

Client Alert

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California's Sustainable Groundwater Management Act to Give Broad Regulatory Authority to Local and State Agencies

On September 16, 2014, California Governor Jerry Brown signed three companion bills, SB 1168, AB 1739 and SB 1319, which compose the Sustainable Groundwater Management Act (the Act). The Act creates the first comprehensive framework for regulating groundwater in California, placing managerial and monitoring responsibilities in the hands of local agencies while also creating mechanisms under which state agencies may oversee and potentially even intervene in groundwater management. With the Act to go into effect on January 1, 2015, and numerous implementation deadlines, stakeholders throughout the state should prepare for increased regulation, oversight and possibly even litigation.

The Act requires the establishment of groundwater sustainability agencies (GSA) for groundwater basins in the state. By January 31, 2015, the Department of Water Resources (DWR) will classify each groundwater basin (as identified by DWR Bulletin 118) as high, medium, low or very low priority. GSAs responsible for high- and medium-priority groundwater basins must create and implement a groundwater sustainability plan (GSP) for their basins. Groundwater basins, or portions of groundwater basins, which are subject to a previous groundwater adjudication are exempt from the GSP requirement.

A GSA may be formed by a local agency with "water supply, water management or land use responsibilities," or a combination of such agencies, overlying a groundwater basin. Once formed, GSAs will have broad groundwater management and investigatory powers to prepare and execute the GSP. GSAs may inspect property or facilities to ensure the requirements of the GSP are being met, including use of surface waters. Further, the GSA will have the authority to regulate and limit groundwater extractions, require the submission of annual extraction reports or impose well spacing requirements, among other substantial powers.

The Act requires that GSPs be designed to achieve "sustainable groundwater management" for the basin within 20 years of implementation. The plan must identify specific milestones to be achieved every five years, in order to reach the 20-year sustainability timeframe. "Sustainable groundwater management" is defined as the maintenance of groundwater use in a manner that does not cause "undesirable results." An undesirable result is the occurrence of at least one of the following:

- Chronic lowering of groundwater levels, indicating a significant and unreasonable depletion of supply.
- Significant and unreasonable reduction of groundwater storage.
- Significant and unreasonable seawater intrusion.
- Significant and unreasonable degradation in water quality.
- Significant and unreasonable land subsidence that substantially interferes with surface land uses.
- Surface water depletions that have significant and unreasonable adverse impacts on beneficial uses of the surface water.

The GSP may be corrective as well as preemptive, in order to remedy past undesirable results. Interested parties will be given opportunities to influence the drafting of the GSP before it is adopted.

The Act further authorizes GSAs to impose civil penalties against persons who violate regulations adopted in furtherance of the GSP, or who extract groundwater in excess of the amount authorized.

Along with the expansive powers given to GSAs, the Act also grants comprehensive oversight and regulatory control to DWR and the state water board. DWR will adopt regulations for the evaluation of GSPs, identifying the necessary components of a plan. Once a GSA adopts a plan, the department will review the plan for compliance with the Act and the regulations and may recommend corrective actions if the plan is found deficient.

Further, if a GSA does not adopt its GSP within the specified timeframe or adopts a GSP that DWR, in consultation with the state water board, determines to be inadequate, the state water board may designate the basin as a probationary basin. If the GSA does not timely remedy the deficiency, the state water board may adopt an interim plan to manage the groundwater in the probationary basin.

While the Act states its intention to preserve existing water rights where possible, the sustainable management of groundwater may override this goal. This results in a lack of clarity regarding the future allocation of water rights. It would appear that answers to such questions may not be forthcoming until the GSA begins to adopt GSPs. Given the several stages in the implementation timeline, the potential for disputes and delay is high. Further, given the ability of groundwater adjudications to secure water rights, an increase in litigation may be on the horizon. Stakeholders may find that the most cost-efficient and effective way to protect their interests is by providing input during the GSP process, as well as the other notice and comment periods specified by the Act.

Implementation Timeline	
January 31, 2015	DWR must designate groundwater basins as high, medium, low or very low priority
June 1, 2016	DWR must adopt regulations for evaluating GSPs
January 1, 2017	DWR must publish best management practices for the sustainable management of groundwater
June 30, 2017	A local agency must be named as GSA for all high- and medium-priority basins
January 31, 2020	A GSP must be adopted for high- or medium-priority basins in a critical condition of overdraft
January 31, 2022	A GSP must be adopted for all other high- or medium-priority basins
January 31, 2025	The state water board may designate as probationary any basin which has not met the deadlines, or which has adopted a GSP which the DWR has found inadequate.

Hunton & Williams will continue to monitor the Act's implementation. For additional information, contact any of the lawyers below.

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