

2014 Groundwater Legislation

Governor Brown Signs Legislation That Regulates Groundwater For The First Time In California - Senate Bill 1168 (Stats. 2014, ch. 346), Senate Bill 1319 (Stats. 2014, ch. 348), and Assembly Bill 1739 (Stats. 2014, ch. 347).

On September 16, 2014, Governor Jerry Brown signed a package of bills that establish the framework for groundwater regulation in California for the first time in the State's history. Senate Bill 1168, Assembly Bill 1739, and Senate Bill 1319 (which amends AB 1739) of the 2013-2014 legislative session collectively form the "Sustainable Groundwater Management Act" ("Act") and related provisions. The Act provides a comprehensive groundwater sustainability management program in California for the first time. According to the last Senate staff analysis, SB 1168 (Pavley) is intended to do the following:

1. Establishes that is the policy of the state that all groundwater basins be managed sustainably and that such management is best achieved locally based on best available science.
2. Adds the Sustainable Groundwater Management Act to the Water Code with the stated intent of empowering local groundwater agencies to sustainably manage groundwater.
3. Encourages the voluntary participation of California Native tribes and federal agencies in sustainable groundwater management while preserving and acknowledging the federally reserved rights of federally recognized Indian tribes.
4. Defines sustainable groundwater management, among other terms.
5. Specifies that groundwater basins are those identified in Department of Water Resources ("DWR") Bulletin No. 118, as it may be amended, and includes subbasins.
6. Requires DWR, by January 31, 2015, to prioritize each basin as either a high, medium, low, or very low priority using factors under the California Statewide Groundwater Elevation Monitoring ("CASGEM") program that include, but are not limited to: population, extent of public wells; overlying irrigated acreage; reliance on groundwater; any documented impact upon the basin from overdraft, subsidence, saline intrusion and other water quality degradation; or any other information determined to be

relevant by the department, including adverse impacts on local habitat and local stream flows.

7. Requires that high and medium priority basins that are in a be sustainably managed through a groundwater sustainability plan (“GSP”)but excepts:
 - A. Basins, or portions of basins, that were subject to a groundwater adjudication; and
 - B. Basins that a local agency can demonstrate are already being sustainably managed.
8. Encourages low and very low priority basins to manage through a GSP but, should they voluntarily choose to do so, exempts them from any State compliance actions.
9. Allows any local agency or combination of agencies to establish a groundwater sustainability agency (“GSA”) for the purpose of developing and implementing a GSP. Allows water corporations regulated by the Public Utilities Commission to participate in a GSA if the local agencies forming the GSA approve.
10. Recognizes and lists special districts that were created in legislation for the purpose of managing groundwater and makes those districts the exclusive entities within their boundaries with authority to comply with the Act, unless they choose to opt out.
11. Allows a city or county to be the GSA or, in the case of an area where no local agency has assumed management, presumes the county to be the GSA unless the county opts out. If the county opts out and there is no other local agency, requires reporting of groundwater extractions directly to the State Water Board.
12. Provides for the procedures and for public involvement in the development of GSPs.
13. Empowers GSAs to collect information regarding the condition of the basin and then develop and implement a GSP using, as the GSA chooses, powers and authorities provided under the Act including, but not limited to:
 - A. Acquiring land and water to carry out the plan, including but not limited to spreading, storing, retaining, percolating, transporting, or reclaiming water to recharge the basin or provide water supplies in-lieu of groundwater;

- B. Monitoring for compliance and limiting extractions; and
 - C. Proposing, collecting, updating and enforcing fees, consistent with all statutory and Constitutional requirements.
14. Specifies that nothing in the Act or in any GSA adopted pursuant to the Act determines or alters surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights.
15. Requires, by June 1, 2016, that DWR develop regulations regarding:
- A. GSP components;
 - B. Coordination of multiple GSPs for a basin; and
 - C. Alternative compliance, including submitting an existing plan as a functional equivalent of a GSP or submitting an analysis of basin conditions that demonstrates the basin is being sustainably managed.
16. Specifies, in those areas that require a GSP to be completed, adopted, and submitted to DWR that the deadlines are:
- A. January 31, 2020, in high and medium priority basins that are subject to critical conditions of overdraft; and
 - B. January 31, 2022 for all other high and medium priority basins.
17. Exempts the preparation and adoption of a GSP from the California Environmental Quality Act but does not exempt a project or action to implement the GSP.
18. Requires GSPs to meet certain standards including:
- A. Encompassing an entire basin or subbasin; and
 - B. Being designed to achieve sustainable groundwater management within 20 years of adoption with progress reports to DWR and the State Water Board every five years.
19. Requires a GSA to annually report to DWR its groundwater elevation data, aggregated extraction data, use or availability of surface water for

recharge or in-lieu supplies, total water use, and change in groundwater storage.

