

Date of Hearing: April 23, 2024

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

AB 2079 (Bennett) – As Amended April 16, 2024

**SUBJECT:** Groundwater extraction: large-diameter, high-capacity water wells: permits

**SUMMARY:** Requires greater interagency coordination and public notice regarding applications to drill water wells and prohibits a local agency from approving new “large-diameter, high-capacity” wells within one-quarter mile of domestic wells and areas of significant land subsidence. Specifically, **this bill:**

- 1) Provides that this bill shall only apply to the 515 groundwater basins identified by the Department of Water Resources (DWR) in Bulletin 118.
- 2) Defines “large-diameter, high-capacity well” as any water well with a diameter greater than eight inches and that pumps more than two acre-feet (AF) of water annually.
- 3) Defines “local enforcement agency” (LEA) as any city, county, or water agency that has adopted and is administering an ordinance for the construction, maintenance, abandonment, or destruction of a water well.
- 4) Requires an LEA to do the following at least 30 days prior to approving a permit for a large-diameter, high capacity water well:
  - a) Notify the public by posting the application on the LEA’s website;
  - b) Notify all groundwater sustainability agencies (GSA) within a 10-mile radius of the proposed well;
  - c) Notify all other LEA’s in the groundwater basin, if any;
  - d) Notify via U.S. Postal Service all registered owners or agents of parcels within a one-mile radius of the proposed well. The notice shall include information about the well permitting process; and
  - e) Notify the State Water Resources Control Board (State Water Board) if the proposed well is to be located in a probationary basin.
- 5) Requires, upon notice, a GSA with oversight of the area where a proposed large-diameter, high-capacity well is to be located to provide the following information to the LEA:
  - a) The name of the applicable groundwater sustainability plan (GSP) and where an electronic copy of the GSP may be accessed;
  - b) The name of the applicable GSA, the GSA manager and contact information, and applicable sustainable groundwater sustainable management criteria;
  - c) The estimated depth to the groundwater level based on most recent monitoring for the area where the large-diameter, high-capacity well is to be located;

- d) Any fees, allocation, metering, spacing determinations, or other regulations or ordinances that the GSA has adopted;
  - e) Any updates to the information provided [i.e., information described in (a) through (d) and (f)] should changes occur; and
  - f) Notice of an inadequate determination, if applicable, and the status of any action by the State Water Board pertaining to the inadequate determination.
- 6) Requires the LEA to provide the following information to an applicant before approving a permit for a large-diameter, high-capacity well:
- a) The basin's name, number, and priority as designated by DWR;
  - b) The name of all GSAs managing the basin, if any, where the well will be located;
  - c) Any regulations or ordinances adopted by the GSA relative to the construction and operation of the well;
  - d) Notice that the well is subject to the regulatory authority of a GSA or State Water Board, if applicable. Specifically that such authority may include limiting groundwater pumping, imposing fees, and requiring metering.
- 7) Prohibits an LEA from approving a large diameter, high-capacity well within one-quarter of a mile of a domestic well.
- 8) Prohibits an LEA from approving a large diameter, high-capacity well within one-quarter of a mile of an area that DWR has reported as having subsided more than 0.5 feet since January 1, 2015 based on data provided in the InSAR subsidence data report. Provides, however, that an LEA *may* approve a well in such an area if the area has not had more than 0.1 feet of subsidence over the preceding four years and if the well is consistent with an applicable GSP and is screened above geologic units know to be susceptible to compaction.
- 9) Prohibits, in basins subject to the Sustainable Groundwater Management Act (SGMA), an LEA from approving a permit for any well unless it is screened below the minimum thresholds established in the GSP applicable to the area of the basin where the well is to be located.
- 10) Provides that an LEA may deny an application to approve a well based on criteria that is more stringent than that outlined in this bill.
- 11) Provides that this bill does not apply to applications or permits for any of the following:
- a) Wells that pump less than two AF annually;
  - b) Wells that will be located on a parcel five acres or less that is zoned rural-residential;
  - c) Drinking water wells of a public water system, state small water system, or a community water system;

- d) Large-diameter, high-capacity wells for the replacement of an existing large-diameter, high capacity well so long as it will not pump more water annually than the well being replaced, is substantially in the same location as the well being replaced and meets other specified conditions.

