

SENATE COMMITTEE ON NATURAL RESOURCES AND WATER
Senator Fran Pavley, Chair
2013-2014 Regular Session

BILL NO: AB 1739

AUTHOR: Dickinson

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DUAL REFERRAL: No

SUBJECT: Groundwater basin management: sustainability.

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URGENCY: No

CONSULTANT: Dennis O'Connor

FISCAL: Yes

BACKGROUND AND EXISTING LAW

California is the only state without a mandatory statewide system of groundwater management. That isn't to say there isn't any groundwater management in California; some of California's groundwater basins are sustainably managed. However, 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 (WC §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 1 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 the Department of Water Resources (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 requirements.” To meet the SB 1938 requirements, a local agency must:

- Prepare and implement a groundwater management plan that includes basin management objectives for the groundwater basin that is subject to the plan. The plan must include components relating to the monitoring and management of groundwater levels, groundwater quality degradation, inelastic land surface subsidence, and changes in surface flow and surface water quality that directly affect groundwater levels or quality or are caused by groundwater pumping in the basin.
- Prepare a plan that enables the local agency to work cooperatively with other public entities whose service area or boundary overlies the groundwater basin.
- Prepare a map that details the area of the groundwater basin and the area of the local agency that will be subject to the plan, as well as the boundaries of other local agencies that overlie the basin in which the agency is developing a groundwater management plan.
- Adopt monitoring protocols that are designed to detect changes in groundwater levels, groundwater quality, inelastic surface subsidence for basins for which subsidence has been identified as a potential problem, and flow and quality of surface water that directly affect groundwater levels or quality or are caused by groundwater pumping in the basin. The monitoring protocols must be designed to generate information that promotes efficient and effective groundwater management.
- For areas outside delineated groundwater basins, local agencies are required to prepare plans using use geologic and hydrologic principles appropriate to those areas.

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.”

PROPOSED LAW

This bill would overhaul how California manages its groundwater. Specifically, it would:

- Require all groundwater basins designated as high or medium priority basins by DWR to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans, with specified exceptions.
- Require a groundwater sustainability agency to certify that its plan complies with the requirements of this bill no later than January 31, 2020, and every 5 years thereafter.
- Encourage basins designated as low-priority basins by the department to be managed under groundwater sustainability plans as soon as possible.
- Require, to the extent practicable, a groundwater sustainability plan to be coterminous with, and augment a groundwater management plan.
- Provide a groundwater sustainability agency specific authorities, including, but not limited to, the ability to:
 - Require the registration of a groundwater extraction facility. Any form used to register such a groundwater extraction facility would be prohibited from being made available for inspection by the public.
 - Require that a groundwater extraction facility be equipped with a water-measuring device.
 - Regulate groundwater pumping
 - Impose certain charges.
- Prohibit, after January 31, 2020, a person from increasing groundwater extractions on a property within the basin until a groundwater sustainability agency or the State Water Resources Control Board (SWRCB) complies with the requirements described above, unless the person submits to the county a specified report.
- Authorize a groundwater sustainability agency to conduct inspections and would require the inspection to be made with any necessary consent or with an inspection warrant. Because the willful refusal of an inspection lawfully authorized by an inspection warrant is a misdemeanor, this bill would impose a state-mandated local program by expanding the application of a crime.
- Authorize DWR to provide technical assistance to a groundwater sustainability agency upon the request of the agency
- Require, by January 1, 2017, DWR to submit to the Legislature and publish on its Internet Web site best management practices for the sustainable management of groundwater.
- Establish it is policy of the state to encourage conjunctive use of surface and groundwater.
- Declare that the storage of water underneath the ground is a beneficial use of water.
- Require, prior to the adoption or any substantial amendment of a general plan, the local planning agency to review, and if necessary revise the land use, conservation, open space, or any other element of the general plan to address a groundwater sustainability plan, groundwater management plan, groundwater management court order, judgment, or decree, adjudication of water rights, or a certain order of the SWRCB.
- Require the planning agency to refer a proposed action to adopt or substantially amend a general plan to any local agency or joint powers authority that has adopted a groundwater sustainability plan or that otherwise manages groundwater and to the SWRCB if it has adopted a groundwater sustainability plan that includes territory within the planning area.

