

Senate Bill No. 37

CHAPTER 391

An act to amend Section 10723 of the Water Code, and to create the Kings River East Groundwater Sustainability Agency, and prescribing its boundaries, organization, operation, management, financing, and other powers and duties, relating to water districts.

[Approved by Governor September 16, 2016. Filed with
Secretary of State September 16, 2016.]

LEGISLATIVE COUNSEL'S DIGEST

SB 37, Vidak. Kings River East Groundwater Sustainability Agency Act.

Existing law, the Sustainable Groundwater Management Act, requires all groundwater basins designated as high- or medium-priority basins by the Department of Water Resources that are designated as basins subject to critical conditions of overdraft to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans by January 31, 2020, and requires all other groundwater basins designated as high- or medium-priority basins to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans by January 31, 2022, except as specified. The act authorizes any local agency or combination of local agencies overlying a groundwater basin to decide to become a groundwater sustainability agency for that basin. The act deems certain agencies created by statute to manage groundwater the exclusive local agencies within their respective statutory boundaries with powers to comply with the act and authorizes these agencies to opt out of being the exclusive groundwater management agency.

This bill would create the Kings River East Groundwater Sustainability Agency and would establish the agency's initial boundaries. The bill would authorize the boundaries of the agency to be adjusted, as specified. The bill would require the agency to elect to be a groundwater sustainability agency under the Sustainable Groundwater Management Act for that portion of the Kings Subbasin that lies within the boundaries of the agency and would require the agency to develop and implement a groundwater sustainability plan to achieve sustainable groundwater management within the territory of the agency. The bill would generally specify the powers and purposes of the agency. The bill would prescribe the composition of the 7-member board of directors of the agency and would require members and alternates to be chosen by certain member agencies, as specified. By imposing duties on the agency and the member agencies, the bill would impose a state-mandated local program. The bill would deem the Kings River East Groundwater Sustainability Agency the exclusive local agency with powers to comply with the Sustainable Groundwater Management Act.

This bill would incorporate additional changes to Section 10723 of the Water Code proposed by both this bill and SB 564 to become operative only if both bills are enacted and become effective before January 1, 2017, and this bill is chaptered last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. This act shall be known and may be cited as the Kings River East Groundwater Sustainability Agency Act.

Kings River East Groundwater Sustainability Agency Act

Article 1. Findings and Declarations

101. The Legislature hereby finds and declares that the preservation of the groundwater resources within the territory of the agency is in the public interest and that the creation of the agency pursuant to this act is for the common benefit.

102. The Legislature further finds and declares that the groundwater management activities of the agency benefit all operators of groundwater extraction facilities within the territory of the agency.

103. The Legislature further finds and declares that circumstances in the territory of the agency to be formed hereby, which may not exist in other locations, justify the formation of the agency and the grant of powers contained in this act.

Article 2. Creation and Purposes

201. (a) A groundwater management agency is hereby created in the Counties of Fresno and Tulare to be known as the Kings River East Groundwater Sustainability Agency.

(b) The agency shall be governed by a board as specified in Section 501 and shall have the boundaries specified in Section 301. The agency shall only exercise the powers granted by this act and the Sustainable Groundwater Management Act (Part 2.74 (commencing with Section 10720) of Division 6 of the Water Code) for purposes of groundwater management within the boundaries of the agency, together with any other powers as are reasonably implied, necessary, and proper to carry out the objectives and purposes of the agency to implement the Sustainable Groundwater Management Act. The agency shall abide by the rules and regulations promulgated by the

Department of Water Resources and the State Water Resources Control Board to implement the Sustainable Groundwater Management Act.

Article 3. Boundaries

301. For purposes of this act, the initial boundaries of the agency shall include the following:

(a) All land located within the exterior perimeter boundaries of Alta Irrigation District that is within the Counties of Fresno and Tulare.

(b) All land located in the incorporated City of Reedley.

(c) All land located in Kings River Water District plus parcel 350-150-16 within the County of Fresno, as that parcel existed as of January 1, 2016, and excluding the incorporated City of Sanger.

(d) Land that is east of Alta Irrigation District and east of the east line of Sections 13 and 24, T13S, R23E, between Alta Irrigation District and east line and the east line of the Bulletin 118 Kings Subbasin boundary, as described in the report by the Department of Water Resources titled, “California’s Groundwater: Bulletin 118,” updated in 2003, as it may be subsequently updated or revised in accordance with Section 12924 of the Water Code.

302. (a) The initial boundaries may be changed upon a petition to the boards of supervisors of the Counties of Fresno and Tulare after a noticed public hearing in the county in which the change is proposed. The boundaries shall be depicted on a map that shall be maintained by the boards of supervisors of those counties and thereafter recorded in the office of the county recorder of each county.

