# IMPLEMENTING CALIFORNIA'S SUSTAINABLE GROUNDWATER MANAGEMENT ACT

Date: 28 June 2018

**U.S. Environment, Land and Natural Resources Alert**

The California legislature passed the Sustainable Groundwater Management Act ("SGMA") nearly four years ago and its impacts are finally beginning to take shape. [1] Until the SGMA, there was no statewide governance scheme regulating groundwater pumping. While in normal years pumped groundwater comprises approximately 38% of California's total water supply, in drought years groundwater contributes up to 46% (or more) of the state's annual water supply. [2] Much of this groundwater supports large commercial enterprises. Agriculture — including ranching, farming, vineyards, and fruit washing — accounts for about 75% of the state's groundwater use. Microchip processors and data centers also rely on a significant amount of groundwater for production and cooling, respectively.

Over the next two to four years, local groundwater agencies will be developing groundwater sustainability plans for 127 basins that supply water to millions of people and businesses. Each plan will establish a "water budget" and "sustainability goal" that may limit future groundwater use. If you rely on groundwater for your home, farm, or business, it is critical to understand if you are located in a basin that is developing a plan and to participate in the process of developing that plan. To help facilitate participation, this alert distills the SGMA's key provisions and describes current steps toward implementation.

## BACKGROUND

Because California historically neglected comprehensive groundwater management, the need for reform became clear when the state's historic drought began in 2012. Before the SGMA, California was the only western state that did not regulate groundwater under a state-wide program. [3] California's groundwater "management" (or the lack thereof) was akin to the Wild West, with farmers and landowners who lacked surface water or shallow groundwater spending millions of dollars to drill deeper to access new groundwater resources. In some locations, over-drilling and over-pumping led to land subsidence, saltwater intrusion, and concerns about the long-term viability of the state's groundwater supply. For example, groundwater pumping has resulted in swaths of the San Joaquin Valley sinking, which the U.S. Geological Survey has called "one of the single largest alterations of the [planet's] land surface attributed to humankind." [4] The valley accounts for half of California's food production; reducing groundwater use here as well as in other agriculturally intensive areas of the state will likely have significant financial consequences. Stakeholders with similar interests and concerns across the arid West will be watching closely as implementation of the SGMA unfolds.

## GROUNDWATER BASIN PRIORITIZATION

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**Basin Management.** In September 2014, Governor Jerry Brown signed the SGMA into law, and it went into effect on January 1, 2015. [5] The SGMA directs the Department of Water Resources ("DWR") to prioritize California's 515 groundwater basins as high-, medium-, low-, or very-low-priority basins. [6] In 2014, DWR identified 127 medium- and high-priority groundwater basins that account for approximately 96% of groundwater use in California. Eighty-eight percent of the state's population uses the groundwater coming from those basins. [7]

High- and medium-priority groundwater basins were required to form groundwater sustainability agencies ("GSAs") by June 30, 2017. [8] GSAs "have the authority and responsibility to sustainably manage their respective groundwater basins." [10] Low- and very-low-priority basins are not required to form GSAs, although they are encouraged and authorized to do so.

To accommodate the regional and hydrological differences among groundwater basins, the SGMA allows various types of local authorities (or a combination of authorities) to control and manage GSAs. In some areas the GSA is the local water district, while in others the GSA is managed by the county or in partnership with a water district.

**GSA Formation.** GSAs are formed when they submit a package of information to DWR. A complete GSA formation notice must include: (1) information showing the GSA notice was submitted within 30 days of the formation decision; (2) the GSA's service area boundaries, the boundaries of the basin or portion of the basin the GSA intends to manage, and identifying any other agencies managing or proposing to manage groundwater within the basin; (3) a copy of the resolution or agreement forming the GSA; (4) a copy of any new bylaws, ordinances, or new authorities adopted by the local agency; and (5) a list of interested parties pursuant to California Water Code Section 10723.2 with an explanation of how the GSA will consider their interests while developing and implementing the sustainability plan. [11]

Currently, 266 local agencies have formed GSAs in 141 basins. The size and scope of the GSAs range greatly, with some local agencies covering only a small portion of one basin to other local agencies covering all of the alluvial basins in an entire county. At a December 2017 meeting of the California Water Commission, a senior engineering geologist noted that local agencies overwhelmingly complied with the GSA formation requirement, resulting in 99.9% of the basins subject to the SGMA being covered by a GSA. [12] A full list of all posted GSA notices is available here.

