

A Guide to Compliance with California's Sustainable Groundwater Management Act

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This summary is based off a report written by Alletta Belin

How to avoid the “undesirable result” of “significant and unreasonable adverse impacts on beneficial uses of surface waters.”

The purpose of this guide is to help Groundwater Sustainability Agencies (GSAs) and other stakeholders understand and comply with the requirement that groundwater withdrawals must not cause significant and unreasonable adverse impacts on beneficial uses of the surface water, known as undesirable result no. 6. While there may be some situations not covered in the guide the issues and legal provisions most likely to give rise to compliance problems under SGMA are set forth.

GSAs charged with implementing SGMA, must complete their first plans no later than the 2020 and 2022 deadlines set forth in Water Code § 10720.7. Each plan must include a sustainability goal for the basin that culminates in the absence of undesirable results within 20 years of the deadline, along with a discussion of how the sustainability goal is likely to be achieved by the deadline. The plan must describe the criteria used to define when and where the effects of the groundwater conditions cause undesirable results for each applicable sustainability indicator.

The factors identified below are intended as guideposts for complying with these requirements and reviews the state and federal legal standards most pertinent to avoidance of undesirable result no. 6.

Red-light circumstances

This category identifies situations which GSAs must look closely at as they are most likely to require additional action to ensure legal compliance. The presence of any Red Light factors creates a presumption that any new groundwater diversion would cause significant and unreasonable adverse impacts on beneficial uses of surface water and rise to the level of an undesirable result.

They include:

1. Federal and/or State Endangered Species Act (ESA) surface flow or other surface water-dependent requirements are currently not being met at least partially due to groundwater diversions
2. Other (non-ESA) legally established instream flow requirements are currently not being met at least partially due to groundwater diversions.
3. Water quality requirements and/or Total Maximum Daily Loads (TMDLs) are currently not being met due at least partially to groundwater diversions.
4. Senior surface water rights or fishing rights are currently not being met at least partially due to groundwater diversions.

5. Instream flows and/or riparian areas within the boundaries of federal or state-designated Wild and Scenic Rivers are currently being adversely affected at least partially by groundwater diversions.
6. Groundwater diversions have adversely affected groundwater dependent ecosystems (GDEs) not included in specially protected areas but covered by the Public Trust Doctrine.
7. Surface waters or GDEs within National Parks or Monuments, National Conservation Areas, National Wildlife Refuges, National Recreation Areas, Wilderness Areas, Wilderness Study Areas, National Forests, Areas of Critical Environmental Concern, U.S. Bureau of Land Management, units of the California State Park System, or California Department of Fish and Wildlife Ecological Reserves or Wildlife Protected Areas are currently being adversely affected by groundwater diversions.
8. Groundwater diversions are known to have caused or contributed to substantial or irreparable surface water infrastructure damage .
3. Federal and/or State Endangered Species Act surface flow or other surface water-dependent requirements will likely not be met in the future at least partially due to groundwater diversions.
4. A species dependent on surface waters that has been proposed for listing or designated as “Candidate Species,” or for which listing under the Endangered Species Act has been determined to be either “warranted” or “warranted but precluded” is being harmed or is likely to be harmed due at least partially to groundwater diversions
5. It is likely that groundwater diversions will in the future prevent compliance with a water quality standard or TMDLs.
6. Instream flows and/or riparian areas within the boundaries of federal or state-designated Wild and Scenic Rivers are likely to be adversely affected by groundwater diversions.
7. Groundwater diversions are likely to adversely affect GDEs not included in specially protected areas but covered by the public trust doctrine.
8. There is reason to believe that groundwater diversions may cause or contribute to substantial or irreparable water infrastructure damage .

Yellow Light Circumstances

This category is a warning flag, it lists legal factors that warn of the potential that a groundwater diversion could have impermissible impacts on beneficial uses of surface water. The warning should prompt GSAs to obtain technical advice as to what further investigation is appropriate to determine whether such impacts would occur, how severe they could be and whether they should be considered significant and unreasonable.

1. Surface waters or GDEs within national or state parks or monuments, national conservation areas, national wildlife refuges, national recreation areas, wilderness areas, wilderness study areas, national forests, areas of critical environmental concern, units of the California State Park System, California Department of Fish and Wildlife Ecological reserves or wildlife protected areas, government-approved mitigation banks or conservation banks are likely to be adversely affected by existing groundwater diversions.
2. Instream flow requirements recommended or being considered by the California Department of Fish and Wildlife, the State Water Resources Control Board, or a regional water quality control board are currently not being met, are unlikely to be met due to groundwater diversions.

Green Light Circumstances

The absence of any Red Light or Yellow Light warnings may lead to a Green Light, meaning that there are no immediately obvious concerns. However, getting a clear Green Light confirmation that undesirable result no. 6 is not occurring may be difficult and requires technical analysis that is beyond the scope of this guide. Not only is it difficult to take the steps necessary to ensure the sustainability of a groundwater basin, but it is also challenging – and potentially expensive – for a GSA to obtain sufficient data and other information to confirm that this goal has been achieved and that all potential problems have been avoided.

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