CALIFORNIA

Farmers lawyer up as 'massive' aquifer cuts loom

Jeremy P. Jacobs, E&E News reporter • Published: Tuesday, January 28, 2020

A groundwater well pumping water into a holding pond in the west side of California's San Joaquin Valley. Peter Bennett/Citizen of the Planet/Newscom

California's first attempt at regulating a precious resource — groundwater — begins Friday, and experts expect a rocky start.

Groundwater aquifers across the state have been plundered mainly by farmers and pumped with no limits, causing large swaths of California to sink at least 28 feet, or nearly three stories, since the 1920s.

In 2014, state legislators stepped in, passing the Sustainable Groundwater Management Act, or SGMA. The law requires critically overdrafted basins to balance their pumping and get on a "sustainable" path by 2040.

SGMA could fundamentally reshape water use and agriculture in California. Hundreds of thousands of acres of farmland are expected to be forced out of production.

The plans are due Friday, and there are signs things may not go smoothly.

One lawsuit asserting property rights to groundwater has already been filed. And experts who have studied the plans so far say they largely focus on how to boost supplies, shying away from the tougher question: how to cut water use.

The plans "talk about importing new supplies, voluntary fallowing and incentivizing fallowing," said Sean Hood, a water litigator with the firm Fennemore Craig PC in Phoenix, who has closely followed the law.

"But at the end of the day, groundwater users are going to be curtailed in a massive, massive way," Hood said.

Twenty-one critically overdrafted basins in California are required to submit groundwater sustainability plans, or GSPs, to the state Department of Water Resources this week. They span from coastal areas like Monterey to swaths near the state's eastern border.

SGMA requires the plans to protect against six undesirable results: degraded water quality, water table decline, surface water depletion, land subsidence, seawater intrusion and reduced groundwater storage.

That may sound complicated, but ultimately there are two basic ways to reduce groundwater overdraft: Augment water supplies to recharge the aquifer, or stop using so much of it.

The problem is most pronounced in the San Joaquin Valley, California's agricultural hub. When the law passed, the valley was sucking close to 2 million acre-feet more water out of its aquifers than was going in. (An acre-foot is about 326,000 gallons, or as much as two Los Angeles families use in a year.)

Up to 780,000 of 5 million acres of farmland in the San Joaquin Valley may have to be taken out of production to comply, according to the nonpartisan Public Policy Institute of California (PPIC).

SGMA gives overdrafted basins 20 years — starting Friday — to reach sustainability. But in a compromise to get the bill passed, it allowed local managers to lead the way in crafting plans with the state acting as a backstop,

raising concerns about whether the new groundwater sustainability agencies would take the required steps to limit groundwater pumping (***Greenwire***, June 25, 2018).

Ellen Hanak of PPIC has kept an eye on the plans as they have been submitted to the state. She said many appear focused, at least initially, on augmenting supplies instead of cutting back use.

"A lot do talk about the eventual need to manage demand," she said. "But not many of them are going to be leading with that out of the gate."

Hanak added there has been "inconsistency" in how the groundwater agencies are measuring their baseline water use; some are including drought years, while some aren't.

"Different basins are reporting for different amounts of time," she said.

But she added that while the overdrafted basins have 20 years to come into compliance, Saturday does mark an important new era. Starting Feb. 1 under the law, the basins cannot take any actions that would cause one of the undesirable results in the law. So groundwater agencies should be monitoring for wells going dry, or roads and bridges sinking from land subsidence that would be indicators of further overdraft.

"What that ensures in principle is you can take your time to get to full sustainability," she said, "but if you are doing something that causes real problems, you have to avoid it or mitigate it sooner."

First lawsuit

The groundwater plan for a basin in a remote part of the state has already sparked the first of what attorneys expect will be many lawsuits.

Indian Wells Valley lies east of Bakersfield on the eastern side of Sequoia National Forest and Sierra Nevada.

Its plan was more specific than others in mandating pumping restrictions, said Hood, the attorney.

Several interests, led by Mojave Pistachios LLC and a mineral mining company, sued.

They are **seeking** a "declaration" that they "have overlying rights to extract groundwater ... and the continued right ... without interruption for existing and future reasonable and beneficial uses."

In other words, Hood said, "they want the court to declare that as overlying landowners, they have a right to pump that water."

He added that the property rights argument is one that will likely emerge in other basins as well.

"There will be other plans that come under in the near term," he said, "and many of the same arguments will be made."

In particular, he pointed west to another part of Kern County.

Sitting at the southern end of the San Joaquin Valley, the Kern basin is among the most overdrafted in the state.

It's also a major agriculture producer. Some estimates have found up to 200,000 of the 900,000 irrigated acres in Kern County may have to be fallowed to come into compliance with the law, resulting in potentially $600 million in lost revenue.

Because of a wrinkle in the law, the Kern basin has multiple groundwater sustainability agencies — all of which must eventually agree on how to reach sustainability.

And the first water budget numbers submitted last fall to the Kern Groundwater Authority, an umbrella group, were criticized as being hard to believe.

"It's obvious that some districts have created water with their paperwork," the then-chairman of the authority, Dennis Mullins, said last October, according to the independent news site SJV Water.

Some of those budgets suggested an overdraft rate of about 90,000 acre-feet per year, when other modeling has put it closer to 300,000 acre-feet. Others reported a surplus of water instead of a deficit.

Patricia Poire, the planning manager for the Kern Groundwater Authority, said those numbers were corrected in the final plan submitted to the state.

"The numbers do add up for the Kern Groundwater Authority," she said, before adding that her group has coordinated with the four other groundwater sustainability agencies in the basin.

The plan estimates about 185,000 to 200,000 acres will have to be taken out of production, she said.

"But," Poire added, "it's all going to be contingent on water supplies."

A couple of water districts in the San Joaquin Valley and Kern County have already started tackling the tough issue of ramping down water use, said Ann Hayden of the Environmental Defense Fund.

Specifically, she pointed to the Semitropic and Rosedale-Rio Bravo water storage districts. They have the advantage of already being water storage banks and having existing groundwater recharge operations.

Hayden added, however, that she hopes the California Department of Water Resources will step in to resolve conflicts between the multiple sustainability plans in a single basin.

"My hope is DWR gets out ahead of that and instructs these agencies to work together and connect the dots between their plans," Hayden said. "In the absence of that, I think we could see a lot of conflict in terms of how these plans are implemented."

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