## GROUNDWATER SUSTAINABILITY PLANS

Once GSAs form, the next step is to develop groundwater sustainability plans ("GSPs"). GSPs detail how the GSAs plan to meet their groundwater sustainability goals. Critically over-drafted medium- or high-priority basins have until 2020 to develop GSPs, [13] while all other medium- and high-priority basins have until 2022. [14] GSAs must achieve groundwater sustainability 20 years after their GSPs are adopted. [15]

There are several steps to developing and adopting a GSP that complies with the SGMA. First, a GSA must notify DWR of its intent to develop a GSP and include information about the drafting process and how interested parties may participate. [16]

Second, and most significantly, while the SGMA requires each GSP to include specific elements (e.g., a description of the physical groundwater basin, measurable objectives to achieve sustainability within 20 years, a

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planning and implementation horizon), [17] it grants the GSAs broad discretion to develop a GSP that works best for the region. For instance, the SGMA allows each GSA to establish its own water budget, [18] “sustainability goal,” [19] and monitoring network. [20] No two GSPs will be alike. The SGMA grants GSAs the authority to develop a GSP that meets the unique characteristics and needs of each groundwater basin.

Third, a GSA may adopt a GSP only after a public hearing is held with at least 90 days' advance notice to the city or county within the area of the proposed plan or amendment. [21]

Fourth, the GSA must submit its adopted GSP to DWR for review and approval. [22] The DWR will post the GSP to its website for public comment, and determine whether the GSP is approved, incomplete, or inadequate. [23]

Lastly, after DWR adopts the GSP, GSAs must submit annual reports to DWR by April 1 for evaluation by the Department. [24] GSAs must also evaluate their GSPs at least every five years, or whenever the GSP is amended, and provide a written assessment to the Department describing whether the GSP is meeting the basin's sustainability goals. [25]

So far, GSAs have filed 56 GSP initial notifications, and one has been withdrawn. No GSPs have been filed yet because there is not a mechanism to submit them. [26] DWR has indicated that a submittal tool is forthcoming. [27]

## ALTERNATIVES TO GSPS

The SGMA established a process for local agencies to develop an alternative (“Alternatives”) in place of a GSP. [28] Local agencies that had already developed groundwater management plans (either on their own or due to a groundwater adjudication) or that could demonstrate that their basins had operated within their sustainable yields, over a period of at least 10 years, could submit those plans or analyses as alternatives to GSPs. Agencies were required to submit alternatives to the DWR by January 1, 2017, and are required to re-file every five years thereafter. Twenty local agencies submitted Alternatives; the complete list is available here.

## ADJUDICATED BASINS ARE MOSTLY EXEMPT

Twenty-six basins — mostly in southern California — have adjudicated areas where a court has determined the groundwater rights of all overliers and appropriators. [29] These previously adjudicated basins are not subject to the SGMA except for specific reporting requirements. [30] A map showing current adjudicated areas is available here. The SGMA required adjudicated basin Watermasters or local agencies to submit Adjudicated Area Annual Reports by April 1, 2016, and annually thereafter. Twenty reports have been submitted and are publically available. [31]

## CONCLUSION

SGMA's implementation phase is only just beginning. Many GSAs have formed, but the first deadline for GSPs is over eighteen months away. GSAs still have hurdles to cross before GSPs can be developed, such as filing initial notices and getting participation from interested parties. As a result, there is still uncertainty about how the SGMA

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will play out on (or rather, *in*) the ground, and how much protection it will ultimately offer California's groundwater resources.

The SGMA establishes stakeholder engagement and collaboration as key to achieving the law's objectives. While the SGMA sets clear requirements for public notice and participation through public hearings, it also includes more nebulous requirements for local agencies to "consider the interests of all beneficial uses and users of groundwater." [32] Because local agencies are still in the beginning stages of formulating GSPs and so much about the practical implications on groundwater users is uncertain, groundwater users should seek to be as involved in the development processes as possible to make sure their needs are addressed going forward. We will continue to monitor and report on the evolution of the SGMA and are available to assist California groundwater users as they navigate the challenges of this new process.

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**Notes:**

[1] *See* Cal. Water Code §§ 10720-10737.8.

[2] Cal. Dep't of Water Res., Groundwater, https://www.water.ca.gov/Water-Basics/Groundwater (last visited May 6, 2018, 10:45 AM).

