

Date of Hearing: June 28, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 372 (Cannella) – As Amended May 30, 2017

SENATE VOTE: 36-0

SUBJECT: San Joaquin River Exchange Contractors Groundwater Sustainability Agency.

SUMMARY: Creates the San Joaquin River Exchange Contractors Groundwater Sustainability Agency, specifies the board composition of the Agency, and adds the Agency to the list of agencies identified in statute to manage groundwater that are deemed the exclusive local agencies to comply with the Sustainable Groundwater Management Act. Specifically, **this bill:**

- 1) Establishes the San Joaquin River Exchange Contractors Groundwater Sustainability Agency Act (Act) and makes a number of findings and declarations related to the preservation of groundwater.
- 2) Creates, within the Counties of Fresno, Madera, Merced, and Stanislaus, a groundwater management agency known as the San Joaquin River Exchange Contractors Groundwater Sustainability Agency (Agency).
- 3) Specifies that the Agency shall be the successor in interest to the San Joaquin River Exchange Contractors Water Groundwater Sustainability Agency that submitted its notice of intent to become a groundwater sustainability agency (GSA) to the Department of Water Resources (DWR) on December 22, 2015.
- 4) Provides that the Agency shall only exercise the powers granted by this Act and the Sustainable Groundwater Management Act (SGMA) for purposes of groundwater management activities within the boundaries of the Agency, together with any other powers as are reasonable implied, necessary, and proper to carry out the objectives and purposes of the Agency to implement SGMA. Requires the Agency to abide by the rules and regulations promulgated by DWR and the State Water Resources Control Board (State Water Board) to implement SGMA.
- 5) Describes the initial boundaries of the Agency, for purposes of the Act, as follows:
 - a) All land located within the boundaries of the Central California Irrigation District, including Class II lands;
 - b) All land located within the boundaries of Firebaugh Canal Water District, including Class II lands;
 - c) All land located within the boundaries of San Luis Canal Company; and,
 - d) All land located within the boundaries of Columbia Canal Company.
- 6) Provides that the lands included within the initial boundaries of the Agency are depicted in the revised map submitted to DWR on October 18, 2016.

- 7) States that in the event of any ambiguity between the narrative boundary described in 5), above, and the map described in 6), above, the boundary depicted in the map shall control.
- 8) Allows the initial boundaries of the Agency to be changed upon a request to and approval by the Board of Directors. Requires the Agency to notify DWR of any changes to the boundaries of the Agency.
- 9) Prohibits the boundaries of the Agency from being adjusted to include an area of the basin within the management area of another GSA unless the Agency has entered into a memorandum of agreement or other local agreement with that GSA that permits the area to be included.
- 10) Defines the following terms:
 - a) “Agency” means the San Joaquin River Exchange Contractors Groundwater Sustainability Agency established by the Act.
 - b) “Basin” has the same meaning as defined in SGMA.
 - c) “Board” means the board of directors of the Agency, as more particularly defined in 11), below.
 - d) “Delta-Mendota Subbasin” has the same meaning as described in the report entitled “California’s Groundwater – Bulletin 118” updated in 2003, as it may be subsequently updated or revised by DWR.
 - e) “Extraction” means the act of obtaining groundwater by pumping or other controlled means.
 - f) “Groundwater” has the same meaning as defined in SGMA.
 - g) “Groundwater management activities” means programs, measures, or actions taken to preserve, protect, and enhance groundwater resources within the boundaries of the Agency.
 - h) “Member agency” means the mutual water companies, irrigation district, and water district entitled to representation on the Agency’s board of directors, as specified in 11), below.
 - i) “Operator” has the same meaning as defined in SGMA.
 - j) “Person” has the same meaning as defined in SGMA.
 - k) “Plan has the same meaning as defined in SGMA.
- 11) Requires the Agency to be governed by a board of directors that shall consist of four members, as follows:
 - a) One member shall be chosen by the Central California Irrigation District;
 - b) One member shall be chosen by the Firebaugh Canal Water District;

