

Water: What New Regulations May Mean for You

December 9, 2015







Speakers


Sarge Green, California Water Institute
(Moderator)

Russell McGlothlin, Brownstein, Hyatt, Farber,
Schreck, LLP

Rich Juricich, DWR

DeeDee D'Adamo, State Water Resources
Control Board



A close-up photograph of several green almonds on a branch, with vibrant green leaves. The background is softly blurred, showing more of the tree and a hint of an outdoor setting.

**Sarge Green,
California Water Institute**



**Russell McGlothlin,
Brownstein, Hyatt, Farber, Schreck, LLP**

The Sustainable Groundwater Management Act and Groundwater Adjudications

Almond Conference – December 9, 2015

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**Brownstein Hyatt
Farber Schreck**

Management Goal = Optimal Balance





Cal. Const. Article X, § 2

... the general welfare requires that the **water resources of the State be put to beneficial use to the fullest extent of which they are capable**, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the **conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare.**

Interpreted: Sustainable Management.

The Triple Bottom Line: Society, Environment, and Economy

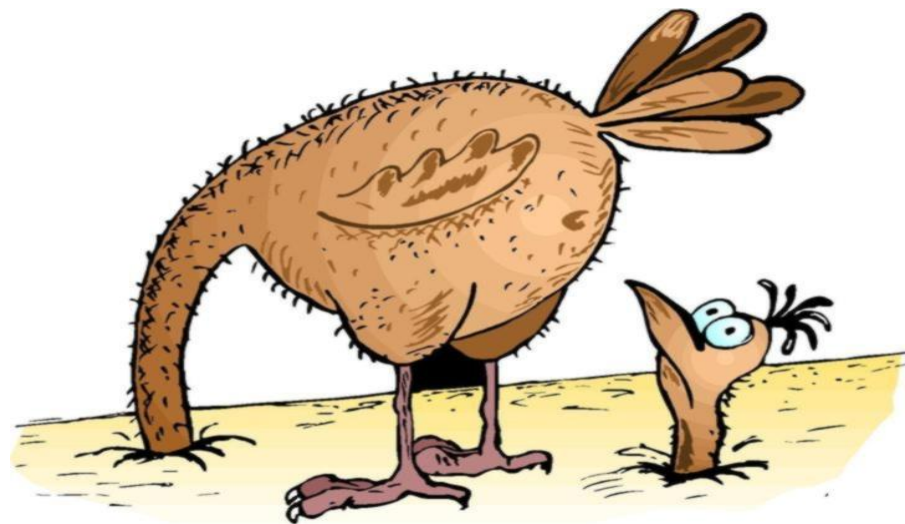
California Supreme Court

City of Barstow v. Mojave Water Agency (2000)

Water right priority has long been the central principle in California water law. The corollary of this rule is that **an equitable physical solution must preserve water right priorities to the extent those priorities do not lead to unreasonable use.**

California Water Law

- Riparian/overlying (Landowner) Rights are First Priority Rights
- Appropriative Rights (Non-Overlying) are Second Priority Rights
- Surface water regulated by the State
- Percolating groundwater regulated by local/judicial management, if regulated



California Overlying Groundwater Rights

Overlying Rights to a Groundwater Aquifer Are Analogous to Riparian Rights to a Surface Water Body

Same Legal Characteristics Apply:

- Tied to Land Ownership
- Not Affected by Historical Use
- Can Only Use on Overlying Land



Appropriative Rights to Groundwater

Can Use Off of
Overlying Land
(e.g., Municipal
Water)

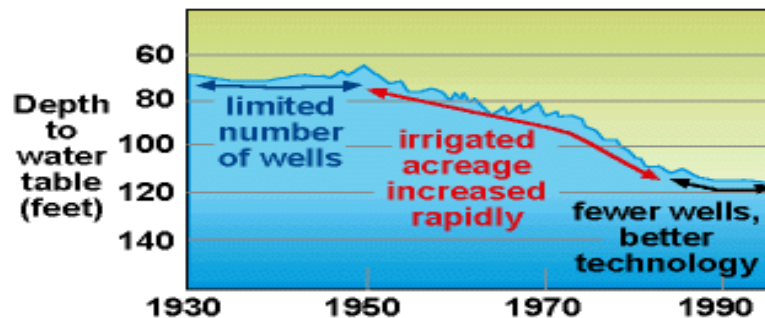
Defined by
Historical Quantity
of Use

Priority Based Upon
First-In-Time, First-
in-Right

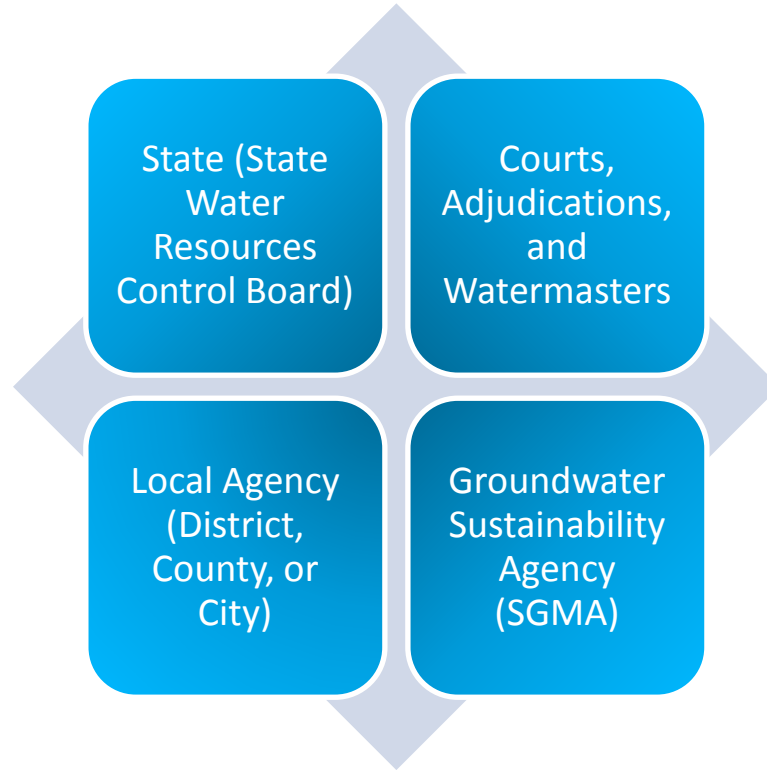


Overdraft ...

- The Rules Change . . . Maybe
- Adverse Basin Impacts (e.g., Seawater Intrusion/Subsidence)
- Ramp-Down
- Prescriptive Rights



Who Manages?



