

## Summary: 2014 Sustainable Groundwater Management Act

Governor Brown signed a package of three bills to advance sustainable groundwater management in California on September 16, 2014, to be effective on January 1, 2015. The legislation, known as the Sustainable Groundwater Management Act (Act), provides a framework for improved management of groundwater by local authorities. The bills are SB 1168 (Pavley), SB 1319 (Pavley), and AB 1739 (Dickinson).

“A central feature of these bills is the recognition that groundwater management in California is best accomplished locally,” the governor wrote in his official signing message for the legislation. “Local agencies will now have the power to assess the conditions of their local water basins and take necessary steps to bring those basins in a state of chronic long-term overdraft into balance.”

The legislation provides local agencies with the tools to manage groundwater basins in a sustainable manner over a long-term horizon and allows for limited state intervention when necessary to protect groundwater resources. The Act establishes a definition of sustainable groundwater management, provides local agencies the ability to develop plans and implement strategies to sustainably manage groundwater resources, prioritizes basins with the greatest need (ranked as high and medium priority), and sets a timeline for implementation as follows:

- June 30, 2017: Local groundwater sustainability agencies (GSA) must be formed.
- January 31, 2020: Groundwater sustainability plans (GSP) must be completed for basins in a critical condition of overdraft.
- January 31, 2022: GSPs must be completed in all other high- and medium-priority basins not currently in overdraft.
- Twenty years after adoption of the GSP (2040 and 2042): All high- and medium-priority groundwater basins must achieve sustainability.

Additionally, the legislation includes numerous provisions to protect water rights to both surface and groundwater. For example, Water Code §10720.5(b) states that nothing in the legislation “determines or alters surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights.” GSPs will not establish or determine groundwater rights. They will simply govern how those rights are exercised.

The following is a brief summary of the key provisions:

**Key Definitions** (*Water Code §10721*). The Act contains a number of important definitions. Among the most important are:

- “Sustainable groundwater management” means management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results.
- “Undesirable results” means any of the following effects caused by groundwater conditions occurring throughout the basin:

- Chronic lowering of groundwater levels, but excluding reductions in groundwater levels during a the drought if they are offset by increases in groundwater levels during other periods;
- Significant and unreasonable reductions in groundwater storage;
- Significant and unreasonable seawater intrusion;
- Significant and unreasonable degradation of water quality;
- Significant and unreasonable land subsidence; and
- Surface water depletions that have significant and unreasonable adverse impacts on beneficial uses.

***Basin Boundaries and Priorities*** (Water Code §§10722-10722.4). The groundwater basin (and subbasin) boundaries set forth in Department of Water Resources (DWR) Bulletin 118 (<http://www.water.ca.gov/groundwater/bulletin118.cfm>) are the initial management area boundaries under the Act. However, the Act also includes provisions for allowing local agencies to ask DWR to modify the boundaries to suit their local needs. The Act requires DWR to adopt regulations by January 1, 2016 specifying the information that must be provided by local agencies to request a revision in the boundaries of a basin, or establishment of a new subbasin. The Act also requires the California Water Commission to hold a public hearing for each proposed modification. The legislation requires DWR to categorize each basin as (1) high priority, (2) medium priority, (3) low priority, or (4) very low priority based on criteria set forth in the California Statewide Groundwater Elevation Monitoring Program (<http://www.water.ca.gov/groundwater/casgem/>), as amended.

***Groundwater Sustainability Agency Formation*** (Water Code §§10723-10724). The Act promotes coordinated management of an entire groundwater basin. Any local agency or combination of local agencies overlying a groundwater basin may form a groundwater sustainability agency (GSA) for the basin. A combination of local agencies may form a GSA by joint powers agreement or memorandum of agreement or other legal agreement. Local agencies in high- and medium-priority basins have until June 30, 2017 to form a GSA.