- c) One member shall be chosen by the San Luis Canal Company; and,
 - d) One member shall be chosen by the Columbia Canal Company.
- 12) Requires the governing board of each member agency to choose a board member for the purpose of 11), above, from the member agency's board members.
 - 13) Requires an alternate for each board member, chosen in the same manner and by the same entity as the board member. Requires the alternate member to act in place of the board member in case of that board member's absence or inability to act.
 - 14) Specifies that it is not a conflict of interest for any board member to simultaneously serve on the Agency board, the board of directors of the San Joaquin River Exchange Contractors Water Authority, and the board of directors of any member agency, or any combination of those offices.
 - 15) Provides that members of the board shall serve for a four-year term of office or until the member is no longer a board member of the member agency that appointed him or her. Allows a member to serve for more than one term of office.
 - 16) 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.
 - 17) Provides that reimbursement for expenses of members of the board is subject to specified provisions in the Government Code. Allows the board, by ordinance, to increase the compensation received by members of the board above the amount of \$100 per day. 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.
 - 18) Prohibits a board member from being compensated for more than a total of 10 days in any calendar month.
 - 19) Allows the board to adopt ordinances for the purpose of regulating, conserving, managing, and controlling the use and extraction of groundwater within the boundary of the Agency.
 - 20) Provides that an ordinance adopted by the board shall become effective 30 days from the date of its passage.
 - 21) Requires all ordinances to be adopted at noticed, public hearings by a majority vote of the board. Prohibits an ordinance from being adopted by the board except at a public hearing. 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.
 - 22) States that no provision of this Act shall be construed as denying any member agency of the San Joaquin River Exchange Contractors Water Authority any rights or powers that they already have or that they may be granted.
 - 23) Allows the Agency to hire contractors and consultants as it considers appropriate.

- 24) 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 Delta-Mendota Subbasin as required by SGMA.
- 25) 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.
- 26) 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 to be carried out by or on behalf of the Agency to be constructed by or under the supervision of licensed engineers, licensed hydrogeologists, or other persons qualified in groundwater geology or hydrology.
- 27) 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.
- 28) Requires the Agency to develop and implement a groundwater sustainability plan (GSP), pursuant to SGMA, to achieve sustainable groundwater management within the territory of the Agency.
- 29) States that the Agency shall be the exclusive GSA for that portion of the Delta-Mendota Subbasin that lies within the boundaries of the Agency.
- 30) Allows the Agency to exercise any of the powers and authorities, including enforcement powers described in SGMA.
- 31) Allows, pursuant to specified provisions in 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 amendment of a groundwater sustainability plan, investigations, inspections, compliance assistance, enforcement, and program administration, including a prudent reserve.
- 32) Specifies that the Agency can sue and be sued, including, but not limited to, as a party to an action pursuant to actions related to groundwater rights contained in the Code of Civil Procedure.
- 33) States that the provisions of SGMA shall prevail, in the event of any conflict between this Act and the provisions of SGMA.
- 34) Adds the Agency to the list of agencies created by statute to manage groundwater that are deemed the exclusive local agencies to comply with SGMA.
- 35) 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.

EXISTING LAW:

- 1) Establishes 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 GSA 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: According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

COMMENTS:

- 1) **Local Groundwater Management and 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. 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 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) **San Joaquin River Exchange Contractors Water Authority.** The San Joaquin River Exchange Contractors Water Authority was formed as a joint powers authority in 1993, and its current members include San Luis Canal Company, Central California Irrigation District, Columbia Canal Company, and Firebaugh Canal Water District, each of which are pre-1914 appropriative and riparian water rights holders on the San Joaquin River. In 1939, the predecessors of these entities reached agreements with the Federal Government to sell and exchange certain water rights from the San Joaquin River and its tributaries for guaranteed deliveries of “substitute” water from the Sacramento River, the San Joaquin Delta, and other sources through the Delta-Mendota Canal and by other means. These agreements were known as the “purchase” and “exchange contract” which collectively enabled the Federal Government to construct the Central Valley Project.

- 3) **Bill Summary.** This bill provides statutory authorization for the San Joaquin River Exchange Contractors Water Authority, including its private mutual water company members, to serve as the GSA for the service territories of its member entities. The bill establishes the Agency, specifies the boundaries, board composition, powers and duties, and adds the Agency to the list of exclusive local agencies created to manage groundwater as required under SGMA.

This bill is sponsored by the San Joaquin River Exchange Contractors Water Authority.

- 4) **Author's Statement.** According to the author, "It was the expressed intent of the Legislature in passing the Sustainable Groundwater Management Act to "manage groundwater basins through the actions of local governmental agencies to the greatest extent feasible, while minimizing state intervention to only when necessary to ensure that local agencies manage groundwater in a sustainable manner" [subdivision (h), Section 10720.1, Water Code]. SB 372 provides statutory authorization for the San Joaquin River Exchange Contractors Water Authority, including its private mutual water company members, to serve as the GSA for the service territories of its member entities to manage groundwater in accordance with the SGMA."

