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September 30, 2019

Craig Altare
GSP Review Section Chief
California Department of Natural Resources
Attention: Sustainable Groundwater Management Office
P.O. Box 942836
Sacramento, CA 94236-0001

Subject: Response to DWR's Assessment of the Groundwater Sustainability Plan Alternative for the Eel River Valley Groundwater Basin

Dear Mr. Altare:

This letter provides the County of Humboldt's response to DWR's assessment of the Groundwater Sustainability Plan Alternative ("GSP Alternative") submitted by the County for the Eel River Valley groundwater basin in conformance with the Sustainable Groundwater Management Act ("SGMA").

A GSP Alternative is intended to accomplish the same goals and objectives as a Groundwater Sustainability Plan but does not require the formation and administration of a Groundwater Sustainability Agency and supports more streamlined planning efforts, which allows more cost-effective use of limited resources. A GSP Alternative must demonstrate that the basin has operated within its sustainable yield over a period of at least ten years [Water Code §10733.6(b)(3)]. Sustainable yield is defined as the maximum quantity of water that can be withdrawn annually without causing any of the six undesirable results defined under SGMA (Water Code §10721). GSP Alternatives were required to be submitted by January 1, 2017, for review and approval by DWR.

Following the adoption of SGMA in September 2014, Humboldt County convened the Eel River Valley Groundwater Working Group ("Working Group") in October 2015 and was awarded a planning grant from DWR in July 2016. Groundwater is an important resource within the Eel River Valley basin for municipal and domestic water supply, agricultural irrigation, and replenishment of surface waters. Based on information provided by groundwater users, analysis performed under the planning grant, and guidance from the Working Group, Humboldt County concluded that the Eel River Valley basin had been managed sustainably without undesirable results for at least ten years. The GSP Alternative for the Eel River Valley basin was submitted on December 30, 2016. Monitoring activities as described in the GSP Alternative were performed for Water Years 2017 and 2018 and are ongoing.

On July 17, 2019, DWR issued a notification letter and staff report stating that it intends to not approve the GSP Alternative submitted by the County. The letter and staff report state that DWR does not conclude that the Eel River Valley basin is, or has been, managed unsustainably. However, the letter and staff report state that the GSP Alternative did not contain all the required elements and did not provide sufficient evidence demonstrating that the requirements for sustainable groundwater management had been performed for a period of ten years. If the GSP Alternative is not approved, then formation of a Groundwater Sustainability Agency will be required and development of a Groundwater Sustainability Plan will be required by January 2022.

DWR initially specified a 30-day response period before issuing a final Statement of Findings. Humboldt County requested, and DWR granted, a 45-day extension, extending the due date for a response until September 30, 2019.

Responses to DWR's Assessment of the GSP Alternative

Response No. 1 – DWR should apply a standard of review that is consistent with the statutory intent for GSP Alternatives

In its July 2019 notification, DWR states that the County did not establish objective management criteria and did not provide evidence that the County had deliberately managed the basin within its sustainable yield for a period of at least ten years prior to the adoption of SGMA in 2014. However, this standard is inconsistent with Water Code §10733.6(b)(3), which states that an alternative submittal can be “an analysis of basin conditions that demonstrates that the basin has operated within its sustainable yield over a period of at least ten years.” This description of the requirements for a GSP Alternative in the Water Code is limited to a demonstration regarding basin conditions and does not require the establishment of “objective management criteria” ten years prior to the adoption of SGMA, nor does it require a demonstration that these conditions were the result of “deliberate management.” It appears that DWR created a new standard of review for GSP Alternatives that goes above and beyond the statutory intent, and DWR did not present these requirements to submitting agencies in 2016 when GSP Alternatives were being prepared.

Because groundwater use was considered sustainable for the ten-year period prior to 2014, the Eel River Valley groundwater basin was not deliberately managed based on pre-established criteria. It was reasonable to conclude that deliberate management and establishment of specific management criteria was unwarranted based on the absence of evidence for significant problems caused by groundwater use. The requirement for management criteria ten years prior to SGMA effectively penalizes the Eel River Valley basin for not having historical groundwater problems that would have warranted deliberate management prior to SGMA.

DWR should evaluate the GSP Alternative based on the standard of review that is specified in the Water Code and not based on new requirements that were unknown to the submitting agencies.

Response No. 2 – DWR has the authority to approve the GSP Alternative

In preparing the GSP Alternative, Humboldt County applied a due diligence approach using the best available information and tools to look for evidence of undesirable results. Previous studies of the basin were limited, and the understanding of groundwater conditions within the basin was advanced significantly through the preparation of the GSP Alternative. The GSP Alternative was fair and honest about data gaps and drew reasonable conclusions. With respect to interconnected surface waters, the GSP Alternative identified that groundwater and surface waters (including the Eel and Van Duzen Rivers) are interconnected and presented data demonstrating this interconnection. However, no data or information were identified that would support the hypothesis of causation between groundwater pumping and significant and unreasonable impacts to beneficial uses within interconnected surface waters. The GSP Alternative documented that no evidence for any of the six potential undesirable results was discovered and concluded that undesirable results are not likely to occur. Technical information needed to establish specific criteria and define minimum numerical thresholds for undesirable results do not exist, and development of such information was beyond the scope and budget of the 2015 planning grant. Therefore, the GSP Alternative concluded that it was more reasonable not to define specific criteria and minimum thresholds to avoid being speculative and arbitrary.

