# Deadlines Fast Approaching to Modify Groundwater Basin Boundaries Under New Regulation

**12.01.2015 | By Gina Nicholls**

Under the recently enacted Sustainable Groundwater Management Act (SGMA), groundwater basins defined by Bulletin 118 are the default regulatory units for sustainable groundwater management. (*See* Water Code § 10722.) But Bulletin 118 basin boundaries may be based on incorrect hydrological information, or may be insufficiently precise or impractical for other reasons. SGMA addresses this issue by establishing a process for local agencies to request that the Department of Water Resources (DWR) revise the Bulletin 118 boundaries of existing groundwater basins or subbasins, or even establish a new subbasin. (*Id*. at § 10722.2; Cal. Code Regs., tit. 23, § 340.)

Following the enactment of SGMA, DWR developed a Basin Boundary Emergency Regulation to implement SGMA's boundary modification process. (*See* DWR, SGM Sustainable Groundwater Management, Basin Boundary Modifications, [last visited Nov. 24, 2015].) DWR released the draft regulation in July 2015 and revised it following public comment and feedback from other agencies. (*Ibid*.) California Water Commission approved the proposed regulation in October 2015, and the regulation took effect on November 16, 2015. (*Ibid*.)

Under the regulation, only a local agency – not other organizations or persons – can request basin boundary modifications. (Cal. Code Regs., tit. 23, § 343.2.) The jurisdictional area of the requesting agency must be within, or adjacent to, existing or proposed basin boundaries. (*Ibid*.) Other entities interested in a boundary modification would need to cooperate with an eligible local agency in order to participate in the process.

The regulation requires, to the greatest extent possible, that local agencies combine all boundary modification requests that affect the same basin or subbasin. (Cal. Code Regs., tit. 23, §§ 343.10, 343.6.) The

requesting agency is required to satisfy the requirements of the California Environmental Quality Act (CEQA). (*Id*. at § 344.18.)

**Important Deadlines**

Deadlines for seeking boundary modifications are fast approaching. There are two important near-term deadlines that agencies must meet. First, a local agency that intends to explore a boundary modification must notify DWR within 15 days of its decision to do so. (*See* Cal. Code Regs., tit. 23, § 343.9.) This initial notification must include a brief description and preliminary map of the proposed modification. (*Ibid*.) Step two is triggered if the local agency decides to move forward with a formal request for basin boundary modification. The local agency must submit its request to DWR between January 1, 2016 and March 31, 2016. (*Id*. at § 343.8; *see also* DWR, SGM Sustainable Groundwater Management, Basin Boundary Modifications, [last visited Nov. 24, 2015].) Although DWR may extend the March 31 deadline, there is no guarantee it will do so. (*See ibid*.) Under this aggressive timeline, local agencies must decide as soon as possible whether to initiate the boundary modification process and should start preparing a formal request with supporting documentation.

**Types of Requests**

Most boundary modification requests presumably will be one of two types specifically permitted by the regulation: either scientific or jurisdictional. Scientific modifications are based on geologic or hydrologic criteria, while jurisdictional modifications are designed to promote sustainable groundwater management. (Cal. Code Regs., tit. 23, § 342.) DWR may exercise its discretion to consider other types of modification requests (id. at § 342.6), except that administrative adjustments are not permitted. (*Id.* at § 342.) The required supporting information varies for scientific versus jurisdictional modifications (*compare id*. at § 344.14, *with id*. at § 344.16), but all types of requests require a substantial amount of documentation. (*See id.* at §§ 344 et seq.)

**Jurisdictional Requests**

A jurisdictional request may be possible where a scientific request cannot be supported, and may effect a modification that is not based on hydrogeology. For example, a jurisdictional request may seek consolidation of basins within a county (Cal. Code Regs., tit. 23, § 342.4(b)), which could not be effected through a scientific request. (*See id*. at § 342.2.)

**Processing of Requests**

When DWR receives a request, DWR will acknowledge receipt and post all the submitted materials on its website. (*See* Cal. Code Regs., tit. 23, § 343.10(a).) Next, DWR will determine whether the request is supported by sufficient information. (*Id.* at §§ 343.10(b).) In general, DWR will not begin its evaluation of the merits of the request until the request is complete. (*See id*. at §§ 343.10(a)-(c), 343.12.) When DWR determines that a request is complete, DWR will initiate a 30-day public comment period. (*See id*. at §§ 343.10(c), 343.12.)

DWR representatives have stated that DWR recognizes the advantages to consolidating basin boundaries but disfavors further basin subdivisions. Therefore, DWR is likely to set a high bar when reviewing any modification requests to subdivide a basin. (*See California Water Commission adopts regulation for modifying basin boundaries, the first of the Sustainable Groundwater Management Act* (Oct. 23, 2015) Maven's Notebook, [as of November 24, 2015].)

**Online Tools**

DWR has equipped its website with tools to help local agencies and their advisors navigate the process.

DWR's Boundary Assessment Tool offers interactive maps of existing basin and subbasin boundaries, and the Modification Request System allows agencies to submit initial notifications and boundary modification requests, as well as monitor the status of requests. DWR has also announced that it will make an instructional webinar about boundary modifications available on its website starting on December 17, 2015. (*See* DWR, SGM Sustainable Groundwater Management, Basin Boundary Modifications, [last visited Nov. 24, 2015].)

**Conclusion**

Interested parties should take immediate action in order to participate in the boundary modification process. The results of this process will have important implications for how groundwater basins are regulated and managed under SGMA.