



News & Publications

Groundwater Plan Determinations Under Sustainable Groundwater Management Act

6.26.23 | Client Alert

The Department of Water Resources (“DWR”) has released findings regarding the adequacy of Groundwater Sustainability Plans (“GSP’s”) prepared for 36 critically overdrafted basins in the State of California. Under the Sustainable Groundwater Management Act (“SGMA”), local groundwater sustainability agencies (“GSAs”) were required to submit their plans to DWR for review by January 31, 2020. After spending years in the preparation of these plans, GSAs and the many industries that rely on groundwater, have been waiting anxiously for DWR’s determinations to either accept these plans or, if not, what criteria DWR will implement to require changes.

In the end, DWR found 30 of the 36 GSPs to be acceptable and that the other 6 were inadequate.

For the approved GSP’s, implementation is the next step. DWR will review these approved plans every five years for non-compliance or a lack of progress with implementation. At this future level of review, DWR will assess if interim milestones are being met and if the basin is on track to sustainability. It is important to note that even a previously approved GSP can be deemed inadequate at a five-year review if DWR finds that these criteria are not being met. DWR expects each plan to change over time to address changing circumstances stemming from climate change and/or changes in land uses. As such, DWR expects local agencies to adapt their plans as needed to better manage their basins, which changes will be evaluated during these five-year reviews. DWR hopes to provide a written scope of their implementation review criteria, Periodic Evaluations Under SGMA, by the summer of 2023.

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Although DWR found that most of the submitted GSPs were adequate, the agency determined that the Chowchilla, Tulare, Delta Mendota, Kaweah, Tule, and Kern Subbasins plans were inadequate and required corrective action. The GSAs responsible for these basins have 180 days to address the deficiencies identified by DWR and resubmit the GSPs to DWR. DWR determined Madera's plan incomplete and gave them 180 days to amend and resubmit it. These plans will continue to be implemented while addressing the deficiencies. At the end of the 180-day period, these agencies will resubmit their plans to DWR. If DWR determines that the deficiencies have been addressed, then DWR can approve the plan.

However, if at the end of that period, DWR determines that a plan is still inadequate, then DWR will consult with the State Regional Water Resources Control Board ("SWRCB") and can deem the plan inadequate. At this point, the SWRCB will intervene and will evaluate DWR's determination. If SWRCB agrees with the DWR determination, there will be a public hearing where SWRCB will decide whether probation is necessary. The hearing will be open to the public, and the public will be able to provide comment. If a basin is designated probationary, then the SWRCB will collect data and fees to fix the plan. If the plan is still inadequate after a year, SWRCB may consider adopting an interim plan. At the May 2023 Association of California Water Agencies conference, the SWRCB provided further information on the prioritization of criteria for the probationary process. SWRCB will focus on subsidence, overdrafts, impact to drinking water and water quality in their plan revisions. The one-year time frame is a statutory minimum, and SWRCB has discretion on these time periods. Agencies who feel that they have corrected their deficiencies can petition SWRCB to end the intervention at any time.

DWR confirmed that all plans will be implemented while being reviewed by DWR as deficiencies are addressed. These plans were adopted by each GSA in 2020 and were implemented upon adoption. In fact, even if a plan is being adjudicated, DWR expects that its implementation will not stop. During plan implementation, agencies are expected to continue (i) addressing both recommended or required corrective actions and (ii) for those under intervention, responding to the SWRCB. Agencies are also expected to augment their water supply, recharge their basins, and demand reductions in use of groundwater by allocations and groundwater trading.

Cox Castle's water resource team has substantial experience with SGMA and adjudicated water basins, groundwater plans, and groundwater rights. We would be happy to assist with any water right transfers and/or water sourcing for real estate acquisition, entitlement, construction, and operation.