20. Allows DWR to adjust basin boundaries, as specified, and re-prioritize low and very low basins according to criteria that include adverse impacts to habitat and surface water resources. Requires DWR to adopt emergency regulations governing basin boundary adjustments.
21. Provides that if a basin is reprioritized to medium or high, it shall have two years from the date of reprioritization to form a governance entity for sustainable management or submit an alternate means of establishing the basin is sustainably managed. If no alternate means is approved, allows five years to adopt a GSP in compliance with the Act.
22. Prohibits the adoption or renewal of existing groundwater management plans that do not meet the requirements for a GSP but allows such plans to remain in effect until a GSP is adopted.
23. Allows a GSA to become a CASGEM monitoring agency.
24. Contains chaptering language that only allows this bill to become operative if AB 1739 (Dickinson) and SB 1319 (Pavley) are enacted and become operative in the 2013-2014 session.

In many respects SB 1168 contains the actions related to establishing GSAs and planning GSPs, while the companion AB 1739 (Dickinson) contains most of the complimentary implementation tools and enforcement authorities. The Legislature intends that AB 1739 do the following:

1. Provide GSAs, as created by SB 1168, with authorities to regulate groundwater extraction through well spacing rules, temporary and permanent transfers of groundwater extraction allocations within the agency's boundaries, accounting rules, and other approaches. Prohibits a GSA from issuing permits for well construction, modification, or abandonment except as authorized by a county.
2. Allow DWR or a GSA to provide technical assistance to entities that extract groundwater and direct DWR to use its best efforts to provide assistance to any GSA that requests it.
3. Require DWR to develop best management practices.
4. Provide a GSA with financial authorities to impose regulatory fees to fund the preparation, adoption, and amendment of a GSP and authorities, consistent with the California Constitution, to fund acquisition of lands, water supply, water treatment, and other activities to implement the GSP.

5. Provide a GSA with capabilities and remedies to enforce its GSP including, but not limited to, civil penalties.
6. Require DWR to periodically review GSPs to evaluate whether they meet minimum requirements, are likely to achieve their sustainability goals, and do not adversely affect the ability of an adjacent basin to implement its GSP or achieve its sustainability goals.
7. Require, by June 1, 2016, that DWR develop emergency regulations regarding:
 - A. GSP components;
 - B. Coordination of multiple GSPs for a basin; and,
 - C. Alternative compliance, including submitting an existing plan as a functional equivalent of a GSP or submitting an analysis of basin conditions that demonstrates the basin is being sustainably managed.
8. Require DWR to post information on its Internet Web site, including notices regarding GSA formation and GSP adoption.
9. Allow a local agency to submit an alternative to DWR for evaluation if it believes that alternative satisfies the Act.
10. Allow the State Water Resources Control Board (“SWRCB”) to designate a basin as “probationary” if one or more of the following occurs:
 - A. By June 30, 2017, no local agency or collection of local agencies has either formed a GSA or submitted an alternative form of compliance;
 - B. By January 31, 2020, no local agency or collection of local agencies has adopted a GSP for a high or medium priority basin in a critical condition of overdraft or DWR has not approved an alternative form of compliance;
 - C. By January 31, 2022, no local agency or collection of local agencies has adopted a GSP for a high or medium priority basin not in a critical condition of overdraft or DWR has not approved an alternative form of compliance;
 - D. After January 31, 2020, DWR determines:

- i. The GSP is inadequate or not being implemented in a manner that will likely achieve the sustainability goal; and
 - ii. The SWRCB has determined that the groundwater basin is in a condition of long-term overdraft or in a condition where groundwater extractions result in significant depletions of interconnected surface waters.
11. Require the SWRCB to identify deficiencies in a probationary basin and allow a minimum of 180 days for a local agency or GSA to remedy those deficiencies and, if the deficiencies are not remedied, adopt an interim plan after public notice and hearing.
12. Require an interim plan to include an identification of the actions that are necessary to correct the condition of long-term overdraft or the condition where groundwater extractions result in significant depletions of interconnected surface waters, a time schedule for those actions, and a description of how the actions will be monitored for effectiveness, among other requirements.
13. Allow SWRCB to require reporting of groundwater extractions in areas that are either in a probationary basin, or not being managed by any local agency; and, charge fees to recover the cost of groundwater management.
14. Allow SWRCB to exclude extractions from reporting if they are subject to a local plan or program that adequately manages groundwater within the portion of that basin to which that plan or program applies, or if those extractions are likely to have a minimal impact on basin withdrawals.
15. Require coordination between local land use planning efforts and groundwater management planning efforts.

SB 1319 (Pavley) was enacted in the waning hours of the legislative session in order to revise provisions from the August 22, 2014 version of AB 1739 as follows:

1. Prohibits the SWRCB from establishing an interim plan to remedy a condition where the groundwater extractions result in significant depletions of interconnected surface waters until January 1, 2025. This provision delays the similar provision in AB 1739 from 2022 to 2025.
2. Requires SWRCB to exclude any portion of a basin in compliance with groundwater management requirements from probationary status. This provision narrows the similar provision in AB 1739 to only apply to the portion of the basin that is out of compliance.

