

# AN ASSESSMENT OF THE SUSTAINABLE GROUNDWATER MANAGEMENT ACT FOR MUNICIPAL WATER SUPPLIERS

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# The Sustainable Groundwater Management Act Design



Form GSA

Develop GSP



Or Else!



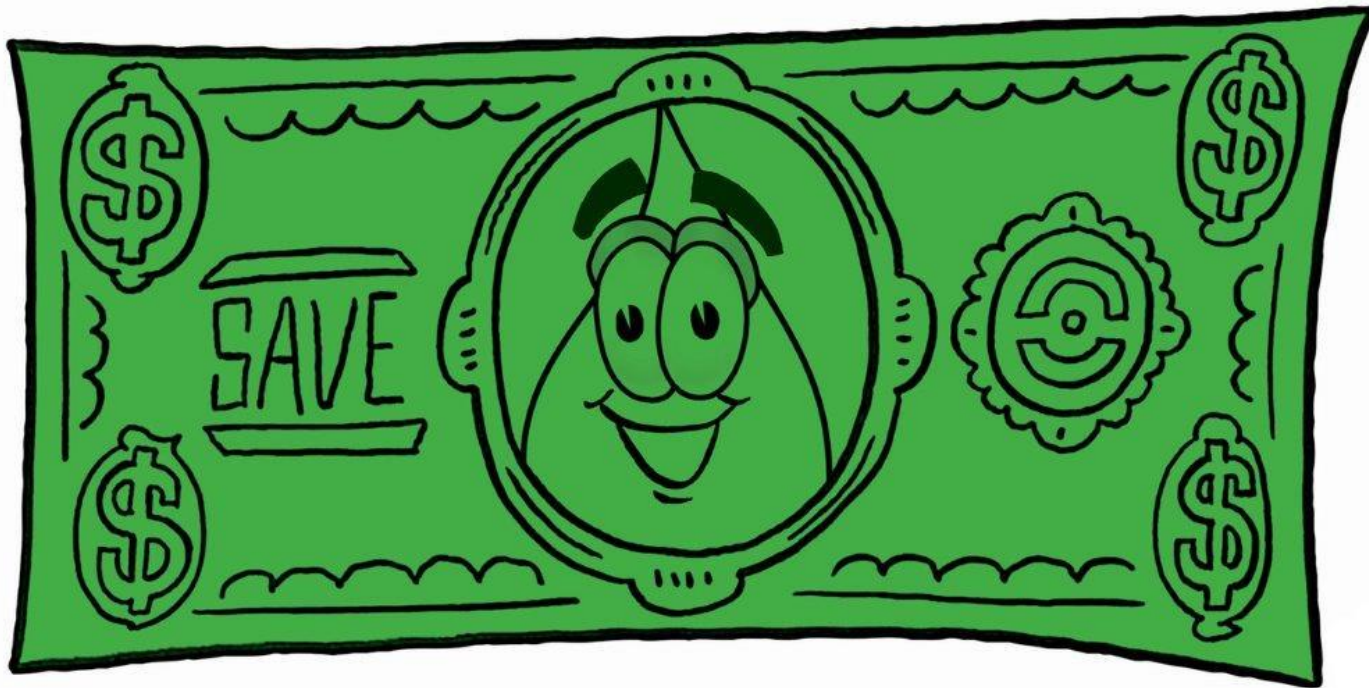
# Form a Groundwater Sustainability Agency



# Develop a Bunch of Great Ideas to Sustainably Manage the Basin



# Determine How to Pay for the Great Ideas



# Write it All Up in a Groundwater Sustainability Plan and Get DWR to Approve Your Plan



# Essential SGMA Provisions

- Mandatory for “priority basins”
- Groundwater Sustainability Agency by 2017
- Groundwater Sustainability Plan by 2020/2022
- Plan must achieve sustainability in 20 years
- Avoid “undesirable results”
- State intervention