The SGMA Design



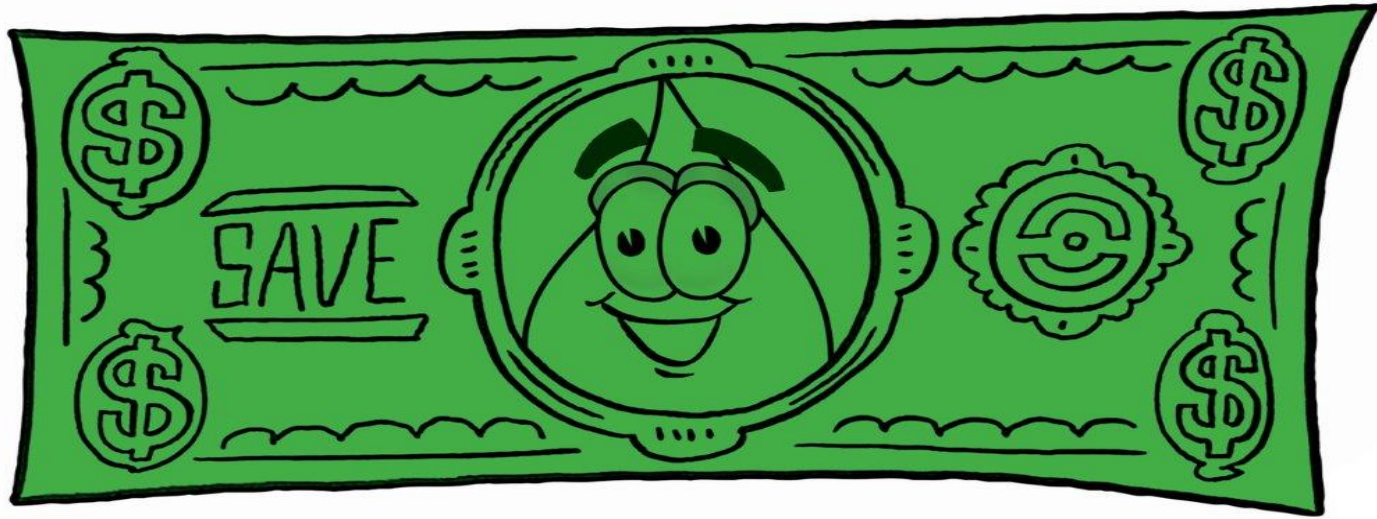
Form a Groundwater Sustainability Agency



Develop a Bunch of Great Ideas to Sustainably Manage the Basin



Determine How to Pay for the Great Ideas



Write it All Up in a Groundwater Sustainability Plan and Get DWR to Approve Your Plan

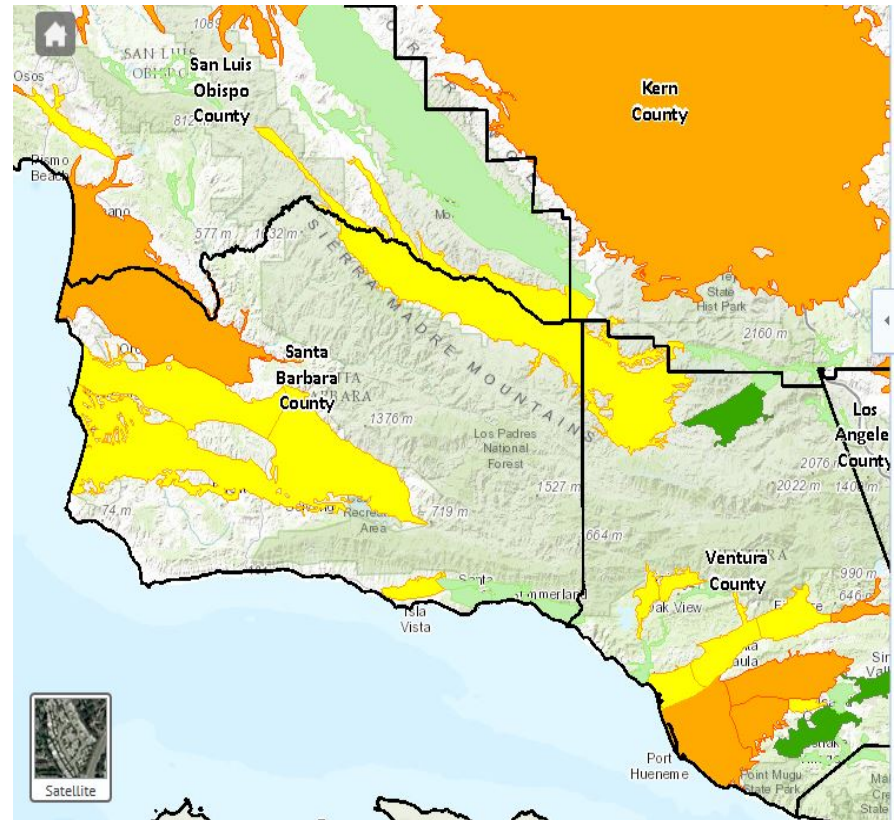
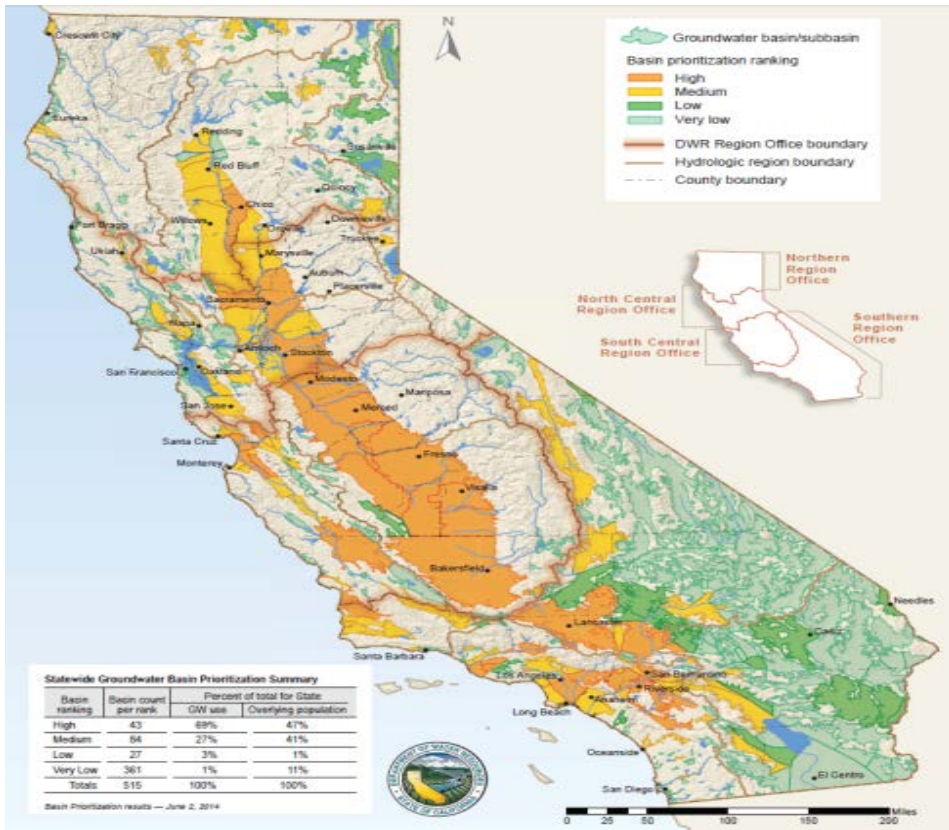


Essential SGMA Provisions

- Mandatory for “priority basins”
- Groundwater Sustainability Agency by 2017
- Groundwater Sustainability Plan by 2020/2022
- Plan must achieve sustainability in 20 years (water quantity and quality elements).
- Avoid “undesirable results”
- State intervention
- Comprehensive timeline

http://opr.ca.gov/s_groundwater.php





Expansive GSA Authority

Adopt rules,
regulations,
ordinances

Conduct
investigations of
water rights

Well registration,
metering,
reporting,
monitoring,
investigation

Replenishment,
reclaimed water,
and other
programs

Regulate
groundwater
production;
establish
production
allocations

Administrative
fees and
assessments

Enforcement
actions



But!

“**Nothing** in [the SGMA], or in any groundwater management plan adopted pursuant to [the SGMA], **determines or alters surface water rights or groundwater rights under common law** or any provision of law that determines or grants surface water rights.”

Water Code § 10720.5(b)



How Will the Locals Get Along. . .

Who governs (who will be the Groundwater Sustainability Agency)?

Who can pump, who cannot, and under what conditions?

Who pays for management/replenishment?



