

“ While the Legislation creates another layer in the land use planning process, neither the Legislation nor a Groundwater Sustainability Plan ‘shall be interpreted as superseding the land use authority of cities and counties, including the city or county general plan, within the overlying basin.’ ”



Sustainable Groundwater Management Act How Cities and Counties Will be Affected

California’s historic groundwater legislation of 2014 (“Legislation”) implements two primary changes in state law. First, the Legislation creates the Sustainable Groundwater Management Act (the “Act”), which requires the identification or creation of a Groundwater Sustainability Agency (“GSA”) for all groundwater basins in the state, and the development of a Groundwater Sustainability Plan (“Plan”)¹ for medium- and high-priority basins designated by the Department of Water Resources (“DWR”). Second, the Legislation amends the Government Code to require close coordination between land use planning agencies and GSAs in the adoption or amendment of any general plan. The Legislation presents several potential benefits and challenges for cities and counties.

Benefits for Cities and Counties

- **More Participation:** Cities and counties will have an opportunity to serve as GSAs or co-GSAs to determine how to protect groundwater resources within their jurisdiction. In the event that no agency elects to be the basin’s GSA, the county will serve as the GSA by default unless it notifies DWR otherwise.² Within 30 days of electing to be or forming a GSA, a county must notify DWR.
- **Better Coordination:** Even if a county or city is not the basin’s designated GSA, the Act allows them to coordinate with the appointed GSA by creating a standardized process for considering the impacts of land use decisions on the area’s groundwater resources. Prior to the adoption or substantial amendment of a city or county’s general plan, the planning agency must notify the GSA.³ This allows the GSA to comment and provide the planning agency with the current version of the Plan, along with a report explaining the impacts of amending a general plan on implementation of the Plan.⁴ This information must be reviewed and considered by the city or county.⁵ Likewise, when adopting a Plan, the GSA must provide notice to the city or county within the area of the proposed plan, “review and consider comments from any city or county” and “take into account the most recent planning assumptions stated in local general plans of jurisdictions overlying the basin.”⁶
- **Expanded Authority to Regulate Groundwater and Funding Mechanism:** As a general matter, cities and counties may exercise their police powers to adopt regulations to protect groundwater resources within their jurisdiction. Even if a city or county has not adopted a groundwater ordinance, if they serve as the basin’s GSA, they will automatically be

granted the authority under the Act to: (1) conduct investigations of water rights; (2) require well registration; (3) require well operators to measure and report extractions; (4) require reporting of diversions of surface water to storage; (5) reclaim water; (6) regulate groundwater extractions and impose well spacing requirements; (7) impose fees; and (8) undertake enforcement actions for noncompliance.⁷ The imposition of fees on groundwater extractions may help GSA-cities and counties fund the costs of a groundwater sustainability program.⁸

- **Additional Technical Information:** The Act will increase the quantity and availability of technical information about a city's and county's groundwater supplies and thereby inform understanding about groundwater availability.⁹ Counties and cities may benefit from DWR's technical assistance and the development of new best management practices for the sustainable management of groundwater.¹⁰ Overall, the Act will assist counties and cities in managing their groundwater supplies.
- **Continued Well Permitting:** A county will still maintain its well permit authority, unless it chooses to delegate that authority to the GSA.¹¹ Under the Act, however, a GSA may request that counties forward well construction permit requests or applications for the GSA's consideration and comment before county approval.¹² Although the county is not required to provide these documents to the GSA, doing so may assist with managing local groundwater supplies.

Risks for Cities and Counties

- **Inconsistent Groundwater Ordinances:** If a city or county is not designated the GSA for the basin, the appointed GSA may adopt rules or regulations that are inconsistent with a county's or city's existing groundwater management ordinance. For example, an existing groundwater ordinance may include permit conditions for pumping or exporting groundwater which may conflict with the GSA's regulations. To avoid this, cities and counties should collaborate closely with the GSA in developing the Plan. The Act contemplates this coordination by requiring the Plan to include a "description of the consideration given to the applicable county and city general plans and a description of the various adopted water resources-related plans and programs within the basin and an assessment of how the groundwater sustainability plan may affect those plans."¹³
- **Additional Land Use Planning Requirements:** A city's or county's existing general plan (or recent amendments) may not consider the impacts of general land use decisions on the area's groundwater resources. The Act changes this by requiring cities and counties to consider Plans, groundwater management court orders or adjudication of water rights, and State Water Resources Control Board orders or plans when adopting or amending plans or policies.¹⁴ Under the Act, cities and counties must now review their existing plans and policies closely and consider inconsistencies.¹⁵ While the Legislation creates another layer in the planning process, neither the Legislation nor a Plan "shall be interpreted as superseding the land use authority of cities and counties, including the city or county general plan, within the overlying basin."¹⁶
- **Increased Expense:** A GSA may impose fees on all basin users, including cities and counties, to fund its activities, including for example, the acquisition of new or supplemental sources of supply which may be required to permit sustainable groundwater management. If a city or county utilizes groundwater, the costs of production will increase.

- ¹ The Act mandates compliance for all non-exempt groundwater basins designated by the DWR as medium- and high-priority basins. (Water Code § 10720.7(a)(1).) However, the Act encourages low- and very low-priority basins to be managed pursuant to a Plan as well.
- ² Water Code, § 10724(a).
- ³ Government Code, § 65352(a)(8).
- ⁴ Government Code, § 65350.5(a), 65352(b).
- ⁵ Government Code, §§ 65350.5, 65352(a)(8).
- ⁶ Water Code, §§ 10726.9, 10728.4.
- ⁷ Water Code, §§ 10725.4, 10725.6, 10726.2, 10732.
- ⁸ Water Code, § 10730.
- ⁹ Water Code §§ 10720.1, 10727.2.
- ¹⁰ Water Code §§ 10720.1, 10729, 10733.2
- ¹¹ Water Code, § 10726.4(b).
- ¹² Water Code, § 10726.4(b).
- ¹³ Water Code, § 10727.2(g).
- ¹⁴ Government Code, § 65350.5.
- ¹⁵ Government Code, § 65350.5.
- ¹⁶ Water Code, § 10726.8(f).