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TO: MEMBERS, FORMATION COMMISSION

FROM: DAVID CHURCH, AICP, EXECUTIVE OFFICER

DATE: SEPTEMBER 18, 2014

SUBJECT: STATUS REPORT - GROUNDWATER LEGISLATION

Recommendation. It is respectfully recommended that the Commission consider this Legislative Update and receive and file this report.

Legislative Update. The State Legislature passed several bills regarding groundwater resources in California. The Bills that have been passed and sent to the Governor for consideration and possible signature include: AB 2453-Achadjian for the formation of the Paso Robles Basin Water District, AB 1739-Dickinson and SB 1168-Pavley for the sustainable management of groundwater resources in California, and SB1319 Pavely, which was passed at the end of the legislative session to make changes to AB 1739. In this report the focus is on AB 2453 with summaries of the other legislation.

The Pavley-Dickinson bills, if signed by the Governor, will eventually change how groundwater is managed in California. The Law would require that each high and medium priority basins (Paso Robles is designated as a High Priority Basin) be regulated by a Groundwater Sustainability Plan developed by a local agency. These plans must be adopted by January 31, 2020 if the basin is determined to be in overdraft, or 2022 if the basin is not subject to the conditions of overdraft. If a GWSP is not developed by a local agency the State Department of Water Resources is authorized to implement such a plan within a particular Basin. SB 1319 provides that the State cannot regulate such a basin until January, 1, 2025. The Governor will have to the end of this month to sign or veto these bills.

AB 2453 (Achadjian)-Water District: This bill would amends the Water Code to allow for a Water District to be formed with a special nine-member Board of Directors to govern the Paso Robles Basin Water District. The Bill has been amended significantly after

Attachments

- SB 1319 Analysis
- SB 1168 Analysis
- AB 1739 Analysis

Source:

leginfo.legislature.ca.gov

going through the Senate's Governance and Finance and Natural Resources and Water Committees. The Bill has been passed by both the Assembly and the Senate and has been moved to the Governor's office for consideration and signature. A key change is that the formation of the District is now subject to a vote of the landowners within the proposed District boundary based on a one land owner-one vote formula. A more detailed chapter-by-chapter summary of the Bill is found below.

Special Legislation-AB 2453 (Achadjian)

AB 2453 is the Special Legislation carried by Assemblyman Katcho Achadjian and is now on the Governor's desk for signature. The legislation is broken into six chapters: 1-General Provisions, 1.5-Formation, 2-Elections, 3-Groundwater Management Authority, 4-Groundwater Management Plans, 5-Groundwater Management, and 6-Groundwater Extraction Charges. If signed by the Governor, the Bill will make numerous modifications to the Water Code in regard to the Paso Robles Basin Water District. Below is a summary of the highlights of each chapter:

Chapter 1-General Provisions

1. Chapter 1 lists a number of definitions to be added to the water code specifically to help guide the Paso Robles Basin Water District. Definitions include: Aquifer, Available Supply, Extraction, Groundwater, Groundwater Management Activities, Operators, Overdraft, and numerous other terms. Of note, the definition of "District" confirms LAFCO authority to establish and/or modify boundaries. (WC 37900)
2. The purpose of the District is to balance the supply to and consumption of groundwater within the basin underlying the District, with the goal of stabilizing that basin and sustaining its resources for the beneficial use of all who use water within the District. (WC 37901)
3. The creation of the District would not modify the powers of the County Flood Control and Conservation District. Furthermore, if formed the District shall not involve itself in activities being undertaken by the County without the agreement of that agency. (WC 37902, 37903)
4. The District, if formed, is subject to the Brown Act and shall set its regular meeting dates, time and place in a resolution. (WC 37904)

Chapter 1.5-Formation

5. The formation process shall comply with the Cortese-Knox-Hertzberg Act, with a few modifications
6. The application to LAFCO for formation of the District may be initiated by a petition of 10% of the landowners within the boundaries of the District or by a Resolution of Application submitted by an affected local agency. (WC 37905 (a))

7. This legislation would sunset (terminate) if the District is not formed by January 1, 2019.
8. The term “Landowner” is defined in this section as any person who holds title to land within the boundaries of the proposed District.
9. The petition and formation vote would be based on a one vote for each landowner formula. Ownership of multiple parcels does not entitle any voter to more than one vote. For land held jointly, owners get only one vote. A public agency owning land in the area gets only one vote. A corporation owning land gets only one vote.
10. The formation is determined to be complete if the majority of votes cast are in favor of the formation.
11. The formation is not subject to the Protest Process, because it will be voted on by the landowners.

Chapter 2-Election

12. If formed the nine-member Board of Directors would be elected based on the following categories:
 - Three registered voters from within the District that are elected at large by the registered voters within the District.

The following are elected by the landowners based on a formula that allows one vote for each acre owned.

- Large landowners: meaning holders of title owning a total of 400 acres or more,
 - Medium landowners: meaning holders of title owning a total of 40 acres or more, but less than 400 acres,
 - Small Landowners: meaning holders of title owning a total of less than 40 acres
13. All landowner Directors must hold title to land within the District and shall reside within the District, within two miles of the District boundary, or within the boundaries of the City of Paso Robles, the Atascadero Mutual Company, the Templeton Community Services District, the San Miguel Community Services District, or SLO County Service Area 16.
 14. District elections shall be conducted in conformance with the Uniform District Election Law. Separate ballots shall be prepared and separate elections conducted for the Registered Voter Directors and for the landowner Directors. The elections shall be conducted at the same time.

15. District elections shall be conducted by all-mailed ballots. Voter lists of resident voters and landowner voters eligible to vote within the District shall be prepared and maintained according to the Election code, including Section 10525. The law references other Uniform Election Code sections for conducting the election.

Chapter 3-Groundwater Management Authority

16. The potential powers of the District are listed in detailed manner and are to be considered by LAFCO. The bill authorizes the District to manage the groundwater basin using a variety of tools, including; extraction charges, extraction allocations, extraction surcharges.
17. The District Board may adopt ordinances for the purposing of regulating the use and extraction of groundwater within the District.
18. The District Board may establishe fines and penalties for violation of the District ordinances or the Act.
19. The District may contract with the County Flood Control District for services.
20. The District may exclude any operator from its ordinances and requirements that is using less than a minimum amount of groundwater as established by the District.
21. All powers listed in Chapters three, four, and five of AB 2453 are subject to review and approval by the San Luis Obispo County LAFCO. This is clearly stated in WC 37920.

