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2015 Updates to California's Sustainable Groundwater Management Act

The Sustainable Groundwater Management Act (SGMA) of 2014 commits the State to locally controlled, sustainable groundwater management. SGMA provides tools and authorities for local agencies to achieve and enforce the sustainability goals over a 20-year implementation period.

Subsequent to the passage of SGMA, two substantial updates were adopted in September 2015: Senate Bill 13 (SB 13) and Assembly Bill 617 (AB 617). Two additional bills, AB 1390 and SB 226, were authorized to "streamline" groundwater adjudication litigation and "harmonize" adjudication with SGMA. The California Water Commission also approved the Department of Water Resources (DWR) groundwater basin boundary modification process in November 2015.

Senate Bill 13

SB 13 streamlines certain SGMA procedures, clarifies ambiguities in SGMA's language, and revises who can participate as a Groundwater Sustainability Agency (GSA), and how a GSA can be formed. The revisions to SGMA made by the passage of SB 13 include the following:

1. Specifies that the State Water Resourced Control Board (SWRCB) is authorized to designate a high- or medium-priority basin as a probationary basin.
2. Provides a local agency (or GSA) 90 or 180 days, as prescribed, to remedy certain deficiencies that caused the SWRCB to designate the basin as a probationary basin.
3. Authorizes the SWRCB to develop an interim plan for certain probationary basins one year after the designation as probationary.
4. Authorizes mutual water companies to participate in a GSA (at the invitation of a public agency) through a memorandum of agreement or other legal agreement.
5. Removes the requirement a proposed GSA include the proposed boundaries of the basin in their notice of intent to form a GSA to the DWR, and requires DWR to post the notice on its website within 15 days of receipt.
6. Requires multiple agencies that have provided a GSA notice to DWR for the same groundwater basin to reach an agreement to create a single GSA or develop a coordination agreement prior to final designation of the GSA.
7. Specifies that DWR is only to post complete notices of intent to form a GSA (including resolution of basin boundary and multiple agency coverages).
8. Extends the deadline to January 31, 2022 for submittal of a Groundwater Sustainability Plan (GSP) for a basin that is elevated to a medium- or high-priority basin before January 31, 2017, and is not subject to critical conditions of overdraft.

Assembly Bill 617

Under SGMA, for any groundwater basin designated as medium- or high-priority, a GSA must be formed by June 30, 2017. After formation, the GSA is responsible for groundwater management within the basin and is required to prepare and adopt a GSP.

AB 617 authorizes a GSA to enter into written agreements and funding arrangements with private parties to assist in the development, or facilitate the implementation, of a GSP to manage the basin's groundwater. Specifically, AB 617:

1. Revises the SGMA prohibition against counting any increase in groundwater pumping during the period that a GSP is under development as the basis for a later groundwater claim.
2. Revises the definition of groundwater recharge to include "in lieu use".
3. Allows mutual water companies to join GSAs formed by one or more public agencies and to exercise the GSA powers provided by SGMA.
4. Allows GSAs to enter into public/private partnerships to facilitate the development and/or implementation of GSPs, and/or elements of GSPs.
5. Creates a remedy for state agency non-compliance with the GSP by allowing a GSA to file notice with SWRCB and have the SWRCB compel a state entity to cooperate.
6. Modifies the requirement that multiple GSAs in the same groundwater basin must utilize the same data and methodologies to consistent data and methodologies.
7. Specifies that California Environmental Quality Act (CEQA) requirements do not apply to the formation or election of a GSA.
8. Removes the requirement for GSPs to be coordinated such that the entire basin is covered and instead allows coordinated implementation among multiple parties within a basin.
9. Allows the DWR to consider, when determining whether to grant five year extensions for submittal of a GSP, if a GSA has failed to meet SGMA requirements because it is in litigation.
10. Prohibits the SWRCB from placing any portion of a basin in probationary status if there is an adopted GSP that is being implemented in accordance with the sustainability goals.

Assembly Bill 1390

AB 1390 establishes a framework for adjudication of groundwater rights in a basin. This new framework facilitates expedited determinations regarding all groundwater rights and priorities of a basin – whether based on appropriation, overlying right, prescription, or other basis of right – and the use of storage space in the basin. AB 1390 also allows courts to issue preliminary injunctions in basins for which a condition of long-term overdraft is demonstrated, placing a moratorium on new or increased extractions.

Senate Bill 226

SB 226, a companion bill to AB 1390, requires that groundwater adjudications be managed to minimize interference with completion and implementation of GSPs in basins where these plans are required. Adjudications in such basins must also proceed in a manner that permits the timely attainment of basin sustainability goals prescribed by SGMA.

Basin Boundary Modifications

In November 2015, the DWR finalized and put into effect its Regulations for Basin Boundary Modifications. The basin boundary regulations outline the process that a GSA must follow to request that DWR modify the boundaries of a groundwater basin or sub-basin, or the creation of new sub-basins. The regulations also identify the methodology and criteria that DWR uses when reviewing and approving the boundary modification requests. The boundaries for each of California's 515 basins and sub-basins are defined in the DWR's publication Bulletin 118, California's Groundwater.

Prior to the passage of SB 13, there was no direct guidance in SGMA related to overlapping GSA areas. As presented within SB 13, if two or more local agencies form GSAs within a 90-day period, and if any of those formations result in service area overlap in all or a portion of the basin or sub-basin, then none of the GSA formations will move forward until the overlap is resolved. The agreement to resolve service area overlap could involve the withdrawal or modification of notifications of intent to form a GSA to eliminate the overlap.

If a designated GSA requests a boundary modification, they must comply with the following process set out in the DWR's regulations:

1. Each modification request include a GSA resolution formally initiating the local agency boundary modification request. This requirement is intended to assure that a public meeting occurs where public comments can be heard regarding the proposed boundary modification.
2. Requiring the support by local agencies (including any adjacent GSA's) and public water systems affected by the boundary modification by needing the support of a minimum of 75% of all parties affected by the proposed basin boundary modifications.
3. Support for the proposed basin boundary modification by the requisite information, either on a scientific or jurisdictional basis, to justify the modification.

Basin boundary modification requests are due to DWR by March 30, 2016. Each request will be evaluated to determine whether the basin modification will result in a sustainable condition and not impact the ability of adjacent basins to achieve sustainability. Prior to approval of any modification request, the proposed modifications will be presented to the California Water Commission for consideration prior to the approval of any requested modification.