[3] While appropriations of groundwater use have been resolved through regional basin adjudications, these adjudications are a lengthy and expensive process that must be overseen by a Watermaster and modified through the courts. Only twenty-six of California's 515 groundwater basins have gone through adjudication, mostly in Southern California. See Cal. Water Code § 10720.8(a).

[4] Jeremy P. Jacobs, *Dry wells, sinking land and fears of a global food crisis*, E&E NEWS (June 25, 2018), https://www.eenews.net/stories/1060086059.

[5] The SGMA is a package of three laws: Assem. B. 1739, 2013-2014 Leg. (Cal. 2014); S.B. 1168, 2013-2014 Leg. (Cal. 2014); and S.B. 1319, 2013-2014 Leg. (Cal. 2014); see S.B. 1168, 2013-2014 Leg. (Cal. 2014) ("This bill, with certain exceptions, would prohibit, beginning January 1, 2015, a new groundwater management plan from being adopted or an existing groundwater management plan from being renewed.").

[6] Cal. Water Code § 10722.4(a).

[7] *Basin Prioritization*, CAL. DEP'T OF WATER RES. (May 6, 2018, 1:15 PM)https://www.water.ca.gov/Programs/Groundwater-Management/Basin-Prioritization.

[8] Cal. Water Code §§ 10723; 10735.2.

[9] *Groundwater Sustainability Agencies*, CALIFORNIA DEPARTMENT OF WATER RESOURCES, https://www.water.ca.gov/Programs/Groundwater-Management/SGMA-Groundwater-Management/Groundwater-Sustainable-Agencies (last visited May 17, 2018 9:05 AM)

[10] Cal. Water Code. §§ 10720.7; 10723; 10750.

[11] *Groundwater Sustainability Agencies*, CALIFORNIA DEPARTMENT OF WATER RESOURCES, https://www.water.ca.gov/Programs/Groundwater-Management/SGMA-Groundwater-Management/Groundwater-Sustainable-Agencies (last visited March 6, 2018 2:19 PM).

[12] *CA Water Commission: Update on Sustainable Groundwater Management Implementation*, MAVEN'S NOTEBOOK (Jan. 4, 2018), https://mavensnotebook.com/2018/01/04/ca-water-commission-update-on-sustainable-groundwater-management-implementation/.

[13] Cal. Water Code § 10720.7(a)(1).

[14] Cal. Water Code § 10720.7(a)(2)

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[15] Cal. Water Code § 10727.2(b)(1).
[16] 23 Cal. Code of Regs. § 353.6(a); Cal. Water Code § 10727.8.
[17] *See* Cal. Water Code § 10727.2.
[18] 23 Cal. Code of Regs. § 354.18.
[19] 23 Cal. Code of Regs. § 354.24.
[20] 23 Cal. Code of Regs. § 354.34.
[21] Cal. Water Code § 10728.4.
[22] 23 Cal. Code of Regs. § 355.2.
[23] *Id.*
[24] Cal. Water Code § 10728; 23 Cal. Code of Regs. §§ 355.8; 356.2.
[25] 23 Cal. Code of Regs. § 356.4
[26] Cal. Water Code § 107.33.4 and GSP Reg. § 353.2.
[27] *Groundwater Sustainability Plans*, CALIFORNIA DEPARTMENT OF WATER RESOURCES, https://www.water.ca.gov/Programs/Groundwater-Management/SGMA-Groundwater-Management/Groundwater-Sustainability-Plans (last visited March 6, 2018 2:20 PM).
[28] Cal. Water Code § 10733.6.
[29] *See* Cal. Water Code § 10720.8(a), listing the 26 basins that have been adjudicated.
[30] Cal. Water Code § 10720.8. When water users within a basin have a dispute over legal rights to the water, courts can issue an adjudication that can cover an entire basin, a portion of a basin, or a group of non-basins and all non-basin locations between.
[31] An interactive map showing, among other things, submitted GSA notices, submitted GSP initial notifications, and adjudicated areas is available here. In addition, the DWR has compiled best management practices and guidance documents to assist GSAs with developing GSPs, available here.
[32] Cal. Water Code § 10723.2; *see also Guidance Document for Groundwater Sustainability Plan*: *Stakeholder Communication and Engagement*, CALIFORNIA DEPARTMENT OF WATER RESOURCES (January 2018), https://www.water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Sustainable-Groundwater-Management/Best-Management-Practices-and-Guidance-Documents/Files/Guidance-Document-for-Groundwater-Sustainability-Plan---Stakeholder-Communication-and-Engagement.pdf.

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