

Summary

AB 1739 (Dickinson), SB 1168 (Pavley) and SB 1319 (Pavley)

The Sustainable Groundwater Management Act empowers local agencies to manage groundwater basins in a sustainable manner over a long-term horizon. The Act provides five to seven years for locals to form a Groundwater Sustainability Agency (GSA) and to create a Groundwater Sustainability Plan (GSP). The plan would have a 20-year implementation horizon with the opportunity for two five-year extensions, if the agency is making progress towards sustainability.

(All references to code sections are to the Water Code, unless otherwise noted.)

State Policy and Local Government Coordination

- Establishes that it is the policy of the state that groundwater resources be managed sustainably for long-term water supply reliability and multiple economic, social, or environmental benefits for current and future beneficial uses. Section 1. (a) of SB 1168
- Requires a city or county planning agency, before adopting or substantially amending a general plan, to review and consider groundwater sustainability plans. Government Code Section 65352.5

I. Core Provisions

Groundwater Sustainability Agency Formation

- Local Agencies have until June 30, 2017, to form a GSA. Section 10735.2 (1)
- Any local agency or combination of local agencies overlying a groundwater basin may elect to be a Groundwater Sustainability Agency. Section 10723
- Agencies that have been created by statute to manage groundwater are deemed the exclusive agencies to comply with the Act within their boundaries, unless the agency elects to opt out. Section 10723 (c)(1) and (c)(2)
- A GSA may adopt rules, regulations, ordinances, and resolutions for the purposes of the Act.

Tools for GSAs

- The Act gives local agencies new tools to manage groundwater sustainably.
- A GSA may conduct investigations to carry out the requirements of the Act. Section 10725.4
- A GSA may require the registration of wells. Section 10725.6

- A GSA may require the installation of water-measuring devices on all groundwater wells within the basin boundaries at the expense of the operator or owner. Section 10725.8
- A GSA may require annual extraction statements or other reasonable method to determine groundwater extractions. Section 10725.8 (c) and (d)
- A GSA may impose well spacing requirements and control extractions by regulating, limiting or suspending extractions from individual groundwater wells. Section 10726.4 (a)(1) and (2)
- A GSA may assess fees to establish and implement local groundwater management plans. Section 10725.4 (a)(3)
- Local agencies may request that the Department of Water Resources (DWR) revise the boundaries of a basin, including establishing new subbasins. The request shall include information, to be specified by DWR in regulations by January 1, 2016, to support the request. Section 10722.2 (a)

Creation of Groundwater Sustainability Plans

- GSAs must create and implement a GSP in each high- and medium-priority basin to meet the sustainability goal of the Act. Section 10727 (a) [See the attached map indicating the location high- and medium-priority basins as currently identified.]
- GSAs in basins that are in “critical conditions of overdraft” must adopt a compliant plan by January 31, 2020. Section 10720.7 (a)(1)
- GSAs in all other high- and medium-priority basins must adopt a compliant plan by January 31, 2022. Section 10720.7 (a)(2)
- A plan may be a single plan covering the entire basin, a single plan covering the entire basin created by multiple agencies, or multiple plans created by multiple agencies. Section 10727 (b)(1), (2), and (3)
- A GSP must include:
 - A description of the physical setting and characteristics of the aquifer system. Section 10727.2 (a)
 - Historical data, groundwater levels, ground water quality, subsidence, groundwater-surface water interaction, a discussion of historical and projected water demands and supplies. Section 10727.2 (1), (2) and (3)
 - A map that details the area of the basin and boundaries. Section 10727.2 (4)
 - A map identifying existing and potential recharge areas that substantially contribute to the recharge of the basin. Section 10727.2 (5)
 - Measurable objectives, as well as interim milestones in increments of five years, to achieve the sustainability goal in the basin within 20 years. Section 10727.2 (b) (1)
 - A planning and implementing horizon. Section 10727.2 (c)
 - The monitoring and management of groundwater levels, water quality, groundwater quality degradation, and inelastic land surface subsidence. Section 10727.2 (d)(1), (2), (3), (4), and (5)
 - A summary of the type of monitoring. Section 10727.2 (e)
 - The monitoring protocols. Section 10727.2 (f)

- A description of the consideration of other applicable local government plans and how the GSP may affect those plans. Section 10727.2 (g)
- DWR may grant two five-year extensions upon a showing of good cause beyond the 20-year sustainability timeframe. Section 10727.2 (3) (A)
- DWR may grant an extension beyond the two five-year extensions, if the local agency demonstrates a need for an extension, has made progress toward meeting its sustainability goal and adopts a feasibility work plan for meeting the sustainability goal during the extension period. Section 10727.2 (3) (B) (i), (ii) and (iii)

DWR Evaluation and Assessment

- DWR shall periodically review GSPs to evaluate whether they conform with the Act and are likely to achieve the sustainability goal. Section 10733 (a)
- If multiple plans are created for a basin, DWR shall evaluate whether the plans conform with the Act and together are likely to achieve the sustainability goal. Section 10733 (b)
- DWR shall evaluate whether a GSP adversely affects the ability of an adjacent basin to implement its GSP or impedes achievement of the sustainability goals in an adjacent basin. Section 10733 (c)

Probationary Status

In general, the State Water Resources Control Board (State Board) may designate a basin as “probationary” if, after consulting with DWR, it is found that a GSA has not been formed, a GSP has not been created, the GSP is inadequate or the GSP is not being implemented in a way that will lead to sustainability. “Sustainable groundwater management” means the “management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results.” “Undesirable results” are defined as follows, based on a “significant and unreasonable” standard:

- Chronic lowering groundwater level
- Seawater intrusion
- Degraded water quality
- Land subsidence
- Depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses

Probationary status requires a GSA to respond to the State Board and describe how it intends to rectify these shortcomings.