Chapter 4-Groundwater Management Plans

22. The law provides the District with the authority to adopt and implement a groundwater management plan.
23. The Groundwater Management Plan may include a policy regarding the issuance of new well permits. The chapter provides other provisions for the development of a Groundwater Management Plan.

Chapter 5-Groundwater Management

24. This chapter provides a list of the various powers the District may, by ordinance, exercise. LAFCO has the authority to activate these powers as part of its review and approval of the District.
25. Powers include: requiring conservation measures, controlling groundwater extractions, Commence legal actions to protect the groundwater basin,

impose regulations to decrease well interference, and other regulatory powers that assist the District in managing the basin.

Chapter 6 – Groundwater Extraction Charges

26. This chapter provides the District with the authority to levy extraction charges and allows the District to establish an extraction allocation for each groundwater facility within the District.
27. Provides a cap of \$200/acre foot on the surcharge that can be charged by the District for an operator exceeding the allocated amount to a certain facility. The District may increase the maximum amount to achieve safe yield in the Basin.

Groundwater Legislation AB 1739 (Dickinson)-SB 1168 (Pavley)-SB 1319 Sustainable Groundwater Management

This year there are two major pieces of legislation relating to sustainable groundwater management. The bills have been passed by the Assembly and the Senate and moved onto the Governor's Office for consideration and possible signature. Attached are the legislative analysis from the legislative Staff that summarize the Bills. The Reports provide a good overview of each of the Bills.

Together, these bills would create the Sustainable Groundwater Management Act which would, in short, require that all high or medium-priority groundwater basins (Paso Robles Basin is a High Priority) be managed under a groundwater sustainability plan (GSP) or coordinated GSP, except if the basin is a specified adjudicated area. The GSPs would be developed by Groundwater Sustainability Agencies (GSAs), which can be a local agency or combination of local agencies that jointly elect to be a GSA through a joint powers agreement or a memorandum of agreement.

The Department of Water Resources (DWR) would be required to review the GSP after adoption and then at least every five years thereafter for compliance and achievement of sustainability goals. If no adequate plan is developed or if the GSP is not being properly implemented, DWR and the SWRCB would be authorized to designate a basin a probationary basin. Such a designation would trigger a process by which a GSA will first be given an opportunity to remedy the deficiency. If this does not occur, the State Water Resources Control Board (SWRCB) would be authorized to develop an interim plan for the probationary basin, which would remain in effect until any deficiencies are resolved. This Bill would also require a planning agency to refer to either the adopted GSP or an interim plan adopted by the SWRCB before a general plan is substantially amended. A GSA would also be required to provide planning agencies with specific information.

AB 1739/SB 1168 requires adoption of a sustainable groundwater sustainability plan (GSP) by January 31, 2020, for all high or medium priority basins that are

subject to critical conditions of overdraft and by 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. Specifically, the Act:

- 1) Makes findings including, but not limited to, California's high reliance on groundwater to meet its water needs; the necessity of integrated surface and groundwater management in order to meet the state's water management goals; and the failed wells, deteriorated water quality, environmental damage, and irreversible land subsidence that occur when groundwater is not properly managed.
- 2) Establishes that it is the policy of the state that all groundwater basins are managed sustainably for multiple economic, social and environmental benefits and that such management is best achieved locally based on best available science.
- 3) Enacts the Sustainable Groundwater Management Act (Act) with the stated intent of empowering local groundwater agencies to sustainably manage groundwater basins through the development of GSPs.

SB 1319, Pavley would amend AB 1739, if it is signed by the Governor. This bill would additionally authorize the state board to designate certain high- and medium-priority basins as a probationary basin if, after January 31, 2025, prescribed criteria are met, including that the state board determines that the basin is in a condition where groundwater extractions result in significant depletions of interconnected surface waters. This bill would add to the prescribed determinations that would prevent the state board from designating the basin as a probationary basin for a specified time period. This bill would require the state board to exclude from probationary status any portion of a basin for which a groundwater sustainability agency demonstrates compliance with the sustainability goal. This bill revises provisions from the August 22, 2014 version of AB 1739 (Dickinson) as follows:

1. Prohibits the State Water Resources Control Board (SWRCB) from establishing an interim plan to remedy a condition where the groundwater extractions result in significant depletions of interconnected surface waters until January 1, 2025. This provision delays the similar provision in AB 1739 from 2022 to 2025.
2. Requires SWRCB to exclude any portion of a basin in compliance with groundwater management requirements from probationary status. This provision narrows the similar provision in AB 1739 to only apply to the portion of the basin that is out of compliance.
3. Requires SWRCB to include any element of a groundwater sustainability plan or the entire plan in its interim plan if SWRCB finds it would help meet the sustainability goal. This provision revises the similar provision in AB 1739 to

allow for the inclusion of local plans when developing interim plans for basins with probationary status.

4. Provides the enactment of this bill is contingent upon the enactment of AB 1739 (Dickinson) and SB 1168 (Pavley).
5. Makes technical and conforming changes.

The above are excerpts from the Legislative Analysis completed during the consideration of these bills. The Analysis are attached for your information.

Office of Senate Floor Analyses

1020 N Street, Suite 524

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UNFINISHED BUSINESS

Bill No: SB 1319
Author: Pavley (D) and Wolk (D)
Amended: 8/29/14
Vote: 21

PRIOR VOTES NOT RELEVANT

ASSEMBLY FLOOR: Not available

SUBJECT: Groundwater management

SOURCE: Author

DIGEST: This bill amends AB 1739 (Dickinson) of the current legislative session which, together with SB 1168 (Pavley) of the current legislative session, form the Sustainable Groundwater Management Act and related provisions.

Assembly Amendments delete the Senate version of the bill relates to oil spills and instead insert the current language.