# What is Sustainable Groundwater Management?

Avoid “undesirable results,” meaning significant and unreasonable:



Lowering  
GW Levels



Reduction  
of Storage



Seawater  
Intrusion



Degraded  
Quality



Land  
Subsidence



Surface Water  
Depletion

Identify undesirable result and establish:

- Monitoring program with representative monitoring points
- Minimum thresholds - Quantitative minimum value used to define an undesirable result
- Measurable objectives - Quantitative target or goal

# Expansive GSA Authority

**Adopt rules,  
regulations,  
ordinances**

Conduct  
investigations of  
water rights

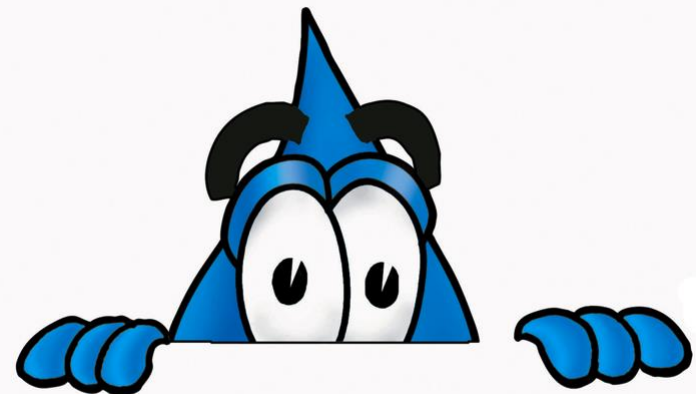
Well registration,  
metering,  
reporting,  
monitoring,  
investigation

Replenishment,  
reclaimed water,  
and other  
programs

**Regulate  
groundwater  
production;  
establish  
production  
allocations**

**Administrative  
fees and  
assessments**

Enforcement  
actions



# But!

“**Nothing** in [the SGMA], or in any groundwater management plan adopted pursuant to [the SGMA], **determines or alters surface water rights or groundwater rights under common law** or any provision of law that determines or grants surface water rights.”

Water Code § 10720.5(b)



# How Will the Locals Get Along. . .

Who governs (who will be the Groundwater Sustainability Agency)?

Who can pump, who cannot, and under what conditions?

Who pays for management/replenishment?



