



## Environmental ADVISORY ■

**SEPTEMBER 16, 2014**

### California Enacts Unprecedented Statewide Groundwater Regulation Scheme

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#### **Background Information**

In response to the ongoing multiyear drought throughout California, on September 16, 2014, Governor Jerry Brown signed into law a package of bills that creates an unprecedented statewide system of groundwater regulation. (California was one of only two states that did not have a statewide regulatory regime for groundwater management.) Two of the bills, SB 1168 and AB 1739, collectively form the Sustainable Groundwater Management Act (“Act”), adding Part 2.74 to Division 6 of the California Water Code. A third bill also passed that extends the time for local governments to comply with some parts of the other measures in the package.

#### **Groundwater Sustainability Plans**

The Act requires the Department of Water Resources (DWR) to prioritize and publish by January 31, 2015, a list of all groundwater basins identified in DWR Bulletin No. 118 as being high, medium, low or very low priority based on the existence and severity of overdraft conditions. The Act then requires local agencies to adopt a groundwater sustainability plan (GSP) and submit it to DWR by: (1) January 31, 2020, for all high or medium priority basins that are subject to critical conditions of overdraft, or (2) January 31, 2022, for all other high and medium priority basins unless the basin is legally adjudicated or the local agency establishes it is otherwise being sustainably managed. A “local agency” is defined as “a local public agency that has water supply, water management, or land use responsibilities within a groundwater basin.” (SB 1168 § 3, Water Code § 10721(m)) Low and very low priority watersheds are encouraged to adopt GSPs, but they are not required to do so.

#### **Groundwater Sustainability Agencies**

The Act also allows a single local agency or multiple local agencies within a basin to come together and form a single groundwater sustainability agency (GSA). GSAs will have broad powers over groundwater management; they are authorized to impose regulatory fees against pumpers to fund creating a GSP and, consistent with the state constitution, to fund activities to implement the GSP. Such actions can include acquiring land and groundwater recharge projects and monitoring.

A GSA may also regulate groundwater extractions through “well-spacing rules,” which can limit the number of

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wells. They can also impose groundwater extraction allocations, which could limit groundwater pumpers' ability to pump groundwater. Note, however, that the Act explicitly states that it is not intended to alter any established water rights. A GSA is also authorized to enforce a GSP by issuing fines and civil penalties against parties for violations of the Act or the GSP. Well construction, modification and abandonment rules will remain within county jurisdictions.

### **Adjudicated Basins and Opting Out of the Act**

A local agency or a GSA may opt out of creating a GSP where a basin has been adjudicated or they can otherwise show a basin is already being "sustainably managed." If they will not create a GSP, a local agency or GSA must submit an alternative compliance report to DWR by the applicable statutory deadline for GSP submittal. The Act also lists a number of adjudicated groundwater basins to which the general provisions of the Act do not apply (See SB 1168 § 3, Water Code § 10720.8). These include, among others, the Central Basin, West Coast Basin and Upper Los Angeles River in Los Angeles, the Main San Gabriel Basin, the Raymond Basin and the Cucamonga and Chino Basin.

### **Enforcement**

The State Water Resources Control Board will be the Act's primary enforcement agency. The board must designate a basin as "probationary" if: (1) by June 30, 2017, no local agency or GSA has assumed responsibility for implementing the Act or no GSP or alternative has been submitted to DWR; or (2) after January 31, 2020, a GSP is deemed inadequate or is not being adequately managed to achieve sustainability. Further, if the board determines a violation of the Act has occurred and the deficiency has not been remedied within the required timeframe, the board can impose fines, intervene and directly implement the Act for the basin or order actions that alleviate an overdraft condition in the basin.

### **The Need to Take Action**

Given the relatively short timeframes set by the Act, water and other local government agencies will need to take immediate action. The first step in that effort is the selection of which agency will act as the local agency or a GSA for enforcing the Act, which may be hampered if multiple agencies seek that position for the same groundwater basin. Further, implementation of the Act may lead to less groundwater production or higher water rates over time, which may, in turn, affect new development and infrastructure projects. Suffice it to say, monitoring the implementation of the Act is critical for both government agencies and private businesses.

If you have any questions regarding the Act, please feel free to contact [Ed Casey](#), [Andrew Brady](#) or one of the attorneys in Alston & Bird's [Water Resources Group](#).

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