ANALYSIS: Existing law authorizes local agencies to adopt and implement a groundwater management plan. Existing law requires a groundwater management plan to contain specified components and requires a local agency seeking state funds administered by the Department of Water Resources (DWR) for groundwater projects or groundwater quality projects to do certain things, including, but not limited to, preparing and implementing a groundwater management plan that includes basin management objectives for the groundwater basin.

This bill revises provisions from the August 22, 2014 version of AB 1739 (Dickinson) as follows:

1. Prohibits the State Water Resources Control Board (SWRCB) from establishing an interim plan to remedy a condition where the groundwater extractions result in significant depletions of interconnected surface waters until January 1, 2025. This provision delays the similar provision in AB 1739 from 2022 to 2025.
2. Requires SWRCB to exclude any portion of a basin in compliance with groundwater management requirements from probationary status. This provision narrows the similar provision in AB 1739 to only apply to the portion of the basin that is out of compliance.
3. Requires SWRCB to include any element of a groundwater sustainability plan or the entire plan in its interim plan if SWRCB finds it would help meet the sustainability goal. This provision revises the similar provision in AB 1739 to allow for the inclusion of local plans when developing interim plans for basins with probationary status.
4. Provides the enactment of this bill is contingent upon the enactment of AB 1739 (Dickinson) and SB 1168 (Pavley).
5. Makes technical and conforming changes.

Background

On March 7, 2014 the Governor's Office released a draft framework soliciting input on actions that can be taken to assure local groundwater managers have the tools and authority to sustainably manage groundwater. The draft framework advises that in developing ideas it may be helpful to consider whether local agencies need enhanced local agency authority, and how the state should structure state backstop authority when local action has not occurred or has been insufficient.

In response, Senator Pavley and Assemblymember Dickinson introduced SB 1168 and AB 1739. These bills which moved through the legislation process in nearly identical form while the authors and administration convened multiple stakeholder meetings and further developed the provisions of the bills. On August 22, 2014, both bills were amended to divide the provisions between the two bills. Together, SB 1168 and AB 1739 provide a comprehensive groundwater sustainability management program.

AB 1739 (Dickinson), among other provisions, authorizes SWRCB to designate a basin as a probationary basin under specified circumstances and to develop an interim management plan in consultation with DWR under specified conditions.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Assembly Appropriations Committee:

1. Increased annual out-year costs of \$1 million to \$2.5 million (special fund) for state interim plans to be covered by fee revenues. The revisions to AB 1739 provided by this bill will likely result in lower costs due to delays in compliance requirements and the ability to place only portions of basins on probationary status.
2. Absorbable General Fund costs for DWR to assist SWRCB in developing interim plans. DWR received \$22.5 million in the 2014-15 Budget (\$2.5 million for fiscal year (FY) 14-15 and \$5 million each year from FY15-16 through FY18-19, which will fund Bulletin 118 updates and technical assistance.

RM:k 8/29/14 Senate Floor Analyses

SUPPORT/OPPOSITION: NONE RECEIVED

**** **END** ****

(Without Reference to File)

SENATE THIRD READING

SB 1168 (Pavley)

As Amended August 29, 2014

Majority vote

SENATE VOTE: 24-12

WATER, PARKS & WILDLIFE	9-4	APPROPRIATIONS	11-5
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Ayes: Rendon, Bocanegra, Fong, Frazier,
Gatto, Gomez, Gonzalez, Rodriguez,
Yamada

Ayes: Gatto, Bocanegra, Bradford,
Ian Calderon, Campos, Gomez,
Holden, Pan, Quirk, Ridley-Thomas,
Weber

Nays: Bigelow, Dahle, Beth Gaines, Gray

Nays: Bigelow, Donnelly, Jones, Linder,
Wagner

APPROPRIATIONS	11-5
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Ayes: Gatto, Bocanegra, Bradford,
Ian Calderon, Campos, Gomez,
Holden, Pan, Quirk,
Ridley-Thomas, Weber

Nays: Bigelow, Donnelly, Eggman, Jones,
Wagner

SUMMARY: Requires adoption of a sustainable groundwater sustainability plan (GSP) by January 31, 2020, for all high or medium priority basins that are subject to critical conditions of overdraft and by 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. Specifically, this bill:

- 1) Makes findings including, but not limited to, California's high reliance on groundwater to meet its water needs; the necessity of integrated surface and groundwater management in order to meet the state's water management goals; and the failed wells, deteriorated water quality, environmental damage, and irreversible land subsidence that occur when groundwater is not properly managed.
- 2) Establishes that it is the policy of the state that all groundwater basins are managed sustainably for multiple economic, social and environmental benefits and that such management is best achieved locally based on best available science.
- 3) Enacts the Sustainable Groundwater Management Act (Act) with the stated intent of empowering local groundwater agencies to sustainably manage groundwater basins through the development of GSPs.

- 4) Defines sustainable groundwater management, among other terms.
- 5) Encourages the voluntary participation of California Native tribes and federal agencies in sustainable groundwater management while preserving and acknowledging the federally reserved rights of federally recognized Indian tribes.
- 6) Specifies that groundwater basins are those identified by the Department of Water Resources (DWR) in Bulletin No. 118, as it may be amended, and includes subbasins.
- 7) Requires DWR, by January 31, 2015, to prioritize each basin as either a high, medium, low, or very low priority using factors under the California Statewide Groundwater Elevation Monitoring (CASGEM) program that include, but are not limited to: population, extent of public wells; overlying irrigated acreage; reliance on groundwater; any documented impacts upon the basin from overdraft, subsidence, saline intrusion and other water quality degradation; or any other information determined to be relevant by the department, including adverse impacts on local habitat and local streamflows.
- 8) Requires that high and medium priority basins that are in a be sustainably managed through a GSP but excepts:
 - a) Basins, or portions of basins, that were subject to a groundwater adjudication; and,
 - b) Basins that a local agency can demonstrate are already being sustainably managed.
- 9) Encourages low and very low priority basins to manage through a GSP but, should they voluntarily choose to do so, exempts them from any State compliance actions.
- 10) Allows any local agency or combination of agencies to establish a groundwater sustainability agency (GSA) for the purpose of developing and implementing a GSP. Allows water corporations regulated by the Public Utilities Commission to participate in a GSA if the local agencies forming the GSA approve.
- 11) Recognizes and lists special districts that were created in legislation for the purpose of managing groundwater and makes those districts the exclusive entities within their boundaries with authority to comply with the Act, unless they choose to opt out.
- 12) Allows a city or county to be the GSA or, in the case of an area where no local agency has assumed management, presumes the county to be the GSA unless the county opts out. If the county opts out and there is no other local agency, requires reporting of groundwater extractions directly to the State Water Resources Control Board (State Water Board).
- 13) Requires a local agency or combination of local agencies that is electing to be, or forming, a GSA to notify DWR of the intent to be a GSA and provide a notice to DWR that includes the proposed boundaries of the GSA, among other information. Requires DWR to post the notice to its website.
- 14) Following public notice, a public hearing, and final action to become a GSA, requires the GSA to notify DWR within 30 days and include copies of pertinent documents, as specified. Requires DWR to post the final notice and documents to its Web site. Ninety days following