Governance (Groundwater Sustainability Agency)

Local agency or combined powers (joint powers authority/MOA)

Some specified agencies deemed exclusive GSA

Competition between potential local agencies?

County as “backstop”?

Shared participation. Advisory committees?

Watermaster (Adjudications)

SGMA and Water Rights



Procedures Toward Compromise

Outreach and Early Collaboration

Outreach, education, discussion,
input

Facilitators, workshops,
steering/advisory committee,
collaborative technical group

Organizing diverse interests

Inclusive governance

- Mutual water co., associations, etc.

- Joint powers authority
- Memorandum of Agreement
- CPUC regulated utilities
- Advisory Committees



Substance Toward Compromise

Fair and Practical Production Allocations & Assessments

Different classes of production rights that “reflect” GW rights

Gradual ramp-down (time to adjust where practical)

Management and replenishment assessments

Transferability and market solutions

Other restrictions and opportunities tailored to local conditions and desires

Plan Durability



Validating a
Groundwater
Sustainability Plan

Agreement

General
groundwater
adjudication

“Friendly”
adjudication
(stipulation)

Resolving future
conflicts

- Shared governance and ongoing outreach
- Facilitators
- Courts (continuing jurisdiction)

Adjudication

Court-administered
plan

Broad options for
plan components
(GSP plus). Typically
quantifies and
apportions available
supply. Adjudicates
rights. Rights
typically transferable

Watermaster – often
composed of
stakeholders board

Court retains
jurisdiction. Plan is
“durable”



Practical Impacts

Short-term

- More conflict
- Increased uncertainty in short-term
- CEQA and Water Supply Assessment/ Water Supply Verification compliance more challenging

Long-term

- Less conflict
- Improved management
- Greater certainty
- Triple Bottom-Line Benefits: Society, Environment, and Economy



Implementation Challenges



Inconsistent or sub-optimal boundaries (Functional, GW Adjudications, B-118)

Plan coordination issues

Technical and substantive plan components

Coordinating with Dept. of Water Res. and other agencies)

Timing

Inconsistent plans/rules

GSPs v. adjudication

Expense

Almond Conference – December 9, 2015

THANK YOU!

Water News + SGMA Desktop Reference
water.bhfs.com

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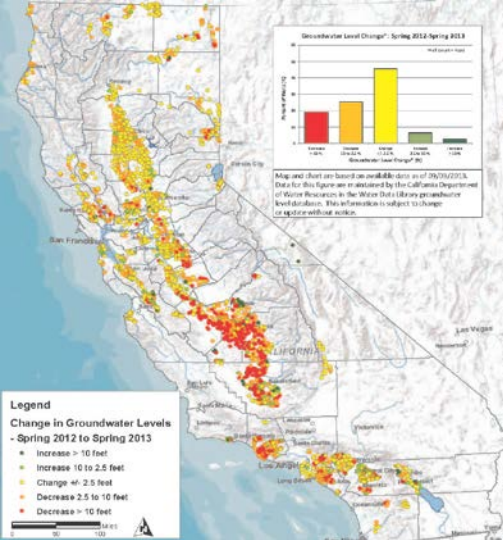
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DWR's Role in Sustainable Groundwater Management

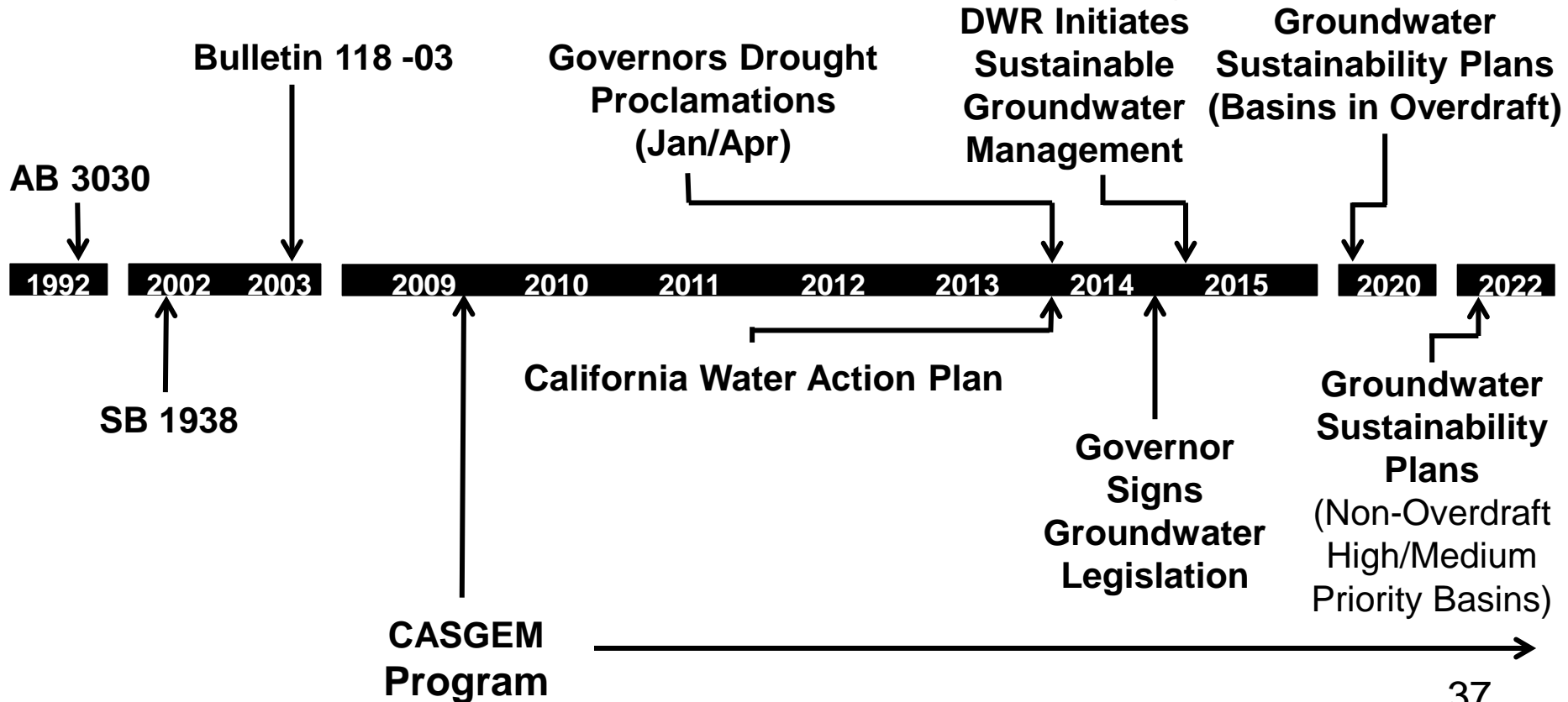
“A central feature of these bills is the recognition that groundwater management in California is best accomplished locally.”

