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California's Water Anxiety Prompts Landmark Groundwater Legislation

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In an effort to balance depleted groundwater supplies amid record drought conditions, Governor Jerry Brown signed three bills on September 17, 2014 designed to regulate groundwater aquifers throughout California. The landmark legislation, as Senator Pavley avers, "embraces the concept that groundwater is best managed locally." This marks the beginning of a critical chapter in the ongoing water saga for the state, in stark contrast to the traditional paradigm that has focused primarily on the management of surface water. Though guardedly optimistic, many still believe that the fate of California's water crisis remains uncertain.

Through a trinity of groundwater legislation, SB 1168, AB 1739, and SB 1319 collectively the Sustainable Groundwater Management Act ("Act"), California enacted a grand framework to regulate and monitor underground basins, a precious resource that provides up to 60 percent of the California's total water supply in dry years. Though highly controversial, the Act has been deemed by some to be a step in the right direction—a remarkable shift away from California's traditional laissez-faire approach to groundwater management. Regardless of the intentions of the legislation or the state of groundwater management, the practical implications boil down to how the Act will affect the basins, the pumpers, overlying landowners and ultimately the end-users. Most importantly, the extraordinary transfer of management and enforcement authority to local agencies will be watched by all to see how each local agency attempts to judiciously sustain each basin while weighing the allocation of groundwater among competing interests.

A short overview of the Act's key provisions:

- Assembly Bill 1739 ("AB 1739") mandates the local management of groundwater basins with the goal of reaching "sustainable yield" over a 20- to 30-year horizon. The local agencies will be called Groundwater Sustainability Agencies ("GSAs") and have the authority to charge fees to supplement the cost of related groundwater management programs. Further AB 1739 puts new teeth into the local agencies enforcement powers, including civil penalties of up t $500 per acre-foot of water pumped in excess of the amount authorized, and penalties of up to $1,000 for violations of any related rule, regulation, ordinance or resolution.

AB 1739 requires that the California Department of Water Resources ("DWR") adopt regulations for the evaluation and assessment of groundwater management plans by June 1, 2016. It also grants authority for the State to intervene if DWR, in consultation with the State Water Resources and Control Board ("Board"), determines a local plan to be inadequately written or implemented.

- Senate Bill 1168 ("SB 1168") establishes minimum standards for sustainable groundwater management and provides GSAs with the authority, technical, and financial wherewithal to manage groundwater sustainably. SB 1168 also establishes the boundaries of groundwater basins, defines a local agency's powers and authorities, develops criteria required in a sustainability plan, and outlines which basins will be required to implement plans, as well as the process through which a local entity can become the GSA for its basin.

DWR is required to prioritize the list of all groundwater basins and to classify each basin as being high, medium, low, or very low priority based on the following considerations: population, extent of public wells, overlying irrigated acreage, reliance on groundwater, any document impact from the basin from overdraft, subsidence, saline intrusion and other water quality degradation, or any other information determined to be relevant, such as adverse impacts on local habitat or local stream flows.

GSAs are then mandated to adopt a groundwater sustainability plan ("Plan") and submit it to DWR by January 31, 2020 for all high or medium priority basins

with serious overdraft conditions, or January 31, 2022 for all other high or medium priority basins, unless the basin has been adjudicated or the GSA asserts that the basin is being sustainably managed. Though encouraged, low and medium priority basins are not required to prepare a Plan.

Any local agency or combination of agencies can establish a GSA for the purpose of developing and implementing a Plan. Further, GSAs are granted the power to collect information relevant to groundwater management through the acquisition of 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; the ability to monitor for compliance and impose limits on groundwater extractions; and the assessment, imposition, and enforcement of fees against pumpers to fund the Plan. GSAs additionally can impose extraction allocations, which in turn could limit a pumpers' ability to extract groundwater in accordance with an existing water right.

And finally, to address the concerns of agricultural constituents, Senate Bill 1319 ("SB 1319") delays the State's ability to intervene in certain regions where surface water has been affected by groundwater pumping. SB 1319 provides that the Board may not intervene and establish a plan for a basin due to surface water depletion caused by groundwater extraction prior to January 1, 2025.

While this article does not address all the intricacies of the Act, it is safe to assert that California has not enacted such a vast legislative framework affecting the waters of California since the Water Commission Act became effective in 1914. With competing water demands due to drought conditions in the late 1930s, courts devised a formal adjudication process to "legally" reapportion and effectively reduce existing water rights if the basin was found to be in overdraft.

As codified, the Act's statutory framework appears to circumvent the adjudication process that the courts devised to "equitably" reapportion and effectively manage water rights if a basin was found to be in overdraft.

This steers those with groundwater rights into dangerous terrain given the Act's strong deference to the GSAs. As such, all groundwater pumpers and overlying landowners must proceed with caution and remain vigilant in protecting their respective groundwater rights as the Board and GSAs navigate into unchartered waters. Alternatively, groundwater rights holders, pumpers and overlying landowners may find themselves unwittingly the biggest losers in California's uncertain and perpetual water drama.

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