Legal Perspective on the Groundwater Legislation

February 27, 2015
Presented By William M. Sloan
View from the Trenches

• Water Code Section 10720.8—Adjudicated Basin Exemption

• “The Antelope Valley basin at issue in the Antelope Valley Groundwater Cases (Judicial Council Coordination Proceeding Number 4408) shall be treated as an adjudicated basin pursuant to this section if the superior court issues a final judgment, order, or decree.”

• Case originated in 1999—still pending…
Not Reinventing the Wheel

• Water Code Section 10721

• “Sustainable yield” means 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over a base period representative of long-term conditions in the basin and including any temporary surplus, that can be withdrawn annually from a groundwater supply without causing an undesirable result.

• “Sustainability goal” means the existence and implementation of one or more groundwater sustainability plans that achieve sustainable groundwater management by identifying and causing the implementation of measures targeted to ensure that the applicable basin is operated within its sustainable yield.
A Looming Clash

• Water Code Section 10720.5:

  • “Nothing in this part modifies rights or priorities to use or store groundwater consistent with Section 2 of Article X of the California Constitution”

  • “Nothing in this part, or in any groundwater management plan adopted pursuant to this part, determines or alters surface water rights or groundwater rights under common law or any provision of law that determines or grants surface water rights.”
A Looming Clash

• Water Code Section 10726.4

  • A groundwater sustainability agency shall have the following additional authority and may regulate groundwater extraction using that authority . . . to impose reasonable operating regulations on existing groundwater wells to minimize well interference, including requiring extractors to operate on a rotation basis.

  • To control groundwater extractions by regulating, limiting, or suspending extractions from individual groundwater wells or extractions from groundwater wells in the aggregate, construction of new groundwater wells, enlargement of existing groundwater wells, or reactivation of abandoned groundwater wells, or otherwise establishing groundwater extraction allocations.
More Fuel to the Fire

• Water Code Section 10730(a)
  • A groundwater sustainability agency may 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, including, but not limited to, preparation, adoption, and amendment of a groundwater sustainability plan, and investigations, inspections, compliance assistance, enforcement, and program administration, including a prudent reserve.
Adequate Protection?

• Water Code Section 10726.4(a)(2)
  • A limitation on extractions by a groundwater sustainability agency shall not be construed to be a final determination of rights to extract groundwater from the basin or any portion of the basin.

• Water Code Section 10726.8(b)
  • Nothing in this part shall be construed as authorizing a local agency to make a binding determination of the water rights of any person or entity.
Final Thoughts
Thank You

William M. Sloan
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
(415) 268-7209
wsloan@mofo.com