An agency or agencies must notify DWR of the formation or establishment of a GSA within 30 days of final formation, and 90 days later the agency shall be the exclusive agency for that area of the basin provided no other agency notice was submitted. If an area over a basin is not within the management area of a GSA, the local county will be presumed to be the GSA for the area unless it opts out. The county shall notify DWR whether it will or will not be the GSA for the area.

***Consideration of Multiple Interests*** (Water Code §§10723.2). A GSA must consider the interests of a variety of different stakeholders, including beneficial users of water, environmental interests, disadvantaged communities, tribes, and others. The agency must maintain a list of persons interested in receiving notices regarding plan preparation and other activities.

***GSA Powers and Authorities*** (Water Code §§10725-10726.8 and §§10730-10732). The Act provides GSAs with a broad array of new authorities. For example, the Act provides local GSAs with the authority to conduct investigations, determine the sustainable yield of a groundwater

basin, measure and limit extractions, impose fees for groundwater management, and enforce the terms of a GSP. Nothing in the Act is to be construed as authorizing a local agency to make a binding determination of the water rights of any person or entity. In addition, the Act states that nothing in a GSP supersedes the land use authority of cities and counties.

***Groundwater Sustainability Plans and Reporting*** (§§10727-10728.6). A key element of the legislation is the requirement that GSAs in high- and medium-priority basins develop groundwater sustainability plans. Due to wide diversity of conditions in groundwater basins throughout the state, the legislation provides options for development of plans, and avoids a “one size fits all” approach. Each basin is to be covered by a single plan developed by one or more agencies, or by multiple plans implemented by multiple GSAs and coordinated by a single coordination agreement that covers the entire basin. The development and adoption of GSPs is exempt from the requirements of the California Environmental Quality Act (CEQA). The legislation describes the contents of the plans, including “measurable objectives, as well as interim milestones in increments of five years, to achieve the sustainability goal in the basin within 20 years of the implementation of the plan.”

Basins are subject to the following different requirements and timeframes for completion of the plans:

- By January 31, 2020 high- and medium-priority basins that are in a critical condition of overdraft are required to develop GSPs and if needed coordination agreements (§10720.7(a)(1))
  - Eleven basins are currently identified by DWR Bulletin 118 as being in a critical condition of overdraft. These basins are: Pajaro Basin, Cuyama Valley Basin, Eastern San Joaquin County Basin, Kern County Basin, Chowchilla Basin, Madera Basin, Kings Basin, Kaweah Basin, Tulare Lake Basin, Tule Basin, and Ventura Central Basin
- By January 31, 2022 the remaining high- and -medium-priority basins are required to develop GSPs, and if needed coordination agreements. (§10720.7(a)(2))
- Low- and very low-priority basins are encouraged, but not required, to adopt GSPs. (§10720.7(b))

DWR may grant up to two 5-year extensions if the agency demonstrates a need for the extension and has demonstrated progress towards its sustainability goal. Beginning April 1 following the adoption of a GSP, the GSA is required to report to DWR annually regarding the condition of the basin. The annual reports shall include information such as aggregated data on groundwater extractions, total water use, and change in groundwater storage.

The Act directs DWR to adopt regulations (§10733.2) by June 1, 2016, regarding GSPs, coordination agreements, and alternative plans and documentation. The regulations shall guide plan evaluation and implementation, and shall identify the necessary plan components and other information that will assist GSAs in developing and implementing GSPs and coordination agreements. DWR is required to adopt these regulations, and any later adopted amendments to the regulations, as emergency regulations, which will remain in effect until amended by DWR.

***Do No Harm—Current Basins Sustainably Managed***

- Adjudicated Basins (§10720.8). The Act essentially exempts groundwater basins that have already been adjudicated and are under continuing court jurisdiction to effectively manage the basin. Adjudicated basins only have annual reporting requirements to DWR that in most cases will be met by submitting their annual court reports.
- Alternative Process (§10733.6). Groundwater basins that have ongoing successful groundwater management programs do not need to create a GSA or develop a new GSP. Successful basins will only need to submit an alternative proposal that demonstrates that the groundwater basin is being managed in a manner that is consistent with the Act and meeting the long-term “sustainable yield.” The Act requires an alternative proposal to be submitted to DWR by June 30, 2017.

