

**FRESNO LOCAL AGENCY FORMATION COMMISSION (LAFCo)
EXECUTIVE OFFICER'S REPORT**

AGENDA ITEM NO. 9

DATE: January 14, 2015

TO: Local Agency Formation Commission

FROM: Kenneth J. Price, LAFCo Counsel 

SUBJECT: The Sustainable Groundwater Management Act &
Local Agency Formation Commissions

The attached slides will be presented at the workshop.

DEF:cf

The Sustainable Groundwater Management Act & Local Agency Formation Commissions

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The Sustainable Groundwater Management Act (the “Act”)

- ▶ SB 1168 (Pavley), AB 1739 (Dickinson),
& SB 1319 (Pavley)
- ▶ Signed by Governor Brown on
September 16, 2014
- ▶ Effective January 1, 2015
- ▶ New law is over 100 pages in length

Historical Significance

- The last drastic change to California water law occurred 100 years ago, in December 1914, with regulation of surface water rights.
- Groundwater has remained a private natural resource.
- California was the only state that did not, in some way, regulate groundwater.

Current Conditions

- Limited surface water supplies have caused industry, especially agriculture, to pump water from wells that are, in some cases, over 1,000 feet deep to obtain a stable water supply.
- There is overdraft of our state's underground aquifers.
- In dry years, groundwater provides close to 60% of the state's water supply. (DWR, 2014)
- Groundwater levels are at an all-time historical low, especially after the last 3 years of drought conditions

The Act

- Intent of the Legislature is “to provide for sustainable management of groundwater basins and to manage groundwater basins through the actions of local governmental agencies...while minimizing state intervention to only when necessary to ensure that local agencies manage groundwater in a sustainable manner.” (Water Code § 10720.1, subd. (a)–(h).)
- There are 515 basins and sub-basins identified in California and defined by DWR.

The Act (continued)

- The Act defines “sustainable groundwater management” as management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results.
- “Undesirable results” include any of the following effects caused by groundwater conditions occurring in the basin:
 - (1) chronic lowering of the groundwater levels, excluding overdraft during a drought if extractions and recharge are otherwise managed;
 - (2) significant and unreasonable reduction of groundwater storage;
 - (3) significant and unreasonable seawater intrusion;
 - (4) significant and unreasonable degradation of water quality;
 - (5) significant and unreasonable land subsidence; and
 - (6) surface water depletions that have significant and unreasonable adverse impacts on beneficial uses of surface water.

Groundwater Sustainability Agencies (GSAs)

- The Act requires the formation of GSAs by June 30, 2017
- The Act states that, “any local agency or combination of local agencies overlying a groundwater basin may elect to be a groundwater sustainability agency for that basin.”
- Existing local agencies, such as water and irrigation districts, that overlay each basin or sub-basin may be charged with the task of regulating groundwater in their basin or sub-basin.
- For those portions of regulated basins in unincorporated areas not served by existing local agencies, the county within the area in which the basin is located will be the default regulatory agency.

Coordination of Local Agencies

- When there are basins and sub-basins covered by multiple local agencies, the agencies must coordinate their individual Groundwater Sustainability Plans (“GSPs”) that apply to a single basin or sub-basin, or these agencies have the option of either (1) forming a joint powers authority (“JPA”) or (2) entering into a “memorandum of agreement or other legal agreement” to develop a single plan for the basin or sub-basin. (Water Code § 10723.6, subd. (a)(1–2).)

Joint Powers Authority (JPA)

- ▶ Legislation allows nontraditional groups to be members of a JPA, such as any federally recognized Indian tribe, or the federal government, or water corporations regulated by the Public Utilities Commission.
- ▶ “Clean up” legislation for the Act may expand this group as well.

Role of LAFCo

- ▶ Initial legislation required LAFCOs to approve the formation of GSAs and to do so within a compressed time period.
- ▶ The Act no longer requires LAFCOs to approve the GSAs, but there is still an open question as to whether or not LAFCOs will need provide some form of approval
- ▶ There is a trend of LAFCOs having an increased role in review of JPA activities, which may also affect how a LAFCo is involved with the formation and oversight of GSAs.

Role of LAFCo (continued)

- ▶ In the areas where there is no oversight by an irrigation or water district, landowners may consider forming new irrigation or water districts, reorganizing existing districts, and reviving districts that have been dormant.
 - This could create an increased burden on LAFCos.

Groundwater Sustainability Plans (GSPs)

- ▶ A GSP may be a single plan developed by one or more GSAs, or multiple coordinated plans within a basin or sub-basin.
- ▶ If the plans are coordinated, there must be a coordination agreement between the GSAs that meets DWR requirements.
- ▶ June 1, 2016 – DWR is required to adopt regulations for evaluating the adequacy of coordination agreements

GSPs (continued)

- DWR has not yet adopted regulations describing what is an adequate GSP
- By statute, GSPs must include the following:
 - Historical data;
 - Groundwater levels, groundwater quality, subsidence, & groundwater-surface water interaction;
 - A general discussion of historical & projected water demands & supplies;
 - A map that depicts the area of the basin or GSA; and
 - A map identifying existing & potential recharge areas for the basin.
- GSPs must have measurable objective and interim milestones in 5-year increments

GSP Deadlines

- June 1, 2016 – DWR required to adopt regulations for evaluating the adequacy of a GSP
- January 31, 2020 – GSPs adopted for high and medium-priority basins that are in critical overdraft
- January 31, 2022 – GSPs adopted for high and medium-priority basins not currently in an overdraft condition
- The goal is to have every basin and sub-basin in California “sustainable” by 20 years after the adoption of a GSP.

DWR Has The Final Approval

- DWR reviews GSPs for compliance
- If DWR determines a GSP is inadequate, or not being implemented in a way that will achieve sustainability, then the State Water Resources Control Board ("SWRCB") may designate that basin as "probationary."
 - Once designated, GSAs will have 180 days to bring their GSPs into compliance
 - If GSPs not in compliance within that time period, the SWRCB has authority to create an interim plan

Other Powers of GSAs

- GSAs can adopt rules, regulations, ordinances, and resolutions
- Determine the need for groundwater management
- Prepare and adopt a GSP and implementing rules and regulations
- Propose and update fees
- Monitor compliance and enforcement
- Enter onto a landowner's property to check wells, monitor pumping, & critique a landowner's water management practices

Moving Forward

- Expect “clean up” legislation in 2015–2016
 - May include an “expedited adjudication” process
 - Define LAFCo’s role?
- Collaboration about forming GSAs
- Turf wars over who will have the power to manage groundwater
- Litigation – Prop 218, CEQA, trespass, etc.

Opportunities for LAFCo Leadership

- Formation and Oversight of JPAs
- Creation of new local agencies
- Reorganization of existing local agencies
- Revitalizing dormant local agencies
- Legislation
 - Does LAFCo want a more active role in the formation of GSAs and the Act?
 - Does LAFCo need a more active role?
 - How does the Act affect LAFCo funding?
 - Other questions?

If you have any questions or want
additional information about
The Sustainable Groundwater Management
Act

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