

California, which prides itself as being a national and international leader in so many areas of environmental policy, lags woefully behind other jurisdictions when it comes to at least one subject area: groundwater regulation. Alone among the Western states in the U.S., California lacks any statewide system of groundwater regulation and planning. (Until a few years ago, California shared that dubious distinction with Texas; but even the Lone Star State adopted statewide groundwater laws a few years ago following a severe multiyear drought in Texas.)

But California's groundwater outlier status may finally be changing in 2014.

What's altered the political and policy debate, of course, is the state's own current drought, the worst in recorded California history. That drought has brought into sharp focus both California's heavy dependence on groundwater, and the consequences of the state's over-reliance on that finite and fragile resource.

In a normal water year, groundwater accounts for about 35-40% of all water consumed by Californians for municipal, industrial and agricultural purposes. By contrast, in periods of drought, when water users' access to substantially-regulated surface water is limited due to reduced river flows and legal mandates such as the Endangered Species Act, users increase their reliance on unregulated groundwater to make up the difference. It's estimated that during the current drought groundwater represents 50-60% or more of all water consumed by state water users.

The problem is that this is the natural resources equivalent of a consumer running up prodigious credit card debt when his or her bank account is empty. It's quite simply unsustainable. Numerous groundwater aquifers in California are now in serious overdraft—meaning that they are being depleted by groundwater pumping at a faster rate than state aquifers can be naturally replenished. If present trends continue, California's groundwater basins will soon be tapped out. Moreover, current groundwater overdrafting is resulting in dramatic ground subsidence in various parts of California (especially in portions of the San Joaquin Valley), causing serious damage to homes, business and critically important state infrastructure. In coastal areas, another problem is often triggered by groundwater overdraft: salt water intrusion from the ocean that contaminates freshwater aquifers.

These documented conditions have led a variety of stakeholders to abandon their traditional opposition to any system of state groundwater regulation. The Association of California Water Agencies, under the leadership of Executive Director Tim Quinn, has signaled openness to first-ever state groundwater controls. The California Water Foundation, headed

by former California Secretary for Natural Resources Lester Snow, has sponsored a series of convenings among stakeholder groups that has produced a set of consensus recommendations for proposed groundwater legislation. And influential think tanks such as the Public Policy Institute of California have weighed in with their own analyses and recommendations focusing on the unsustainability of current groundwater pumping practices.

As the California Legislature returns from its summer recess, there are a number of groundwater-related legislative proposals under consideration. Those with the best chance of passage are [SB 1168 \(Pavley\)](#) and [AB 1739 \(Dickinson\)](#). Governor Jerry Brown has already signaled his conceptual support for the approach to groundwater regulation reflected in those bills.

SB 1168 and AB 1739 both envision a new system of regional groundwater management backed by state agency technical assistance and, where regional water agencies fail to act, back-up state regulation of groundwater pumping. Under both bills, California's Department of Water Resources (DWR) would be required to designate those groundwater basins that are in serious overdraft or otherwise significantly stressed. Regional and local governments and water agencies would be reclassified as aquifer-specific groundwater management agencies. These newly-constituted groundwater management agencies would be required to adopt a "sustainable groundwater management plan" for each designated groundwater basin in California, by a specified deadline. The key goal of these plans would be to eliminate overdrafted aquifers and to bring them into a condition that assures their long-term sustainability. (The bills would require DWR to establish general criteria for such plans and to provide technical assistance to regional groundwater agencies in preparing them on a timely basis.) If a regional groundwater management agency fails to prepare and adopt a groundwater plan by the prescribed deadlines, or if the plan is substantively deficient, California's State Water Resources Control Board would be authorized to adopt and enforce its own sustainable groundwater management plan for the particular basin.

A critical mass of state legislators, the Governor, water agencies, agricultural interests and environmental groups have all expressed conceptual support for the regional groundwater regulation approach outlined in SB 1168 and AB 1739.

The pending bills are far from perfect, and their current language leaves unresolved some key points. The Pavley bill, for example, is vague as to the conditions that would authorize the State Water Board to step in and adopt a sustainable groundwater management plan for those regional agencies unwilling or unable to do so. The current version of the Dickinson bill leaves this issue essentially unaddressed, for later legislative attention.

But the most glaring defect in the current iterations of both SB 1168 and AB 1739—at least to this observer—is that they fail to explicitly require those who extract California groundwater to monitor and report the volume and rate of their groundwater pumping. (Surface water rights permit holders have been required to monitor and report the amounts of their diversions for many years, as a condition of their state-issued permits.)

It seems quite impossible to develop viable and effective plans to eliminate groundwater overdraft and maintain groundwater aquifer sustainability without knowing who is pumping groundwater from a given aquifer and in what amounts. Why not simply make groundwater pumpers compile and report the same data that most California surface appropriators already do?

The California Legislature returns next week from its summer recess to begin a four-week sprint to the end of the 2014 legislative session. Given the state's current drought, water will be at the top of the Legislature's agenda, and the pending groundwater bills will be debated, refined and amended. Most observers are cautiously optimistic, believing the chances are better than 50-50 that the Legislature will enact meaningful groundwater reform this year that will be signed by the Governor.

The pending legislative proposals are far from perfect and, hopefully, some of their current defects can and will be remedied in the coming weeks. But make no mistake: the proposed groundwater legislation represents real and meaningful reform to a woefully inadequate corner of California water rights law and policy. California's people and natural resources stand to benefit greatly if legislators stay the course and get it done. And woe to us all if they don't.