

Date of Hearing: June 15, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Susan Talamantes Eggman, Chair

SB 37 (Vidak) – As Amended May 31, 2016

**SENATE VOTE:** 37-0

**SUBJECT:** Kings River East Groundwater Sustainability Agency Act.

**SUMMARY:** Creates the Kings River East Groundwater Sustainability Agency, specifies the Board composition of the Agency, and adds the Agency to the list of agencies created by statute to manage groundwater that are deemed the exclusive local agencies to comply with the Sustainable Groundwater Management Act. Specifically, **this bill:**

- 1) Enacts the Kings River East Groundwater Sustainability Agency Act (Act) and creates a groundwater management agency in the Counties of Fresno and Tulare to be known as the Kings River East Groundwater Sustainability Agency (Agency).
- 2) Adds the Agency to the list of agencies created by statute to manage groundwater that are deemed the exclusive local agencies within their respective statutory boundaries with powers to comply with the Sustainable Groundwater Management Act (SGMA).
- 3) Provides that the Agency is governed by a Board, consisting of seven members, as follows:
  - a) One member chosen by Alta Irrigation District;
  - b) One member chosen by the County of Fresno;
  - c) One member chosen by the County of Tulare;
  - d) One member chosen by the Cities. This member shall be chosen from members of the city councils of the cities whose territory, at least in part, overlies the territory of the Agency. This member shall be chosen at a public meeting where each city is represented by its mayor;
  - e) One member chosen from the members of the governing board of the following special districts that are not governed by the boards of supervisors of either county, are engaged in water activities, and whose territory, at least in part, overlies the territory of the Agency:
    - i) Hills Valley Irrigation District;
    - ii) Orange Cove Irrigation District;
    - iii) Tri-Valley Water District; and,
    - iv) Kings River Water District.
  - f) One member chosen from members of the governing boards of special districts that provide drinking water within the territory of the Agency; and,

- g) One member chosen by the other six board members to represent agricultural interests within the territory of the Agency. This member shall reside and be actively and primarily engaged in production of agriculture within the territory of the Agency. This member shall be selected from a list of at least five nominations submitted from the Fresno County Farm Bureau and the Tulare County Farm Bureau, acting jointly, but the five nominees need not be members of either organization.
- 4) Provides that the board members listed above in 3a) through 3c) shall be chosen by their respective governing boards from their board members whose districts or divisions overlie, at least in part, the territory of the Agency.
- 5) Provides that the board members listed above in 3e) and 3f) shall be chosen at a public meeting where each special district is represented by the president or chair of its governing board.
- 6) Requires an alternate for each board member, chosen in the same manner and by the same entity as the board member. The alternative member shall act in place of the board member he or she is an alternate for in case of that board member's absence or inability to act.
- 7) Provides that the board members shall serve a four-year term of office or until the member is no longer an eligible official of the member agency. Members may serve for more than one term of office. Provides that the member described in 2g) above, shall serve a four-year term of office.
- 8) Allows the board to adopt an ordinance to provide compensation to members of the board in an amount not to exceed \$100 per day for each day's attendance at meetings of the board or for each day's service rendered as a member of the board by request of the board. Provides that the determination of whether a board member's activities on any specific day are compensable shall be made pursuant to existing law. Provides that reimbursement for expense of members of the Board are subject to existing law.
- 9) Allows the board to adopt an ordinance to increase the compensation received by members of the board above the amount of \$100 per day and specifies that the increase shall not exceed an amount equal to 5%, for each calendar year following the operative date of the last adjustment, of the compensation that is received when the ordinance is adopted.
- 10) Prohibits a board member from being compensated for more than a total of 10 days in any calendar month.
- 11) Allows the board to adopt ordinances for the purpose of regulating, conserving, managing, and controlling the use and extraction of groundwater within the territory of the Agency.
- 12) Specifies that an ordinance adopted by the board shall become effective 30 days from the date of its passage.
- 13) Requires all ordinances shall be adopted at noticed, public hearings by a majority vote of the Board, and requires notice of the hearing to be published in a newspaper of general circulation, as specified. Requires the board to provide notice of the adoption of all ordinances.