# SGMA and Water Rights



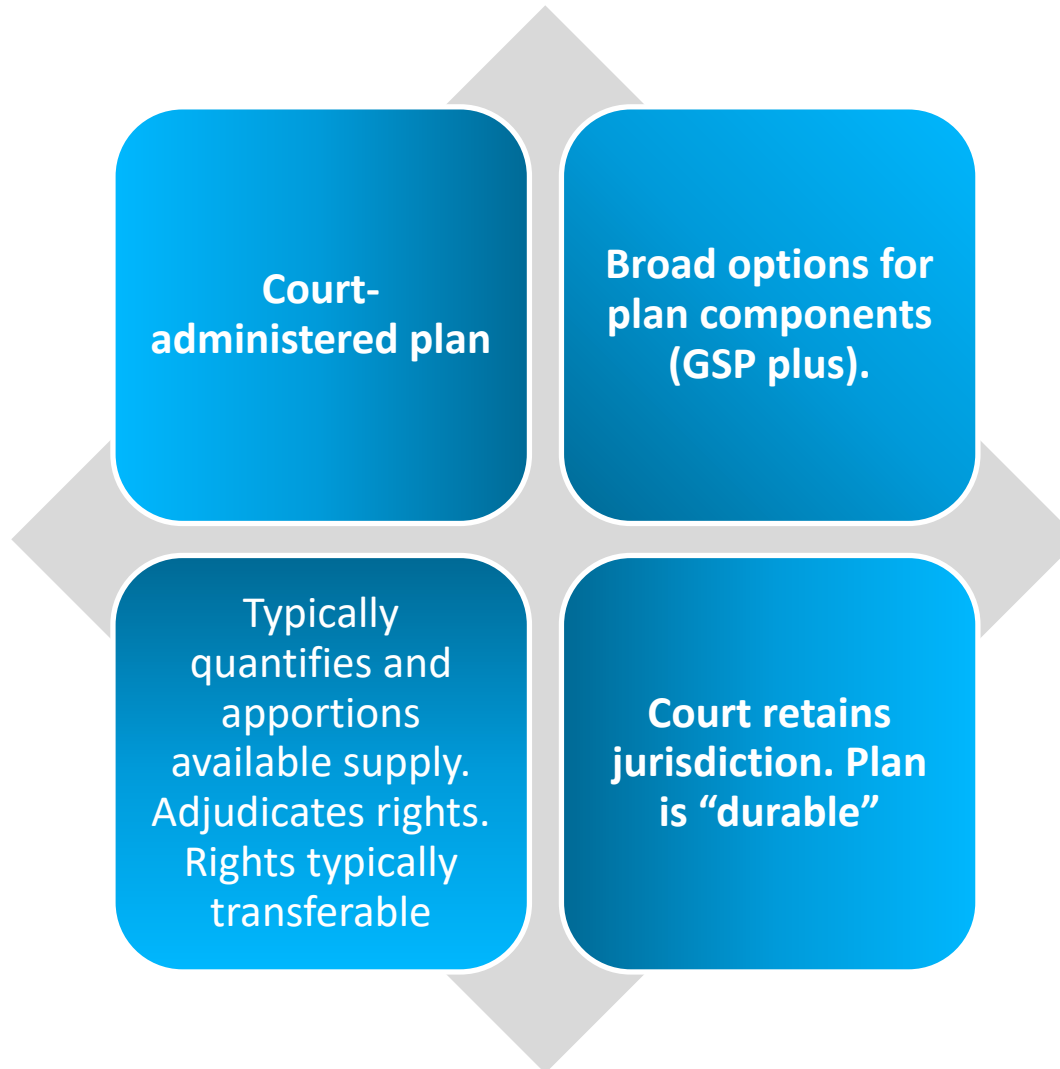
# Plan Durability

- Validating a Groundwater Sustainability Plan
- Agreement
- General groundwater adjudication
- Streamlined comprehensive adjudication
- “Friendly” adjudication (stipulation)
- Resolving future conflicts
  - Cooperation and ongoing outreach
  - Facilitators
  - Courts (continuing jurisdiction)





# Adjudication



# Management is the Same (SGMA or Adjudication)

- Both require sustainable management – avoid “undesirable results”
- Sustainable yield (SGMA) = safe yield (adjudications)
- Groundwater Sustainability Agency (SGMA) = watermaster (adjudications)
- Groundwater Sustainability Plan (SGMA) = physical solution (adjudications)
  - Monitoring and reporting
  - Pumping limits, allocations, transferability
  - Pump fees
  - Replenishment/yield enhancement
- State intervention v. court intervention

# Adjudication Challenges

- Every landowner has rights = 1,000s of parties
- Can take decades
- Can cost \$\$ millions
- Complex technical and legal issues
- Now need to coordinate with SGMA



# Adjudication Reform – Streamlining 2015

- Designed to expedite and lessen the expense of future adjudications.
- AB 1390 - New provisions in the Code of Civil Procedure for future basin adjudications.
- SB 226 - Addresses the coordination and consistency of future groundwater adjudications with basin management under SGMA

# AB 1390 – Key Provisions

- Process to determine all groundwater rights, and establish in rem jurisdiction and comprehensive effect of the adjudication
- Judicial Council to assign a judge (non-county) to preside
- Permits the court to form classes of groundwater rights holders
- Authorizes the court to stay the litigation to allow for progress on a GSP
- Allows the court to appoint special masters
- Requires litigants to make early factual disclosures

# AB 1390 – Key Provisions (Continued)

- Allows Court to adopt a preliminary injunction limiting groundwater use
- Encourages settlement and specific procedures for court to review proposed settlement stipulations supported by majority of parties
- Permits the court to “subordinate” the priority of dormant (i.e., unused) overlying rights as applied in *In re Waters of Long Valley*
- Establishes required findings that the court must make in entering a judgment in a comprehensive adjudication and preserves the court’s continuing jurisdiction over the action.