12) Provides that no reimbursement by the state is required by this bill because local agencies have the authority to levy service charges, fees, or assessments sufficient to cover the implementation costs.

**EXISTING LAW:**

- 1) Requires, under SGMA, local agencies to sustainably manage groundwater in high- or medium-priority basins by 2040. Defines sustainable management of groundwater as the avoidance of the following six “undesirable results:” (a) chronic lowering of groundwater levels; (b) reduction of groundwater storage; (c) seawater intrusion; (d) degraded water quality; (e) land subsidence; and (f) depletions of interconnected surface water (Water Code § 10720 *et seq.*).
- 2) Requires DWR to designate groundwater basins as high-, medium-, low-, or very low-priority and requires that the designation be based on specified criteria, including population of the overlying basin, number of wells in the basin, and irrigated acreage in the basin (Water Code § 10722.4).
- 3) Permits a GSA to require registration of any groundwater extraction facility (e.g., groundwater well) within its management area (Water Code § 10725.6).
- 4) Prohibits a GSA from issuing a permit for the construction, modification, or abandonment of a groundwater well unless authorized by a county to do so. Permits a GSA to request that a county forward permit applications for construction, modification, or reactivation of groundwater wells to the GSA before approval and requires counties to consider such a request from a GSA [Water Code § 10726.4 (b)].
- 5) Defines “well” or “water well” as any artificial excavation for the purpose of extracting water from, or injecting water into, the underground. Excludes oil and gas wells, geothermal wells, and wells used to dewater during destruction or stabilize hillsides or earth embankments from the definition of “well” and “water well” (Water Code § 13710).
- 6) Requires every person who drills, expands, or destroys a water well, cathodic protection well, groundwater monitoring well, or geothermal heat exchange well to file a well completion report with DWR containing specified information within 60 days of completing the construction, alteration, abandonment, or destruction of the well (Water Code § 13751).
- 7) Defines “domestic well” as a groundwater well used to supply water for the domestic needs of an individual residence or water system that is not a public water system and has no more than four connections [Health and Safety Code § 116681(i)].

**FISCAL EFFECT:** Unknown. This bill is keyed fiscal.

**COMMENTS:**

- 1) **Purpose of this bill.** This bill requires disclosure of information regarding permit applications for large-diameter, high-capacity wells and prohibits such wells where excessive land subsidence is occurring and near existing domestic wells. According to the author, “SGMA was passed to establish a statewide framework to help protect groundwater basins from over-pumping and have them reach long-term sustainable pumping levels. In March of 2022, the Governor signed Executive Order (EO) N-7-22 to establish new well permitting requirements in order to ensure new wells were evaluated for their impact on neighboring wells and land subsidence. Thousands of wells were permitted, with only a cursory ministerial approval process between the 2014 passage of SGMA and the governor's 2022 [EO]. Thousands of drinking water wells that often times served disadvantage communities went dry during that same period. [DWR] performed an extensive review followed by a thorough report on the implementation and effectiveness of the Governor's [EO]. [This bill] now implements the recommendations from DWR to ensure that new wells are evaluated for their impact on neighboring wells and land subsidence.”
- 2) **Background.** According to DWR, groundwater provides approximately 40% of California’s water supply in a “normal” year and as much as 60% in dry years. DWR estimates there are two million groundwater wells in California at present and indicates that between 7,000 and 15,000 new wells are constructed each year. Permitting for construction, alteration, or destruction of groundwater wells is handled by local agencies; typically this is a county department of environmental health, but cities and water agencies also exercise this authority in some cases. LEAs at a minimum, ensure compliance with well standards set by DWR (in Bulletin 74) before issuing a permit. Some LEAs adopt standards for wells that surpass DWR guidelines.

Oftentimes, a permit for a groundwater well is deemed a “ministerial” action by an LEA. Ministerial actions do not require the exercise of any discretion by the LEA: ““ministerial” describes a governmental decision involving little or no personal judgement by the public official as to the wisdom or manner of carrying out the project. The public official merely applies the law to the facts as presented but uses no special discretion or judgement in reaching a decision” (14 California Code of Regulations § 15369).

