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State Water Resources Control Board's Evolving Role: Balancing Groundwater Sustainability With Property Rights

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This article explores the SWRCB's evolving role and how its enforcement actions under SGMA intersect with property owners' groundwater rights, especially considering potential regulatory takings claims.

In California, groundwater has long been a critical resource, especially for agricultural landowners. The passage of the Sustainable Groundwater Management Act (SGMA) in 2014 marked a turning point in the state's water management strategy, aiming to address persistent issues of groundwater overdraft. SGMA seeks to ensure sustainable groundwater use, but it has also introduced new regulatory limitations that affect property owners' rights to extract groundwater beneath their land.

The California State Water Resources Control Board plays a central role in enforcing SGMA's objectives. As local Groundwater Sustainability Agencies (GSAs) work to implement Groundwater Sustainability Plans (GSPs), the SWRCB intervenes when these plans are inadequate or absent. This expanded authority raises significant legal questions about the balance between protecting water resources and respecting property rights. This article explores the SWRCB's evolving role and how its enforcement actions under SGMA intersect with property owners' groundwater rights, especially considering potential regulatory takings claims.

SWRCB's Expanded Jurisdiction Under SGMA

Before SGMA, California's groundwater regulation was fragmented, with limited state oversight over percolating groundwater. The SWRCB's jurisdiction primarily extended to surface water, while

local agencies managed groundwater with varying levels of effectiveness. This lack of unified management left many groundwater basins vulnerable to overdraft.

SGMA created a new framework, requiring GSAs to develop and implement GSPs for high- and medium-priority basins. These plans must address critical issues like groundwater depletion and land subsidence to ensure sustainability. If a GSA fails to submit a satisfactory plan or implement it effectively, SGMA empowers the SWRCB to intervene. This expanded authority enables the SWRCB to impose pumping restrictions and other regulatory measures to align the basin with SGMA's sustainability goals.

This expansion is legally grounded in Article X, Section 2 of the California Constitution, which mandates that all water use in the state be "reasonable and beneficial." The SWRCB's authority is further bolstered by the public trust doctrine, which requires the state to protect natural resources for the public's benefit. Together, these legal principles give the SWRCB the power to regulate groundwater use, even at the expense of property owners' historical pumping rights.

Balancing Groundwater Sustainability and Property Rights

California law recognizes that overlying property owners have the right to reasonable and beneficial use of the groundwater beneath their land. However, these rights are not absolute. The SWRCB's expanded role under SGMA highlights the legal tension between sustainable water management and property rights, especially when the state imposes restrictions that limit groundwater extraction.

Under SGMA, the SWRCB can restrict groundwater pumping to prevent overdraft and ensure use remains within the basin's "safe yield"—the amount that can be withdrawn without depleting the resource. For property owners who have historically relied on unrestricted pumping for agriculture or industry, these restrictions represent a significant shift. Some landowners may view these limits as infringing on their property rights, arguing that their investments were made with the expectation of continued groundwater access.

The doctrine of “reasonable use,” codified in both state law and the California Constitution, governs all water rights in the state, including groundwater. This doctrine allows the state to regulate water use to protect the public interest, especially during drought or resource scarcity. California courts have consistently upheld this principle, affirming that water rights must adapt to changing conditions. As a result, while landowners may have the right to use groundwater, that right is not inviolable and can be curtailed when necessary to achieve sustainability.

Takings Claims and Property Rights Under SGMA

A key legal issue arising from the SWRCB’s restriction of groundwater pumping rights is whether these limitations could constitute a regulatory taking under the Fifth Amendment. The takings clause prohibits the government from taking private property for public use without just compensation. In cases of regulatory takings, the government imposes restrictions that significantly limit the use of private property, potentially requiring compensation.

The U.S. Supreme Court’s decision in *Penn Central Transportation v. New York City* (1978) provides the framework for determining whether a regulatory action constitutes a taking. The Penn Central test involves three factors: the economic impact of the regulation, the degree of interference with the landowner’s investment-backed expectations, and the character of the government action.

