

Date of Hearing: June 24, 2014

ASSEMBLY COMMITTEE ON WATER, PARKS AND WILDLIFE

Anthony Rendon, Chair

SB 1168 (Pavley) – As Amended: June 17, 2014

SENATE VOTE: 24-12

SUBJECT: Groundwater management

SUMMARY: Requires adoption of a sustainable groundwater management plan (SGMP) by January 1, 2020 for all basins that are a high or medium priority as determined by the Department of Water Resources (DWR) according to specified criteria and that are not otherwise being sustainably managed pursuant to an existing plan or adjudication. Specifically, this bill:

- 1) Establishes that is the policy of the state that all groundwater basins be managed sustainably.
- 2) Adds the Sustainable Groundwater Management Act (Act) to the Water Code with the stated intent of empowering local groundwater agencies to sustainably manage groundwater.
- 3) Defines sustainable groundwater management, among other terms.
- 4) Specifies that groundwater basins are those identified in DWR's Bulletin No. 118, as it may be amended, and includes subbasins.
- 5) Allows any local agency or combination of agencies to establish a groundwater management agency (GMA) and recognizes a diverse set of interests that should be considered by the GMA.
- 6) Provides for public involvement in the development of sustainable groundwater management plans (SGMPs).
- 7) Requires DWR, as part of the existing California Statewide Groundwater Elevation Monitoring (CASGEM) program, to categorize each basin and subbasin as either a high, medium, low, or very low priority utilizing factors that include, but are not limited to, population, extent of public wells, overlying irrigated acreage, reliance on groundwater, and any documented impacts upon the basin from overdraft, subsidence, saline intrusion and other water quality degradation.
- 8) Requires a SGMP to be completed, adopted, and submitted to DWR by January 1, 2020 for each high and medium priority basin.
- 9) Requires DWR, in consultation with the State Water Resource Board (State Water Board), to develop a process to certify and exempt existing groundwater management plans or adjudicated areas that already meet the requirements of the Act.
- 10) Requires SGMPs to meet certain standards including:
  - a) Encompassing an entire basin or subbasin;
  - 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.
- 11) Requires DWR, in consultation with the State Water Board, to establish minimum standards for the adoption of a SGMP and provide technical assistance.

- 12) Empowers a GMA to:
  - a) Develop a SGMP;
  - b) Establish monitoring, measuring, and reporting on groundwater conditions;
  - c) Require reports on groundwater extraction;
  - d) Establish a system for allocating groundwater based on the sustainable yield of the basin;
  - e) Collect groundwater management fees; and,
  - f) Establish a system for local, voluntary transfers of groundwater within a basin.
- 13) Requires DWR, by January 1, 2018, to offer assistance to local agencies in medium and high priority basins that have not yet initiated a SGMP and, if there is no positive response, refer the matter to the State Water Board.
- 14) Allows the State Water Board to initiate a process to have a qualified third party develop a SGMP in high or medium priority basins that either:
  - a) Failed to initiate a SGMP process by January 1, 2018; or,
  - b) Submitted a plan by January 1, 2020 that failed to meet the requirements of the Act and were unwilling or unable to cure deficiencies identified in the SGMP.
- 15) Allows a GMA to assume duties for measuring groundwater elevations in a basin under the CASGEM program.
- 16) Requires coordination between local land use planning efforts and groundwater management planning efforts.

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 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 Senate Appropriations Committee analysis costs are unknown but will be at least in the mid-hundreds of thousands to millions of dollars annually, from the General Fund for the state's oversight of groundwater management.

COMMENTS: California is the last State in the Union without an enforceable set of statewide groundwater management standards. The purpose of this bill, together with AB 1739 and the Administration's proposal, is to help develop a comprehensive set of sustainable groundwater management statutes that empower local agencies that currently lack sustainable management to plot a 20-year path towards predictable groundwater supplies. This will facilitate coordinated use of groundwater and surface water supplies together ("conjunctive use") and create legal certainty regarding rights to store and withdraw groundwater, thus increasing overall local water supply reliability.

#### *Catastrophic Impacts from a Lack of Statewide Standards*

In some parts of California the lack of sustainable groundwater management has become an economic and environmental catastrophe. A headlong rush to pump a finite resource has crashed into a brick wall of harsh realities including dropping groundwater levels that are leaving wells spitting sand and farms and communities stranded; land subsidence that buckles infrastructure, cracks irrigation canals, and deposits threatening levels of sediment into flood control structures; and disappearing streams where the pull of subsurface pumping has deprived both senior water rights holders and wildlife of crucial surface flows.

California uses more groundwater than any other State. Groundwater provides, on average, 40% of California's water supply and that usage can increase to 60% or greater in dry years. For some communities groundwater is 100% of their local supplies. Groundwater informational hearings in the Assembly Water, Parks & Wildlife Committee and the Senate Natural Resources & 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.

#### *Current Groundwater Management*

There are three basic methods available for managing groundwater resources in California: management by local agencies under authority granted in the California Water Code or other applicable State statutes; local government groundwater ordinances or joint powers agreements; and, court adjudications.