*Governor’s drought EOs.* The Governor issued EO N-7022 on March 28, 2022, to extend the then existing drought emergency and require various administrative responses to the previous drought. Among these actions, paragraph nine of EO N-7-22 prohibited a local or public agency from issuing a permit for a new groundwater well or the alteration of an existing well in a groundwater basin subject to SGMA “without first obtaining written verification from a [GSA] managing the basin or area of the basin where the well is proposed to be located that groundwater extraction by the proposed well would not be inconsistent with any sustainable groundwater management program established in any applicable [GSP] adopted by that [GSA] and would not decrease the likelihood of achieving a sustainability goal for the basin covered by such a plan.” Furthermore, the EO required that an LEA determine that a proposed new well or modification of an existing well would not likely interfere with nearby wells and would not cause subsidence that would harm infrastructure before issuing a permit. EO N-3-23 issued on February 13, 2023 again extended the then existing drought emergency and the provisions related to groundwater well permitting with minor changes to address any wells that must be moved related to the construction of high-speed rail.

*Groundwater Well Permitting: Observations and Analysis of Executive Orders N-7-22 and N-3-23 (EO report).* Completed in March 2024, this report notes that local agencies adopted various approaches to complying with the well permitting requirements of the EOs. These approaches included individual consultation on a permit-by-permit basis, reliance on existing requirements deemed sufficient, reliance on information submitted by applicants, passage of a broad resolution claiming any new well was consistent with relevant GSPs, and reliance on a report by a licensed professional. In some cases, GSAs and LEAs were simply unwilling to perform the verification process mandated in the EOs. There was little that DWR could do for those opting to not comply; as the EO report notes, “there is also no mechanism in the EOs to ensure compliance.” The EO report notes that at least 1,911 wells were reported as going dry via the voluntary Dry Well Reporting System from March 2022 through August 28, 2023 and that there were several areas of land subsidence of up to one foot in parts of the Sacramento Valley and San Joaquin Valley. The EO report includes DWR recommendations for statutory concepts to replace the EOs: 1) require disclosures; 2) set minimum standards; 3) exempt certain discrete types of wells and procedures; and 4) establish applicability of requirements (i.e., specify to groundwater basins are subject to requirements). This bill is based on the recommendations contained in the EO report.

*Interferometric Synthetic Aperture Radar (InSAR) subsidence data report.* This dataset is derived from satellite imagery collected by the European Space Agency ESA Sentinel-1A satellite and processed by TRE ALTAMIRA, Inc. under contract with DWR. DWR makes this subsidence data available to GSAs as part of its SGMA technical assistance program for GSP development and implementation. Data collection began in late 2014. The dataset includes point data that represent average vertical displacement values for 100 meter by 100 meter areas. The data was updated in 2018, 2019, and 2020 and has been updated quarterly since October 2021 (with the latest update in January 2024). This bill prohibits permitting a new large-diameter, high-capacity well within one-quarter mile of an area identified as having greater than 0.5 feet of land subsidence since January 1, 2015 based on InSAR data and interpretation.

- 3) **Arguments in support.** CleanEarth4Kids.org supports this bill asserting that many California communities face serious shortages of drinking water due in part to unregulated overpumping of groundwater. CleanEarth4Kids.org observes that groundwater levels plummeted during droughts experienced over the past decade and a half and that “high-capacity wells were drilled with no oversight or thought to the impacts to our drinking water.” CleanEarth4Kids.org argues this bill is necessary to protect our children’s health and future.
- 4) **Arguments in opposition.** The Valley Ag Water Coalition (VAWC) opposes this bill “because it represents an unnecessary intrusion into local control, interferes with the regulatory authority granted to [GSAs] under [SGMA], and adds burdensome requirements on GSAs at a time when they are focused on implementation of [GSPs]—the majority of which have been approved by [DWR].” VAWC further asserts the approach contained in this bill is contrary to the principle of SGMA that groundwater should be managed locally and tailored to unique local conditions which DWR has embraced when evaluating GSPs. Finally, VAWC contends that this bill “threatens state and local investments in groundwater banks and indirect potable reuse projects by prohibiting or interfering with the withdrawal of water placed into aquifers throughout the state.”