Governor Jerry Brown

CA Department of Water Resources



California's Major Milestones toward Sustainable Groundwater Management



California Water Action Plan

Action 6: Expand water storage capacity and improve groundwater management



The Sustainable Groundwater Management Act of 2014

- Requires sustainable groundwater management
- Promotes local control



Groundwater Sustainability



Lowering of
Groundwater
Levels

Reduction of
Groundwater
Storage

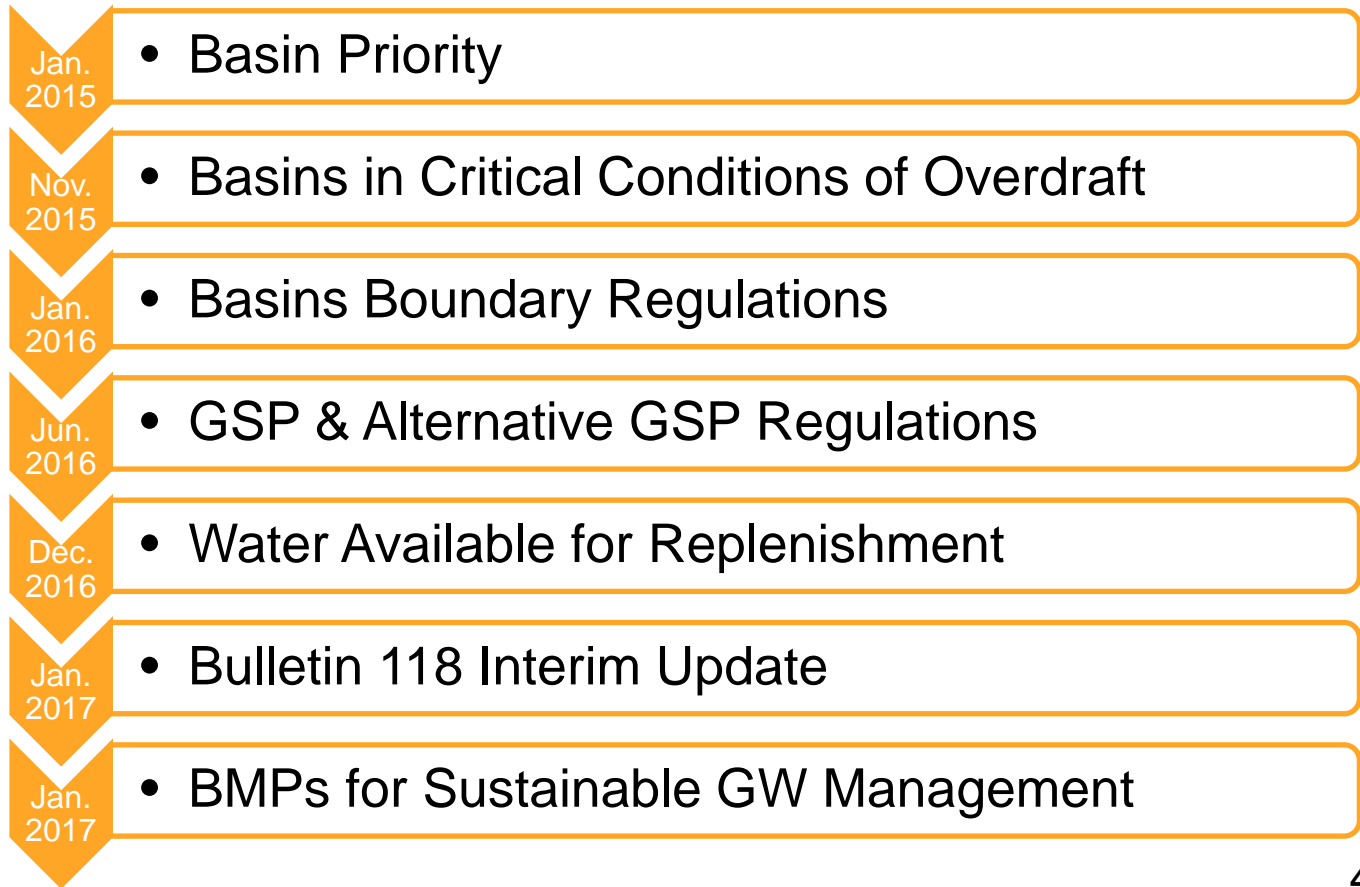
Seawater
Intrusion

Water Quality
Degradation

Land
Subsidence

Depletions of
Surface Water

DWR Near-term Actions

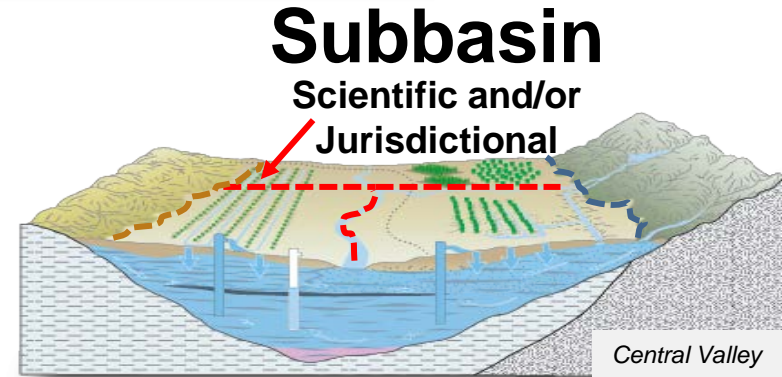
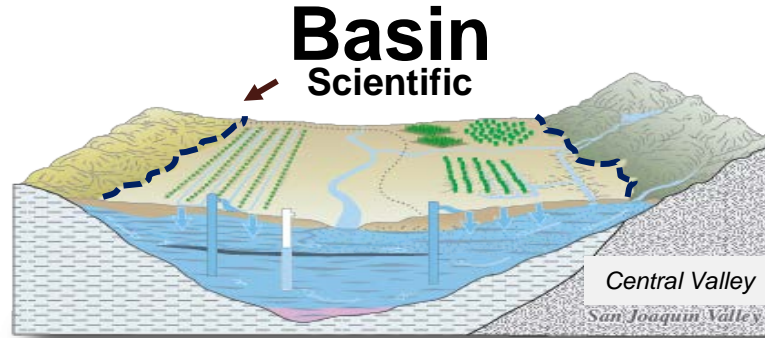
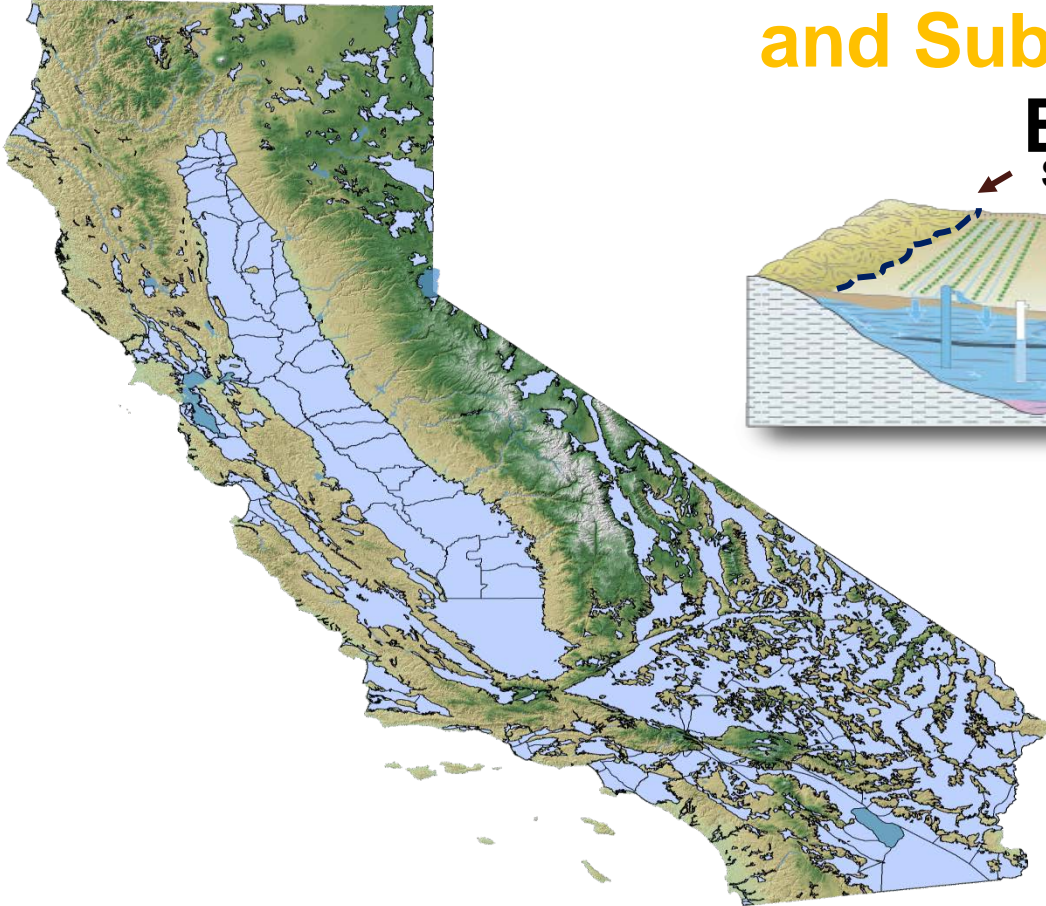




