



Environment Now®

The Honorable Edmund G. Brown
Governor, State of California
c/o State Capitol, Suite 1173
Sacramento, CA 95814

April 15, 2014

Re: Groundwater Regulation Must Protect Instream Beneficial Uses of Water and Public Trust Resources

Dear Governor Brown:

We are encouraged by your efforts to reform groundwater management in California. Inadequacies in the current regulatory framework jeopardize endangered salmon runs, surface water right holders, and the diverse stakeholders who depend on healthy rivers for jobs, food, recreation, and cultural survival. We urge you to rectify this problem by advancing groundwater management policies that prevent not only overdraft and waste, but also adverse impacts to instream and cultural beneficial uses of water and public trust resources.¹ To this end, we offer the following recommendations:

(1) Establish Statewide Standards for Local Groundwater Management Entities

Local groundwater management entities often lack the will and capacity to limit groundwater withdrawals as necessary to protect instream and cultural beneficial uses of water and public trust resources. Therefore, we urge you to advance statewide standards that require local groundwater management entities to:

- A) Collect and submit standardized groundwater extraction data including the quantity, location, timing, and purpose of all groundwater withdrawals.²
- B) Adopt and enforce pumping limitations as necessary to prevent and reverse adverse impacts to instream and cultural beneficial uses of water and public trust resources.^{3,4} Water users should not increase groundwater withdrawals unless and until they demonstrate that the additional withdrawal will not cause such adverse impacts or delay improvements to watershed health.
- C) Include stakeholders who rely on instream flows for jobs, food, recreation and cultural survival. These must include at a minimum tribal representatives, fishing interests (including sport, commercial, and subsistence), tourism and recreation businesses, and conservation organizations.⁵

(2) Establish a Trigger for State Intervention if Statewide Standards Are Not Met

If local groundwater management entities for specific basins have not met the aforementioned statewide standards by January 1, 2016, the State Water Resources Control Board (SWRCB) should: (1) undertake an enforcement or adjudicatory proceeding to bring that basin into compliance; and (2) order an immediate moratorium on new well drilling and increased groundwater extraction from existing wells for all non-domestic water uses.

The SWRCB has the authority to take these actions pursuant to various laws including the Public Trust Doctrine and Water Code Sections 174 and 275 (enforcement against waste and unreasonable use), 2100 (authorizing adjudication of groundwater basins), and 1243 (recognizing instream beneficial uses of water).⁶

(3) Authorize a Streamlined Citizen Petition Process

We urge you to advance a streamlined process for citizens to petition the SWRCB or the courts to determine whether groundwater withdrawals comply with the Public Trust Doctrine and the Reasonable Use Doctrine.

We are pleased that the California Water Action Plan seeks to enhance instream flows and improve groundwater management.⁷ To fulfill these commitments, California must regulate groundwater withdrawals in a manner that protects instream and cultural beneficial uses of water, public trust resources, and surface water right holders.

Please don't hesitate to contact us if you have questions or concerns.

Sincerely,

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¹ Instream beneficial uses of water are protected by the Public Trust Doctrine and Water Code Section 1243 which reads: “The use of water for recreation and preservation and enhancement of fish and wildlife resources is a beneficial use of water. In determining the amount of water available for appropriation for other beneficial uses, the board shall take into account, whenever it is in the public interest, the amounts of water required for recreation and the preservation and enhancement of fish and wildlife resources.”

² The Legislative Analyst’s Office recommends regulations that require “local water districts to submit standardized extraction data from all groundwater wells.” See: Legislative Analyst’s Office, Improving Management Of the State’s Groundwater Resources (March 11, 2014), available at: <http://www.lao.ca.gov/handouts/resources/2014/Groundwater-Resources-03-11-14.pdf>.

³ Even in basins not in a state of overdraft, groundwater withdrawals can impact instream flows. See: S.S. Papadopoulos & Associates Inc., Groundwater Conditions in Scott Valley, California, prepared for the Karuk Tribe, Happy Camp, California (2012).

⁴ Unfortunately, the SWRCB’s Draft Groundwater Workplan Concept Paper released in October 2013 does not mention instream flows or recognize that groundwater withdrawals can impact instream flows without causing overdraft. Document available at available at: http://www.waterboards.ca.gov/water_issues/programs/groundwater/workplan.shtml.

⁵ It is important to recognize that these stakeholders may be located outside of a specific groundwater basin. For example, groundwater withdrawals contribute to the dewatering of the Scott River, and thereby eliminate salmon spawning and rearing habitat. This has a direct impact on stakeholders who rely on returning adult salmon in the lower-Klamath River outside of the Scott River watershed.

⁶ The SWRCB’s Draft Groundwater Workplan Concept Paper recognize the state’s “constitutional and statutory authorities to protect the public trust, prevent the waste and unreasonable use of the State’s water resources, and initiate actions to protect those resources.” See section 3.5 of this document at: http://www.waterboards.ca.gov/water_issues/programs/groundwater/workplan.shtml.

⁷ Specifically, The California Water Action Plan commits the SWRCB and CA Department of Fish and Wildlife to “enhance water flows in stream systems statewide” and commits the Brown Administration to “work with the Legislature to ensure that local and regional agencies have the incentives, tools, authority and guidance to develop and enforce local and regional management plans that protect groundwater elevations, quality, and surface water-groundwater interactions.”