Groundwater Management
Who Pays for It?

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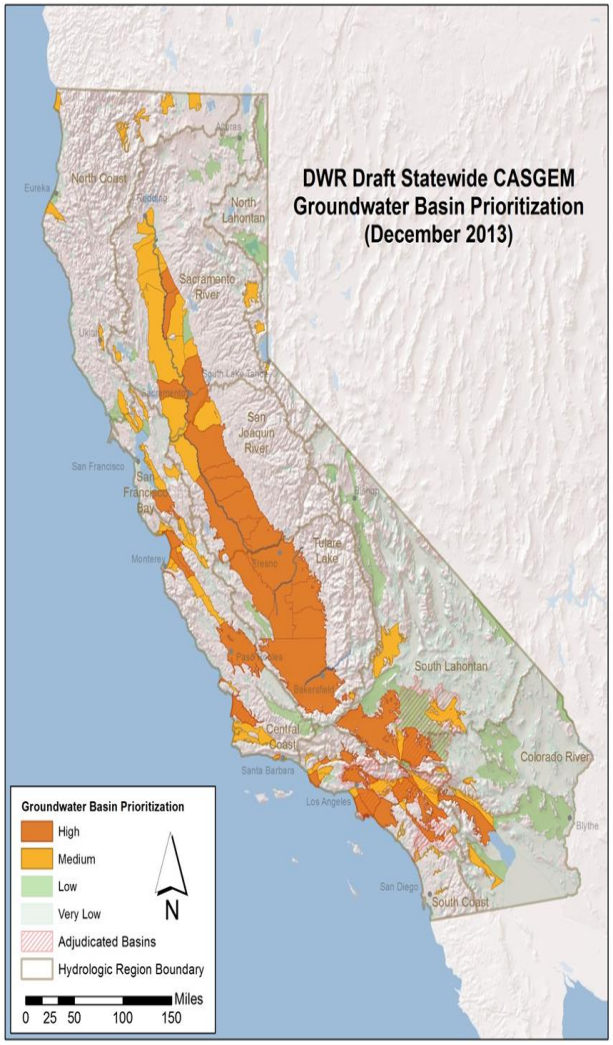
Water in CA: The Big Picture

- Climate change, regulatory drought, mining groundwater basins, and competition for Colorado River supplies = less supply
- Continued population growth and economic development = more demand
- Governance challenges:
  - Federal & State mandates
  - Inter- and Intra-regional Competition
  - Local Conflict vs. Consensus-Building

Sustainable Groundwater Management Act in a Nutshell

- Major groundwater basins around California require SGMAs (DWR Bulletin 118)
- Can be county, city, water district, or JPA
- Some LAFCO proposals are pending to create water agencies just to give groundwater users a seat at the table

High & Medium Priority Basins



More on SGMA

- SGMAs must:
  - Prepare plans
  - Implement plans
  - Achieve safe yield
- This will require funding for:
  - Plans
  - Enforcement
  - Supplemental water supplies

Impact of SGMA

- To actually achieve safe yield, we must:
  - Use less groundwater
  - Make better use of other water resources
  - Make water more expensive
  - Chase out inefficient uses
- How will a SGMA pay for all of this and the likely litigation, too?

SGMA Fee Authorities

- Service fees subject to Prop. 218
  - Full range of services can be funded, including water supply
- Permitting and other regulatory fees subject to Prop. 26
  - Limited to developing plan, metering wells, and other regulatory costs
  - Cannot fund water supply

Services Fees Under Prop. 218

- GSA service fees – WC 10730.2(c)
- Local agency pre-plan fees – WC 10730.2(b)
- Members of multi-agenda SGMA pre-plan fees – WC 10721(j)

Regulatory Fees Under Prop. 26

- Permit fees and fees to fund plan development – WC 10730(a)
- Meter installation cost recovery fee – WC 10725.8(b)

More SGMA Details on Fees

- Can impose fees on other state and local governments – WC 10726.8(d)
- Fees can be validated, which may help with issuance of debt backed by fees – WC 10726.6