Basin Boundary Emergency Regulations

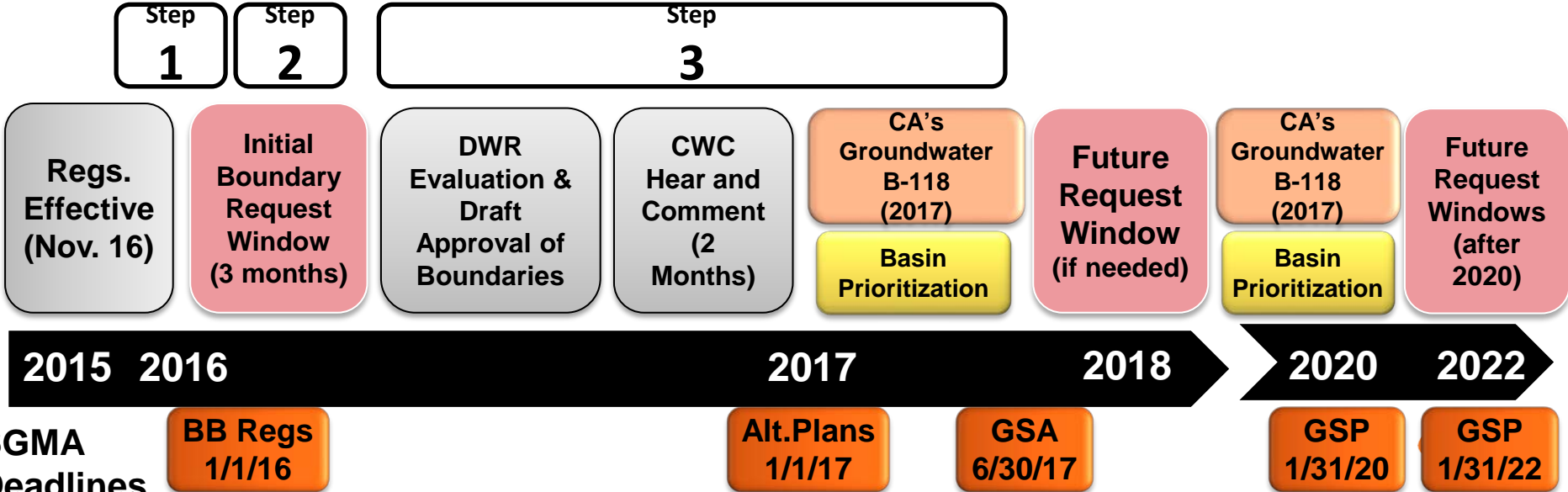
Applicability

➤ 515 Groundwater Basins and Subbasins



Basin Boundary Modification Process

- **Step 1 – Initial Notification (§ 343.9)**
- **Step 2 – Local Agency Submits Request**
- **Step 3 – DWR Evaluation, Approval, & Publishes**
- **Future Request Opportunities**



All basins begin with existing Bulletin 118 boundaries.



Boundary modification requested by local agency?

YES

Notify DWR

NO

Step 1

Reason

Type of Modification

Reason	Type of Modification	Required Components of Submittal									Request Review Process		
		Step 2			(1) Local Info			(2) Local Agency Input			(3) Technical Information		DRAFT APPROVAL
Scientific	Hydrogeologic	Agency Information and Resolution	Notification & Consultation	Affected Agencies and Systems - Must be Notified - Provided an Opportunity to Support or Oppose	Supported by 75% of Agencies and Systems	Desc. of Basin Boundaries (Map, GIS data)	Existing Water Management in Basin	Hydrogeologic Conceptual Model	Historic and Current Conditions	Technical Study	Opportunity for Public Input?	DWR Review & Public Notification	
		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Jurisdictional	Internal	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
	Consolidation	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
	Subdivision	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	

Local agencies may submit multiple modification types.

If any required components are missing, request may not be approved and original boundaries will be used.

Review process may determine modification is not acceptable.

GSA/GSP formed in existing basin(s)

If DWR determines requested modification is acceptable, **Boundary Modification is Approved**

Approved Boundaries Published in California's Groundwater Bulletin 118 Updates (2017 and years ending in 0 and 5)

B-118 2017
2020
2025

Jan 1st, 2016

March 31, 2016, Summer 2016



Groundwater Basin Boundary Resources

1. DWR Basin Boundary Modification Website (Informational)

http://www.water.ca.gov/groundwater/sgm/basin_boundaries.cfm

SGM Sustainable Groundwater Management

Basin Boundary Modifications

The Sustainable Groundwater Management Act (SGMA) established a process for local agencies to request that the Department of Water Resources (DWR) revise the boundaries of existing groundwater basins or subbasins, including the establishment of a new subbasin. The Basin Boundary Emergency Regulation was developed through an extensive stakeholder outreach process and was adopted on October 21, 2015. The provisions of the emergency regulation go into effect on November 16, 2015.

Planning to request a modification to basin boundaries?

NOTE: If you are an eligible local agency and are thinking of requesting modification to the boundaries of your basin, follow these steps:

1. Review the Basin Boundary Modification Regulations
2. Submit Initial Notification within 15 days of exploring a modification – notification is preliminary and is intended to signal that a modification request may occur. It serves to notify other local agencies, public, and the department. Use Basin Boundary Assessment Tool to explore geology and other boundaries.
3. Submit a Basin Boundary Modification Request
4. Review the Basin Boundary Modification Request

Boundary Modification Webcast
December 17 – 10 am to 12pm

The following is the anticipated schedule and next steps for basin boundary modifications:

- SQVP Grant Program
- Facilitation Support Services

2. DWR Basin Boundary Assessment Tool (Informational)

<https://gis.water.ca.gov/app/bbat/>

Groundwater Basin Boundary Assessment Tool

DWR Boundary Assessment | **Boundary References** | Geology References

Boundary References

- County Boundaries
- Region Office Service Areas
- Hydrologic Regions
- Prop 1 Funding Areas
- Regional Water Quality Control Board Boundaries
- Tribal Lands
- Military Installations, Ranges, and Training Areas
- CDFW Lands
- Regional Flood Planning Regions
- Reclamation Districts
- CASGEM Designated Monitoring Entities as of 10-15-15
- CASGEM Groundwater Basin Privatization
- Groundwater Management Plans and IRWH Regions
- Disadvantaged Community Block Groups
- Disadvantaged Community Tracts
- Disadvantaged Community Places
- Water Agencies
- Bulletin 118 Groundwater Basins
 - Basin - 118 Groundwater Basins
- Waterbodies

Boundary References

Click on features in the map or see below for more information:

DATA DISCLAIMER:
All information provided by the Department of Water Resources on this page and related areas, is made available to provide information used for the convenience of interested parties. While the Department believes the information to be accurate, human or mechanical error remains a possibility. Therefore, the Department does not guarantee the accuracy, completeness, timeliness, or correct updating of the information. Neither the Department of Water Resources nor any of the authors of the information shall be responsible for any errors or omissions, or for the use of results obtained from the use of the information.