5) **Prior Legislation:**

- a) SB 37 (Vidak), Chapter 391, Statutes of 2016. This bill creates the Kings River East Groundwater Sustainability Agency, specifies the board of directors 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 SGMA.
- b) SB 564 (Cannella), Chapter 392, Statutes of 2016. This bill creates the North Fork Kings River 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 SGMA.

6) **Policy Considerations.** The Committee may wish to consider the following:

- a) **Board of Supervisors Approval and Public Noticing to Change the Agency's Boundaries.** Previous legislation, including both SB 37 (Vidak) and SB 564 (Cannella), included language that says that the initial boundaries of the agencies both of those bills created could be changed upon a petition to the boards of supervisors of the respective counties after a noticed public hearing in the county in which the change is proposed, and also requires the boundaries to be depicted on a map that is maintained by the boards of supervisors of those counties and thereafter recorded in the office of the county recorder of each county.

This bill used to contain the same language, but it was removed with the latest round of amendments, meaning that current version of the bill allows the Agency's board of directors to change the initial boundaries *without county approval and without noticed public hearing* and then the Agency must notify DWR of the changes, after the fact. The Committee may wish to consider adding this language back into the bill.

b) **How do Boundary Changes Occur for other Special Act Special Districts?** Water Code Section 10723 specifies, by name, the entities created by statute to manage groundwater and deems that list as the exclusive local agencies within their respective statutory boundaries to comply with SGMA. This bill adds the Agency to that list. Of the list of 17 districts specified in this section, there were a variety of approaches as to if and how a boundary change for that district or agency could occur, including the following approaches:

- Petition, noticed public hearing, and resulting election where voters weigh in on the boundary change.
- County Board of Supervisors approval with noticed public hearing (examples: SB 37 and SB 564 last year).
- No boundary change process specified. Some agencies and districts have several pages worth of boundary descriptions in their statutes – it’s a hard and fast boundary. No process is specified for a boundary change, which means that a statutory fix in the form of legislation would be needed.
- Boundary changes can happen through the LAFCO annexation process for certain districts.

In light of this information about boundary changes for the “deemed exclusive local agencies” contained in Water Code Section 10723, the Committee may wish to consider whether it makes sense to allow the agency created by this bill to adjust its own boundaries with no public noticing or hearing requirements and no specified process for review by an outside entity like a LAFCO or County Board of Supervisors.

7) **Committee Amendments.** The author has received approval by the Assembly Rules Committee to add an urgency clause. The proposed Committee amendments contain the urgency clause and also contain the following language to address the policy considerations raised above.

Article 3. Boundaries

301.

(a) For purposes of this act, the ~~initial~~ boundaries of the agency shall be as follows:

- (1) All land located within the boundaries of Central California Irrigation District, including Class II lands.
- (2) All land located within the boundaries of Firebaugh Canal Water District, including Class II lands.
- (3) All land located within the boundaries of San Luis Canal Company.
- (4) All land located within the boundaries of Columbia Canal Company.

(b) The lands included within the ~~initial~~ boundaries of the agency are depicted in the revised map submitted by the San Joaquin River Exchange Contractors Water Authority

Groundwater Sustainability Agency to the Department of Water Resources on October 18, 2016.

(c) In the event of any ambiguity between the narrative boundary described in subdivision (a) and the map described in subdivision (b), the boundary depicted in the map shall control.

~~302.~~

~~(a) The initial boundaries of the agency may be changed upon a request to and approval by the board. The agency shall notify the Department of Water Resources of any changes to the boundaries of the agency.~~

~~(b) The boundaries of the agency shall not be adjusted to include an area of the basin within the management area of another groundwater sustainability agency unless the agency has entered into a memorandum of agreement or other legal agreement with that groundwater sustainability agency that permits the area to be included.~~

8) **Arguments in Support.** The sponsor argues that this bill is modelled after the two previous bills, both signed into law in 2016, and is needed to ensure that the Agency can serve as the GSA for their area.

9) **Arguments in Opposition.** None on file.

10) **Double-Referral.** This bill is double-referred to the Water, Parks and Wildlife Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

San Joaquin River Exchange Contractors Water Authority [SPONSOR]
Association of California Water Agencies (ACWA)

Opposition

None on file

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