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Chapters 346 and 347: Keeping California's Thirst for Groundwater in Check

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Chapters 346 and 347: Keeping California’s Thirst for Groundwater in Check

Micah Green

Code Sections Affected

Government Code §§ 65350.5 (new); 65352, 65352.5 (amended).
Water Code §§ 113, 1529.5, 5200–5209, 10720–10736.6, 10750.1 (new);
§§ 348, 1120, 1552, 1831, 10726.4, 10726.8, 10927, 10933, 12924
(amended).
SB 1168 (Pavley); 2014 STAT. Ch. 346.
AB 1739 (Dickinson); 2014 STAT. Ch. 347.

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I. INTRODUCTION

California has hit the proverbial panic button concerning its dwindling statewide water supply.¹ In his 2014 State of the State address, Governor Edmund G. Brown stressed: “It is imperative that we do everything possible to mitigate the effects of the drought.”² He called for “regulators to rebalance water rules”

1. See, e.g., Press Release, Edmund G. Brown Jr., Governor, State of Cal., Governor Brown Declares Drought State of Emergency (Jan. 17, 2014), available at <http://gov.ca.gov/news.php?id=18368> (on file with the *McGeorge Law Review*) (declaring a state of emergency due to drought conditions); Sara Jerome, *Water Bills Advance in California Senate*, WATER ONLINE (May 14, 2014), <http://www.wateronline.com/doc/water-bills-advance-in-california-senate-0001> (on file with the *McGeorge Law Review*) (quoting Senator Fran Pavley stating that “California is pushing up against the limits of our finite water supply” and characterizing the current landscape as a “water crisis”).

2. Edmund G. Brown, Governor, State of Cal., State of the State Address (Jan. 22, 2014).

and implement “serious groundwater management,” so that California might not only “get through this drought,” but also “prepare for the next.”³ Over the past year alone, Governor Brown has declared a state of emergency due to drought conditions,⁴ convened an interagency Drought Task Force,⁵ and tasked several state agencies with jointly compiling a State Water Action Plan.⁶

Unfortunately, at the same time, reliance on the state water supply is ever increasing.⁷ Together, California’s 80,500 farms and ranches serve as one of the largest and most profitable agricultural supply systems in the nation.⁸ Moreover, the amount of people who call California home is increasing at a quickening rate.⁹ These conditions have led to widespread over-reliance on groundwater resources, a problem that has the entire state scrambling for solutions.¹⁰

II. LEGAL BACKGROUND

For well over a century, California’s judicial branch has determined the private rights to groundwater found under the state’s surface.¹¹ Generally, the common law recognizes the right to extract and use groundwater as a property right that belongs to the overlying landowner.¹² In most regions, surface owners may extract groundwater and put it to “beneficial use.”¹³ These owners are not

3. *Id.*

4. Press Release, Edmund G. Brown Jr., *supra* note 1.

5. Letter from Edmund G. Brown Jr., Governor, State of Cal., to Karen Ross, Sec’y, Cal. Dep’t of Food and Agric., Mark Cowin, Dir., Dep’t of Water Res., Felicia Marcus, Chairwoman, State Water Res. Control Bd., and Mark Ghilarducci, Dir., Office of Emergency Servs. (Dec. 17, 2013) (on file with the *McGeorge Law Review*).

6. CAL. NATURAL RES. AGENCY, CAL DEP’T OF FOOD AND AGRIC. & CAL. ENVTL. PROTECTION AGENCY, CALIFORNIA WATER ACTION PLAN (2014), available at http://resources.ca.gov/docs/california_water_action_plan/Final_California_Water_Action_Plan.pdf [hereinafter CALIFORNIA WATER ACTION PLAN] (on file with the *McGeorge Law Review*).

7. See CAL. DEP’T OF FOOD AND AGRIC., CALIFORNIA AGRICULTURAL STATISTICS REVIEW, 2013–2014, at 1 (2014) (stating generally that agricultural demand and production are growing annually and depend upon “adequate annual precipitation and effective water policy”).

8. See *id.* at 2, 5 (finding that California leads the nation in cash farm receipts and the production of over 70 crops and livestock commodities).

9. Emily Alpert Reyes, *California Population Grows by 332,000 to 38.2 Million*, L.A. TIMES (Dec. 12, 2013), <http://articles.latimes.com/print/2013/dec/12/local/la-me-california-growth-20131213> (on file with the *McGeorge Law Review*).

10. See CALIFORNIA WATER ACTION PLAN, *supra* note 6, at 2, 13–15 (describing California’s decreasing groundwater supply and offering a number of suggestions to preserve it); *infra* Part IV.D (detailing the proposed methods of reducing reliance on groundwater resources).

