ENVIRONMENTAL LAW

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ARTICLE

In January 2015, California became the last Western state to adopt a comprehensive plan for managing its groundwater resources. With passage of the Sustainable Groundwater Management Act, the legislature overcame a century of resistance to impose substantial state-level regulatory control. The law vests authority in new local groundwater sustainability agencies, which must prepare sustainability plans for the over 100 aquifers presently experiencing critical declines in water levels. Under these plans, the statute contemplates that, among other criteria, withdrawals from aquifers must be managed to avoid both significant and unreasonable depletion of water storage levels and adverse effects on surface flows. This Article argues that the key standard imposed to meet these objectives, the sustainable yield, is fundamentally flawed because it specifies allowed withdrawals in terms of base periods representative of long-term conditions in each basin. However, such long-term conditions are no longer definable given twenty-first century climate models that predict sustained, increasing drought in the most populous parts of the state. To slow, and ultimately halt, the ongoing sharp declines in aquifer water levels, this Article suggests that the sustainable yield standard should be replaced with mandated, numerical criteria specifying defined levels of groundwater to be retained in each individual basin. This approach will require substantial, targeted efforts to gather missing data on the hydrological properties of aquifer basins across the state. It ultimately envisions a fully science-based approach to conjunctive management of ground and surface waters in California.

ESSAY

In 2011, the National Academy of Sciences recommended that the United States Environmental Protection Agency (EPA) consider sustainability in its actions and decisions, and the Agency is now taking steps to do so. However, this is harder than it might seem, particularly for the regulatory programs that are EPA's core line of work. While voluntary programs promoting energy efficiency or pollution prevention fit comfortably with such a goal, the relationship between regulation and sustainability is more complex. If anything, experience suggests that there are tensions between them. Sustainability initiatives tend to be characterized by innovation, adaptability, continuous change and systemic thinking, and these are not always easy to harmonize with a statutorily driven, top-down regulatory system addressing specific issues in a narrowly-targeted way.

This Essay analyzes the challenges of using regulatory programs to promote sustainability, looking at how regulatory programs have dealt with those challenges in the past—sometimes successfully and sometimes less so. It concludes that advancing sustainability is not always a natural role for environmental regulatory programs; "win-win" opportunities in a regulatory setting may be the exception rather than the rule. However, it also concludes that, based on the Agency's past history, opportunities can be found and that EPA should look for ways to take advantage of them where it can. This can be done in part by establishing new requirements, but more often by enabling, facilitating and incentivizing the initiatives undertaken by others. Sometimes this can be done by writing rules in ways that permit or even encourage innovation; in other cases it requires case by case tailoring. The challenges are real, but at a minimum the opportunities should not be overlooked, and should be affirmatively sought out by the Agency and its stakeholders.

2014 NINTH CIRCUIT ENVIRONMENTAL REVIEW

The Ninth Circuit Court of Appeals' recent decision in *League of Wilderness Defenders v. Connaughton* exemplifies its continued resistance to the Supreme Court's approach to preliminary injunctions. This Chapter analyzes the Ninth Circuit's discretionary approach to preliminary injunctive relief, despite Supreme Court precedent in