posting by DWR, the GSA is presumed to be the exclusive GSA for its boundaries if no other GSA submits a notice.

- 15) Provides for public involvement in the development of GSPs and sets forth a diverse set of interests that should be considered by the GSA during that process including an entity within the basin that is currently a CASGEM monitoring entity.
- 16) Empowers GSAs to collect information regarding the condition of the basin and then develop and implement a GSP using, as the GSA chooses, powers and authorities provided under the Act including, but not limited to:
 - a) Acquiring 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;
 - b) Monitoring for compliance and limiting extractions;
 - c) Proposing, collecting, updating and enforcing fees, consistent with all statutory and Constitutional requirements; and
- 17) Specifies that nothing in the Act or in any GSA adopted pursuant to the Act determines or alters surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights.
- 18) Requires, by June 1, 2016, that DWR develop regulations regarding:
 - a) GSP components;
 - b) Coordination of multiple GSPs for a basin; and,
 - c) Alternative compliance, including submitting an existing plan as a functional equivalent of a GSP or submitting an analysis of basin conditions that demonstrates the basin is being sustainably managed.
- 19) Specifies, in those areas that require a GSP to be completed, adopted, and submitted to DWR that the deadlines are:
 - a) January 31, 2020, in high and medium priority basins that are subject to critical conditions of overdraft; and,
 - b) January 31, 2022 for all other high and medium priority basins.
- 20) Exempts the preparation and adoption of a GSP from the California Environmental Quality Act but does not exempt a project or action to implement the GSP.
- 21) Requires GSPs to meet certain standards including:
 - a) Encompassing an entire basin or subbasin; and

- b) Being designed to achieve sustainable groundwater management within 20 years of adoption with progress reports to DWR and the State Water Board every five years.
- 22) Requires a GSA to annually report to DWR its groundwater elevation data, aggregated extraction data, use or availability of surface water for recharge or in-lieu supplies, total water use, and change in groundwater storage.
- 23) Allows DWR to adjust basin boundaries, as specified, and re-prioritize low and very low basins according to criteria that include adverse impacts to habitat and surface water resources. Requires DWR to adopt emergency regulations governing basin boundary adjustments.
- 24) Provides that if a basin is reprioritized to medium or high, it shall have two years from the date of reprioritization to form a governance entity for sustainable management or submit an alternate means of establishing the basin is sustainably managed. If no alternate means is approved, allows five years to adopt a GSP in compliance with the Act.
- 25) Prohibits the adoption or renewal of existing groundwater management plans that do not meet the requirements for a GSP but allows such plans to remain in effect until a GSP is adopted.
- 26) Allows a GSA to become a CASGEM monitoring agency.
- 27) Contains chaptering language that only allows this bill to become operative if AB 1739 (Dickinson) of the current legislative session and SB 1319 (Pavley) of the current legislative session, are enacted and become operative this session.

EXISTING LAW:

- 1) Provides the State Water Board with broad powers to regulate the waste and unreasonable use of water, including groundwater.
- 2) Categorizes groundwater as either a subterranean stream flowing through a known and definite channel or percolating groundwater. Groundwater that is a subterranean stream is subject to the same State Water Board water right permitting requirements as surface water. There is no statewide permitting requirement for percolating groundwater, which is the majority of groundwater.
- 3) Encourages local agencies to work cooperatively to manage groundwater resources within their jurisdictions and, if not otherwise required by law, to voluntarily adopt GMPs.
- 4) Requires that a GMP contain components related to funding, management, and monitoring in order for a local agency to be eligible for groundwater project funds administered by DWR.
- 5) Allows a GMP to voluntarily contain additional listed components.
- 6) Requires all of the groundwater basins identified in DWR's Groundwater Report, Bulletin No. 118, to be regularly and systematically monitored locally and the information to be

readily and widely available.

- 7) Requires DWR to perform the groundwater elevation monitoring function if no local entity will do so but then bars the county and other entities eligible to monitor that basin from receiving state water grants or loans.
- 8) Requires DWR to prioritize groundwater basins based on multiple factors including, but not limited to, the level of population and irrigated acreage relying on the groundwater basin as a primary source of water and the current impacts on the groundwater basin from overdraft, subsidence, saline intrusion and other water quality degradation.

FISCAL EFFECT: According to the Assembly Appropriations Committee:

- 1) Increased annual General Fund (GF) costs to DWR of approximately \$4 million beginning in fiscal year (FY) 2019-20 to collect and manage data, complete evaluations, and assist the State Water Board in developing interim plans. DWR received \$22.5 million in the 2014-15 Budget (\$2.5 million for FY 2014-15 and \$5 million each year from FY 2015-16 through FY 2018-19 which will fund Bulletin 118 updates and technical assistance.
- 2) Minor, if any, reimbursable local government costs.

COMMENTS: As Benjamin Franklin warned over 200 years ago, we know the worth of water when the well is dry. Unfortunately, for many Californians that is a stark reality or a pending calamity that has been coming in slow-motion for 50 years. In its August 15, 2014, editorial the Sacramento Bee notes that it was in 1962 that an Assembly Interim Water Committee dodged the issue of needed groundwater management by advising the Legislature it should act if the situation got worse. It got worse. Sixteen years later, in 1978, the Governor's Commission to Review California Water Rights Law, a group commissioned by Governor Jerry Brown, found the groundwater situation was critical and that comprehensive local management had not been undertaken in many overdrafted areas of the state. Again, there was no action.