11. Wells A. Hutchins, *California Ground Water: Legal Problems*, 45 CALIF. L. REV. 688, 688 (1957).

12. See *The Water Rights Process*, STATE WATER RES. CONTROL BD., http://www.waterboards.ca.gov/waterrights/board_info/water_rights_process.shtml#law (last visited Aug. 12, 2014) (on file with the *McGeorge Law Review*) (noting that percolating groundwater (water found in the soil) is not subject to the state’s permitting authority, while other types of groundwater are subject to that authority).

13. *Id.*; see also Hutchins, *supra* note 11, at 689 (“These rights entitle all [overlying land] owners to abstract and use the groundwater on or in connection with their overlying lands to the full extent of their reasonable beneficial needs, as long as the water supply is enough for all. If the water supply is insufficient to

required to gain the approval of the state or a regulatory agency.¹⁴ However, this is not a universal rule, as certain basins are monitored and regulated by the State.¹⁵

Provisions of the State Water Code and Government Code supplement the common law and act to regulate the management, allocation, and use of some of California's groundwater resources.¹⁶ Together, the Codes mandate that when a city- or county-based agency¹⁷ wants state funding for groundwater management and allocation activities, it must first design a "water management plan."¹⁸

Prior to Chapters 346 and 347, a sufficient water management plan had to contain management objectives, usage reports, and levels of local supply and demand.¹⁹ That, however, was essentially the extent of the planning necessary to gain access to state funding and, more importantly, to assume control over groundwater usage.²⁰ Because the scheme made no mention of usage limits, these requirements created noticeable inconsistencies among the management practices of different cities and counties.²¹ Free from the restraints of usage caps, some municipalities heavily sapped their groundwater supplies.²² As a result, many of California's groundwater basins and subbasins were pumped in excess of their average yearly supplies.²³

To compound the problem, attempts to create a statewide monitoring system proved ineffective—California's best effort, the California Statewide Groundwater Elevation Monitoring Program (CASGEM), fell far short of establishing uniformity

satisfy all reasonable needs, it may be apportioned on some equitable basis by court order.”).

14. *The Water Rights Process*, *supra* note 12.

15. *Id.*

16. *See, e.g.*, CAL. WATER CODE §§ 10000–12999 (West 1992) (controlling the planning of groundwater usage for many areas throughout the state); *see also* GOV'T §§ 65352, 65352.5 (West 2010) (delineating specific reporting requirements connected with planning and groundwater use).

17. *See* WATER § 10721(m) (enacted by Chapter 346) (defining “[l]ocal agency” as “a local public agency that has water supply, water management, or land use responsibilities within a groundwater basin”).

18. SENATE COMMITTEE ON NATURAL RESOURCES AND WATER, COMMITTEE ANALYSIS OF SB 1168, at 2 (Apr. 10, 2014).

19. WATER § 10753.7(a) (West 2012) (declaring the required components of a water management plan); Senate COMMITTEE ON NATURAL RESOURCES AND WATER, COMMITTEE ANALYSIS OF SB 1168, at 2 (Apr. 10, 2014).

20. SENATE COMMITTEE ON NATURAL RESOURCES AND WATER, COMMITTEE ANALYSIS OF SB 1168, at 2 (Apr. 10, 2014).

21. *See* Gary Weatherford et al., *California Groundwater Management: The Sacred and the Profane*, 22 NAT. RESOURCES J. 1031, 1031 (1982) (“There are selective areas where highly sophisticated management exists. In many areas, however, there is no management whatsoever.”).

22. *See, e.g.*, Devin Galloway & Francis S. Riley, *San Joaquin Valley, California: Largest Human Alteration of the Earth's Surface*, in U.S. GEOLOGICAL SURVEY CIRCULAR NO. 1182, LAND SUBSIDENCE IN THE UNITED STATES 23, 24 (Devin Galloway et al. eds., 1999) (explaining that the San Joaquin Valley has suffered “sustained ground-water overdraft”).

23. *See State Needs to Monitor Use of Underground Water*, S.F. CHRON. (May 9, 2014, 8:06 PM), <http://www.sfgate.com/opinion/editorials/article/State-needs-to-monitor-use-of-underground-water-5466878.php> (on file with the *McGeorge Law Review*) (indicating that California's groundwater supply “is being depleted at twice the rate nature can restore it”).

in groundwater management.²⁴ Beginning in 2009, CASGEM's goal was to improve groundwater management by granting local management entities the "responsibility for monitoring and reporting groundwater" levels.²⁵ The program aimed to pair the efforts and resources of the Department of Water Resources with those of local entities, and in 2012 CASGEM began requiring all monitoring entities to report their measurements.²⁶ However, nearly five years after its inception, the program's progress has been slow: the Department of Water Resources only monitors 169 of California's 515 groundwater basins.²⁷ These circumstances effectively placed California's groundwater supply in an "almost unregulated" state.²⁸

