

Tensions, threats as California's new groundwater law takes shape

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Drive the farm roads of sparsely populated Kings County, and it's hard to miss them: clusters of pipes, cylinders and electrical boxes jutting from the soil every few hundred yards or so, in almost every direction. These are the groundwater pumps that ensure water soaks the vast fields of tomatoes, corn, alfalfa, cherries, almonds and walnuts even when the ditches run dry.

They've helped make agriculture the single largest industry in Kings County, where crop values actually have grown by \$753 million during California's drought.

So maybe it shouldn't have surprised County Supervisor Doug Verboon, who owns a small walnut farm, that he got a hostile reception at a recent gathering after he suggested the county impose restrictions on drilling new wells and selling groundwater to other counties.

"Can you afford a bodyguard?" he recalled one grower asking him. It was bluster, Verboon said. The real fighting is going to take place in front of a judge.

"We're going to get sued no matter what," Verboon said.

The tensions in Kings County offer just a taste of what's expected in cities and towns throughout California's farm belt over the next few years as local officials work to enact the state's first-ever groundwater regulations. They are under orders to begin actively managing underground aquifers that for generations have been treated as a private resource, with property owners empowered to dig wells and extract as much water as they wanted without particular regard for their neighbors or government agencies.

But even amid the sobering accounts of dried-up wells, salt-tainted groundwater and collapsing aquifers in California farm country, no one expects regulation will be easy to set up or sell. Instead, the entire process – starting with just who gets to decide how much water can be "sustainably" pumped in a region – is expected to spark lengthy debate and complicated lawsuits. This is particularly true in farm-rich regions such as Kings County, where the groundwater basins are critically overdrawn.

"Based on my experience, the more severe the overdraft – the harder the problem – probably the more likely you'll end up being in the courts," said Jeffrey Dunn, an Irvine attorney who specializes in groundwater adjudication cases.

By now, at the tail end of year four of California's drought, the story of the state's groundwater woes has been widely chronicled. This year alone, farmers across the state lost nearly 9 million acre-feet of surface water from the state and federal water delivery networks, nearly half their usual supply.

They largely made up for the loss by sinking thousands of new wells and furiously pumping water from below. In the parched San Joaquin Valley, the effects of decades of unregulated groundwater pumping have become more pronounced in the drought. As in much of California, seasonal crops such as cotton and tomatoes have given way to vast orchards of walnuts, pistachios and almonds. These high-demand crops are lucrative, but can't be fallowed in a drought, leading to more groundwater pumping when surface deliveries are cut.

In some areas, the land is sinking as aquifers are depleted. Portions of the Delta-Mendota Canal, which brings water to much of the San Joaquin Valley, have buckled. NASA researchers found a stretch near the California Aqueduct, the

key highway of the State Water Project, that sank 8 inches in four months last year. A spot near Corcoran in Kings County, sank 13 inches in one recent eight-month period.

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Saying such conditions posed a threat to the state's long-term water supply, the Legislature last year passed legislation that imposes sweeping new regulations on groundwater extraction. The laws call for creation of new local agencies with broad powers to restrict pumping and impose penalties for overuse and failing to allow inspections.

Existing state agencies, including the Department of Water Resources and State Water Resources Control Board, are charged with overseeing these local agencies and taking over their programs, if deemed inadequate.

The state is still in the process of finalizing its regulations, but local officials are tasked with making most of the critical decisions about how to create a sustainable system of groundwater use in their region. Questions abound: Who manages the agencies? How will they be funded? How much groundwater can be drawn overall – and how will that be divvied up among individual property owners? Should zoning ordinances be used to limit new wells and the types of crops that can be planted? How is groundwater use tracked? How are violators punished?

The notion of setting limits on groundwater use threatens a business model deeply ingrained in California's farm economy. Groundwater makes up about 60 percent of all fresh water consumed in California during drought years, and about 40 percent in average years. Given the stakes, a top state groundwater official acknowledged legal challenges are all but inevitable.

"It's a big state. Probably, unfortunately, there will be litigation," David Gutierrez, program manager for groundwater sustainability at the Department of Water Resources, recently told the State Board of Food and Agriculture. "Our job is to develop those regulations aside from who's going to sue who."

A twisted knot

California's new groundwater legislation affects 127 basins that regulators have deemed to be medium or high priority because of their importance to the state's water supplies. The basin management agencies must be formed by 2017. The agencies overseeing the 21 basins that have been deemed critically overdrafted have until 2020 to set up long-term management plans. The rest have until 2022.

The legislation doesn't specify the makeup of the basin management agencies, other than saying members should be local public officials. An existing entity, such as a water district or county board, could manage a basin, or they could be created from a combination of agencies. Their charge will be to ensure water use in their region is balanced – that what's pumped out can be replenished over time.

A critical unanswered question is how this process will mesh with long-standing California laws that protect water and property rights.

The new groundwater legislation doesn't prohibit unhappy water users from filing lawsuits hoping to circumvent the process. Under established water law, property owners can ask a Superior Court judge to settle groundwater disputes through a process known as adjudication, in which the judge ultimately rules on who has a right to how much water. Gov. Jerry Brown signed two bills this fall that aim to streamline the adjudication process and prevent litigants from using the courts to hamstring conservation efforts. But these lengthy, costly legal proceedings are left largely untouched by the new groundwater measures.

Adjudications generally require a judge to untangle the water rights of every well owner in a groundwater basin, whether they are cities, irrigation districts or homeowners. The more wells in the basin, the more twisted the knot for the judge to unravel. Plus, the various factions – down to residential well owners – are allowed to bring in expert

witnesses to offer their views on basin boundaries, hydrology and historical water use.