An August 18, 2014, Los Angeles Times column asserts there is no better time to act than now. The Times notes that the recently-passed \$7.545 bond for water-related projects and programs that is scheduled for the November 2014 ballot contains \$100 million for planning and implementing groundwater management, \$800 million for cleaning up groundwater, \$700 million for recycling and \$2.7 billion for dam building. As the Los Angeles Times column states, these are projects that can help replenish underground basins but it will take pumping rules to assure taxpayers that they're getting their money's worth. The Times Los Angeles column concludes, the State has been ignoring experts' increasing warnings regarding groundwater depletions for decades and holding off on groundwater regulation since statehood but together this bill and a related measure AB 1739, seek to empower local governments to manage groundwater sustainably while allowing the state to step in if they fail to do so.

While California uses more groundwater than any other state, it is the last in the Union to lack an enforceable set of statewide groundwater management standards. Groundwater informational hearings in the Assembly Water, Parks and Wildlife Committee and the Senate Natural Resources and Water Committee in March 2014 revealed disturbing statistics on the current degradation of some of California's groundwater basins: between 2003 and 2009 the

groundwater aquifers for the Central Valley and its major mountain water source, the Sierra Nevadas, lost almost 26 million acre-feet of water – nearly enough water combined to fill Lake Mead, America's largest reservoir. The findings reflected the effects of California's extended drought and the resulting increased rates of groundwater being pumped for human uses, such as irrigation.

In response to the crisis two bills were introduced in the Legislature, this bill and AB 1739. Following introduction of both bills the authors began extensive stakeholder outreach facilitated by both a nonprofit nonpartisan foundation and an association of water agencies. During this time, the Administration of Governor Brown also proposed statutory language to manage groundwater, made it available on the internet, and started a series of public stakeholder meetings. In July 2014, four professionally facilitated public meetings were convened and led by representatives of both authors as well as the Administration. Following those meetings language was taken from each bill and the Administration's proposal and crafted into one integrated statute. That language was amended into both this bill and AB 1739, making them identical. Both authors also became coauthors of each bill. When the integrated statute came into print, another professionally-facilitated stakeholder meeting was held to get additional input on refinements.

The August 18, 2014 amendments to this bill and AB 1739 divided the integrated statute into two logical pieces that must be enacted together and included many of the stakeholder-suggested refinements. The August 22, 2014, amendments made mostly technical and clarifying changes as well as additional stakeholder refinements. This bill contains: the general policy of the State regarding sustainable groundwater management; the Act's general provisions, including phased requirements for high and medium priority basins to manage sustainably, depending on whether a critical condition of overdraft exists; basin boundary adjustment language; requirements and authorities for establishing GSAs; powers and authorities of GSAs; and, required GSP components. AB 1739 includes provisions related to coordination between local land use agencies and GSAs as well as those provisions of the Act regarding: DWR technical assistance; GSA financial authorities; GSA enforcement powers; State evaluation and assessment of GSPs; and, State intervention should the requirements of the statute not be met, including authority for the State Water Board to require reporting of groundwater withdrawals and charge fees for its interim management activities. In many respects this bill contains the actions related to establishing GSAs and planning GSPs while AB 1739 contains most of the complimentary implementation tools and enforcement authorities, both State and local.

The author states that this bill is needed because California faces a groundwater crisis. The author points out that the cumulative overdraft of our groundwater basins is equivalent to the entire amount of water stored in Lake Tahoe and that in many areas of the state, local groundwater managers lack the tools and authorities to manage the groundwater basins. The author concludes that without improved local management the overdraft in many parts of the state will get even worse over the next several years. Other supporters add that a new statewide policy for sustainable groundwater management is urgently needed and that this bill addresses one of California's most pressing water management issues. Supporters point out that breadth of the stakeholder involvement process that was used in order to help ensure the right balance of provisions to empower local groundwater management agencies with new tools and authorities and to create an appropriate state backstop that will allow the state to intervene only when needed.

Opponents state they share the author's interest in improving groundwater management but are concerned about the broad scope and specific impacts of this measure. Opponents believe this bill is extraordinarily ambitious and comprehensive and that in its current form it would substantially alter the California landscape and economy for generations to come. Opponents are concerned that this bill could require hundreds of millions of dollars in implementation costs and are worried about potential affects to existing groundwater rights and generate litigation. Opponents maintain the legislation goes beyond the goal of sustainable groundwater management and will adversely affect the agricultural economy and the landscape that is dependent upon it and cause a potential devaluation in some land thus affecting property tax collections in some areas and the services and programs that are dependent upon them. Opponents advocate delaying action in order to avoid what they believe would be unanticipated consequences.

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FN: 0005579

SENATE RULES COMMITTEE

AB 1739

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THIRD READING

Bill No: AB 1739
Author: Dickinson (D), et al.
Amended: 8/22/14 in Senate
Vote: 21

SENATE NATURAL RESOURCES AND WATER COMMITTEE: 7-1, 6/24/14
AYES: Pavley, Evans, Hueso, Jackson, Lara, Monning, Wolk
NOES: Cannella
NO VOTE RECORDED: Fuller

SENATE APPROPRIATIONS COMMITTEE: 5-0, 8/14/14
AYES: De León, Hill, Lara, Padilla, Steinberg
NO VOTE RECORDED: Walters, Gaines

ASSEMBLY FLOOR: 48-24, 5/28/14 - See last page for vote

SUBJECT: Groundwater management

SOURCE: Author

DIGEST: This bill provides specific authority to a groundwater sustainability agency (GSA), as defined in SB 1168 (Pavley, 2014), to impose certain fees. This bill authorizes the Department of Water Resources (DWR) or a GSA to provide technical assistance to entities that extract or use groundwater to promote water conservation and protect groundwater resources.