III. CHAPTERS 346 AND 347

In response to the long list of problems caused by California's record-low groundwater supply,²⁹ Senator Fran Pavley introduced Senate Bill 1168.³⁰ With the goal of responsible and sustainable groundwater use as its backbone,³¹ Chapter 346 adds an entire part³² and two sections³³ to the California Water Code. Additionally, Assemblyman Roger Dickinson authored Assembly Bill 1739 (Chapter 347) in order to supplement Chapter 346 and respond to the state's lack of intervention power.³⁴ To do so, Chapter 347 adds a section and makes two amendments to the Government Code and introduces a new part and makes several changes to the Water Code.³⁵

Dubbed the Sustainable Groundwater Management Act (the "Act"), Chapter 346 works with Chapter 347 to change the existing groundwater planning system

24. See DEP'T OF WATER RES., PUBLIC UPDATE FOR DROUGHT RESPONSE GROUNDWATER BASINS WITH POTENTIAL WATER SHORTAGES AND GAPS IN GROUNDWATER MONITORING ii (Apr. 30, 2014) [hereinafter DROUGHT REPORT] (stating that "gaps in groundwater monitoring persist").

25. *California Statewide Groundwater Elevation Monitoring (CASGEM)*, DEP'T OF WATER RES., <http://www.water.ca.gov/groundwater/casgem/> (last visited Jul. 10, 2014) (on file with the *McGeorge Law Review*).

26. See *id.* (referring to Cal. Water Code §§ 10920 et seq. as the controlling statutory sections).

27. DROUGHT REPORT, *supra* note 24, at ii.

28. Stephen Frank, *Democrats in Sacramento Present Bills to Take Groundwater Into Government Management System*, CAL. POLITICAL NEWS AND VIEWS (Apr. 23, 2014, 9:30 PM), <http://capoliticalnews.com> (quoting Fran Pavley, Senator, California State Senate) (on file with the *McGeorge Law Review*).

29. See 2014 Cal. Stat. ch. 346, § 1(a)(3) ("Excessive groundwater extraction can cause overdraft, failed wells, deteriorated water quality, environmental damage, and irreversible land subsidence that damages infrastructure and diminishes the capacity of aquifers to store water for the future.").

30. Jerome, *supra* note 1.

31. CAL. WATER CODE § 10720.1(a)–(b) (enacted by Chapter 346).

32. *Id.* § 10720–10728.6 (enacted by Chapter 346).

33. *Id.* §§ 113, 10750.1 (enacted by Chapter 346).

34. 2014 Cal. Stat. ch. 347, § 1(a)(9), (b)(2).

35. GOV'T §§ 65350.5 (enacted by Chapter 347), 65352, 65352.5 (amended by Chapter 347); WATER §§ 1529.5, 5200–5209, 10726.9, 10729, 10730, 10732, 10733–10733.8, 10735–10736.6 (enacted by Chapter 347); *id.* § 348, 1120, 1552, 1831, 10721, 10726.4, 10726.8 (amended by Chapter 347).

in three ways.³⁶ First, intending to rejuvenate and effectively manage all of California's heavily depleted groundwater basins,³⁷ the Act requires groundwater management practices to be "sustainable."³⁸ To satisfy this new requirement, a local management agency's³⁹ plan must include an approximate sustainable yield for the basin it oversees.⁴⁰ To ensure non-harmful use, groundwater extraction and distribution plans for a given basin must now reflect the basin's determined sustainable yield.⁴¹ Additionally, management agencies must formulate their new plans in light of the surface water supply in the area and the basin's total water use, water budget, and any available groundwater extraction and elevation data.⁴²

Second, Chapter 346 sets forth a framework for prioritizing groundwater basins,⁴³ and mandates that entities managing basins with "high" and "medium" priority classifications create new sustainable plans first.⁴⁴ Specifically, Chapter 346 requires agencies that manage basins and subbasins of "high" and "medium" priority that are critically overdrafted to complete and submit sustainable groundwater management plans by the year 2020.⁴⁵ Local entities must design plans that achieve satisfactory groundwater use within twenty years of their implementation.⁴⁶

In order to enforce such a timeframe, Chapter 347 makes the third major change by granting the State the power to intervene upon noncompliance. State intervention under Chapter 347 will proceed in two steps.⁴⁷ First, the Department

36. SENATE COMMITTEE ON NATURAL RESOURCES AND WATER, COMMITTEE ANALYSIS OF SB 1168, at 3 (Apr. 10, 2014).

37. WATER § 10720.1(a)–(b) (enacted by Chapter 346).

38. *Id.* § 10720.1(c); *see also id.* § 10721(u) (enacted by Chapter 346) (defining "[s]ustainable groundwater management" as groundwater extraction and use that avoids "undesirable results"); *id.* § 10721(w) (enacted by Chapter 346) (delineating six "undesirable results" ranging from "unreasonable depletion of supply" to "[s]ignificant and unreasonable land subsidence that substantially interferes with surface land uses").

39. *Id.* § 10723 (enacted by Chapter 346) (granting local agencies overlying groundwater basins and existing management entities the authority to form "groundwater sustainability agenc[ies]," which in turn have the authority to create sustainable management plans).