# SB 226 – Key Provisions

- Allows the state to intervene as a party in a comprehensive adjudication
- Provides that the court manage the proceeding in a manner that minimizes interference with SGMA/GSP process
- Exempts a basin managed pursuant to a judgment entered in a comprehensive adjudication from SGMA/GSP requirements if DWR determines that the judgment satisfies the objectives of SGMA
- Prohibits the court from entering a judgment that would impair efforts to achieve sustainable groundwater management.

# Adjudication Reform

- Future adjudications = more efficient; not necessary “fast”
- Designed to prohibit use of adjudications to to delay/avoid sustainable management
- Adjudications can be used to ensure SGMA management is consistent with water right priorities
- Designed to encourage compromise and “cram down” reasonable management on unreasonable dissenters
- Maybe used as “friendly adjudications” to make the plan durable

# Practical Impacts of SGMA

## Short-term

- More conflict
- Increased uncertainty

## Long-term

- Less conflict
- Less pumping
- Sustainable management
- Greater certainty
- More expensive
- More options, flexibility, and VALUE



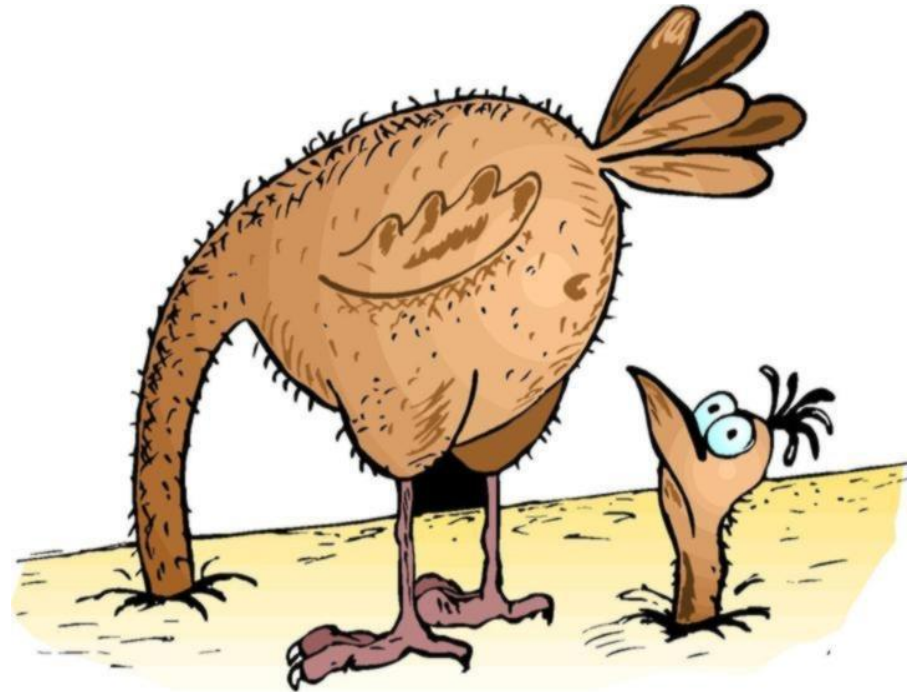
# Implementation Challenges

- Technical and substantive plan components
- Plan coordination issues
- Dept. of Water Res. and other agencies
- Timing
- Inconsistent plans/rules
- GSPs v. adjudication
- Expense