- 14) Allows the Agency to contract with either county or Alta Irrigation District for staff and other services. Allows the Agency to hire contractors and consultants as it considers appropriate.
- 15) Requires the Agency to enter into a coordination agreement with other local agencies for purposes of coordinating the Agency's plan with other agencies or groundwater sustainability plans within the King Subbasin, as required by the SGMA.
- 16) Allows the Agency to exclude from any of the requirements of this Act, or the operation of any ordinance, any operator who annually extracts less than a minimum amount of groundwater, as specified by an ordinance adopted by the Board.
- 17) Allows the Agency to collect data and conduct technical and other investigations of all kinds in order to carry out the provisions of this Act. Requires all hydrological investigations and studies carried out by or on behalf of the Agency to be constructed by or under the supervision of licensed engineers or other persons qualified in groundwater geology or hydrology.
- 18) Allows the Agency to recommend and encourage water recycling and other water development projects, where those projects will enhance and contribute to the responsible management of groundwater resources, as part of its annual plan for implementation of groundwater management objectives.
- 19) Requires the Agency to develop and implement a groundwater sustainability plan, pursuant to existing law, to achieve sustainable groundwater management within the territory of the Agency.
- 20) Requires the Agency to elect to be a groundwater sustainability agency, pursuant to existing law, for that portion of the Kings Subbasin that lies within the boundaries of the Agency.
- 21) Allows the Agency to exercise specified powers, pursuant to SGMA.
- 22) Allows, pursuant to SGMA, the Agency to impose fees, including, but not limited to, permit fees and fees on groundwater extraction or other regulated activity, to fund the costs of a groundwater sustainability program, that include, but are not limited to, the preparation, adoption, and amendments of a groundwater sustainability plan, investigations, inspections, compliance assistance, enforcement, and program administration, including a prudent reserve.
- 23) Declares that the availability of supplemental water to any operator shall not subject that operator to regulations that are more restrictive than those imposed on other operators.
- 24) Declares that no provision of this Act shall be construed as denying to the Counties, any City, or any other member agency any rights or powers that they already have or that they may be granted.
- 25) Specifies the initial boundaries of the Agency, for purposes of the Act, as follows:
  - a) All land located within the exterior perimeter boundaries of Alta Irrigation District that is within the Counties of Fresno and Tulare;

- b) All land located in the incorporated City of Reedley;
  - c) All land located in Kings River Water District plus parcel 350-150-16 within the County of Fresno, as that parcel existed as of January 1, 2016, and excluding the incorporated City of Sanger; and,
  - d) Land that is east of Alta Irrigation District and east of the east line of Sections 13 and 24, T13S, R23E, between Alta Irrigation District and east line and the east line of the Bulletin 118 Kings Subbasin boundary, as described in the report by the Department of Water Resources titled, "California's Groundwater: Bulletin 118," updated in 2003, as it may be subsequently updated or revised in accordance with Section 12924 of the Water Code.
- 26) Requires the Agency's initial boundaries to be established by the boards of supervisors of the Counties of Fresno and Tulare after a noticed public hearing, and requires the boundaries to be depicted on a map that shall be adopted by the boards of supervisors of those counties and thereafter recorded in the office of the county recorder of each county.
- 27) Allows the boards of supervisors of the Counties of Fresno and Tulare to adjust the boundaries of the Agency in the same manner prescribed for establishment of the initial boundaries if the boundaries of the basin are revised, including the establishment of new subbasins.
- 28) Provides that the Agency has the powers granted by this Act and the SGMA, for purposes of groundwater management within the boundaries of the Agency, together with any other powers as are reasonably implied, necessary, and proper to carry out the objectives and purposes of the Agency to implement the SGMA.
- 29) Defines the following terms:
- a) "Actively and primarily engaged in production of agriculture" to mean that a person derives at least 75 percent of his or her annual income from production agriculture;
  - b) "Agency" means the Kings River East Groundwater Sustainability Agency;
  - c) "Alta" means the Alta Irrigation District;
  - d) "Aquifer" means a geologic formation or structure that transmits water in sufficient quantities to supply pumping wells or springs;
  - e) "Basin" to mean a groundwater basin or subbasin identified and defined in the Department of Water Resources' "California Groundwater: Bulletin 118" updated in 2003, as it may be subsequently updated or revised, as specified;
  - f) "Board" to mean the Board of Directors of the Agency;
  - g) "Cities" to mean the Cities of Dinuba, Orange Cove, and Reedley;
  - h) "Coordination agreement" to mean a legal agreement adopted between two or more groundwater sustainability agencies that provides the basis for coordinating multiple agencies or groundwater sustainability plans within a basin;