40. *Id.* § 10727.6(g) (enacted by Chapter 346); *see also id.* § 10721(v) (enacted by Chapter 346) (defining "[s]ustainable yield" as "the maximum quantity of water, calculated over a base period representative of long-term conditions in the basin and including any temporary surplus, that can be withdrawn annually from a groundwater supply without causing an undesirable result").

41. *See id.* § 10721(t) (enacted by Chapter 346) (demonstrating an intent to "ensure that the applicable basin is operated within its sustainable yield").

42. *Id.* § 10727.6 (enacted by Chapter 346).

43. *Id.* § 10933(b) (amended by Chapter 346).

44. *Id.* § 10727(a) (enacted by Chapter 346); *see id.* § 10933(b)(1)–(8) (enacted by Chapter 346) (giving the Department of Water Resources authority to prioritize every basin and subbasin in the state based on a variety of factors).

45. *Id.* § 10720.7(a)(1) (enacted by Chapter 346). Agencies managing medium- and high-priority basins that are not critically overdrafted have until 2022 to complete and submit groundwater sustainability plans. *Id.* § 10720.7(a)(2) (enacted by Chapter 346).

46. *Id.* § 10727.2(b)(1) (enacted by Chapter 346).

47. *See id.* §§ 10735.2, 10736 (enacted by Chapter 347) (granting the Department of Water Resources the authority to (1) designate basins as probationary and (2) create interim sustainable groundwater management plans).

of Water Resources may designate a given basin as a “probationary basin” if it determines that a sustainable groundwater management plan has not been developed or if it disapproves of such a plan⁴⁸ Persons extracting water from probationary basins must conform to heightened monitoring and reporting standards.⁴⁹ The second step gives Chapter 347 its teeth: if a local agency fails to develop a satisfactory plan within one year of designation as a probationary basin, the Department of Water Resources may step in and develop an interim plan for sustainable management.⁵⁰ The State also gains authority under Chapter 347 to collect fees⁵¹ and restrict groundwater extraction.⁵² Chapter 347 does, however, afford local agencies an opportunity to regain control of a given basin by petitioning the Department of Water Resources to rescind its interim plan upon submission of a satisfactory groundwater sustainability plan.⁵³

In order to further encourage sustainable groundwater management, Chapter 347 requires city and county planning agencies to review any groundwater management plans, extraction limitations, and water rights adjudications prior to adopting or substantially amending a general plan.⁵⁴ Chapter 347 also amends the Government Code to emphasize “close coordination and consultation between . . . management agencies and . . . land use approval agencies” regarding proposed projects that will demand additional quantities of water.⁵⁵

IV. ANALYSIS

Prolonged periods of statewide drought have led to an over-reliance on groundwater supplies, which in turn brings a host of environmental consequences.⁵⁶ This section will discuss the new mandates and likely effects of the Legislature’s response to California’s “water crisis”⁵⁷ and will explain why many view Chapters 346 and 347 as a step in the wrong direction.⁵⁸

48. *Id.* § 10735.2(a) (enacted by Chapter 347).

49. *Id.* § 5202(a)(1) (enacted by Chapter 347).

50. *Id.* § 10735.6(b) (enacted by Chapter 347).

51. *See id.* § 1529.5(a) (enacted by Chapter 347) (allowing the Water Resources Control Board to collect fees “to recover costs incurred in . . . investigations, facilitation, monitoring, hearings, enforcement, and administrative costs”).

52. *Id.* § 10735.8(c)(1) (enacted by Chapter 347).

53. *See id.* § 10735.8(g)(1) (enacted by Chapter 347) (authorizing rescission “if a groundwater sustainability plan or an adjudication action is adequate to eliminate the condition of long-term overdraft”).

54. Gov’T § 65350.5 (enacted by Chapter 347).

55. *Id.* § 65352.5 (enacted by Chapter 347).

56. *See infra* Part IV.A.

57. *See infra* Parts IV.B–C.

58. *See infra* Part IV.D.

A. *Responding to a Two-Pronged Crisis*

Mounting scientific research showing the impact of California's groundwater pumping habits⁵⁹ has sparked a widespread legislative effort⁶⁰ to address what many view as an urgent problem.⁶¹ Evidence cited by proponents of groundwater management reform demonstrate two major complications caused by California's current use of its groundwater resources. First, the already limited supply of groundwater is dwindling as the state faces one of its worst droughts in recent history.⁶² As a result of the drought, the entire state's reliance on groundwater supplies has increased, a trend that has many groundwater basins pumping out water at a faster pace than that of their recharge rate.⁶³ This consequence, commonly called "over-draft," is both the first problem and the cause of the second problem.⁶⁴ Sustained periods of groundwater over-draft have been directly linked to land subsidence,⁶⁵ a geological condition where the surface of the land over groundwater extraction sites sinks considerably.⁶⁶

In light of this multi-faceted issue, lawmakers who took steps to reform the existing system had two main goals in mind: increasing statewide oversight⁶⁷ and mandating sustainable use.⁶⁸ Chapter 346 will further the Legislature's intent to address the limited supply issue by requiring local management entities to

59. See generally, DROUGHT REPORT, *supra* note 24, at 2–3 (recognizing a groundwater shortage); Weatherford et al., *supra* note 21, at 1032 (noting California's long-term habit of heavy reliance on groundwater resources and the problems such reliance has caused); Galloway & Riley, *supra* note 22, at 23–24 (discussing the subsidence caused by over-pumping in the San Joaquin Valley).