Basins are listed (options to the layers contained in the map):

County Boundaries This layer depicts the boundaries of California's Counties as developed by CAL FIRE.

Region Office Service Area This layer depicts the coverage area of DWR's 9 Region Offices. [1309c.info](#)

Hydrologic Regions This layer depicts the areas comprising the major California watersheds and is used by a variety of DWR programs including the CA Water Plan. [1309c.info](#)

Prop 1 Funding Areas This layer depicts the 21 funding areas established by Proposition 1. [1309c.info](#)

Regional Water Quality Control Board Boundaries This layer depicts the boundaries of the 9 Regional Water Quality Control Boards. [1309c.info](#)

Tribal Lands This layer depicts Tribal Lands in the State of California. This layer includes historical locations of Indian land which was once held in Trust for a Terminated Tribe and/or the location of a landless Federally Recognized Tribe. Indian land currently held in Trust by the United States Government, Indian land currently held in Trust by the United States Government and known as a Public Domain Allotment, Indian land currently held in Trust by the United States Government but resided in the Nevada or Arizona jurisdictions. [1309c.info](#)

Military Installations, Ranges, and Training Areas This layer depicts major military installations, ranges, and training areas in California. [1309c.info](#)

Groundwater Basin Boundary Resources

3. DWR Basin Boundary Modification System (Operational)

Local Agency Tools

- Submit Initial Notification (343.9)
- Submit Boundary Requests

Public Tools

- Table of Boundary Modification Notification & Requests
- Map of Boundary Modification Notification & Requests

<http://sgma.water.ca.gov/basinmod/>

The screenshot shows the homepage of the Basin Boundary Modification Management System. At the top, it features the CA.GOV logo and the text "Department of Water Resources Basin Boundary Modification Management System". Below this is a "Welcome" message explaining the system's purpose and providing registration information. A flowchart on the right side of the page details the process: "Basin Boundary Regulations Became Effective November 16, 2015", followed by "STEP 1: Within 15 days of a local agency's decision to explore boundary modification, the relevant local agency shall notify DWR by completing the Initial Notification", and "STEP 2: Local Agencies can submit a Basin Boundary Modification Request starting January 1 through March 31, 2016". The main content area includes two columns of buttons: "Local Agency Submissions Tools" with buttons for "Click Here to Submit Initial Notification (Pursuant to Section 343.9)" and "Upcoming Basin Boundary Modification Request Submission Period January 1, 2016 through March 31, 2016"; and "Public and Interested Party Tools" with buttons for "View List of Submitted Initial Notifications", "View Map of Submitted Initial Notifications", "View List of Submitted Modification Requests", and "View Map of Submitted Modification Requests". At the bottom, there is a footer with a subscription link: "If you are interested in being informed when Basin Boundary Modifications related Actions or any other SGM Program actions are made, please subscribe to email listserv here: <http://www.water.ca.gov/groundwater/sgm/subscribe.cfm>".

CA.GOV Department of Water Resources
Basin Boundary Modification Management System

Welcome to the Basin Boundary Modification Request System. The Sustainable Groundwater Management Act (SGMA) established a process for local agencies to request that the Department of Water Resources (DWR) revise the boundaries of a groundwater basin or subbasin, including the establishment of a new subbasin. This tool is for use by local agencies to request basin boundary modifications and for the public to access basin boundary modification information.

Registration and login are required to submit a basin boundary modification request, but are not required to view submitted information.

The system accepts voluntary basin boundary modification requests from local agencies, pursuant to DWR's [Basin Boundary emergency regulation](#). Additional information is available about the [existing Bulletin 118 groundwater basins](#) and an [interactive map](#) is available to help visualize the Bulletin 118 groundwater basins and other relevant political, geologic, and geographic boundaries.

- Upon submission, you will receive an email acknowledging receipt of your initial notification or modification request.
- For assistance with the Basin Boundary Modification System, please email the administrator at Timothy.Godwin@water.ca.gov.

Basin Boundary Regulations
Became Effective
November 16, 2015

STEP 1:
Within 15 days of a local agency's decision to explore boundary modification, the relevant local agency shall notify DWR by completing the Initial Notification

STEP 2:
Local Agencies can submit a Basin Boundary Modification Request starting January 1 through March 31, 2016

Local Agency Submissions Tools

Click Here to Submit Initial Notification (Pursuant to Section 343.9)

Upcoming Basin Boundary Modification Request Submission Period
January 1, 2016 through March 31, 2016

Public and Interested Party Tools

View List of Submitted Initial Notifications

View Map of Submitted Initial Notifications

View List of Submitted Modification Requests

View Map of Submitted Modification Requests

If you are interested in being informed when Basin Boundary Modifications related Actions or any other SGM Program actions are made, please subscribe to email listserv here: <http://www.water.ca.gov/groundwater/sgm/subscribe.cfm>

Next Steps - Roles and Responsibilities

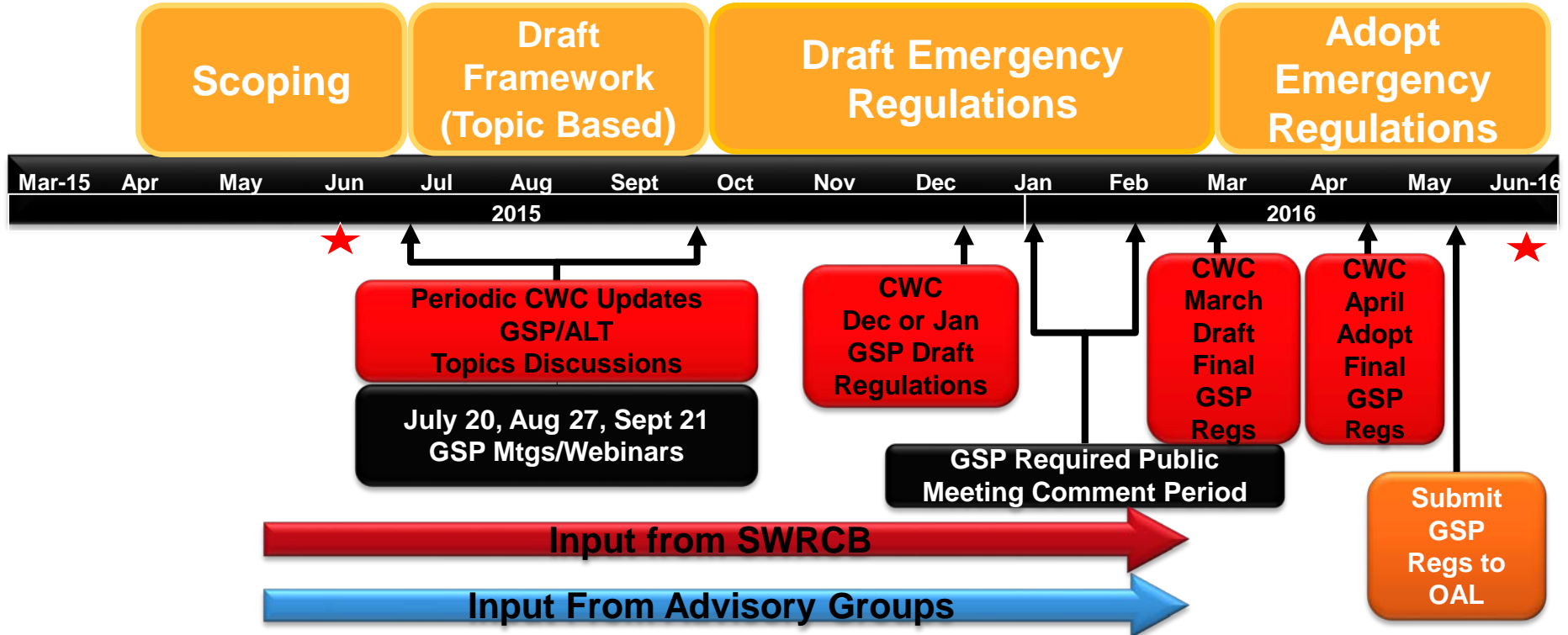
- **December 17** – DWR will hold a Basin Boundary Modification Instructional Webinar
- **January 1, 2016** – DWR Starts Accepting Boundary Modification Requests (3 Month period - *Due 3/31/16*).
- **Sep. 2016*** – DWR Approves Draft List of Boundaries and Presents to CWC to Hear and Comment.
- **Early 2017*** – DWR Approves & Publishes Final Boundaries