AB 3030 (Costa), the California Groundwater Management Act, was passed by the Legislature in 1992. It set forth a framework for voluntary groundwater management by local agencies throughout California. SB 1938 (Machado/2002) took a further step when it set out certain

specified components for GMPs and required any local agency seeking state funds administered by DWR to meet those requirements. Both statues were a significant step in that they encouraged agencies to start to look at the condition of their groundwater resources. But unlike special district acts that are designed to empower a groundwater agency to address sustainable groundwater levels and withdrawals, or adjudications, where individual rights are quantified based on available supplies and enforced, neither AB 3030 nor SB 1938 preclude a continued trajectory in a basin of significant and long-term overdraft.

### *The Governor's Call for Action*

On October 4, 2013 the State Water Board released a *Discussion Draft Groundwater Workplan Concept Paper* identifying five key elements – “whether at the local, regional, or state level” – in order to effectively manage groundwater. The five elements are: 1) Establishing sustainable thresholds for groundwater levels and quality for impacted, vulnerable, and high-use basins; 2) Groundwater monitoring and assessment; 3) Effective governance structures to manage and protect the resource; 4) Funding to support monitoring and management actions; and, 5) State and local oversight and enforcement. Following release of that Concept Paper the State Water Board engaged in stakeholder discussion to receive feedback and held several highly-attended all day public workshops.

January 22, 2014 the Governor released the final California Water Action Plan (Action Plan). The Plan focuses on eight "challenges for managing California's water supplies," which are: uncertain water supplies; water scarcity/drought; declining groundwater supplies; poor water quality; declining native fish species and loss of wildlife habitat; floods; supply disruptions; and, population growth and climate change further increasing the severity of risks. With respect to groundwater, the Action Plan found that "inconsistent and inadequate tools, resources and authorities make managing groundwater difficult in California and impede our ability to address problems such as overdraft, seawater intrusion, land subsidence, and water quality degradation." Whereas properly managed groundwater resources could "help protect communities, farms and the environment against the impacts of prolonged dry periods and climate change." The Action Plan was supported in the Governor's January 2014-15 budget proposal which provided, among other allocations, \$1.9 million to the State Water Board for “10 positions [to the State Water Board] to act as a backstop when local or regional agencies are unable or unwilling to sustainably manage groundwater basins.”

On March 7, 2014 the Governor's Office released a draft framework for "soliciting input on actions that can be taken to assure that local groundwater managers have the tools and authority to sustainably manage groundwater consistent with the California Water Action Plan." On May 22, 2014, after holding multiple stakeholder meetings and receiving significant stakeholder response, the Governor's office posted draft statutory language entitled *Sustainable Groundwater Management* to the web site <http://groundwater.ca.gov> . Thereafter, SB 868 (Committee on Budget and Fiscal Review) was introduced. SB 868 is a trailer bill, meaning legislative language that would implement one or more parts of the California State Budget Bill. SB 868 declares that it is the policy of the state that groundwater resources be managed sustainably and could be amended prior to the end of session to provide guidance on how groundwater funding in the State budget should be directed.

*Much Work Ahead*

In early February 2014, following release of the Governor's Action Plan and Budget items addressing groundwater, this bill and AB 1739 (Dickinson) were introduced to develop policy language for sustainable groundwater management through the Legislative process. AB 1739 was heard in this Committee on April 29, 2014. Both bills represent initial groundwater management concepts developed after extensive stakeholder processes and consideration of the Administration's proposed set of groundwater statutes.

While there appears to be general agreement among many on the need for a broad framework of locally-driven sustainable groundwater management, there are quite a number of issues to be resolved. Issues where the various proponents agree or are close to agreement include:

- Identifying mandatory elements for groundwater management
- Need for fee authority
- Permitting of new and/or existing wells
- Need for coordination between groundwater planning and local land use planning

Issues where there are differences of opinion include:

- 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
- Potential inclusion of an administrative adjudication process
- Potential creation of a new groundwater management district act

Supporting arguments: The author states that this bill is needed because "California faces a groundwater crisis. The cumulative overdraft of our groundwater basins is equivalent to the entire amount of water stored in Lake Tahoe. In many areas of the state, local groundwater managers lack the tools and authorities to manage the groundwater basins. Without improved 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 "is an important part of the discussion." This bill "addresses one of California's most urgent water management needs." Supporters add that "numerous stakeholders have been involved and are continuing to work together on this legislation and the companion bill," AB 1739, to help ensure that 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."

Opposing arguments: Opponents commend the author for her "attention and commitment to sustainable groundwater management" but seek various amendments to definitions, management structure, sustainable yield calculation requirements, and state intervention before they could support the measure. Other opponents state that they are concerned the current process is a "rush to meet arbitrary deadlines without adequate time to address such a complex issue." Those opponents add that this "measure will have huge long-term economic impacts on farms, the State and local economies and county tax rolls, with a very real potential to devalue land and impact farms and business viability and jobs."

Comment letters: A number of groups, while not taking a position of either support or opposition on this bill, have stated they are generally supportive of legislative efforts intended to produce more effective management of groundwater resources and then offered specific recommendations on how this bill and AB 1739 could be improved as they move forward.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of California Water Agencies (if amended)  
California Water Foundation  
California Waterfowl Association

Opposition

California Farm Bureau Federation (unless amended)  
Sacramento Suburban Water District (unless amended)

Analysis Prepared by: Tina Cannon Leahy / W., P. & W. / (916) 319-2096