(b) The boundaries of the agency shall not be adjusted to include an area of the basin within the management area of another groundwater sustainability agency unless the agency has entered into a memorandum of agreement or other legal agreement with that groundwater sustainability agency that permits the area to be included.

(c) The boundaries of the agency shall not be adjusted to include any part of a proposed management area, as defined in a notice of intent submitted pursuant Section 10723.8 of the Water Code, unless the agency has entered into a memorandum of agreement or other legal agreement with all agencies listed in the notice of intent that permits the area to be included.

Article 4. Definitions

401. Unless otherwise indicated by their context, the definitions set forth in this article govern the interpretation of this act.

401.1. “Actively and primarily engaged in production of agriculture” means that a person derives at least 75 percent of his or her annual income from production agriculture.

402. “Agency” means the Kings River East Groundwater Sustainability Agency established by this act.

403. “Alta” means the Alta Irrigation District.
404. “Aquifer” means a geologic formation or structure that transmits water in sufficient quantities to supply pumping wells or springs.
405. “Basin” has the same meaning as defined in Section 10721 of the Water Code.
406. “Board” means the board of directors of the agency, as more particularly described in Section 501.
407. “Cities” means the Cities of Dinuba, Orange Cove, and Reedley.
408. “Coordination agreement” has the same meaning as defined in Section 10721 of the Water Code.
409. “County” means either the County of Fresno or the County of Tulare, as the context requires. “Counties” means the County of Fresno and the County of Tulare.
410. “Extraction” means the act of obtaining groundwater by pumping or other controlled means.
411. “Groundwater” has the same meaning as defined in Section 10721 of the Water Code.
412. “Groundwater management activities” means programs, measures, or actions taken to preserve, protect, and enhance groundwater resources within the territory of the agency.
413. “Kings Subbasin” means the San Joaquin Valley Groundwater Basin Kings Subbasin.
414. “Member agency” means Alta, the counties, the cities, and the special districts entitled to representation on the agency’s board of directors as specified in Section 501.
415. “Operator” has the same meaning as defined in Section 10721 of the Water Code.
416. “Person” has the same meaning as defined in Section 10735 of the Water Code.
417. “Plan” means a groundwater sustainability plan prepared by the agency pursuant to this act.
418. “Supplemental water” means surface water or groundwater imported from outside the watershed or watersheds of the basin or aquifer and floodwaters that are conserved and saved within the watershed or watersheds that would otherwise have been lost or would not have reached the basin or aquifer.

Article 5. General Provisions

501. (a) The agency shall be governed by a board of directors that shall consist of seven members, as follows:
- (1) One member shall be chosen by Alta.
 - (2) One member shall be chosen by the County of Fresno.
 - (3) One member shall be chosen by the County of Tulare.
 - (4) One member shall be chosen by the cities. This member shall be chosen from the members of the city councils of the cities whose territory,

at least in part, overlies the territory of the agency. This member shall be chosen at a public meeting where each city is represented by its mayor.

(5) One member shall be chosen from the members of the governing boards of the following special districts that are not governed by the board of supervisors of either county, are engaged in water activities, and whose territory, at least in part, overlies the territory of the agency:

- (A) Hills Valley Irrigation District.
- (B) Orange Cove Irrigation District.
- (C) Tri-Valley Water District.
- (D) Kings River Water District.

(6) One member shall be chosen from the members of the governing boards of special districts that provide drinking water within the territory of the agency.

(7) One member shall be chosen by the other six board members to represent agricultural interests within the territory of the agency. This member shall reside and be actively and primarily engaged in production of agriculture within the territory of the agency. This member shall be selected from a list of at least five nominations submitted from the Fresno County Farm Bureau and the Tulare County Farm Bureau, acting jointly, but the five nominees need not be members of either organization.

(b) The board members described in paragraphs (1), (2), and (3) of subdivision (a) shall be chosen by their respective governing boards from their board members whose districts or divisions overlie, at least in part, the territory of the agency.

(c) The board members described in paragraphs (5) and (6) of subdivision (a) shall be chosen at a public meeting where each special district is represented by the president or chair of its governing board.

(d) There shall be an alternate for each board member, chosen in the same manner and by the same entity as the board member. The alternate member shall act in place of the board member he or she is an alternate for in case of that board member's absence or inability to act.

(e) Members and their alternates shall be chosen on or before January 31, 2017.

502. (a) The members described in paragraphs (1) to (6), inclusive, of subdivision (a) of Section 501 shall serve for a four-year term of office, or until the member is no longer an eligible official of the member agency. These members may serve for more than one term of office.

(b) The member described in paragraph (7) of subdivision (a) of Section 501 shall serve a four-year term of office.