- i) “County” to mean either the County of Fresno or the County of Tulare, as the context requires. “Counties” to mean the County of Fresno and the County of Tulare;
- j) “Extraction” to mean the act of obtaining groundwater by pumping or other controlled means;
- k) “Groundwater” to mean water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water, but does not include water that flows in known and definite channels;
- l) “Groundwater management activities” to mean programs, measures, or actions taken to preserve, protect, and enhance groundwater resources within the territory of the Agency;
- m) “Kings Subbasin” to mean the San Joaquin Valley Groundwater Basin Kings Subbasin;
- n) “Member agency” to mean Alta, the counties, the cities, and the special districts entitled to representation on the Agency’s Board of Directors, as specified;
- o) “Operator” to mean a person operating a groundwater extraction facility. The owner of a groundwater extraction facility shall be conclusively presumed to be the operator, unless a satisfactory showing is made to the governing body of the groundwater sustainability agency that the groundwater extraction facility actually is operated by some other person;
- p) “Person” to include any state or local governmental agency, private corporation, firm, partnership, limited liability company, individual, group of individuals, or, to the extent authorized by law, any federal agency;
- q) “Plan” to mean a groundwater sustainability plan prepared by the Agency; and,
- r) “Supplemental water” to mean surface water or groundwater imported from outside the watershed or watersheds of the basin or aquifer and floodwaters that are conserved and saved within the watershed or watersheds that would otherwise have been lost or would not have reached the basin or aquifer.

30) Finds and declares the following:

- a) The Legislature finds and declares that the preservation of the groundwater resources within the territory of the Agency for agricultural, municipal, and industrial uses is in the public interest and that the creation of the Agency, pursuant to the Act, is for the common benefit of water users;
- b) The Legislature further finds and declares that the groundwater management activities of the Agency benefit all operators of groundwater extraction facilities within the territory of the Agency; and,
- c) The Legislature further finds and declares that circumstances in the territory of the Agency to be formed hereby, which may not exist in other locations, justify the formation of the Agency and the grant of powers contained in this Act.

- 31) States that no reimbursement is required by this act because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, as specified.

**EXISTING LAW:**

- 1) Establishes the Sustainable Groundwater Management Act (SGMA) to provide local groundwater agencies with the authority and the technical and financial assistance necessary to sustainably manage groundwater.
- 2) Requires, by January 31, 2020, all basins designed as high- or medium-priority basins by DWR that have been designated in Bulletin 118, as may be updated or revised on or before January 1, 2017, as basins that are subject to critical conditions of overdraft, to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans.
- 3) Requires, by January 31, 2022, all basins designed as high- or medium-priority basins by DWR that are not subject to 2), above, to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans.
- 4) Allows any local agency or combination of local agencies overlying a groundwater basin to elect to be a groundwater sustainability agency for that basin, except as specified.
- 5) Requires the local agency or agencies to hold a public hearing in the county or counties overlying the basin, prior to electing to be a GSA, and to provide specified notice of that hearing, pursuant to existing law.
- 6) Requires a local agency or combination of local agencies that elects to be the GSA to submit a notice of intent to DWR, as specified.
- 7) Allows a combination of local agencies to form a GSA by using any of the following methods:
  - a) A joint powers agreement (JPA); or,
  - b) A memorandum of agreement or other local agreement.
- 8) Requires a groundwater sustainability plan to be developed and implemented for each medium- or high- priority basin by a GSA to meet the sustainability goal established, pursuant to SGMA.
- 9) Specifies that a GSP may be any of the following:
  - a) A single plan covering the entire basin developed and implemented by one GSA;
  - b) A single plan covering the entire basin developed and implemented by multiple GSAs; or,
  - c) Multiple plans implemented by multiple GSAs and coordinated pursuant to a single coordination agreement that covers the entire basins, as specified.