“I think, in most areas, the local water users and districts and counties are thoroughly committed to try come up with a management approach rather than litigation approach,” said Sacramento attorney Kevin O’Brien, who handles water disputes. “Everybody understands the expense and time involved in these groundwater (adjudication) cases, many of which take 10, 15, 20 years to resolve.”

Yet that was exactly the approach that a group of local activists preferred in San Luis Obispo County, when supervisors recently placed unprecedented restrictions on groundwater use. The action followed years of complaints from area landowners about wells drying up because aquifers were overdrafted.

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Sue Luft, Paso Robles winery owner

Sue Luft, a retired environmental engineer, and her husband, Karl, experienced it firsthand. In 2004, Luft decided to retire and start a small winery. The couple bought 10 acres in Paso Robles in the heart of the rolling brown hills of San Luis Obispo County's thriving wine country.

Their well began to fail just three years later. Luft dipped into her family's retirement savings to drill a new deeper well. It's pulling from a source so deep that the water that comes up is rank with sulfur, salt and boron. The couple resorted to buying a costly filtration system to make the water safe to drink and for irrigation of their zinfandel grapes.

“Our neighbors all around us have drilled new wells, but immediately next door, the neighbor can't afford to,” she said. “He's trucking water. A few of the neighbors are trucking water.”

The county Board of Supervisors took action after studies showed that the groundwater levels below Paso Robles were dropping precipitously as arid pastureland was replanted with vineyards. In 2013, the supervisors passed an ordinance requiring farmers in the Paso Robles basin to offset their groundwater use if they wanted to plant new crops. A landowner, for example, would have to remove an acre of alfalfa if he wanted to plant 3.6 acres of new vineyards to ensure the groundwater demand stayed the same.

[Last month](#), the supervisors voted to make the ordinance countywide – and permanent. Voters in the Paso Robles region [will decide in March](#) whether to form a groundwater management district. If the measure passes, they also will choose who would sit on a new board, and whether to use a parcel tax to fund it.

The decisions appeared to put San Luis Obispo County years ahead of most jurisdictions in implementing key goals of the new groundwater legislation. But the county's efforts almost immediately were undermined. A group of vineyard owners and property-rights activists sued, saying they would rather a judge divvy up the groundwater through an adjudication than allowing local politicians to shape the regulations.

Ryan Newkirk, a sixth-generation Paso Robles farmer, is [spearheading the legal case with his mother](#). He said the restrictions the county has put on groundwater use amount to the “government picking winners and losers” based on faulty assumptions.

“I don't see a lot of responsibility in the regulation that we're seeing,” said Newkirk, who grows grapes in the region. “It's just a kind of a rush to get something done, whether it's right or not. Whether it's based in fact or not. The potential for us to be negatively impacted by the regulations is what scares us.”

The adjudication is still likely years from being resolved. Should voters approve the new groundwater agency, it's not clear how its formation will mesh with the legal process.

‘Whose water is he taking?’

In Kings County, Russell Waymire is among a group of farmers already expressing concerns about the prospect of new regulations, though they're still years from being implemented.

Waymire, 64, has been an outspoken advocate for local farmers on water issues. Drivers along the major highways in the San Joaquin Valley likely have seen his handiwork: dozens of yellow signs that read, "Congress Created Dust Bowl."

Waymire, the 2009 "Agriculturist of the Year for Kings County," said he was forced to quit farming commercially in the 1990s when his government surface water deliveries were curtailed. He still grows some crops, but his primary income now comes from selling agricultural real estate in the Hanford area.

Absent the government restoring historic surface-water delivery levels, he said, groundwater is the only thing preventing more San Joaquin Valley farmers from going out of business. He speaks of restrictions on pumping in bleak terms: shuttered schools, broke local governments, vast brown fields of dust.

"I refuse to comply myself," he said. "Because it's a prescription for bankruptcy."

Waymire said he hopes area farmers will sue to prevent the groundwater restrictions from being implemented.

Kings County supervisors have heard those threats loud and clear. They've also watched the uproar over the groundwater regulations in neighboring San Luis Obispo County.

I refuse to comply myself. Because it's a prescription for bankruptcy.

Russell Waymire, Kings County farmer and real estate agent

At the advice of the county's attorney, the supervisors have held off on taking proactive steps to regulate groundwater. Instead, they're waiting for the state to finalize the regulatory process, and for various local agencies to figure out what form the county's groundwater management structure will take. The supervisors said they also hope, in the years ahead, the state will step up to help pay for the county's inevitable legal fees.

"There's no question there will be lawsuits," said Larry Spikes, the county's administrative officer. "I don't believe even the most congenial efforts to regulate groundwater will happen without lawsuits occurring ... You're really talking about a sea change in how this has been done."

Still, Supervisor Verboon is among those in the county who say something needs to change. Increasingly, Verboon said, he hears other small farmers complaining that only the wealthiest among them – the big corporate operations – can afford to pay the tens of thousands of dollars required to install wells deep enough to reach the receding groundwater.

"It's almost turned into a competition: Who can have the deepest well in the aquifer near your farm," he said. "We need to have some kind of ordinance to protect us from trying to kill each other off. We don't want to be fighting over water to survive."

This isn't an abstract concept for Verboon. His neighbor recently dug a massive well just feet from the edge of Verboon's walnut orchard. He wonders whether his two shallower wells might soon pump nothing but air.

"Now you can see the concern you have with your neighbors when it comes to property rights," Verboon said, glancing over at his neighbor's pump. "Because whose water is he taking now?"

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