- Require a public water system to provide a report on the anticipated effect of the proposed action on implementation of a groundwater sustainability plan.
- Require a groundwater sustainability agency to provide the planning agency with certain information as is appropriate and relevant.
- State the intent of the Legislature to the following:
 - Amend this measure to provide that one or more state agencies act to ensure that all basins in California are on track to achieve the sustainability goal if local agencies are unable to adopt or implement groundwater sustainability plans that achieve that goal.
 - Amend this measure to provide for expedited adjudications of rights to extract and store water from and in basins by enacting and directing the Judicial Council to develop innovative judicial procedures to manage those adjudications as quickly as reasonably feasible.
 - Amend this measure to provide that the SWRCB and the regional water quality control boards must weigh the value of surface water for groundwater replenishment and recharge to promote the state's interest in groundwater sustainability.
- Provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.
- Provide, with regard to any other mandates, that if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to statutes governing state mandated costs.

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.”

COMMENTS

Time Is Ripe For Action. This committee, the Assembly Water, Parks, and Wildlife Committee (AWP&W), and the administration all held hearings and workshops this year on the need to reform groundwater management. This committee’s hearing focused on California groundwater law, groundwater management approaches, what does and does not work in groundwater management, and the administration’s plan to move forward. AWP&W’s hearing addressed where we are on groundwater management, what are the elements of successful groundwater management, and stakeholder perspectives on where we should go from here. (Information presented at each hearing is available on this committee’s and AWP&W’s websites.)

The administration held a workshop to hear from a variety of stakeholder groups their proposals for a new approach to groundwater management in California. There were formal presentations from the following:

- Lester Snow, Executive Director, California Water Foundation
- Tim Quinn, Executive Director, Association of California Water Agencies and David Orth, General Manager, Kings River Conservation District; Vice-Chair, Groundwater Sustainability Task Force, Association of California Water Agencies
- Robert Reeb, Executive Director, Valley Ag Water Coalition
- Jonas Minton, Water Policy Advisor, Planning and Conservation League

What was remarkable about all three hearings and workshops was not only the breadth of acceptance that something needed to be done, but also of many of the key elements of the “solution.”

One of Two, One of Three, One of Many. There are currently two major groundwater bills moving through the legislature: This bill, AB 1739 (Dickinson), and SB 1168 (Pavley). There are three major proposals for reforming groundwater, by: the California Water Foundation, the Association of California Water Agencies (ACWA), and the administration. This bill largely follows the ACWA proposal. There are many perspectives on which precise right mix of proposals is best for all concerned; this bill reflects just one of them.

We Can Work It Out. The two authors are collaborating with each other, as evidenced by their each being principal co-authors of the other’s bill. They are also working and the administration to craft a final product. Further, the authors have committed to working through July with the administration and all interested parties to craft a proposal that addresses and resolves as many issues as is practicable.

Much Work Ahead. While there appears to be general agreement on a broad framework of a sustainable groundwater management system, there are quite a number of potentially contentious issues to be resolved.

Issues where the various proponents are close to agreement include:

- Identifying mandatory elements for groundwater management.
- Enforcement powers for groundwater management entities.
- Permitting of new and/or existing wells.

Issues where there are significant differences of opinion include:

- The definitions, including “sustainable groundwater management.”
- The scope of management plans: one for the entire basin or subbasin, or many.
- Changes in land use planning requirements, or not.
- Appropriate protections of both property rights and community rights.
- Representation on groundwater management entities.
- Level of transparency in managing and use of groundwater.
- Reporting requirements for groundwater users.
- Financing of groundwater management activities.
- State intervention authorities.

Issues that have yet to be addressed include:

- Integrating water quality with water supply considerations.
- Coordination among subbasins within a basin.
- Scope and limitations on groundwater storage and banking.
- Inclusion of an administrative adjudication process.
- The need to create a new groundwater management district act.

SUGGESTED AMENDMENTS: None

SUPPORT

California Water Foundation – if amended

OPPOSITION

California Farm Bureau Federation