- 10) Allows the State Water Board, after notice and public hearing, to designate a basin as a probationary basin, if the board makes certain specified findings.

**FISCAL EFFECT:** This bill is keyed fiscal.

**COMMENTS:**

- 1) **Local Groundwater Management and the Sustainable Groundwater Management Act (SGMA).** The Legislature passed SGMA (SB 1168 (Pavley), AB 1739 (Dickinson) and SB 1319 (Pavley), Statutes of 2014), creating a statewide requirement to sustainably manage groundwater resources. The package of bills was signed by Governor Brown with the objective to ensure the long-term reliability of groundwater resources and connected surface water resources by requiring sustainable management. Groundwater Sustainability Agencies (GSAs) must be formed by 2017, Groundwater Sustainability Plans (GSPs) for critically overdrafted basins must be written by 2020, and sustainability must be reached by 2040. Prior to 2014, there was no statutory mandate to manage groundwater in California.

Prior to SGMA, there were several ways that groundwater was managed at the local level. A local agency that provided water service was authorized to develop and implement a groundwater management plan, known as AB 3030 plans. The Legislature also created a number of “special act special districts” that addressed groundwater management – these local agencies were created via statute to establish unique governance structures and grant powers that were customized to the problems and solutions of a particular groundwater basin. The acts creating these special act districts are located in the Water Appendix.

**Local Control and Governance Options under SGMA.** SGMA requires local entities in medium- and high-priority basins to establish GSAs by June 2017, to avoid state intervention. GSAs must self-identify by June 30, 2017, to the Department of Water Resources (DWR), and can include a city, a county, a special district, or a combination of these agencies organized via a legal agreement, like a JPA or Memorandum of Agreement (MOA). One agency can form a GSA for the entire basin, or multiple agencies can form individual GSAs and coordinate for basin sustainability. There are multiple options for local agencies to manage groundwater under SGMA, including alternatives to forming a GSA and developing a GSP. SGMA does not specify exactly how GSAs should govern local groundwater resources to achieve sustainability goals.

All groundwater basins designated as medium- or high-priority and identified as subject to critical conditions of overdraft must be managed under one or more GSPs by January 31, 2020. The deadline is two years later (January 31, 2022) for other medium- or high-priority basins. The goal of the GSPs is to achieve operation within the basins’ sustainable yield within 20 years of plan implementation.

Because of the June 30, 2017, date to have GSAs in place, the timeline for local agencies to make decisions on management at the local level, and governance, is very short.

- 2) **Bill Summary.** This bill creates the Kings River East Groundwater Sustainability Agency, and requires the Agency to be the GSA under SGMA for that portion of the Kings Subbasin that lies within the boundaries of the Agency, and would require the Agency to develop and implement a GSP to achieve sustainable groundwater management within the territory of the

Agency. The bill additionally specifies the powers and purposes of the Agency, and prescribes the composition of the seven-member board of directors of the Agency, including the terms, how the members are chosen, and their compensation and reimbursement. The bill also adds the Agency to the list of agencies created by statute to manage groundwater that are deemed the exclusive local agencies within their respective statutory boundaries with powers to comply with SGMA.

This bill is sponsored by Alta Irrigation District.

- 3) **Author's Statement.** According to the author, "In 2014 the Legislature passed the Sustainable Groundwater Management Act (SGMA). The legislation requires local agencies to manage groundwater basins in a sustainable manner and allows for state intervention when necessary to protect groundwater resources.

"SGMA provides local agencies the ability to develop plans and implement strategies to sustainability manage groundwater resources, prioritizes basins with the greatest need and sets a timeline for implementation. Establishing a sustainability agency as required by SGMA, authorizes any local agency or a combination of local agencies to elect to be a GSA through a joint powers agreement, or memorandum of agreement. The act leaves no room for a private, non-profit, or unelected member of the public to sit on a GSA as a voting member.