Specifically, the State Board may designate a basin as a probationary, if:

- After June 30, 2017, the State Board finds that there is no local agency or a collection of agencies that has elected to become the GSA or an agency has not provided an alternative plan. Section 10735.2 (1)

- After January 31, 2020, a GSA in any high- or medium-priority basin in critical condition of overdraft has not adopted a GSP for the entire basin. Section 10735.2 (2)
 - After, January 31, 2020, DWR in consultation with the State Board determines that the GSP is inadequate or the GSP is not being implemented in a manner that will likely achieve the sustainability goal. Section 10735.2 (3)
 - After January 31, 2022, a GSA in any high- or medium-priority basin that is not subject to the critical conditions of overdraft has not adopted a plan for the entire basin. Section 10735.2 (4)
 - After January 31, 2022, DWR in consultation with the State Board determines that the GSP is inadequate or that the GSP is not being implemented in a manner that will achieve the sustainability goal and the State Board determines that the basin is in a condition of long-term overdraft. Section 10735.2 (5)(A)
 - After January 31, 2025, DWR in consultation with the State Board determines that the GSP is inadequate or that the GSP is not being implemented in a manner that will achieve the sustainability goal and the State Board determines that the basin is in a condition where groundwater extractions result in significant depletions of interconnected surface waters. Section 10735.2 (5)(B)
- A GSA has 180 days to remedy any deficiency with additional time provided if the agency is making substantial progress toward remedying the problem. Section 10735.4 (a) and (b)

State Board Intervention/Interim Plans

A GSA has 180 days to respond appropriately to the designation of “probationary status” before the State Board can move forward with the next step. Failure to respond to the deficiencies in the GSP could lead to limited state intervention and the development of a State Board- created interim plan.

- The State Board may develop an “interim plan” for a probationary basin if at the end of the time provided for rectifying the deficiency the State Board, in consultation with DWR, determines that the local agency has not remedied the deficiency. Section 10735.4 (c)
- The State Board must exclude from probationary status any portion of a basin for which a GSA demonstrates compliance with the sustainability goal. Section 10735.2 (e)
- Before January 1, 2025, the State Board is prohibited from establishing an interim plan to remedy a condition where the groundwater extractions result in significant depletions of interconnected surface waters. Section 10735.8 (h)
- The State Board may adopt regulations to establish the allocation, administration or collection of fees in carrying out its duties. Section 10736 (d)(3)

Protections for Areas under Sustainable Management

- The State Board must exclude from probationary status any portion of a basin for which a GSA demonstrates compliance with the sustainability goal. Section 10735.2 (e)

- State fees may be assessed by the State Board to carry out its duties only in areas not in compliance with the Act after 2017, or 2020, or later, as described in the requirements for “probationary status” designation.

II. Other Important Provisions

California Environmental Quality Act (CEQA)

- The formation of a GSA is not expressly exempt from CEQA. Any deadlines missed due to litigation challenging the formation of the agency would be extended until the litigation is resolved. Section 10735.2 (d)
- The preparation of a GSP is exempt from CEQA. Section 10728.6
- The Act does not exempt the implementation of projects under a GSP from CEQA. Section 10728.6

Water Rights

- The Act states that the intent of the Legislature is to “respect overlying and other proprietary rights to groundwater, consistent with section 1200 of the Water Code.” Section 1(b)(4) of AB 1739
- The Act further states that it is in the intent of the Legislature to “preserve the security of water rights in the state to the greatest extent possible consistent with the sustainable management of groundwater.” Section 10720.1(b)
- Additionally, the Act states that “nothing in this part or in any groundwater management plan adopted pursuant to this part, determines or alters surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights.” Section 10720.5(b). Similar language is at Section 10726.8(b)

Application to Adjudicated Basins

- The Act does not contain any provisions affecting the adjudicatory process.
- Adjudicated basins are required to submit to DWR a copy of a governing final judgment, or other judicial order or decree and any amendments entered before April 1, 2016. Section 10720.8 (f)(1) [See the attached map indicating the location of adjudicated basins.]
- After April 1, 2016, adjudicated basins are required to submit:
 - Any amendment made to the decree or final judgment.
 - Groundwater elevation data unless submitted under Section 10932.
 - Annual aggregate data identifying extraction for the preceding year.
 - Surface water supply used for or available for groundwater recharge or in-lieu use.
 - Total water use.
 - Change in groundwater storage.
 - The annual report submitted to the court.

Tribal Lands

- The Act applies to tribes to the extent authorized under federal law. Section 10720.3(b)
- The Act provides that tribes may voluntarily agree to participate in a GSA and GSP. Section 10720.3(c)
- The Act provides that federally reserved rights to groundwater shall be respected in full. Section 10720.3(d)