



Governor Signs Amendments to SGMA, with Provisions for Water Utilities Regulated by CPUC

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In the last two months, Governor Brown has signed several bills into law, amending the 2014 Sustainable Groundwater Management Act (SGMA or the Act). Two bills, Assembly Bill 1390 and Senate Bill 226, addressed the specifics of groundwater adjudication processes, which we previously discussed here. In addition, the Governor signed into law Senate Bill 13 and Assembly Bill 617, which also further the legislative scheme to manage California's groundwater by clarifying certain procedures and terms in the original Act and attuning SGMA to existing law. These new amendments also include important opportunities for water systems and water utilities regulated by the Public Utilities Commission (PUC) to participate in the development of groundwater sustainability agencies (GSAs) and groundwater sustainability plans (GSPs).

The following provides a brief summary of the main aspects of each new law.

SB 13

SB 13 specifies that the State Water Resources Control Board (Board) is authorized to designate high- or medium-priority basins as a probationary basin. (Wat. Code, § 10735.2, subd. (a).) A probationary basin is one that has failed to develop a sufficient GSP. A local agency or GSA will have 90-180 days to correct the deficiency that led to the designation, and the Board has the authority to develop an interim plan for the basin. For basins that are elevated from low- to medium- or high-priority basins before January 31, 2017, SB 13 extended the deadline to either establish a GSA or submit an alternative plan to the Department of Water Services (Department). (Wat. Code, § 10722.4.)

The amendment also clarified the process for establishing a GSA with the Department. After deciding to become a GSA, agencies have 30 days to inform the Department of their intent. (Wat. Code, § 10723.8, subd. (a).) If no other agency submits the same notification of intent, then that agency becomes the GSA

within 90 days after the Department has posted the intent to form a GSA on its website. (Id. at subds. (b)-(c).) However, if more than one agency submits notification of intent to become the GSA for the same or overlapping service area, then it is up to the local agencies to reach an agreement as to which entity, or combination of entities, will be the designated GSA. (Id. at subd. (c).) The decision to form a GSA will not take effect until competing notifications are withdrawn or modified to remove overlap. (Ibid.)

SB 13 also carved out a role for mutual water companies and PUC-regulated water utilities. Section 10723.6, subdivision (b) of the Water Code, states that mutual water companies and regulated water utilities can participate in GSAs by entering a memorandum of agreement or some other legal agreement with GSAs. (Wat. Code, § 10723.6, subd. (b).)

Under the new code provisions, if the Department finds that all or part of a basin or subbasin is not being monitored, the Department is required to determine whether there is sufficient interest in establishing a GSP. (Wat. Code, § 10933, subd. (c).) Finally, the amendments streamlined SGMA procedures by exempting certain technical or procedural analyses and guidance prepared by the Department from the Administrative Procedure Act. (Wat. Code, § 10729.2.)

AB 617

Like SB 13, AB 617 also amended the Water Code to allow more collaboration between GSAs, water companies, and private entities. AB 617 permits GSAs to enter written agreements with and receive funding from private parties that assist in or facilitate the implementation of a GSP or any elements of the plan. (Wat. Code, § 10726.5.) Additionally, if the geographic area to be covered by a GSP includes a PUC-regulated water utility, then the GSA must provide a written statement to the commission describing how such water companies can participate in the planning process. (Wat. Code, § 10727.8, subd. (a).)

In the event that other state or local agencies interfere with a GSA's ability to implement a GSP, the GSA may file notice with the Board and the Board will be required to investigate. (Wat. Code, § 10732.2.) The Board is then authorized to direct the state entity to cooperate with GSP implementation if the Board determines that failure to do so would compromise the ability of the GSA to achieve its sustainability objectives. (Ibid.)

Finally, AB 617 brings SGMA's objectives into greater harmony with existing state law. The Integrated Regional Water Management Planning Act authorizes regional water management groups to adopt integrated water management plans concerning water supply and quality. AB 617 specifies that groundwater sustainability planning is as an action of regional water management group members which may be addressed or incorporated into a regional water management plan. (Wat. Code, § 10540.) AB 617 also added that a GSP must include measures addressing in-lieu use where appropriate (Wat. Code, § 10727.4, subd. (h)), defined as the use of surface water by persons who could otherwise extract groundwater in order to preserve groundwater supplies (Wat. Code, § 10721, subd. (m)).

SB 13 and AB 617 were signed into law on September 3, 2015 and October 9, 2015, respectively.