60. See CALIFORNIA WATER ACTION PLAN, *supra* note 6 (calling for federal, state, local, and tribal governments to collaborate with industry and nongovernmental organizations to solve California's water crisis); Lisa Lien-Mager, *Senate Committee Advances Groundwater Bill*, ASS'N OF CAL. WATER AGENCIES (April 22, 2014, 1:42 PM), <http://www.acwa.com/news/groundwater/senate-committee-advances-groundwater-bill> (on file with the *McGeorge Law Review*) (Quoting Sen. Pavley: "Everyone—literally everyone—seems to be working on groundwater this year.")

61. See, e.g., Jerome, *supra* note 1 (quoting Senator Pavley stating that "California is pushing up against the limits of our finite water supply" and characterizing the current landscape as a "water crisis").

62. See Press Release, Edmund G. Brown Jr., Governor, State of Cal., Governor Brown Declares Drought State of Emergency (Jan. 17, 2014), available at <http://gov.ca.gov/news.php?id=18368> (on file with the *McGeorge Law Review*) (noting the dwindling water supply); see also Ker Than, *Stanford Scientists Investigate Worst Drought in California's History*, STANFORD REP. (Feb. 27, 2014), <http://news.stanford.edu/news/2014/february/drought-climate-change-022714.html> (on file with the *McGeorge Law Review*) (stating that this drought is the worst in California history).

63. DROUGHT REPORT, *supra* note 24, at 2.

64. See U.S. GEOLOGICAL SURVEY, CIRCULAR NO. 1182, LAND SUBSIDENCE IN THE UNITED STATES I (Devin Galloway et al. eds., 1999) ("Extraction and drainage of ground water play direct roles in land subsidence . . .").

65. See Galloway & Riley, *supra* note 22, at 23–24 (describing subsidence caused by groundwater over-draft in the San Joaquin Valley).

66. See *id.* at 24 (describing "subsidence caused by aquifer-system compaction due to the lowering of ground-water levels by sustained ground-water overdraft" in the San Joaquin Valley).

67. CAL. WATER CODE § 10720.1(b) (enacted by Chapter 346).

68. *Id.* § 10720.1(a).

determine and abide by a sustainable yield.⁶⁹ By advancing this new method of groundwater management and use, the drafters hope to first encourage, and eventually require, a process that both rejuvenates California's water supply and limits further geological and environmental damage.⁷⁰

B. Introducing a New Standard

For the first time in their collective history, local management entities will have to determine exactly how much groundwater can be sustainably extracted from their basins.⁷¹ This is a major shift in groundwater management in California: prior to Chapters 346 and 347, management entities were only held to a "reasonable and beneficial use" standard.⁷² Consequently, the outputs and expectations of many of California's groundwater basins could change drastically.⁷³

The new sustainability requirements of Chapter 346 will also reshape groundwater monitoring in California by requiring management entities to furnish annual public reports that include current groundwater levels, the amount of groundwater extracted in the previous year, and any changes in groundwater storage.⁷⁴ Critics of the pre-Chapter 346 system pointed to gaps in basin oversight as the main reason for overdraft.⁷⁵ Increased monitoring could therefore serve to discourage overuse,⁷⁶ ensuring the availability of an emergency water supply during uncharacteristically dry years.⁷⁷

Although Chapter 346 mandates a heightened standard of sustainability in groundwater management and grants the State new oversight capabilities, its proponents emphasize the importance of the knowledge and expertise possessed by local agencies.⁷⁸ Local management entities will thus be the first to determine

69. See *supra* notes 39–42 and accompanying text (describing the requirement that groundwater sustainability plans reflect a basin's sustainable yield).

70. SENATE COMMITTEE ON NATURAL RESOURCES AND WATER, COMMITTEE ANALYSIS OF SB 1168, at 3 (Apr. 10, 2014).

71. WATER § 10727.6(g) (enacted by Chapter 346).

72. AGRICULTURAL GROUNDWATER PRINCIPLES 1 (June 23, 2014) (on file with the *McGeorge Law Review*); CAL. CONST. art. X, § 2.

73. Jessica Calefati, *Sweeping New California Pumping Rules Signed into Law by Gov. Jerry Brown*, SAN JOSE MERCURY NEWS (Sept. 16, 2014, 6:40 PM), http://www.mercurynews.com/california/ci_26547666/sweeping-new-california-groundwater-pumping-rules-signed-into (on file with the *McGeorge Law Review*).