"SB 37 will create the Kings River East Groundwater Sustainability Agency as a special act district. The GSA will cover an area in Fresno and Tulare counties east of the Kings River, including all of the cities of Dinuba, Orange Cove, and Reedley as well as the communities of Cutler, East Orosi, London, Orosi, and Sultana.

"The GSA created under SB 37 would consist of seven members chosen by the following categories: (1) Alta Irrigation District; (2) Tulare County; (3) Fresno County; (4) Cities (Dinuba, Orange Cove, Reedley); (5) Water Districts (Hills Valley Irrigation District, Orange Cove Irrigation District, Tri-Valley Water District, and Kings River Water District); (6) Special Districts that provide drinking water (Cutler Public Utility District, East Orosi Community Services District, London Community Service District, Orosi Public Utilities District, and Sultana Community Services District), and, (7) an agricultural representative.

"SB 37 provides that the GSA shall only have the ability to carry out the powers provided in SGMA. Additionally, the creation of this district will not pose challenges to other GSAs in terms of coordination because of requirements under SGMA for multiple plans implemented by multiple GSAs within a basin to be coordinated pursuant to a single coordination agreement."

- 4) **Notice of Election to Serve as a Groundwater Sustainability Agency.** On March 28, 2016, Alta Irrigation District filed paperwork with the California Department of Water Resources on behalf of the to-be created Kings River East Groundwater Sustainability Agency, in order to notify DWR that Kings River East would like to serve as the GSA for that portion of the Kings Sub-basin of the San Joaquin Valley Basin. The notice to DWR says that "all of those local agencies, acting as interested parties, have entered into a Memorandum of Understanding to form the Kings River GSA,.... in the MOU, such interested parties commit to forming either (i) a special act district, or (ii) a joint powers authority to implement the GSA."

The notice to DWR also states:

“On March 17, 2016, the Kings River East held a public hearing to consider serving as the GSA. The signed MOUs state the intent of the parties to form the GSA. The Kings River East noticed the public hearing in a paper in Fresno County (Reedley Exponent) and a paper in Tulare County (Dinuba Sentinel) as required by Water Code Section 10723 (b) and Government Code Section 6066.

“The District did not receive any written comments prior to the hearing. Furthermore, at that public hearing, the Kings River East did not receive any comments or conditions objecting to or criticizing the formation of the Kings River East GSA. Section 6 of the MOU, regarding the GSA Governing Body, specifies and describes the governance structure for the Kings River East GSA.”

The notice to DWR also references SB 37 (Vidak), the intent of which is to establish a special act district.

- 5) **Policy Considerations.** The Committee may wish to consider the following:
  - a) **Ag Representative on Board.** This bill allows for an agriculture “seat” on the Board of the Agency. That member is to be chosen by the other six board members to represent agricultural interests, selected from a list of at least five nominations submitted from the Fresno County Farm Bureau and the Tulare County Farm Bureau, acting jointly.

The sponsor notes that this board makeup is modeled after the governing board of the Fox Canyon Groundwater Management Agency, created by statute in 1982, which includes a member that represents production agriculture.

The Committee may wish to contemplate the inclusion of a seat on the Board that is not held by a member appointed by a public agency or combination of public agencies, given the requirements of SGMA on public water agencies.
  - b) **Other Alternatives to Special Act District.** The Committee may wish to ask the author to discuss why other local management options (JPA, MOA, electing to have an existing district serve as the GSA) do not suffice.
- 6) **Arguments in Support.** According to the supporters, it is the intent of all the interested parties to work collaboratively to solve the groundwater issues in the region and to develop the governance structure that will facilitate implementing a groundwater sustainability plan.
- 7) **Arguments in Opposition.** None on file.
- 8) **Double-Referral.** This bill is double-referred to the Water, Parks and Wildlife Committee.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Alta Irrigation District  
California Citrus Mutual  
City of Dinuba, Orange Cove, Reedley  
Community Water Center  
County of Tulare  
Cutler Public Utility District  
Gillette Citrus Inc.  
Kings County Water District  
Kings River Water District  
London Community Services District  
Sultana Community Services District  
Tulare County Farm Bureau  
Orosi Public Utilities District

**Opposition**

None on file

**Analysis Prepared by:** Debbie Michel / L. GOV. / (916) 319-3958