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Duane Morris: California Enacts Comprehensive Groundwater Management Legislation.

On September 16, 2014, California Governor Jerry Brown signed into law a historic package of three bills—Senate Bill 1168, Senate Bill 1319 and Assembly Bill 1739—instituting comprehensive groundwater management in California. The legislation represents perhaps the most significant change to California water law since the adoption of the California Water Code and establishment of the state water rights structure in 1914. Prior to passage of the groundwater bills, California was one of only two states, and the only state in the western United States, that did not regulate groundwater rights.

Local Control

To implement comprehensive groundwater management, the three bills make significant additions and amendments to the California Water Code and Government Code. The goal of the legislation is to create a framework for “local control” at the basin, or subbasin, level over groundwater regulation while providing authority to the state to oversee the implementation and sufficiency of local groundwater regulation.

To achieve the goal of local control, the legislation requires the adoption of groundwater sustainability plans for designated medium- and high-priority basins. The legislation authorizes local agencies or combinations of local agencies to form “groundwater sustainability agencies” (GSA) with the power to develop and implement such plans, and to thereafter regulate pumping and groundwater use within basins with a state-approved plan. Certain adjudicated basins identified in the legislation are excluded from these requirements, provided they satisfy certain criteria for basin management.

Sustainable Groundwater Management

The purpose of the groundwater sustainability plans is to achieve, within 20 years, “sustainable groundwater management” of each basin to ensure that the basin is operated within its sustainable yield. Sustainable groundwater management is defined in the legislation as “the management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results,” which include chronic lowering of groundwater levels and significant and unreasonable loss of groundwater storage, seawater intrusion, degraded water quality, land subsidence or adverse impacts on surface water. Sustainable yield “means the maximum quantity of water, calculated over a base period representative of long-term conditions in the basin and including any temporary surplus, that can be withdrawn annually from a groundwater supply without causing an undesirable result.”

Key Deadlines

- January 31, 2015. Department of Water Resources must categorize each basin as one of the following priorities: high, medium, low or very low.
- April 1, 2016. Local agencies managing certain designated adjudicated basins are required to

submit a report to the state with information on pumping, water levels and related information regarding the basin.

- June 1, 2016. The Department of Water Resources shall adopt regulations for the evaluation and implementation of groundwater sustainability plans.
- January 1, 2017. The Department of Water Resources will develop and publish best management practices for the sustainable management of groundwater.
- January 1, 2017. The Department of Water Resources may update its designation of basins as high- or medium-priority basins, which are subject to critical conditions of overdraft.
June 30, 2017. GSAs must be formed across California to regulate designated high- and medium-priority basins.
- January 31, 2020. Groundwater basins that have been designated as being in a state of critical condition of overdraft have to be managed under a groundwater sustainability plan approved by the Department of Water Resources.
- January 31, 2022. All other medium- and high-priority basins are required to be managed under an approved groundwater sustainability plan.

Within 20 years of the above plan deadlines, with “interim milestones” in increments of five years, by 2040 or 2042 respectively, each medium- and high-priority basin must achieve sustainability.

Groundwater Sustainability Agencies

Any local agency or combination of local agencies, with water management or land use responsibilities, overlying a groundwater basin, may elect to be a GSA for that basin or subbasin. Certain designated local agencies that already manage groundwater are deemed to have “exclusive” authority to form a groundwater sustainability agency within their boundaries. It is important to note that investor-owned utilities do not have authority to become GSAs, though they may participate in a GSA with the approval of the local agencies.

A local agency electing or combination of local agencies electing to form a GSA are required to submit notice to the Department of Water Resources within 30 days of formation.

Within 90 days of the Department of Water Resources’ posting of a notice to form a GSA, the agency filing the notice shall be presumed to be the exclusive GSA within the area described, provided that no other notice is submitted. The legislation does not address the process that will occur if multiple notices are filed by local agencies seeking to form GSAs with overlapping geographic boundaries. However, as noted below, the legislation allows a single groundwater sustainability plan to be developed and implemented by multiple GSAs or for multiple GSAs to develop and implement multiple plans pursuant to a coordination agreement covering the entire basin.

Among other powers, a GSA may require the registration of groundwater extraction facilities, the installation of water-measuring devices and the filing of annual statements of groundwater extractions; impose spacing requirements on new wells (to avoid pumping interference); impose operating regulations on existing wells; and control groundwater extractions by regulating, limiting or suspending extractions from wells or otherwise establishing groundwater extraction allocations. The GSA may also impose and enforce fees, including permit fees and fees on groundwater extraction, and seek civil penalties for violations of any rules, regulations or ordinances.

Groundwater Sustainability Plans

A groundwater sustainability plan for a basin may be either (1) a single plan covering the entire basin developed and implemented by one GSA, (2) a single plan covering the entire basin developed and implemented by multiple GSAs or (3) multiple plans implemented by multiple GSAs and

coordinated pursuant to a coordination agreement covering the whole basin.

The groundwater sustainability plan has to include information regarding current and historical groundwater extractions, recharge locations, groundwater levels, water quality, subsidence, “groundwater-surface water interactions” and a general discussion of historical and projected water demands and supplies.

Preparation and adoption of groundwater sustainability plans are exempt from compliance with the California Environmental Quality Act (CEQA). However, there is no CEQA exemption adopted by the legislation for projects that would implement actions taken pursuant to an adopted plan.

State Authority

If a GSA is not formed or a groundwater sustainability plan is not adopted within established time limits, or if a plan is found to be inadequate or improperly implemented, then, under specified conditions, the State Water Resources Control Board can designate the basin as “probationary.”

If the deficiencies in the basin are not resolved, the State Board may, in specified circumstances, adopt an interim plan for the basin until such time as local control can be returned. The interim plan may include restrictions on pumping, a physical solution and “principles and guidelines” for the administration of surface water rights that are connected to the basin.

Coordination with Land Use Planning

Planning agencies should “review and consider” a groundwater sustainability plan in connection with any adoption or amendment to a general plan to ensure close coordination and consultation between water supply or management agencies and land use approval agencies regarding the adequacy of existing and future water supplies.

Conversely, groundwater sustainability plans must take into account applicable elements of general plans.

The legislation provides that it shall not be interpreted as superseding the land use authority of cities and counties.

Given the extensive and historic changes enacted by the legislation, much is unknown regarding both the immediate effect of the bills on local agencies, as well as the long-term interpretation and implementation of the statutory provisions and corresponding, soon-to-be enacted regulatory provisions authorized by the legislation.

Potential short-term issues or implications of the groundwater bills include further debate and, possibly, litigation over the concepts and definitions of “sustainable groundwater management” and “sustainable yield”; a race by local agencies to form GSAs to ensure retained control over groundwater regulation in areas under their jurisdiction; issues concerning coordination among local agencies within a designated basin’s boundaries; and effects of more intensive pumping by neighbors to GSAs that may cause groundwater management problems.

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