74. WATER § 10728 (enacted by Chapter 346).

75. DROUGHT REPORT, *supra* note 24, at 32.

76. *Id.* at 42–43.

77. See Press Release, Cal. Water Found., What People Are Saying About Protecting California's Groundwater 2 (July 7, 2014) (Quoting Mark Cowin, director of the Department of Water Resources: "Being good stewards of our groundwater basins is essential for ensuring that we can turn to them during dry years when these resources are critically needed.").

78. See *id.* at 1 (quoting Senator Pavley: "Groundwater is most effectively managed at the local or regional level; that is the goal"); see also WATER § 113 (enacted by Chapter 346) ("Sustainable groundwater management is best achieved locally . . .").

sustainability goals and plans for their own basins.⁷⁹ Such determinations will be given their due deference, as Chapter 346 provides the technical assistance of the Department of Water Resources⁸⁰ but does not grant the state authority to plan for a given basin absent noncompliance on the part of the local agency.⁸¹

C. *A New Enforcement Scheme*

It can be fairly anticipated that many groundwater management agencies will comply with the new sustainability requirements, as proponents of Chapter 346 note a “breadth of acceptance”⁸² and emphasize general compliance with past and existing management efforts.⁸³ However, holdouts are virtually certain and gaps such as those seen in CASGEM could reappear in the new scheme if the State ultimately lacks power to enforce its goal of sustainability.⁸⁴ Proponents therefore conclude that absent enforcement ability, the State would be forced to resort to the sluggish court system to fill those gaps⁸⁵ and “further delay means further damage to our water system.”⁸⁶

The implementation of Chapter 346 will begin with the Department of Water Resources prioritizing all of California’s groundwater basins on a scale ranging from “[h]igh priority” to “[v]ery low priority.”⁸⁷ Entities that manage high and medium priority basins subject to critical overdraft must produce sustainable groundwater management plans by January 31, 2020.⁸⁸ This requirement is likely to be met with some opposition, as many local entities assert that “developing a workable groundwater management plan will take time.”⁸⁹

Nevertheless, if no local management entity has elected to be a sustainable management entity and initiated the development of a new plan for a given basin by June 30, 2017, or if no plan has been adopted by the applicable deadline, the Department of Water Resources will have the authority to declare that basin

79. See generally WATER §§ 10725–10726.8 (enacted by Chapter 346) (giving groundwater sustainability agencies the powers necessary to manage groundwater on their own).

80. *Id.* § 10720.1(d) (enacted by Chapter 346).

81. *Id.* §§ 10735.2–10735.8 (enacted by Chapter 347).

82. SENATE COMMITTEE ON NATURAL RESOURCES AND WATER, COMMITTEE ANALYSIS OF SB 1168, at 3 (Apr. 10, 2014).

83. See, e.g., CALIFORNIA WATER ACTION PLAN, *supra* note 6, at 4 (praising existing cooperation among state and local agencies).

84. See DROUGHT REPORT, *supra* note 24, at ii (noting the negative consequences of programs like CASGEM, which did not grant intervention powers to the state).

85. See *State Needs to Monitor Use of Underground Water*, *supra* note 23 (describing the years of litigation it took to achieve groundwater management in Orange County).

86. Press Release, Cal. Water Found., *supra* note 77, at 1 (quoting Lester Snow, Exec. Dir., Cal. Water Found.).

87. CAL. WATER CODE § 10722.4(a) (enacted by Chapter 346).

88. *Id.* § 10720.7(a)(1) (enacted by Chapter 346).

89. AGRICULTURAL GROUNDWATER PRINCIPLES, *supra* note 72, at 2.

“probationary.”⁹⁰ A “probationary” declaration must “identify the specific deficiencies [of the plan] and identify potential actions to address [them].”⁹¹ The enforcement section of Chapter 346 also grants the State authority to impose reporting requirements,⁹² restrict groundwater extraction,⁹³ and collect fees to offset the costs of assuming management of a given basin.⁹⁴ According to proponents of Chapter 346 and 347, these sections will work to incentivize sustainable practices and eliminate the problems caused by widespread over-draft in groundwater supplies.⁹⁵ The enforcement provisions of Chapter 347 are geared toward promoting the general environmental welfare of the state and are not intended to create or encourage a punitive effect.⁹⁶

D. *The Wrong Solution?*

Due to its widespread effects, the movement toward groundwater management reform has created its fair share of critics, especially within California’s agricultural community.⁹⁷ There are three main concerns regarding Chapter 346: it could upset decades of groundwater jurisprudence, create additional costs for entities that already demand large budgets, and potentially infringe on the individual rights of overlying landowners.⁹⁸ Because of these concerns, some of Chapter 346’s opponents urge the State to focus on other methods of groundwater conservation.⁹⁹

Since its main function will be to introduce sustainable standards, critics argue that Chapter 346 could impinge upon decades of groundwater jurisprudence.¹⁰⁰ California’s courts have a long history of allocating groundwater

90. See WATER § 10735.2(a) (enacted by Chapter 347) (setting forth the deadlines applicable to the planning process). This section also allows for the probationary status of basins if a plan is developed but fails to meet the standards of Chapters 346 and 347. *Id.*

91. *Id.* § 10735.6(a) (enacted by Chapter 347).