503. (a) The board may adopt an ordinance to provide compensation to members of the board in an amount not to exceed one hundred dollars (\$100) per day for each day's attendance at meetings of the board or for each day's service rendered as a member of the board by request of the board. For purposes of this section, the determination of whether a board member's activities on any specific day are compensable shall be made pursuant to Article 2.3 (commencing with Section 53232) of Chapter 2 of Part 1 of Division 2 of Title 5 of the Government Code.

(b) Reimbursement for expenses of members of the board is subject to Sections 53232.2 and 53232.3 of the Government Code.

(c) The board may adopt an ordinance to increase the compensation received by members of the board above the amount of one hundred dollars (\$100) per day. The increase shall not exceed an amount equal to 5 percent, for each calendar year following the operative date of the last adjustment, of the compensation that is received when the ordinance is adopted.

(d) A board member shall not be compensated for more than a total of 10 days in any calendar month.

504. (a) The board may adopt ordinances for the purpose of regulating, conserving, managing, and controlling the use and extraction of groundwater within the territory of the agency.

(b) An ordinance adopted by the board shall become effective 30 days from the date of its passage.

(c) All ordinances shall be adopted at noticed, public hearings by a majority vote of the board. No ordinance shall be adopted by the board except at a public hearing. Notice of the hearing shall be published in a newspaper of general circulation pursuant to Section 6066 of the Government Code.

(d) The board shall provide notice of the adoption of all ordinances.

505. No provision of this act shall be construed as denying to the counties, any city, Alta, or any other member agency any rights or powers that they already have or that they may be granted.

506. The agency may contract with either county or Alta for staff and other services. The agency may hire contractors and consultants as it considers appropriate.

507. The agency shall enter into a coordination agreement with other local agencies for purposes of coordinating the agency's plan with other agencies or groundwater sustainability plans within the Kings Subbasin as required by the Sustainable Groundwater Management Act (Part 2.74 (commencing with Section 10720) of Division 6 of the Water Code).

508. The agency may exclude from any of the requirements of this act, or the operation of any ordinance, any operator who annually extracts less than a minimum amount of groundwater as specified by an ordinance adopted by the board.

Article 6. Studies and Investigations

601. The agency may collect data and conduct technical and other investigations of all kinds in order to carry out the provisions of this act. All hydrological investigations and studies carried out by or on behalf of the agency shall be constructed by or under the supervision of licensed engineers or other persons qualified in groundwater geology or hydrology.

602. The agency may recommend and encourage water recycling and other water development projects, where those projects will enhance and

contribute to the responsible management of groundwater resources, as part of its annual plan for implementation of groundwater management objectives.

Article 7. Sustainable Groundwater Management Powers

701. The agency shall develop and implement a groundwater sustainability plan pursuant to Chapter 6 (commencing with Section 10727) of Part 2.74 of Division 6 of the Water Code to achieve sustainable groundwater management within the territory of the agency.

702. The agency shall elect to be a groundwater sustainability agency pursuant to Chapter 4 (commencing with Section 10723) of Part 2.74 of Division 6 of the Water Code for that portion of the Kings Subbasin that lies within the boundaries of the agency.

703. The agency may exercise any of the powers described in Chapter 5 (commencing with Section 10725) of Part 2.74 of Division 6 of the Water Code and the enforcement powers described in Chapter 9 (commencing with Section 10732) of Part 2.74 of Division 6 of the Water Code.

704. The availability of supplemental water to any operator shall not subject that operator to regulations by the agency that are more restrictive than those imposed on other operators.

Article 8. Fee Authority

801. Pursuant to Chapter 8 (commencing with Section 10730) of Part 2.74 of Division 6 of the Water Code, the agency may impose fees, including, but not limited to, permit fees and fees on groundwater extraction or other regulated activity, to fund the costs of a groundwater sustainability program, that include, but are not limited to, the preparation, adoption, and amendment of a groundwater sustainability plan, investigations, inspections, compliance assistance, enforcement, and program administration, including a prudent reserve.

Article 9. Miscellaneous

901. In the event of any conflict between the Kings River East Groundwater Sustainability Agency Act and the provisions of the Sustainable Groundwater Management Act (Part 2.74 (commencing with Section 10720) of Division 6 of the Water Code), the provisions of the Sustainable Groundwater Management Act shall prevail.

SEC. 2. Section 10723 of the Water Code is amended to read:

10723. (a) Except as provided in subdivision (c), any local agency or combination of local agencies overlying a groundwater basin may decide to become a groundwater sustainability agency for that basin.

(b) Before deciding to become a groundwater sustainability agency, and after publication of notice pursuant to Section 6066 of the Government

Code, the local agency or agencies shall hold a public hearing in the county or counties overlying the basin.

