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The Sustainable Groundwater Management Act Benefits and Risks to Non-GSA Water Providers

The Sustainable Groundwater Management Act (the “Act”)¹ permits local agencies to establish Groundwater Sustainability Agencies (“GSA”) in all basins, and requires the development and implementation of a Groundwater Sustainability Plan (“Plan”)² in medium- and high-priority basins designated by the Department of Water Resources (“DWR”). This creates opportunities, responsibilities, and risks for water providers. The Act grants the GSA the tools to sustainably manage California’s most at-risk groundwater basins. However, it defines the GSA³ as “one or more local agencies.”⁴ The Act authorizes other water providers, such as regulated private water companies, to join local agencies in the creation of a GSA through coordination agreements if the local agencies approve.⁵ Along with this opportunity to participate in governance, non-GSA water providers will face several potential benefits and challenges as outlined below.

Benefits to Non-GSA Water Providers:

- **Increased Certainty and Water Supply Reliability Over the Long-Term:** An essential potential benefit of the Act is increased predictability and long-term water supply reliability.
- **Respect for Water Rights:** Although the Act provides for comprehensive regulation of all at-risk groundwater supplies for the first time, California’s existing water right system—a mix of both the riparian and appropriative right systems—is left intact. Water providers should be comforted by the fact that the Act consistently and repeatedly declares the Legislature’s intent to preserve the security of water rights⁶ and that the Act does not authorize a local agency to make a binding determination of the water rights.⁷ In the event of litigation, these legislative declarations should aid water providers’ claims to the extent they possess a basis to assert senior water rights.
- **Water Provider Participation:** Water providers should embrace the Act’s mandated open process for groundwater sustainability planning, particularly the directive to GSAs to consider the interests of other stakeholders, including the owners of public water systems.⁸ The Act requires that the GSA encourage the “active involvement” of all stakeholders, particularly those operating public water systems, in the development and implementation of the Plan.⁹ This should afford non-GSA water providers a venue to voice concerns and input. The Act also authorizes multiple agencies (including water corporations regulated by the Public Utilities Commission) to enter into a coordination agreement to

develop a Plan for the shared basin.¹⁰ Further, other portions of the new law require additional coordination between land use planning agencies (cities and counties) and public water systems with 3,000 or more service connections.¹¹ As a result, operators of public water systems should expect increased opportunities to coordinate with land use planning agencies.

- **Adjudication of Water Rights:** In the event a plan to sustainably manage a particular groundwater basin cannot be adopted without limiting groundwater extractions by some or all users, a judicial action to declare all water rights in a basin that is subject to the Act is likely, especially if anticipated follow-on legislation providing for streamlined adjudications is adopted.¹² Although litigation is notoriously protracted and expensive, the result is increased certainty for all groundwater users and a more durable plan.

Risks to Non-GSA Water Providers:

- **Decreased Certainty Over the Short-Term:** Although the Act may increase a water provider's certainty over the long run regarding the availability of the groundwater supply to meet existing and projected customer demands, while the Plan is being developed (and during any litigation that may follow), the Act may create significant uncertainty. In the development of a Plan, hard decisions regarding allocating cutbacks and costs of replenishment among users will often be necessary. Such curtailments may trigger litigation to adjudicate water rights.¹³ Other controversial powers given to GSAs that may adversely impact non-GSA water providers include the power "to control groundwater extractions by regulating, limiting, or suspending extractions from individual groundwater wells or extractions from groundwater wells in the aggregate . . ."¹⁴ and the power, "to authorize temporary and permanent transfers of groundwater extraction allocations within the agency's boundaries . . ."¹⁵
- **Reduced Access to Groundwater:** As a result of allocating cutbacks in order to bring the basin into sustainable balance, water supplies may be reduced, thus necessitating new supply development to satisfy current and/or projected demands. This concern will be particularly pronounced if, due to water right priorities under the common law, the burden falls predominantly on water purveyors instead of landowners.¹⁶
- **Conflict Among Water Providers:** Water providers often develop and implement their own management plans and regulations. Designation of one agency as the GSA, therefore, could generate conflict among water providers by creating inconsistent regulations and policies. Therefore, water providers that extract and deliver groundwater should, in all basins, engage in the process of choosing a local agency to act as the GSA and should engage in developing and implementing a Plan consistent with the Act in medium- and high-priority basins designated by DWR. Further, once adopted and validated,¹⁷ "a water provider may be prohibited from overturning a Plan or any element of the Plan that is inconsistent with the water provider's groundwater rights or its existing and projected demand requirements."
- **Increased Expense and Regulation:** Under the Act, a GSA is authorized to impose fees on all basin users, including other water providers, to fund its activities.¹⁸ For example, the GSA may impose new pump fees to fund the acquisition of new or supplemental sources of supply for replenishment or in lieu delivery to offset groundwater production.¹⁹ Therefore, a water provider's costs of groundwater production may increase. For investor-owned water utilities, approval by the California Public Utilities Commission will be required to incorporate these additional costs in approved rates.²⁰

- ¹ Senate Bill 1168 (Pavley), Senate Bill 1319 (Pavley), and Assembly Bill 1739 (Dickinson).
- ² 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. (Water Code § 10720.7(b).)
- ³ See Water Code § 10723 et seq.
- ⁴ Water Code §§ 10721(j), (m), 10723(a).
- ⁵ See Water Code §§ 10727(b)(3), 10727.6.
- ⁶ See Water Code § 10720.1(b).
- ⁷ See Water Code § 10726.8(b).
- ⁸ See Water Code §§ 10723.2(c), 10723.4, 10727.8.
- ⁹ See Water Code §§ 10727.8(a), 10723.2(c).
- ¹⁰ See Water Code §§ 10721(d), 10727(b)(3), 10727.6, 10733.2, 10733.4.
- ¹¹ See Water Code §§ 65352(a)(7), 65352.5.
- ¹² See Water Code § 10726.6.
- ¹³ See Water Code § 10726.4.
- ¹⁴ See Water Code § 10726.4(a)(2).
- ¹⁵ See Water Code § 10726.4(a)(3).
- ¹⁶ See *City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1240-49.
- ¹⁷ See Water Code § 10726.6.
- ¹⁸ See Water Code §§ 10725.4(a)(3), 10726.8.
- ¹⁹ See Water Code § 10726.4(a)(2), (3).
- ²⁰ The California Public Utilities Commission (CPUC) is responsible for ensuring that California's investor-owned water utilities deliver clean, safe, and reliable water to their customers at reasonable rates. There are 114 investor-owned water utilities under the CPUC's jurisdiction providing water service to about 16 percent of California's residents.