92. *Id.* § 5202(b) (enacted by Chapter 347).

93. *Id.* § 10735.8(c)(1) (enacted by Chapter 347).

94. *Id.* § 1529.5 (enacted by Chapter 347).

95. SENATE COMMITTEE ON NATURAL RESOURCES AND AIR, COMMITTEE ANALYSIS OF SB 1168, at 3 (Apr. 10, 2014).

96. See CALIFORNIA WATER ACTION PLAN, *supra* note 6, at 14 (2014) (explaining the aim of sustainable management: “When a basin is at risk of permanent damage, and local and regional entities have not made sufficient progress to correct the problem, the state should protect the basin and its users until an adequate local program is in place”).

97. See, e.g., AGRICULTURAL GROUNDWATER PRINCIPLES, *supra* note 72, at 1 (calling for the protection of groundwater property rights).

98. *Id.* at 1–2.

99. See Wes Bowers, *North San Joaquin Water Conservation District Backs San Joaquin County’s Concerns over Groundwater Reform Bill*, LODI NEWS-SENTINEL (May 20, 2014, 12:08 AM), http://www.lodinews.com/news/article_8a144302-dfed-11e3-85f1-001a4bcf887a.html (on file with the *McGeorge Law Review*) (noting some of these alternative methods).

100. Wes Bowers, *Lodi-Area Growers Oppose California Groundwater Reform*, LODI NEWS-SENTINEL (May 29, 2014, 1:09 AM), http://www.lodinews.com/news/image_83815c88-e708-11e3-974e-0019bb2963

rights, determining usage standards, and adjudicating disputes.¹⁰¹ Chapter 346's opponents argue that the Act disregards precedent and undermines the goals and priorities of local management entities by placing enforcement power in the hands of a state agency.¹⁰² In light of this perspective, the agricultural community has been vocal about retaining the power to adjudicate their groundwater rights.¹⁰³ These parties maintain that the adjudicatory process "should not be supplanted by or made subservient to a planning process."¹⁰⁴

Opponents of the Act point to an array of potentially significant economic impacts that could arise as a result of the implementation of Chapter 346.¹⁰⁵ The Act could create economic problems for both local communities and the agricultural industry.¹⁰⁶ Many rural municipalities rely on their groundwater supplies as economic engines.¹⁰⁷ Over-regulation and intervention by the State could cripple the economies of communities dependent upon their water supplies.¹⁰⁸ The agricultural industry may experience economic hardship as "[r]estrictions on groundwater use potentially will reduce land values, limit availability of land acquisition and operational financing, negatively affect infrastructure investments, . . . and substantially alter land use."¹⁰⁹

Local control over and beneficial use of groundwater resources are valued by landowners as property rights; therefore, critics argue, Chapter 346 acts to usurp a fundamental stick in California's bundle of property ownership entitlements.¹¹⁰ If Chapters 346 and 347 are fully implemented, opponents fear that little control will remain with the owners of the land overlying certain basins.¹¹¹ Because of this possibility, local landowners who have enjoyed free reign over their water supplies for decades would like to limit the State's intervention power to a narrowly applied and scarcely used backstop, exercised only when absolutely necessary.¹¹² Owners who use their land for agriculture are especially fearful that Chapters 346 and 347 will do more harm than good to local management efforts if the legislature fails to limit the new power it has granted to the State Water

f4.html (on file with the *McGeorge Law Review*).

101. See Weatherford et al., *supra* note 21, at 1033–36 (summarizing the legal history surrounding California's groundwater resources).

102. AGRICULTURAL GROUNDWATER PRINCIPLES, *supra* note 72, at 1.

103. See *id.* at 1, 3 (stating that "[t]he reasonable and beneficial use of groundwater is a property right," and calling for the protection of overlying land owners' rights to access and allocate groundwater).

104. *Id.* at 3.

105. *Id.* at 2.

106. *Id.*

107. *Id.*

108. *Id.*; see RICHARD HOWITT ET AL., CTR. FOR WATERSHED SCIS., UNIV. OF CAL., DAVIS, ECONOMIC ANALYSIS OF THE 2014 DROUGHT FOR CALIFORNIA AGRICULTURE iii (July 23, 2014) (finding that the Central Valley has suffered "\$800 million in lost farm revenues and \$447 million in additional pumping costs").

109. AGRICULTURAL GROUNDWATER PRINCIPLES, *supra* note 72, at 2.

110. *Id.* at 1.