# California Water Law

- Riparian/overlying (Landowner) Rights are First Priority Rights
- Appropriative Rights (Non-Overlying) are Second Priority Rights
- Surface water regulated by the State
- Percolating groundwater regulated by local/judicial management, if regulated



# Overlying Groundwater Rights

Analogous to Surface Water Rights  
Senior in Priority to Appropriative Rights

## Same Legal Characteristics Apply:

- Tied to Land Ownership
- Not Affected by Historical Use
- Can Only Use on Overlying Land



**Not Transferable at Common Law**



# Appropriative Groundwater Rights

For Non-Overlying  
Use (e.g.,  
Municipal Water)

Defined by  
Historical Quantity  
of Use

Priority Based  
Upon First-In-Time,  
First-in-Right



**Transferable at Common Law**

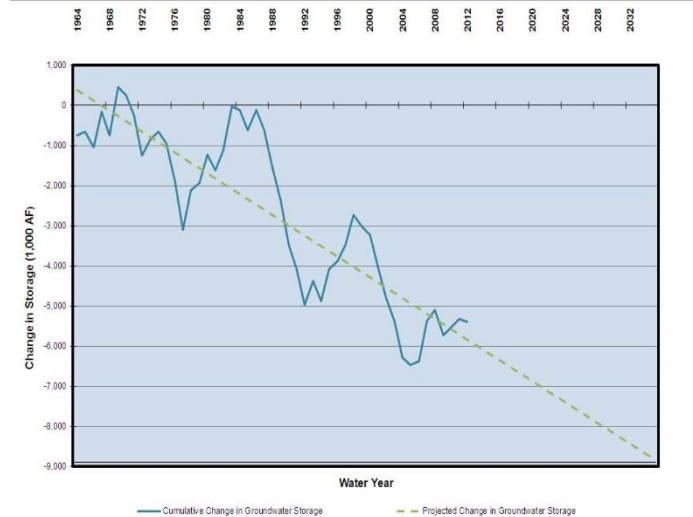
# Overdraft ...

The Rules Change . . . Maybe

Adverse Basin Impacts (e.g., Seawater Intrusion/Subsidence)