***Groundwater Data and Privacy Protections*** (§10730.8(b), 5206, and §22 of AB 1739). The legislation limits the public release of certain personal information related to individual groundwater pumpers, including water usage. However, aggregated information on groundwater withdrawals in a basin will be available along with information on the basin conditions and progress in meeting sustainability goals.

***State Technical and Financial Assistance*** (§10729). The Act directs DWR to provide technical assistance to local agencies in the implementation of this legislation and to develop best management practices. In addition, \$100 million in grant funding is included in the pending Water Bond (Proposition 1) to be used for development and implementation of groundwater management plans and projects.

***State Review and Intervention*** (§§10733—10733.8, and §§10735-10736.6). The legislation requires that DWR review groundwater sustainability plans and their implementation, and authorizes State Water Resources Control Board (SWRCB) intervention under certain conditions. Within two years of submission, DWR is required to evaluate whether a GSP conforms with the requirements of the Act and is likely to achieve the sustainability goal, and issue an assessment of the plan. Thereafter, DWR is to evaluate each GSP or alternative at least every five years.

In general, the SWRCB may designate a basin as “probationary” if, after consulting with DWR, it is found that a GSP has not been created, the plan is inadequate or the program is not being implemented in a way that will lead to sustainability. A GSA would have 180 days or a year to remedy the problem, depending on the nature of the deficiency, with additional time provided if the agency is making substantial progress toward remedying the problem.

Specifically, the conditions for SWRCB intervention and designation of probationary basin include:

- After June 30, 2017, if a basin is in a condition of long-term overdraft and there no agency has elected to be the GSA for the basin, the SWRCB may prepare an interim plan.
- After January 31, 2020, for high- and medium-priority basins in a critical condition of overdraft (currently 11 basins), if no GSP was completed, the GSP is inadequate, or not implemented to achieve sustainability, the SWRCB may prepare an interim plan.
- After January 31, 2022, in all other high- and medium-priority basins (excluding the 11 basins), if no GSP is completed, the GSP is inadequate, or not implemented to achieve

sustainability **and** there is a condition of long-term overdraft, the SWRCB may prepare an interim plan.

After January 31, 2025, in all other high and medium priority basins (excluding the 11 basins), if no agency has elected to be the GSA for the basin, the GSP is inadequate, or not implemented to achieve sustainability **and** the basin is in a condition where groundwater extractions are resulting in significant depletions of surface waters, the SWRCB may prepare an interim plan.

The SWRCB must exclude from probationary status any portion of a basin for which a GSA demonstrates compliance with the sustainability goal. The Act requires groundwater extraction reporting for probationary basins and basins without a GSA (*Part 5.2, commencing with Water Code §5200*). It is the intention of the Legislature that state intervention under an “interim plan” continue only until a local GSA is able take over and manage the basin sustainably.

The SWRCB can assess fees to recover costs incurred in administering an unmanaged area or a probationary basin (*Water Code §1529.5*). For example, fees can cover SWRCB costs incurred in connection with reporting requirements, investigations, facilitation, monitoring, hearings, enforcement, and administrative costs in carrying out these actions.

***Coordination of Land Use Planning & Water Management*** (*Gov. Code §§65350.6, 65352, 65352.5*). The Act amends Planning and Zoning Law to require increased coordination between land use planning agencies and groundwater sustainability agencies. Specifically it requires the planning agency of a city or county, before the adoption or any substantial amendment of a general plan, to:

- Review and consider a GSP or other groundwater plans and court orders affecting the groundwater basin.
- Refer the proposed action to local groundwater agencies.

The legislation also requires groundwater agencies to provide the local planning agencies with the following information if notified of a General Plan amendment:

- The current version of its GSP or alternative, and other information if the basin is managed by court order, judgment or decree.
- A report on the anticipated effect of the proposed General Plan action on implementation of a GSP.