August 25, 2014

To: CSAC Executive Committee

From: Karen Keene, CSAC Senior Legislative Representative

Cara Martinson, CSAC Legislative Representative

**RE: Groundwater Legislation – SB 1168 (Pavley) & AB 1739 (Dickinson)**

As California continues to experience significant drought conditions, the Legislature has focused on two bills that would seek to establish a comprehensive statutory groundwater management framework aimed at achieving sustainable groundwater management across the state. CSAC was successful in negotiating several amendments that address a majority of our concerns, focused primarily on governance and preserving existing police powers over groundwater and protecting local land use authority. While we continue to express a few remaining concerns, both the Administration and the authors have committed to working with us on implementation of both bills and through clean-up legislation, if necessary. Thus, we have removed our official opposition to the bills. Both bills are currently pending on the Assembly and Senator Floors.

The following is a brief analysis of SB 1168, by Senator Fran Pavley and AB 1739, by Assembly Member Roger Dickinson.

**SB 1168 (Pavley) – As Amended August 22, 2014**

SB 1168, by Senator Fran Pavley, includes the provisions that address the formation of a groundwater sustainability agency (GSA) and the development of groundwater sustainability plans (GSP). The bill also includes various findings and declaration regarding the importance of protecting the State’s groundwater resources and the need for sustainable groundwater management in California. The bill also specifies the Legislature’s intent to provide local and regional agencies with the authority to sustainably manage groundwater and to recognize and preserve the authority of cities and counties to manage groundwater pursuant to their police powers.

SB 1168 also includes several definitions. Of specific interest to counties is the definition of “local agency” which is defined as “…a local public agency that has water supply, water management , or land use responsibilities within a groundwater basin.” This definition will enable counties to become GSAs if they so choose.

The bill also includes a process for revising basin boundaries and specifically directs the Department of Water Resources (DWR) to adopt regulations by January 21, 2016 that include information basin boundary revisions and the establishment of new subbasins.

*Groundwater Sustainability Agency*

SB 1168 sets up a process for establishing the entity responsible for managing a particular groundwater basin, or sub-basin. Basins are defined and prioritized by DWR. The bill allows any local agency or combination of agencies to establish a Groundwater Sustainability Agency (GSA) for the purpose of developing and implementing a Groundwater Sustainability Plan (GSP). It also allows water corporations regulated by the Public Utilities Commission to participate in a GSA if the local agencies approve and recognizes special groundwater districts.

SB 1168 establishes the county as the default GSA in the case of an area where no local agency has assumed management, unless the county opts out. If the county opts out and there is no other local agency, groundwater extractions must be directly reported to the State Water Resources Control Board. The bill requires a GSA to annually report to DWR its groundwater elevation data, aggregated extraction data, use or availability of surface water for recharge or in-lieu supplies, total water use, and change in groundwater storage.

*Groundwater Sustainability Plan*

SB 1168 requires all high or medium priority basins that are subject to critical conditions of overdraft to adopt a Groundwater Sustainability Plan by January 31, 2020. In addition, this bill would require all other high and medium priority basins to adopt plans by January 31, 2022 unless the basin is legally adjudicated or the local agency establishes it is otherwise being sustainably managed. The bill establishes the process for who manages what basins and what that management involves.

The also defines sustainable groundwater management as “the management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results.” The bill defines what should be included in a GSP and empowers management agencies to collect information regarding the condition of the basin and then develop and implement a GSP using powers and authorities provided in the bill including, but not limited to:

* 1. Acquiring land and water to carry out the plan, including but not limited to spreading, storing, retaining, percolating, transporting, or reclaiming water to recharge the basin or provide water supplies in-lieu of groundwater;
  2. Monitoring for compliance and limiting extractions;
  3. Proposing, collecting, updating and enforcing fees, consistent with all statutory and Constitutional requirements.

GSPs must cover an entire basin or sub-basin and be designed to achieve sustainable groundwater management within 20 years of adoption with progress reports to DWR and the State Water Board every five years.

The bill also specifies the content of a GSP, one of which is a description of the consideration given to applicable county and city general plans.

*Exceptions, Public Input & Process*

SB 1168 sets up an expedited process for high and medium priority basins but exempts basins, or portions of basins, that were subject to a groundwater adjudication and basins that a local agency can demonstrate are already being sustainably managed. The bill also excludes low and very low priority basins from requirements of the bill.

SB 1168 exempts the preparation and adoption of a GSP from the California Environmental Quality Act (CEQA) but does not exempt a project or action to implement the GSP. The bill requires DWR to develop regulations to implement GSP components, including the coordination of multiple GSPs and alternative compliance options, including submitting an existing plan as a functional equivalent of a GSP or submitting an analysis of basin conditions that demonstrates the basin is being sustainably managed. Finally, the bill provides for public involvement in the development of GSPs and specifies that nothing in the bill determines or alters surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights.

**AB 1739 (Dickinson) – As Amended August 22, 2014**

AB 1739, by Assembly Member Roger Dickinson, is linked to SB 1168. Both bills are joined and must be passed together, or neither becomes operative. AB 1739 provides the specific authority to impose fees, both at the basin and state level. The bill also establishes an enforcement component, authoring DWR to take certain actions and outlines state evaluation and intervention regarding groundwater sustainability plans. AB 1739 also clarifies the relationship between local governments and groundwater agencies with respect to land use planning, consideration of groundwater plans in local planning and the consideration of local general plans in groundwater planning.

*State Evaluation & Assessment*

AB 1739 requires a GSA to submit their plan to DWR for review, and requires DWR to develop regulations for the evaluation of these plans. This bill provides DWR with the authority to conduct inspections and to designate a basin as a probationary basin, if basins are not in compliance. The bill authorizes the State Water Resources Control Board (Board) to develop an interim plan for a probationary basin and outlines the process related to an interim plan. AB 1739 authorizes the Board to issue a cease and desist order in response to a violation of any decision of the Board or any extraction restriction, limitation, order or regulation adopted or issued. The bill also establishes reporting requirements for a person extracting groundwater in an area within a basin that is not covered by a GSA.

In addition, the bill allows local agencies to submit an alternative groundwater management plan provided it satisfies specified objectives.

*Fee Authority*

The bill authorizes the Board to develop a schedule of fees to cover the costs incurred by activities described in the bill. AB 1739 also provides specific authority to a GSA to impose certain fees.

*Land Use Authority*

This bill requires a planning agency to review and consider a GSP, groundwater court order or judgment prior to the adoption or any substantial amendment to a general plan. AB 1739 requires both the local planning agency and a GSA to share information. The bill also includes language that specifies that nothing in the new law or in a groundwater sustainability plan shall be interpreted as superseding the land use authority of cities and counties, including the city or county general plan, within the overlying basin. The bill also requires a GSP to take into account the most recent planning assumptions stated in local general plans of the overlying basin.