Ramp-Down is Needed

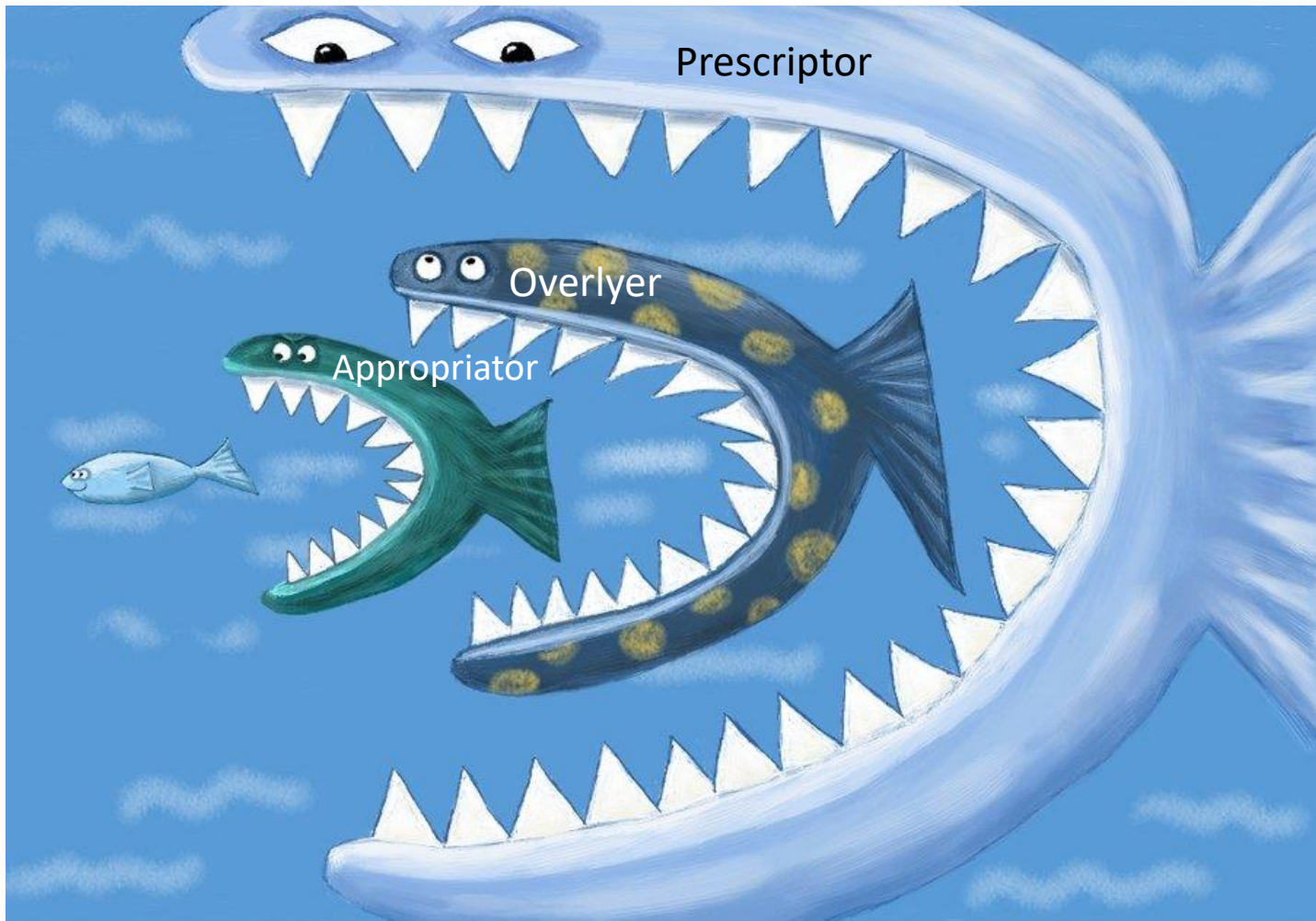
Prescriptive Rights



# Prescription

- Four Elements: Actual, Open and Notorious, Adverse, Exclusive and Continuous for Five Years
- Overdraft = Adversity
- Notice – Must at least be constructive notice (reasonable person standard)
- Overlying landowners preserve “overlying rights” through “self-help” pumping
- Result is “equal” claim (overlying landowners lose priority claim)
- Eliminate dormant overlying rights

Note: overdraft can result in “subordination” of dormant overlying rights even without prescription – *Long Valley Doctrine*



# Allocation Theories

- **Historical production:** Based on average amount of production over a base period (e.g., 1995-2015)
- **Net irrigated acreage owned:** Division of safe yield by quantity of basin irrigated acreage
- **Gross acres owned:** Division of safe yield by quantity of all acreage owned (or all acreage capable of irrigation).
- Prescription in overdrafted basins might compel historical production approach, but:
  - What base period?
  - Highest use v. average use?
  - Lack of production data?



# Itching for a Water Right Fight (Adjudication)?





# Substance Toward Compromise

## Fair and Practical Production Allocations & Assessments

- Different classes of production rights that “reflect” GW rights
- Gradual ramp-down (time to adjust where practical)
- Management and replenishment (various options)
- Transferability and market solutions
- Other restrictions and opportunities tailored to local conditions and desires



# Procedures Toward Compromise

## Outreach and Early Collaboration

- Outreach, education, discussion, input
- Facilitators, workshops, advisory committee, collaborative technical group
- Inclusive governance
- Organize diverse interests



## More Information

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**Brownstein Water Blog**

water.bhfs.com



**Desktop Reference to the Sustainable Groundwater Management Act of 2014**  
**water.bhfs.com/sgmadesktopreference**