**Estimated – Subject to Change*

Groundwater Sustainability Plan Emergency Regulations



Groundwater Sustainability Plan (GSP) Emergency Regulations – Detailed Timeline



Dates and Durations are Subject to Change

Critically Overdraft Basins



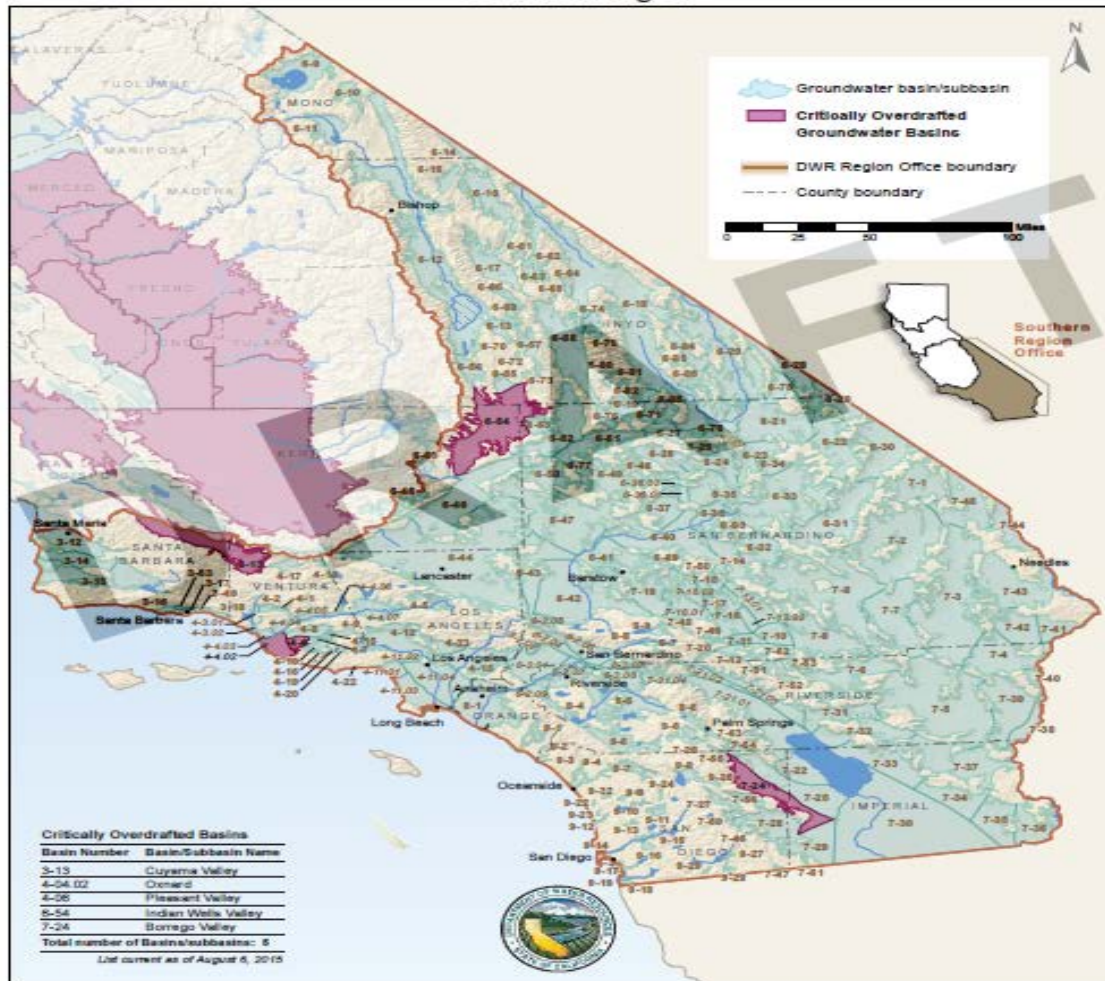
Critically Overdrafted Groundwater Basins – August 6, 2015 Draft —
North Central and South Central Regions

Critically Overdrafted Groundwater Basins North Central and South Central Region



Critically Overdrafted Groundwater Basins – August 6, 2015 Draft
— Southern Region

Critically Overdrafted Groundwater Basins Southern Region



A photograph of a glass of water and a jar of almonds. The glass is on the left, filled with clear water, and the jar is on the right, filled with almonds. The background is a warm, golden-yellow color.

Water Available for Groundwater Replenishment

WC 10729 (c) The department shall prepare and publish a report by December 31, 2016, on its Internet Web site that presents the department's best estimate, based on available information, of **water available for replenishment of groundwater** in the state.

- Water Availability
 - “Water availability traditionally has meant securing a volume of water to meet a current and projected demand on the basis of existing and projected usage” (USGS, 2005)
- Water Replenishment
 - Replenishment may be accomplished using two potential methods: active recharge and in-lieu.

Initial Outreach and Discussion


- Address both opportunities for additional water supplies as well as obstacles
- Include uncertainty in potential outcomes and provide range of estimates
- Consider regional variation in capability to capture water for replenishment
- Recognize the value of surface storage and other water management strategies
- Link to the full range of issues addressed in the Governor's Water Action Plan

Annotated Outline

- **Chapter 1: Introduction and Purpose**How to Use this Report
- **Chapter 2: How to Use this Report**
- **Chapter 3: Description of Water Available for Replenishment**
- **Chapter 4: Water Available Information and Estimates by Hydrologic Region**
- **Chapter 5: State Water Project and Central Valley Project**
- **Chapter 6:Water Available Roadmap by Source**
- **Chapter 7: Replenishment Roadmap by Replenishment Method**
- **Chapter 8: Next Steps**

DWR Web Resources

- **DWR Sustainable Groundwater Management (SGM)**
<http://www.water.ca.gov/groundwater/sgm/index.cfm>
- **DWR GSP Emergency Regulation Website**
<http://www.water.ca.gov/groundwater/sgm/gsp.cfm>
- **Subscribe to DWR SGM Email List**
<http://www.water.ca.gov/groundwater/sgm/subscribe.cfm>
- **Water Management Planning Tool**
<http://www.water.ca.gov/groundwater/boundaries.cfm>
- **Questions or Comments**
sgmps@water.ca.gov



