Paper, the Board needs to collaborate with other state agencies and stakeholders to effectively address oversight and enforcement needs. Improved coordination between state agencies is essential, especially between the Board and the Department of Water Resources (DWR) (for example with regard the status of the CASGEM program). We support the proposed action to establish an interagency task force to address this issue but recommend that it be convened by DWR, with Board participation. Such an effort should be broadly inclusive of stakeholders (including agriculture and land use authorities that are responsible for managing growth and which drive ever-increasing demand pressure in many groundwater basins), and charged with developing recommendations for pairing oversight and enforcement assurances with regulatory streamlining incentives and groundwater management authorities to achieve optimal outcomes.

ACWA also supports the Board’s related proposal to clarify its Antidegradation Policy to improve administrative consistency by the regional boards and reduce barriers to enhanced and improved groundwater management. Additionally, we believe the Concept Paper should describe how the proposed policies and programs are in alignment with and support the State’s climate change adaptation policies.

Eric Oppenheimer
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ACWA appreciates the interest and sensitivity that has been evidenced by each Board member personally, and by senior staff, in engaging in various focus group and other stakeholder outreach efforts in the preparation of the Concept Paper. We look forward to continuing a constructive dialog on this extremely significant issue in coming weeks and months.

If you have questions or want to follow-up concerning these comments please contact me at (916) 441-4545.

Sincerely,



David Bolland
Senior Regulatory Advocate

Copies:

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