Senate Floor Amendments of 8/22/14 clarify the relation between cities/counties and groundwater agencies with respect to land use planning, consideration of groundwater plans in local planning, and consideration of local general plans in groundwater planning.

Senate Floor Amendments of 8/18/14 (1) refine provisions of the bill regarding state evaluation and intervention regarding groundwater sustainability plans, (2) delete those parts of the bill that will be solely in SB 1168 (which has similar amendments), and (3) make chaptering of the bill contingent on enactment of SB 1168.

ANALYSIS: Existing law:

1. Authorizes local agencies to adopt and implement a groundwater management plan. Requires a groundwater management plan to contain specified components and requires a local agency seeking state funds administered by DWR for groundwater projects or groundwater quality projects to do certain things, including, but not limited to, preparing and implementing a groundwater management plan that includes basin management objectives for the groundwater basin.
2. Establishes the Water Rights Fund (Fund), which consists of various fees and penalties. The monies in the Fund are available, upon appropriation by the Legislature, for, among other things, the administration of the State Water Resource Control Board's (Board) water rights program.
3. Requires, with certain exceptions, each person who diverts water after December 31, 1965, to file with the Board a prescribed statement of diversion and use.
4. Subjects a person to civil liability if that person fails to file, as required, a diversion and use statement for a diversion or use that occurs after January 1, 2009, tampers with any measuring device, or makes a material misstatement in connection with the filing of a diversion or use statement.
5. Provides that a person who violates a cease and desist order of the Board may be liable in an amount not to exceed \$1,000 for each day in which the violation occurs. Revenue generated from these penalties is deposited in the Fund.
6. Authorizes the Board or the DWR to adopt emergency regulations providing for the filing of reports of water diversion or use that are required to be filed.
7. Requires the legislative body of each county and city to adopt a comprehensive, long-term general plan for the physical development of the county or city with specified elements, including, among others, land use and conservation elements.

8. Requires a city or county, upon the adoption or revision of its general plan, on or after January 1, 1996, to utilize as a source document any urban water management plan submitted to the city or county by a water agency.
9. Requires a public water system to provide a planning agency with certain information upon receiving notification of a city's or a county's proposed action to adopt or substantially amend a general plan.

This bill:

1. Provides specific authority to a GSA, as defined in SB 1168 (Pavley, of 2014), to impose certain fees.
2. Authorizes the DWR or a GSA to provide technical assistance to entities that extract or use groundwater to promote water conservation and protect groundwater resources.
3. Requires the DWR to prepare and publish a report by December 31, 2016, on its Internet Web site that presents the department's best estimate, based on available information, of water available for replenishment of groundwater in the state.
4. Requires the DWR, by January 1, 2017, to publish on its Internet Web site best management practices for the sustainable management of groundwater, and requires the DWR to prepare and release a report by December 31, 2016, on the DFW's best estimate of water available for replenishment of groundwater in the state.
5. Requires a GSA to submit a groundwater sustainability plan to the DWR for review upon adoption. Requires the DWR to periodically review groundwater sustainability plans, and by June 1, 2016, and requires the DWR to adopt regulations for evaluating groundwater sustainability plans adopt regulations for evaluating groundwater sustainability plans, the implementation of groundwater sustainability plans, and coordination agreements. These regulations adopted shall identify appropriate methodologies and assumptions for baseline conditions concerning hydrology, water demand, regulatory restrictions that affect the availability of surface water, and unreliability of, or reductions in, surface water deliveries to the agency or water users in the basin, and the impact of those conditions on achieving sustainability and shall include

the historic average reliability and deliveries of surface water to the agency or water users in the basin..

6. Requires the DFW to adopt the regulations, including any amendments thereto, as emergency regulations in accordance with the Administrative Procedure Act. The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare.
7. Authorizes a local agency to submit to the DWR for evaluation and assessment an alternative that the local agency believes satisfies the objectives of these provisions.
8. Requires the DWR to review any of the above-described submissions at least every five years after initial submission to the DWR.
9. Authorizes the DWR to conduct inspections to obtain an inspection warrant.
10. Authorizes the Board to designate a basin as a probationary basin, if the Board makes a certain determination.
11. Authorizes the Board to develop an interim plan for a probationary basin if the Board, in consultation with the DWR, determines that a local agency has not remedied a deficiency that resulted in designating the basin as a probationary basin within a certain timeframe.
12. Authorizes the Board to adopt an interim plan for a probationary basin after notice and a public hearing and requires state entities to comply with an interim plan.
13. Authorizes the Board to rescind all or a portion of an interim plan if the Board determines at the request of specified petitioners that a groundwater sustainability plan or adjudication action is adequate to eliminate the condition of long-term overdraft or condition where groundwater extractions result in significant depletions of interconnected surface waters.
14. Provides that the Board has authority to stay its proceedings relating to an interim plan or to rescind or amend an interim plan based on the progress made by a groundwater sustainability agency or in an adjudication action.

15. Provides that the money in the Fund is available for expenditure, upon appropriation by the Legislature, for the purpose of Board enforcement. Requires the Board to adopt a schedule of fees in an amount sufficient to recover all costs incurred and expended from the Fund by the Board.
16. Authorizes the Board to issue a cease and desist order in response to a violation or threatened violation of any decision or order of the Board or any extraction restriction, limitation, order, or regulation adopted or issued.
17. Establishes groundwater reporting requirements for a person extracting groundwater in an area within a basin that is not within the management area of a groundwater sustainability agency or a probationary basin. Requires the reports to be submitted to the Board or in certain areas, to an entity designated as a local agency by the Board, as specified. Requires each report to be accompanied by a specified fee.
18. Authorizes the Board or the DWR to adopt emergency regulations providing for the filing of reports of water extraction.
19. Requires, prior to the adoption or any substantial amendment of a general plan, the planning agency to review and consider a groundwater sustainability plan, groundwater management plan, groundwater management court order, judgment, or decree, adjudication of water rights, or a certain order or interim plan by the Board.
20. Requires the planning agency to refer a proposed action to adopt or substantially amend a general plan to any groundwater sustainability agency that has adopted a groundwater sustainability plan or local agency that otherwise manages groundwater and to the Board if it has adopted an interim plan that includes territory within the planning area.
21. Requires a groundwater sustainability agency or an entity that submits an alternative to provide the planning agency with certain information as is appropriate and relevant, including a report on the anticipated effect of the proposed action on implementation of a groundwater sustainability plan.
22. Provides that the provisions against superseding the land use authority of cities and counties applies to that authority within the overlying basin, including the city or county general plan, and requires a groundwater sustainability plan to take into account the most recent planning assumptions stated in local general plans overlying the basin.