111. *Id.* at 2; Frank, *supra* note 28.

112. AGRICULTURAL GROUNDWATER PRINCIPLES, *supra* note 72, at 2.

Resources Control Board.¹¹³ Many of the Act's opponents argue that the state is simply not the most informed decision maker when it comes to groundwater management.¹¹⁴

As an alternative approach, local management entities have pointed out that they have already implemented measures that will decrease reliance upon groundwater resources.¹¹⁵ For example, San Joaquin County has reportedly spent over \$700 million on “water resource projects that have increased surface water reliance over groundwater reliance.”¹¹⁶ One such endeavor, the More Water Project, began in 1990 and has since worked to build diversions, dams, and reservoirs that have created new access to large amounts of surface water in a number of locations.¹¹⁷ Those who oppose Chapter 346 argue that these measures are working to reduce groundwater reliance and that the State's new tasks would interfere with local efforts.¹¹⁸ Moreover, the Assembly Appropriations Committee has determined that the implementation of Chapter 346 will cost approximately four million dollars.¹¹⁹ That money would go to the Department of Water Resources so that it may “collect and manage data, complete evaluations and assist [the State Water Resources Control Board] in developing interim plans,”¹²⁰ and the Department already stands to receive over \$22 million in state funding in the next five years.¹²¹ Thus, critics conclude that an overhaul of the existing groundwater management system will be extremely costly and, in light of the alternatives, might not be necessary at all.¹²²

Indeed, Chapter 347 recognizes that alternatives to a sustainable groundwater management plan might exist.¹²³ However, opponents of management reform will likely not be satisfied with this alone because such alternatives must ultimately “satisfy the objectives” of sustainable groundwater management.¹²⁴

113. Frank, *supra* note 28.

114. *See id.* (quoting a member of a local management entity as saying that “groundwater is certainly one of those areas of resource management where [sic] local folks really understand what's best for their area”); Bowers, *supra* note 99 (quoting Tom Flinn, vice president of the North San Joaquin Water Conservation District, as saying that “[t]he last thing we need is the state coming in and telling us what to do”).

115. *See* Bowers, *supra* note 100 (detailing the methods used by San Joaquin County to reduce groundwater reliance and pointing out that the cities of Stockton and Lodi have successfully implemented similar alternative measures of groundwater conservation).

116. *Id.*

117. *About the Project*, MOKELUMNE RIVER WATER AND POWER AUTHORITY, http://www.morewater.org/about_project/index.html (last visited Mar. 25, 2015) (on file with the *McGeorge Law Review*).

118. Bowers, *supra* note 100.

119. ASSEMBLY COMMITTEE ON APPROPRIATIONS, COMMITTEE ANALYSIS OF SB 1168, at 2 (Aug. 13, 2014).

120. *Id.*

121. *Id.*

122. AGRICULTURAL GROUNDWATER PRINCIPLES, *supra* note 72.

123. CAL. WATER CODE § 10733.6(a)–(b) (enacted by Chapter 347).

124. *Id.* § 10733.6(a) (enacted by Chapter 347).

V. CONCLUSION

This is not the first attempt at an exhaustive groundwater monitoring system.¹²⁵ However, Chapters 346 and 347 are the strongest effort of their kind, and will have a major effect on the planning, usage, and reporting activities of local management entities.¹²⁶ As such, there is bound to be conflict between state agencies and the individuals who currently control groundwater supplies.¹²⁷ However, the powers that be on both sides seem to agree that times of prolonged drought are opportunities for cooperation and conservation¹²⁸ and Chapter 346 embodies this optimistic spirit.¹²⁹

125. See, e.g., *California Statewide Groundwater Elevation Monitoring (CASGEM)*, *supra* note 25 (stating that the CASGEM Program began in 2009).

126. See SENATE COMMITTEE ON NATURAL RESOURCES AND WATER, COMMITTEE ANALYSIS OF SB 1168, at 4 (Apr. 10, 2014) (evidencing the legislature's goal of fundamental changes in California's groundwater management framework).

127. Compare Bowers, *supra* note 99, with *State Needs to Monitor Use of Underground Water*, *supra* note 23.

128. See, e.g., CAL. DEP'T OF FOOD AND AGRIC., *supra* note 7, at 1 (stating, in a foreword by Karen Ross, Sec'y, Cal. Dep't of Food and Agric., that the agricultural community should "continue to do our part to . . . conserve resources"); Press Release, Cal. Water Found., *supra* note 77, at 2 (quoting Mark Cowin, Dir., Dep't of Water Res., as saying that "[w]e must work together to control groundwater overdraft to avoid [negative] impacts").

129. See, e.g., 2014 Cal. Stat. ch. 346, § 1(a)(1) ("The people of the state have a primary interest in the protection, management, and reasonable beneficial use of the water resources of the state . . . and that the integrated management of the state's water resources is essential to meeting its water management goals.").