**DeeDee D'Adamo,
State Water Resources Control Board**

Water: What New Regulations May Mean For You

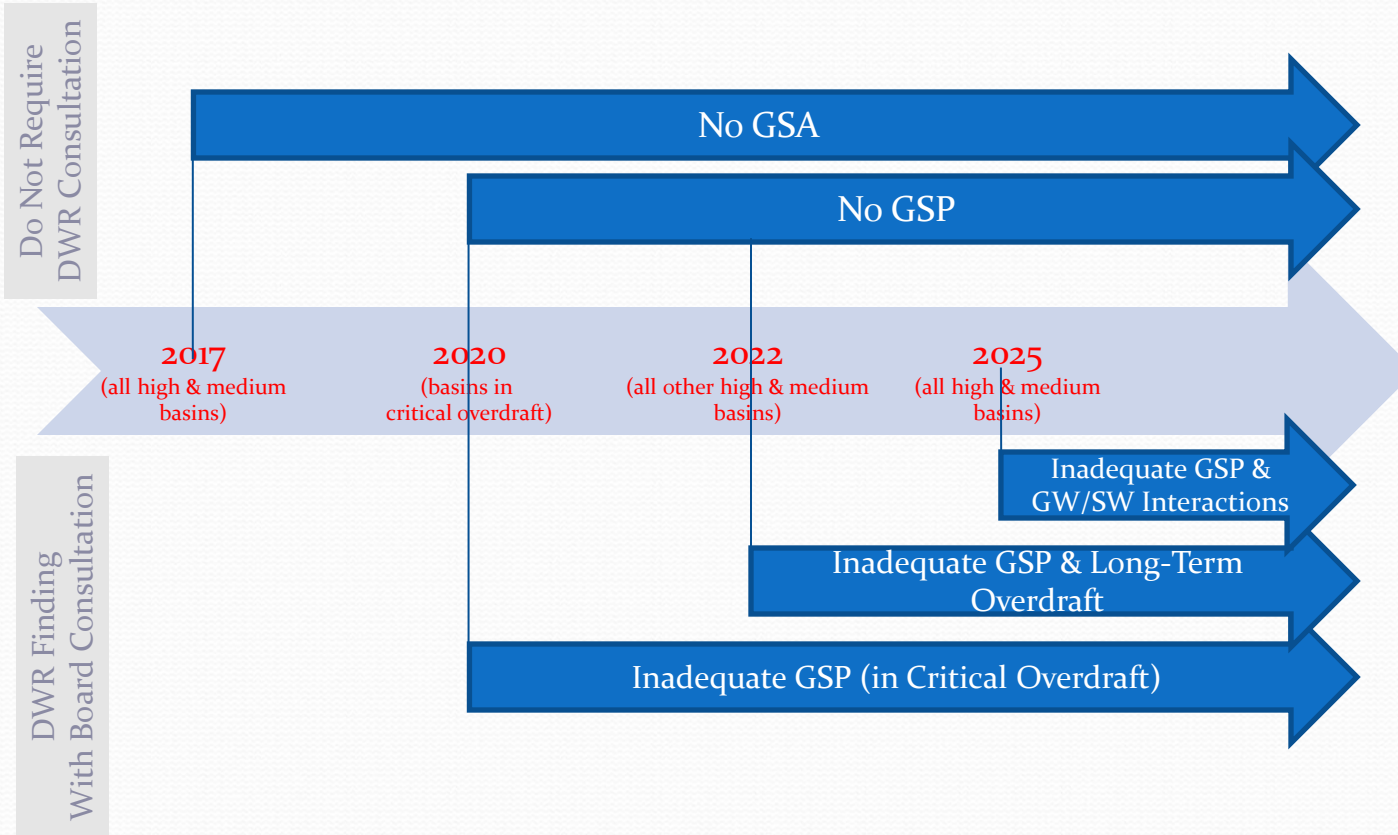
The Almond Conference
December 9, 2015
Sacramento, CA

DeeDee D'Adamo, Board Member
State Water Resources Control Board
www.waterboards.ca.gov



State Water Resources Control Board

State Board Intervention Timeline



Three SGMA funding needs:

- Forming GSA and developing sustainability plan
- Projects that help a basin become sustainable
- Projects that help maintain a sustainable basin

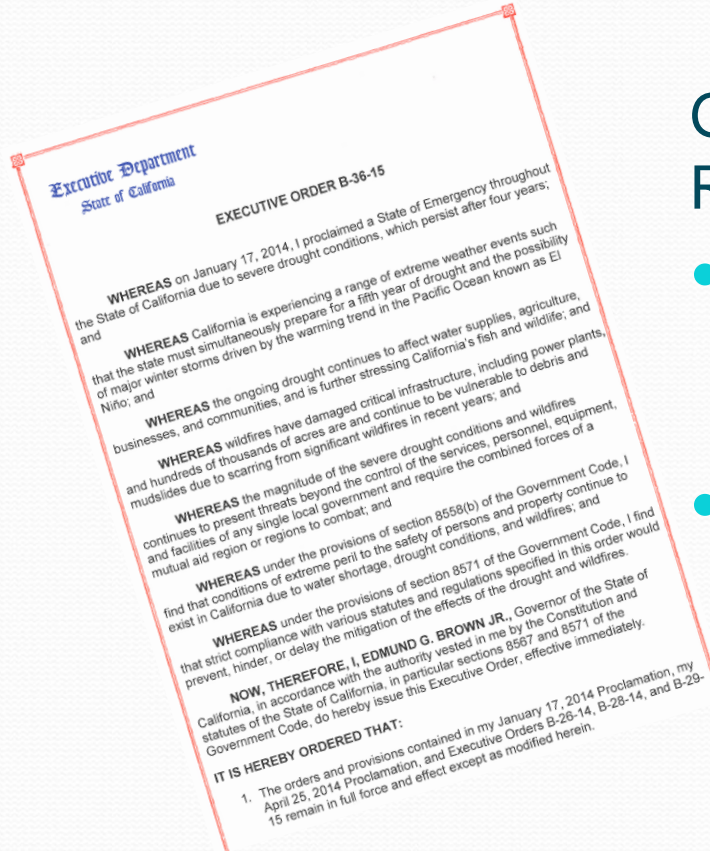


Take Advantage of Funding Opportunities

- SGMA
- Stormwater Capture/GW Recharge
- IRWM
- Storage
- Irrigation Efficiencies



Governor's Executive Order



Groundwater Recharge

- Calls upon Water Board to prioritize permits
- CEQA waiver

Ongoing Board Activities

- Getting to know state of basins
- Outreach, technical & financial assistance
- Regulations – development and consultation
- Develop database for intervention activities (Potentially Unmanaged Areas)
- Develop fee schedule for intervention activities

Water Rights: Measurement and Reporting

- SB 88 adds measurement requirements to all water rights that are 10 af or more.
- Requires diverters to annually report monthly diversions.
- More frequent reporting can be required during periods of shortage.

Measurement and Reporting - Next Steps

- 5 public meetings statewide & other technical meetings to get public input for drafting regulation to implement new law.
- December 17 2015-State Water Board Workshop.
- January 19, 2016-Tentative schedule for board consideration.

Bay-Delta Plan Schedule

- Phase 1 (San Joaquin River flow and Southern Delta Salinity):
 - Early 2016 – Release for public comment- Revised Draft Substitute Environmental Document (SED) & draft proposed changes to Bay-Delta Plan
 - Summer 2016 – Release of Final SED & proposed changes to Bay-Delta Plan
 - Late Summer/Early Fall 2016 - State Water Board to consider adoption

Bay-Delta Plan Schedule

- Phase 2 (Delta outflow and other Bay Delta Plan elements)
 - Early 2016 – Release of Initial Draft Scientific Basis Report (identifying science supporting potential changes to the Bay-Delta Plan) & range of alternatives for evaluation in Draft SED.
 - Spring 2016 - Final Draft Scientific Basis Report.
 - Summer 2017 – Release for public comment- Draft SED & draft proposed changes to Bay-Delta Plan
 - Early 2018 – Release of Final SED
 - Spring 2018 - State Water Board meeting to consider adoption.