The implementing regulations of SGMA [California Code of Regulations (CCR), Title 23] direct DWR to apply the principle that sustainable management criteria and projects and management actions shall be commensurate with the level of understanding of the basin [23 CCR §350.4(d)]. The regulations specify that DWR shall not require agencies to establish criteria or minimum thresholds for undesirable results when it is demonstrated that undesirable results are not present and not likely to occur [23 CCR §354.26(d) and 23 CCR §354.28(e)]. In

addition, DWR is directed to evaluate Plans based on a “substantial compliance” standard that allows discretion and judgment when reviewing supporting information and evaluating whether a basin’s sustainability goal is likely to be attained. Therefore, the regulations provide DWR with the authority to approve the GSP Alternative for the Eel River Valley basin.

DWR approved the GSP Alternatives for the Corralitos-Pajaro Valley and Livermore Valley groundwater basins even though each of these submittals appear to have elements that are incomplete. The submittal for Pajaro Valley did not quantify the depletion of interconnected surface waters, and the submittal for Livermore Valley did not contain minimum thresholds for chronic lowering of groundwater levels in certain areas of the basin. DWR approved these GSP Alternatives with recommendations to address the identified deficiencies. DWR could use similar discretion to approve Humboldt County’s GSP Alternative with recommendations for making specified improvements in a subsequent update.

Response No. 3 – DWR should have engaged with submitting agencies during the review period

One of the main tenets of SGMA is to encourage robust stakeholder engagement. However, DWR chose to review the GSP Alternatives over 2.5 years without any opportunity for communication with submitting agencies. Dialogue during the review period would have provided an opportunity to ensure that there was full understanding of the technical information in the GSP Alternative before DWR issued its final assessment. Some of DWR’s comments identify issues that would have been readily fixable, while other comments may reflect an incomplete understanding of the methods and assumptions. DWR should have provided submitting agencies the opportunity to make clarifications, corrections, or straight-forward revisions during the 2.5-year review period.

Comment on Agricultural Water Use and Basin Prioritization

In 2018, while GSP Alternatives were under review, DWR initiated a state-wide update of basin prioritizations. During the comment period for the draft prioritization results, Humboldt County submitted a comment letter (dated August 20, 2018) transmitting a report (dated December 8, 2016) prepared by the Humboldt County Resource Conservation District (“Humboldt County RCD”) which quantified the amount of irrigated land and the total amount of annual agricultural groundwater use within the Eel River Valley basin. DWR accepted the results for the total area of irrigated land but declined to accept the results for total water use, choosing instead to use the results of computer model simulations performed by DWR using the Cal-SIMETAW model. DWR stated that using the Cal-SIMETAW model was necessary to provide consistency across the state.

The problem is that DWR’s modeling results suggest a water use rate over three times larger than the results of the 2016 Humboldt County RCD report and previous empirical studies [e.g., DWR (1968), USGS (1978)]. At the time this modeling was performed, there was no California Irrigation Management Information System (CIMIS) automated weather station operational within the basin. The appropriateness of using Cal-SIMETAW on the North Coast has not been demonstrated and the accuracy of the modeling results continues to be questionable.

The Eel River Valley groundwater basin received a rating of 14.5 points which was one-half point above the threshold (14 points) for medium-priority basins. It’s unclear whether the rating score and prioritization level would have changed if DWR had utilized the Humboldt County RCD’s empirical estimate of agricultural water use rather than the modeling simulations. However, the significant discrepancy between DWR’s modeling results and the Humboldt County RCD’s 2016 study will continue to be a point of contention. We request that DWR commit to working with Humboldt County and other stakeholders to develop a mutually agreeable method for determining agricultural water use in the Eel River Valley basin so that there is consensus agreement on the results.

Conclusion

The Eel River Valley groundwater basin on the North Coast has very unique watershed and climatological conditions compared to the basins in the Central Valley and more arid regions of the state. The basin has high precipitation rates, favorable recharge conditions, stable groundwater levels, and steady groundwater use rates. Data and information gathered over the last several years supports the conclusion of sustainable management. The GSP Alternative is the best fit for SGMA compliance by providing assurances of ongoing monitoring, evaluation, reporting, and stakeholder engagement while avoiding over-regulation and the significant costs associated with administering a new public agency.

If DWR approves the GSP Alternative, then:

1. Humboldt County would continue to conduct annual monitoring, evaluation, and reporting as described in the GSP Alternative.
2. Humboldt County would continue to utilize the Working Group for engagement with stakeholders.
3. Humboldt County would apply for a Prop. 68 Round 3 planning grant to conduct further technical assessment and update the GSP Alternative. Technical information would be developed to establish specific criteria and minimum thresholds for each sustainability indicator and to quantify sustainable yield.
4. The updated GSP Alternative would be reviewed by DWR in 2022 as part of the five-year periodic evaluation.

For further discussion please contact me at (707) 445-7741 or hseemann@co.humboldt.ca.us.

Sincerely,



Hank Seemann
Deputy-Director (Environmental Services)