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SB 13: Groundwater authority adjustment

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On Sept. 3, 2015, Gov. Jerry Brown signed legislation that redefines the authority of local government agencies and public utilities over California's groundwater supplies. Senate Bill 13 amends the Sustainable Groundwater Management Act by providing public utilities and mutual water companies greater access to participation in groundwater sustainability agencies, or GSAs.

For the past four years, California has experienced severe drought. Groundwater sources have inevitably declined, and unmanaged well drilling in some parts of the state has caused subsidence and other problems. The groundwater act was passed in 2014 to regulate the extraction of groundwater from the state's basins and sub-basins by providing GSAs with broad authority to manage groundwater supplies. Most importantly, the act empowered GSAs to regulate, limit or suspend the extraction of groundwater and the construction of groundwater wells, and to impose operating restrictions on existing groundwater wells. GSAs are responsible for developing and implementing groundwater sustainability plans for medium and high-priority groundwater basins in order to meet sustainability goals. The act expressly excluded from its requirement the management of 29 water basins that were either previously adjudicated or in the pro-



New York Times
The recessed shores of Folsom Lake.

cess of being adjudicated by a court.

As initially enacted, the act effectively limited involvement in GSAs to local government agencies. Under the act, local agencies that have "water supply, water management, or land use responsibilities" and that overlie a groundwater basin could elect to become a GSA or participate in a GSA for that basin. But the act prohibited public utilities and mutual water companies (which provide water service to millions of California residents) from participating in a GSA unless they received approval from local agencies. Accordingly, entities that serve a significant percentage of California residents were subject to exclusion by local agencies from participating in GSAs. By authorizing public utilities and mutual water companies to participate in a GSA "through a memorandum of agreement or other legal agreement," SB 13 is intended to remove this barrier to participation. The bill also

deletes a provision from the act that prohibited public utilities and mutual water companies from participating in a GSA unless "the local agencies approve."

In a letter to the secretary of the California State Senate, the author of SB 13, Sen. Fran Pavley, said the dual goals of the bill were to (1) preclude "the ability of local agencies to deny membership and participation in a GSA by these regulated public water systems, and (2) ensure[] that when a regulated water supplier has the largest or one of the largest groundwater management operations in a basin or sub-basin subject to [the act's] requirements, the GSA in question will have the benefit of that urban supplier's experience, management expertise and technical prowess."

It is unclear how SB 13 will operate in practice. The water utilities must still enter into "a memorandum of agreement or other legal agreement" with a local agency to participate in a GSA. These entities often have divergent interests, however, and the statute does not address how utilities and local agencies should resolve their disputes in the event that they cannot reach agreement concerning participation in a GSA. Regulations, yet to be adopted, may address this issue.

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