23. Requires, after January 31, 2020, the DFW, in consultation with the Board, to determine that a groundwater sustainability plan is inadequate or that the groundwater sustainability program is not being implemented in a manner that will likely achieve the sustainability goal.
24. Provides that the basin, after January 31, 2022, be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans if none of the following have occurred:
 - A. A groundwater sustainability agency has adopted a groundwater sustainability plan for the entire basin.
 - B. A collection of local agencies has adopted groundwater sustainability plans that collectively serve as a groundwater sustainability plan for the entire basin.
 - C. The DFW has approved an alternative, as specified.
25. Provides that the basin be managed, as specified, after January 31, 2022, if both of the following have occurred:
 - A. The DFW, in consultation with the Board, determines that a groundwater sustainability plan is inadequate or that the groundwater sustainability plan is not being implemented in a manner that will likely achieve the sustainability goal.
 - B. The Board determines that the basin is in a condition of long-term overdraft or in a condition where groundwater extractions result in significant depletions of interconnected surface waters.
26. Revises the definition of “undesirable result,” and specifies that certain authority granted to a groundwater sustainability agency to control groundwater extractions shall be consistent with applicable elements of a city or county general plan, except as specified.
27. Provides that this bill is contingent on the enactment of SB 1168 (Pavley, of 2014).

Background

California is the last state without an enforceable set of statewide groundwater management standards. While some of California's groundwater basins are sustainably managed, many are not.

A number of different entities may manage some aspect of groundwater in California. These include:

- Special Districts. Many types of special districts have some groundwater related authorities under the water code and other statutes. Such districts include county water districts, municipal utility districts, community service districts, and water replenishment districts.
- Special Act Districts. The Legislature has created a number of special districts whose specific purpose is to manage one groundwater basin or another. These include agencies such as the Orange County Water District and Fox Canyon Groundwater Management Agency.
- Court Appointed Watermasters. In an adjudication, the court determines who has rights to pump from the groundwater basin, how much they can pump, etc. The court also typically appoints someone to be the "Watermaster" whose job is to ensure that the basin is managed in accordance with the court's decree.
- Cities and Counties. The courts have held that cities and counties, under their general police powers, have the authority to enact ordinances regarding groundwater. More than 20 counties have done so, generally addressing issues such as banning transfers of groundwater out of the county. Counties also issue drilling permits for water wells.

The powers to manage groundwater vary. In most special act districts, the authorizing act allows the agency to require groundwater users to report their extractions to the agency, who can then levy fees for groundwater management or water supply replenishment. Some acts also provide the special district the authority to limit exports and extractions.

For most non-special act districts, the authority to manage groundwater derives from what is commonly referred to as AB 3030 (Water Code Section 10750 et seq.). AB 3030 allows, but does not require, certain defined existing local agencies to develop groundwater management plans in defined groundwater basins and subbasins.

An AB 3030 plan can be developed only after a public hearing and adoption of a resolution of intention to adopt a groundwater management plan. If landowners representing more than 50% of the assessed value of lands within the proposed district do not protest the plan, the plan can be adopted within 35 days. If

landowners representing a majority of the assessed value in the proposed district oppose the plan, cannot be adopted and no new plan may be attempted for one year.

AB 3030 plans cannot be adopted in adjudicated basins or in basins where groundwater is managed under other sections of the Water Code without the permission of the court or the other agency.

Once the plan is adopted, rules and regulations must be adopted to implement the program called for in the plan. Many plans that have been adopted are relatively simple and in some cases are a means of defining boundaries.

There are 149 adopted AB 3030 plans.

If a local agency wishes to receive state funds administered by DWR for groundwater projects or for other projects that directly affect groundwater levels or quality, the local agency must have an AB 3030 plan or equivalent groundwater management plan meets specific requirements. These requirements are sometimes known as “SB 1938 [Machado, Chapter 603, Statutes of 2002] requirements.”

This January, the Governor released his final California Water Action Plan (CWAP). Among the many initiatives in the CWAP is a call to improve sustainable groundwater management:

Groundwater is a critical buffer to the impacts of prolonged dry periods and climate change on our water system. The administration will work with the Legislature to ensure that local and regional agencies have the incentives, tools, authority and guidance to develop and enforce local and regional management plans that protect groundwater elevations, quality, and surface water-groundwater interactions. The administration will take steps, including sponsoring legislation, if necessary, to define local and regional responsibilities and to give local and regional agencies the authority to manage groundwater sustainably and ensure no groundwater basin is in danger of being permanently damaged by over drafting. When a basin is at risk of permanent damage, and local and regional entities have not made sufficient progress to correct the problem, the state should protect the basin and its users until an adequate local program is in place.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

B-1
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CONTINUED

- No additional state costs for fiscal year (FY) 2014-15 through FY 2018-19 to the DWR for initial activities.
- Annual costs \$3.5 to \$4 million from the General Fund beginning in FY 2017-18 to DWR to review plans and to provide ongoing technical support.
- Annual costs of \$260,000 to \$390,000 from the Water Rights Funds (special) for FY 2014-15 through FY 2016-17 to the SWRCB for initial activities.
- Annual costs of \$325,000 to \$600,000 from the General Fund beginning in FY 2017-18 to the SWRCB for review of GSPs.
- Unknown annual costs, estimated to be approximately \$1.5 M, from the Water Rights Fund (special) to the SWRCB for enforcement actions beginning in FY 2017-18. These costs would be at least partially offset by fees.