Types of Fees

- Prop. 26 defines everything as a tax, except:
  - Fees for benefit or privilege (e.g., utility connection)
  - Fees for service or product (e.g., utility services)
  - Regulatory fees
  - Use of government property
  - Fines and penalties

More Types of Fees

- More Prop. 26 Exceptions
  - Development Fees (permitting, CEQA mitigation, development impact fees)
  - Assessments and property related fees subject to Prop. 218

Authority for Fees

- Every fee must be authorized by some legislation, such as:
  - the Constitution (utility fees)
  - Statutes (e.g., the SGMA legislation)
  - Local ordinances (e.g., utility fees, permit fees)

Prop. 218 in a Nutshell

- Prepare justification for fee (13D, 6(b))
- Give notice of majority protest hearing by mail (13D, 6(a)(1))
- Conduct majority protest hearing (13D, 6(a)(2))
- If no majority protest, impose fee (13D, 6(a)(2))
- Can set fees with annual CPI adjustment for up to five years (GC 53756)

Prop. 218 in a Nutshell

- Fees cannot
  - Exceed cost of service in total
  - Be used for other purposes
  - Exceed proportional cost of service to customer or customer class
  - Fund services not immediately available
  - Fund general government services

Prop. 26 in a Nutshell

- No procedural requirements
- Must qualify for one of 7 exceptions
- Exception for regulatory fees
  - Limited to reasonable costs of regulation
  - Costs allocated in “fair or reasonable relationship to payor’s burdens on, or benefits … from” government regulation

Tips on Rate-making

- Use a rate-making consultant
- Have the cost-of-service analysis (COSA) reviewed by an attorney
- Allow for the possibility Board will reject consultants' recommendation
- Make a good record
- Don't adopt fees not supported by the record
- Consider validation

Groundwater Extraction Charges

- *Pajaro Valley Water Mgmt. Agency v. AmRhein* (2007) 150 CA4th 1364
  - Groundwater augmentation / extraction charges are property related fees subject to Prop. 218

Groundwater Extraction Charges

- *Griffith v. Pajaro Water Mgmt. Agency* (2013) 220 CA4th 586
  - Charge is a fee for "water service" exempt from 13D, 6(c) election requirement
  - Omnibus Act's definitions are good authority notwithstanding *HJTA v. Salinas*
  - Notice of protest hearing can be given to property owners alone

Groundwater Extraction Charges

- *Griffith* (continued)
  - Debt service, GA&O, service planning all permissible uses of fee
  - AWWA M-1 Manual's cost-accounting process complies w/ Prop. 218
  - Parcel-by-parcel cost analysis is not required; class-by-class is okay provided the classes are rationally drawn

Groundwater Extraction Charges

Ventura v. UWCD (CA S Ct Case No. S226036)

- Groundwater charges subject to Prop. 26 or Prop. 218?
- Does 3:1 ratio of ag. to non-ag. rates mandated by Water Code 75594 violate 218 or 26?
- Fully briefed 10/19/15 and awaiting argument

Groundwater Extraction Charges

Great Oaks Water Co. v. Sta. Clara Valley WD (grant & hold behind *Ventura*)

- Groundwater charges subject to Prop. 218?
- Are they "water" charges exempt from election requirements?
- DCA remanded substantive challenges to 10:1 ratio of ag. to non-ag. fees

Groundwater Extraction Charges

- *Water Replenishment District of So. Cal. v. Cerritos* (2013) 220 CA4th 1450 (2nd DCA)
  - "Pay first, litigate later" rule applies to local government
  - Dicta suggests remedy for illegal revenue measure is not full refund, but refund of difference between lawful charge and what was paid

Stormwater Recapture

- AB 2403 (Rendon, D-So. Gate)
  - Codifies *Griffith v. Pajaro*
  - Amends GC 53750(m) to add “from any source” to definition of “water” in Prop. 218 Omnibus Implementation Act
  - Chaptered 6/28/14

Questions?