In the context of SGMA, property owners might raise two key arguments to support claims of regulatory takings: local control vs. state overreach and reasonable investment-backed expectations.

SGMA emphasizes local control by empowering GSAs to develop GSPs tailored to their region’s unique needs. However, if the SWRCB overrides a GSA’s plan by imposing stricter groundwater extraction limits, property owners may argue that the state has exceeded its regulatory authority, infringing on their property rights. For example, farmers in a semi-arid agricultural basin could claim that their GSA approved a plan allowing a certain level of groundwater extraction deemed sustainable based on local conditions. If the SWRCB

intervenes with stricter statewide limits, these farmers could argue that the state has overreached, disregarding local considerations and infringing on their rights.

These landowners might contend that the SWRCB's blanket restrictions, which fail to account for regional variability in groundwater needs, constitute a regulatory taking by undermining their legitimate reliance on the GSA's local authority. They could argue that SGMA was designed to allow localized control, and the SWRCB's intervention negates this promise, causing economic harm to their farming operations.

While property owners may argue that local GSAs are better suited to assess reasonable groundwater use in their areas, courts have generally deferred to the state's regulatory authority when statewide resource sustainability is at stake. California's "reasonable use" doctrine gives the SWRCB the power to intervene when local plans fail to meet sustainability goals. Still, the local control vs. state overreach argument could fuel legal challenges, especially if landowners can prove the SWRCB's actions are excessive or unnecessary given local conditions.

The reasonable investment-backed expectations standard from Penn Central is another key factor in takings analysis. Many agricultural and business property owners have made substantial investments based on the historical availability of groundwater. These investments, often made over decades, were predicated on the assumption that groundwater use would remain relatively unrestricted.

Consider a large-scale almond grower in the Central Valley who has invested millions in land, irrigation infrastructure, and equipment, all based on consistent groundwater access. If the SWRCB imposes severe pumping restrictions, the grower might argue that the state's actions disrupt their reasonable investment-backed expectations, rendering their land and business economically unsustainable. The farmer could claim that their right to use the groundwater beneath their land, as part of the "bundle of rights" inherent to property ownership, has been improperly restricted without compensation.

While property owners can argue that their investments were based on reasonable expectations of continued groundwater access, courts have generally held that water rights are inherently flexible and must adapt to changing environmental and legal contexts. In *Allegretti & v. County of Imperial* (2006), California courts upheld restrictions on groundwater use, ruling that water rights are part of the “bundle of rights” but are not absolute. Moreover, the “reasonable use” doctrine prioritizes sustainable management over individual water use, suggesting that takings claims may face significant legal hurdles unless a property owner can prove a near-total loss of economic value.

Technical and Legal Nuances of Groundwater Rights as Property

Groundwater rights, traditionally viewed as private property, involve complex legal and technical considerations. For example, return flows—water re-entering the groundwater basin post-use—represent a significant property interest for landowners. If SWRCB restrictions impede access to these return flows, it might constitute a taking of property rights. Similarly, while promoting safe yield is a legitimate public objective, enacting strict limits to achieve it could deprive landowners of their rights without just compensation, particularly if the restrictions severely curtail their usage.

California courts have historically recognized groundwater rights as part of a landowner’s “bundle of sticks,” suggesting that significant impediments to these rights could equate to a compensable taking. The “use-it-or-lose-it” principle underlines this view, whereby landowners may lose rights they would otherwise exercise if precluded by regulations.

Conclusion

The SWRCB’s expanded role under SGMA underscores the delicate balance between safeguarding California’s groundwater resources and respecting property owners’ rights. As the SWRCB enforces restrictions to ensure long-term sustainability, it may encounter

legal challenges from property owners who argue these restrictions constitute regulatory takings. Claims of state overreach and violations of reasonable investment-backed expectations will likely shape these challenges. However, California's legal precedent—rooted in the “reasonable use” doctrine and the state's responsibility to manage water sustainably—grants the SWRCB considerable regulatory authority.

As groundwater management evolves, the courts will play a crucial role in defining the limits of state regulatory power and the scope of property owners' rights, ensuring a balance between sustainable resource management and individual economic interests.

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