(c) (1) Except as provided in paragraph (2), the following agencies created by statute to manage groundwater shall be deemed the exclusive local agencies within their respective statutory boundaries with powers to comply with this part:

(A) Alameda County Flood Control and Water Conservation District, Zone 7.

(B) Alameda County Water District.

(C) Desert Water Agency.

(D) Fox Canyon Groundwater Management Agency.

(E) Honey Lake Valley Groundwater Management District.

(F) Kings River East Groundwater Sustainability Agency.

(G) Long Valley Groundwater Management District.

(H) Mendocino City Community Services District.

(I) Mono County Tri-Valley Groundwater Management District.

(J) Monterey Peninsula Water Management District.

(K) Ojai Groundwater Management Agency.

(L) Orange County Water District.

(M) Pajaro Valley Water Management Agency.

(N) Santa Clara Valley Water District.

(O) Sierra Valley Groundwater Management District.

(P) Willow Creek Groundwater Management Agency.

(2) An agency identified in this subdivision may opt out of being the exclusive groundwater management agency within its statutory boundaries by sending a notice to the department, which shall be posted on the department's Internet Web site within 15 days of receipt. If an agency identified in paragraph (1) opts out of being the exclusive groundwater management agency, any other local agency or combination of local agencies operating within the statutory boundaries of the agency that has opted out may notify the department pursuant to Section 10723.8 of its decision to be the groundwater sustainability agency.

(3) A local agency listed in paragraph (1) may comply with this part by meeting the requirements of Section 10733.6 or opting to become a groundwater sustainability agency pursuant to this section. A local agency with authority to implement a basin-specific management plan pursuant to its principal act shall not exercise any authorities granted in this part in a manner inconsistent with any prohibitions or limitations in its principal act unless the governing board of the local agency makes a finding that the agency is unable to sustainably manage the basin without the prohibited authority.

(d) The decision of a local agency or combination of agencies to become a groundwater sustainability agency shall take effect as provided in Section 10723.8.

SEC. 2.5. Section 10723 of the Water Code is amended to read:

10723. (a) Except as provided in subdivision (c), any local agency or combination of local agencies overlying a groundwater basin may decide to become a groundwater sustainability agency for that basin.

(b) Before deciding to become a groundwater sustainability agency, and after publication of notice pursuant to Section 6066 of the Government Code, the local agency or agencies shall hold a public hearing in the county or counties overlying the basin.

(c) (1) Except as provided in paragraph (2), the following agencies created by statute to manage groundwater shall be deemed the exclusive local agencies within their respective statutory boundaries with powers to comply with this part:

(A) Alameda County Flood Control and Water Conservation District, Zone 7.

(B) Alameda County Water District.

(C) Desert Water Agency.

(D) Fox Canyon Groundwater Management Agency.

(E) Honey Lake Valley Groundwater Management District.

(F) Kings River East Groundwater Sustainability Agency.

(G) Long Valley Groundwater Management District.

(H) Mendocino City Community Services District.

(I) Mono County Tri-Valley Groundwater Management District.

(J) Monterey Peninsula Water Management District.

(K) North Fork Kings Groundwater Sustainability Agency.

(L) Ojai Groundwater Management Agency.

(M) Orange County Water District.

(N) Pajaro Valley Water Management Agency.

(O) Santa Clara Valley Water District.

(P) Sierra Valley Groundwater Management District.

(Q) Willow Creek Groundwater Management Agency.

(2) An agency identified in this subdivision may opt out of being the exclusive groundwater management agency within its statutory boundaries by sending a notice to the department, which shall be posted on the department's Internet Web site within 15 days of receipt. If an agency identified in paragraph (1) opts out of being the exclusive groundwater management agency, any other local agency or combination of local agencies operating within the statutory boundaries of the agency that has opted out may notify the department pursuant to Section 10723.8 of its decision to be the groundwater sustainability agency.

(3) A local agency listed in paragraph (1) may comply with this part by meeting the requirements of Section 10733.6 or opting to become a groundwater sustainability agency pursuant to this section. A local agency with authority to implement a basin-specific management plan pursuant to its principal act shall not exercise any authorities granted in this part in a manner inconsistent with any prohibitions or limitations in its principal act unless the governing board of the local agency makes a finding that the agency is unable to sustainably manage the basin without the prohibited authority.

(d) The decision of a local agency or combination of agencies to become a groundwater sustainability agency shall take effect as provided in Section 10723.8.

SEC. 3. Section 2.5 of this bill incorporates amendments to Section 10723 of the Water Code proposed by both this bill and Senate Bill 564. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2017, (2) each bill amends Section 10723 of the Water Code, and (3) this bill is enacted after Senate Bill 564, in which case Section 2 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.