SUPPORT: (Verified 8/25/14)

Agua Caliente Band of Cahuilla Indians
 Association of California Water Agencies
 Barona Bank of Mission Indians
 Bay Area Council
 California Council of Geoscience Organizations
 California Groundwater Coalition
 California Groundwater Council
 California Tribal Business Alliance
 California Trout
 California Water Foundation
 California Waterfowl Association
 City of Los Angeles, Mayor's Office
 Community Alliance with Family Farmers
 East Bay Municipal Utility District
 EMAX Laboratories, Inc.
 Groundwater Resources Association of California
 Horizon Environmental, Inc.
 Inland Empire Utilities Agency
 Inyo County
 Irvine Ranch Water District
 Los Angeles Area Chamber of Commerce
 Los Angeles City Council
 Luhdorff & Scalmanini Consulting Engineers
 Mayor of Los Angeles
 Montclair Environmental Management, Inc.
 Orange County Water District

Pala Band of Mission Indians
Parker Groundwater
Paskenta Band of Nomlaki Indians
PRO Water Equity
Quinn Environmental Strategies, Inc.
Raymond Basin Management Board
San Francisco Bay Regional Water Quality Control Board
San Francisco Public Utilities Commission
San Gabriel Valley Water Association
Santa Clara Valley Water District
Sierra Club California
Sullivan International Group, Inc.
The Source Group, Inc.
Todd Groundwater
Trout Unlimited
United States Department of Defense, Regional Environmental
Upper San Gabriel Valley Municipal Water District
Viejas Band of Kumeyaay Indians
WILDCOAST

OPPOSITION: (Verified 8/25/14)

African American Farmers of California
Agricultural Council of California
Allied Grape Growers
Almond Hullers & Processors Association
Association of California Egg Farmers
Blue Diamond Growers
California Agricultural Aircraft Association
California Ammonia Company
California Association of Nurseries and Garden Centers
California Bean Shippers Association
California Blueberry Association
California Canning Peach Association
California Cattlemen's Association
California Chamber of Commerce
California Citrus Mutual
California Cotton Ginners Association
California Cotton Growers Association
California Dairies, Inc.
California Farm Bureau Federation

California Fresh Fruit Association
 California Grain & Feed
 California Groundwater Association
 California League of Food Processors
 California Pear Growers Association
 California Seed Association
 California State Floral Association
 California Tomato Growers Association
 California Warehouse Association
 California Women for Agriculture
 Campos Brothers Farms
 Dairy Farmers of America-Western Area
 Del Monte Foods
 Family Business Association
 Family Winemakers
 Fruit Growers Supply Company
 Grower-Shipper Association of Central California
 Grower-Shipper Association of Santa Barbara and San Luis Obispo Counties
 Kern County
 Land O' Lakes
 Nisei Farmers League
 Northern California Water Association
 Pacific Coast Producers
 Raisin Bargaining Association
 Sacramento Regional Water Authority
 San Joaquin County
 Stockton East Water District
 Sun-Maid Growers of California
 Sunsweet Growers Inc.
 Valley Ag Water Coalition
 Western Agricultural Processors Association
 Western Growers Association
 Western Plant Health Association

ARGUMENTS IN SUPPORT: According to the California Water Foundation (CWF), “AB 1739 addresses one of California’s most pressing water management issues – the need for improved and sustainable groundwater management. The current drought and its immediate impacts to the state’s groundwater resources compel us to search for solutions now so we are better prepared for further droughts. Improved groundwater management will protect critical water supplies and provide ecosystem and economic benefits to the mid- and long-term.

“A new statewide policy for sustainable groundwater management is urgently needed, and AB 1739 is an important piece of this discussion. Numerous stakeholders have been involved and are continuing to toward together on this legislation and ... SB 1168 [Pavley]. CWF is working with both authors to help ensure that these bills provide the right provisions to empower local groundwater management agencies with new tools and authorities, and to create an appropriate state ‘backstop’ that will allow the state to intervene, only when needed, to ensure groundwater management goals are met.”

ARGUMENTS IN OPPOSITION: According to the California Farm Bureau Federation, “We are concerned the current process is rushed to meet arbitrary deadlines without adequate time to address such a complex issue. This measure will have huge long-term economic impacts on farms, the State and local economies and county tax roles, with a very real potential to devalue land and impact farms and businesses viability and in turn impact jobs. We believe groundwater must be managed locally/regionally and that overlying property rights are protected to avoid a taking. Without addressing these issues with stakeholder input, this measure will certainly create a significant fiscal impact to the state when many are forced to defend their overlying property rights through adjudication.

“Overall, Farm Bureau believes we do not have a groundwater problem solely from a lack of regulation, but from a failure to update our water capture and delivery system to today’s conditions. Any legislation that creates a new groundwater management regime must be coupled with real, substantive actions to increase surface water supplies and restore water supply reliability. The complexities of groundwater, groundwater management and interactions with surface water are too great to rush to judgment and to an isolated solution. We are not suggesting the status quo, nor are we suggesting do nothing, but we do recommend a carefully thought through process to develop appropriate protections of our groundwater resources for future generations. For these reasons we are actively engaged with others to develop a path forward, but we must oppose AB 1739.”

ASSEMBLY FLOOR: 48-24, 5/28/14

AYES: Alejo, Ammiano, Bloom, Bocanegra, Bonilla, Bonta, Bradford, Brown, Buchanan, Ian Calderon, Campos, Chau, Chesbro, Cooley, Daly, Dickinson, Fong, Garcia, Gatto, Gomez, Gonzalez, Gordon, Roger Hernández, Jones-Sawyer, Levine, Lowenthal, Medina, Mullin, Muratsuchi, Nazarian, Pan, Perea, John A. Pérez, V. Manuel Pérez, Quirk, Quirk-Silva, Rendon, Ridley-Thomas

Rodriguez, Salas, Skinner, Stone, Ting, Weber, Wieckowski, Williams,
Yamada, Atkins

NOES: Allen, Bigelow, Chávez, Conway, Dahle, Donnelly, Fox, Beth Gaines,
Gorell, Grove, Hagman, Harkey, Jones, Linder, Logue, Maienschein, Mansoor,
Melendez, Nestande, Olsen, Patterson, Wagner, Waldron, Wilk

NO VOTE RECORDED: Achadjian, Dababneh, Eggman, Frazier, Gray, Hall,
Holden, Vacancy

RM:d 8/25/14 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** **END** ****