

REAL ESTATE & WATER LAW UPDATE: THE FUTURE OF CALIFORNIA GROUNDWATER

The days of landowners pumping as much groundwater as they want from underneath their land may soon be ending. Some of the most significant changes to California water law since the adoption of the California Water Code and establishment of the state water rights structure in 1914 became effective earlier this year. These changes, collectively known as the “Sustainable Groundwater Management Act,” make considerable additions and alterations to the California Water Code and comprehensively regulate California’s groundwater for the first time in California’s history.

The goal of the Act is simple: obliterate the concern about the over-drafting of certain groundwater basins within a specified amount of time. To achieve this goal, the Act requires: (i) local management (ii) to develop and implement groundwater sustainability plans that (iii) the Department of Water Resources approves.

Local Management Obligations

The Act begins by creating a framework for groundwater control at the “local” level for basins that the Department of Water Resources designates as high or medium priority basins, which are subject to critical conditions of overdraft. Principally, the Act requires local agencies – agencies that have “water supply, water management or land use responsibilities within a [designated] groundwater basin,” to elect to be a “groundwater sustainability agency” (“GSA”). These GSAs must be formed and identified to the Department of Water Resources by June 30, 2017.

Among other powers (which are described below), a GSA may require the registration of groundwater extraction facilities, the installation of water-measuring devices and the filing of annual statements of groundwater extractions, impose spacing requirements on new wells, impose operating regulations on existing wells, control groundwater extractions by regulating, limiting or suspending extractions from wells or otherwise establishing groundwater extracting allocations, and impose fees or seek civil penalties for violations of any rules, regulations or ordinances.

Moreover, along with the new broad groundwater management authority, GSAs will be required to develop a “groundwater sustainability plan” (“GSP”). GSAs for basins designated as being in a state of critical overdraft must adopt a GSP by January 31, 2020. For basins designated as high and medium priority basins, the plan must be adopted by January 31, 2022.

Groundwater Sustainability Plans

A GSP for a basin may be either: (1) a single plan covering the entire basin developed and implemented by one GSA, (2) a single plan covering the entire basin developed and implemented by multiple GSAs, or (3) multiple plans implemented by multiple GSAs and coordinated pursuant to a coordination agreement covering the whole basin.

The purpose of GSPs is to achieve “sustainable groundwater management” by ensuring the applicable basin is operating within the sustainable yield within 20 years. The Act defines “sustainable yield” as the maximum quantity of water that can be withdrawn without causing an “undesirable” result.” An “undesirable result” means one or more the following effects:

- chronic lowering of groundwater levels;
- significant reduction of groundwater storage;
- significant seawater intrusion;
- unreasonable degraded water quality;
- significant and unreasonable land subsidence that substantially interferes with surface land uses; and
- depletion of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the surface water.

The Department of Water Resources will review GSPs and will have the power to request changes to submitted plans.

State Authority

If GSAs are not established by June 30, 2017 for the designated basins, the Department of Water Resources may intervene by adopting and enforcing its own plan for the basin. If a GSA is formed but fails to adopt and/or implement a compliant GSP, the Department of Water Resources may designate the basin as “probationary.” If the GSA does not respond, the Department of Water Resources is authorized to create an interim plan that will remain in place until a local GSA is able to reassume responsibility with a compliant plan.

How Hoge Fenton Can Help

Landowners, farmers and ranchers can and should take action now to work together in developing a GSA **and** a GSP in their areas with water districts, municipalities and counties. These agencies and plans will surely shape local ordinances and regulations and most importantly change the way groundwater can and will be used in the years to come.

If you have any questions about this article or the Sustainable Groundwater Management Act, please contact the experienced attorneys of Hoge Fenton's Real Estate and Land Use Group.

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