3. Requires SWRCB to include any element of a groundwater sustainability plan or the entire plan in its interim plan if SWRCB finds it would help meet the sustainability goal. This provision revises the similar provision in AB 1739 to allow for the inclusion of local plans when developing interim plans for basins with probationary status.

SB 1319 was also contingent upon the enactment of AB 1739 and SB 1168.

According to the legislative intent language in SB 1168, AB 1739 and SB 1319, the bills were passed for the following reasons: (a) California's high reliance on groundwater to meet its water needs; (b) surface and groundwater management must be integrated in order to meet the state's water management goals; (c) failed wells, deteriorated water quality, environmental damage, and irreversible land subsidence occur when groundwater is not properly managed; (d) sustainable groundwater management is part of the implementation of the California Water Action Plan; and (e) sustainable groundwater management will respect overlying and other property rights. Timothy Quinn of the Association of California Water Agencies described the legislation as a necessary remedy for what has been "a simmering crises for half a century." The urgency of the matter this year was highlighted by a UC Davis study that reported in July 2014 that 75% of the shortfall in precipitation is being made up by groundwater withdrawals, which is far more than the entire state water project delivers in an average year. In fact, up to 65 percent of California's water supply has been estimated to come from underground sources this year, and well drilling has increased in all regions of the state over the past three years of drought. Mark Cowin, the director of the California Department of Water Resources, points out that "[o]ne of the reasons that agriculture hasn't done worse this year is because of the tremendous amount of groundwater withdrawal that took place. That's essentially borrowing on tomorrow's future." said, "It is estimated that about two million people in the state rely on private well water or other unregulated underground water sources. The motivation to act on groundwater regulation was illustrated by the comments of head of the Office of Planning and Research, Ken Alex, who said early in 2014: "If we can do it this year, the time is now."

When he signed the groundwater legislation, Governor Brown said that "[t]his is a big deal." As one senator from the Central Valley exclaimed: "[I]n the farming community, this is war." The legislation was described by proponents as a "frontal assault on the management of California groundwater," and by opponents as "the first step to dictatorial state control of our groundwater." Bi-partisan members of the Assembly who represent farming areas in the Central Valley were generally opposed to the bill. "While there is legitimate concern about the over-drafting of some groundwater basins, this massive expansion of state authority will not solve the problem," said Assembly Minority Leader Connie Conway (R-Tulare). Assemblymember Henry T. Perea (D-Fresno) stated: "We can all agree groundwater regulation is important. I am disappointed we could not come to an agreement that takes the needs of every region into account." Opponents believed that the legislation would substantially alter the California agricultural economy and related landscape for generations to come, could require hundreds of millions of dollars

in implementation costs, and could cause a potential devaluation in some land thus affecting property tax collections in some areas and the services and programs that are dependent upon them. But Brown said at the signing ceremony in his office that “[i]t has been known about for decades that underground water has to be managed and regulated in some way.” He cautioned, however, that years of disagreements and arguments are ahead in regulating groundwater. As Assemblymember Jim Patterson (R-Fresno) predicted about future litigation over the groundwater regulations: “There’s really going to be a wrestling match over who’s going to get the water.”

2015 Groundwater Legislation

De Minimis Extractors Senate Bill 173 (Nielsen R) Introduced February 5, 2015

Existing law exempts a de minimis extractor from having to file a report of groundwater extraction by December 15 with the State Water Resources Control Board for extractors who otherwise have to report (a probationary basin where the local agency has failed to regulate under the act.) A de minimis extractor was one who extracted 2 acre-feet or less per year for domestic purposes. Under the new bill it would raise that minimum to 10 acre feet or less per year for domestic purposes.

For more information:

<http://www.latimes.com/local/political/la-me-pc-groundwater-management-bills-20140829-story.html>;

<http://www.sacbee.com/2014/08/29/6665672/historic-california-groundwater.html>

<http://mavensnotebook.com/2014/08/30/reactions-legislators-and-organizations-respond-to-the-passage-of-groundwater-legislation/>

<http://www.familiesprotectingthevalley.com/topstory.php?ax=v&n=99&id=99&nid=926>

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<http://www.sfgate.com/default/article/Groundwater-pumping-propping-up-farms-in-5623258.php>

<http://www.latimes.com/science/la-me-water-year-20141001-story.html>

http://leginfo.ca.gov/pub/13-14/bill/sen/sb_1151-1200/sb_1168_bill_20140916_chaptered.htm

http://leginfo.ca.gov/pub/13-14/bill/sen/sb_1301-1350/sb_1319_bill_20140916_chaptered.htm

http://leginfo.ca.gov/pub/13-14/bill/asm/ab_1701-1750/ab_1739_bill_20140916_chaptered.htm

<http://www.capradio.org/31017>

<http://sacramento.cbslocal.com/2014/09/16/governor-brown-signs-californias-first-groundwater-rules/>