- 5) **Oppose unless amended.** The California Chamber of Commerce (CalChamber) and a number of agricultural trade associations have taken an “oppose unless amended” position on this bill arguing “that a stringent limitation on essentially any new non-drinking water well is [not] the appropriate way to address a decades-long and complex issue” and that “when SGMA was developed, the focus on achieving groundwater sustainability was rightfully on the relative use of groundwater: on how much water is used. It did not focus on how many wells are or may be in existence.” CalChamber et al. maintain this bill should focus on communication between GSAs, LEAs, and well permit applicants. In addition, CalChamber et al. seek several amendments to: 1) limit notifications of permit applications to only properties with wells; and 2) exempt adjudicated basins and basins with a statutorily designated groundwater agency [Water Code § 10723(c)] from this bill.
- 6) **Proposed committee amendments.** The Committee may wish to request that the author to somewhat narrow the application of this bill so that water wells for recharge, water quality, and municipal purposes are excluded and to make clarifying and technical amendments:

Amendment 1 – exclude drinking water wells, wells that are part of a conjunctive use or water banking program, and wells used for groundwater remediation from this bill and make technical and clarifying changes:

13807.4. This article does not apply to applications or permits for any of the following water wells:

- (a) Wells that will draw less than two acre-feet per year.
- (b) Wells that will be located on a parcel of five acres or fewer that is in an area that has been zoned by the local land use authority for rural residential use.
- (c) Drinking water wells of an urban retail water supplier ~~a public water system~~, state small water system, or a community water system.
- (d) Large-diameter, high-capacity wells for the replacement or reconstruction of an existing large-diameter, high-capacity well that meets all of the following conditions:
- (1) The replacing or reconstructed well shall not have a larger diameter or be used to pump more water annually than the previous well.
- (2) The well being replaced shall be abandoned prior to initial operation of the replacement replacing well.
- (3) The replacing replacement well is in substantially the same location as the well it is replacing or is to be moved to a location that would lessen impacts to domestic wells and wells that provide water for state small water systems or community water systems.
- (e) Wells associated with or part of a conjunctive use or water banking program or project that has approved environmental document consistent with Public Resources Code section 21000 et seq.

(f) Wells that are part of a groundwater remediation or protection project that aims to address groundwater contamination, water quality, or sea water intrusion.

Amendment 2 – Add definition of urban retail water supplier:

13807.1. The following definitions shall apply to this article:

(a) “Community water system” has the same meaning as provided in Section 116275 of the Health and Safety Code.

(b) “Domestic well” has the same meaning as provided in Section 116681 of the Health and Safety Code.

(c) “Large-diameter, high-capacity well” means any water well with a diameter of more than eight inches and intended to produce greater than two acre-feet annually.

(d) “Local enforcement agency” means any city, county, or water agency that has adopted and is administering an ordinance for the construction, maintenance, abandonment, or destruction of a water well pursuant to this chapter.

(e) “Public water system” has the same meaning as defined in Section 116275 of the Health and Safety Code.

(f) “State small water system” has the same meaning as provided in Section 116275 of the Health and Safety Code.

(g) “Urban retail water supplier” has the same meaning as provided in Section 10608.12 of the Water Code.

Amendment 3 – make technical and clarifying changes:

13807.2. ... (b) If the proposed large-diameter, high-capacity well is to be located in an area subject to management by a groundwater sustainability agency, the applicable ~~Upon notice, a~~ groundwater sustainability agency ~~with oversight for the area of the basin where the proposed large-diameter, high-capacity well is to be located~~ shall, upon notice of a permit application, provide all of the following information to the local enforcement agency:

(1) The name of the applicable groundwater sustainability plan being implemented and where an electronic copy of the plan may be accessed.

(2) The name of the applicable groundwater sustainability agency, the agency manager and contact information, and the applicable sustainable management criteria related to groundwater levels, including the groundwater level measurable objectives and minimum thresholds.

(3) The estimated depth to the groundwater level based on the most recent monitoring conducted by the groundwater sustainability agency for the area of the basin where the proposed activities covered by the application would occur.

(4) Any fees, allocation, metering, spacing determinations, or other regulations or ordinances that the groundwater sustainability agency has adopted.

(5) Any updates to the information provided pursuant to this subdivision as necessary within 30 days, should changes occur.

(6) Notice of an inadequate determination, if applicable, by the department of the groundwater sustainability plan and the status of any action of the state board resulting from the department determination.

(c) Before approving any well permit for a large-diameter, high-capacity well, a local enforcement agency shall provide all of the following information to the applicant:

(1) The basin name, number, and priority as assigned by the department in its most recent Bulletin 118.

(2) The name of all groundwater sustainability agencies, if any, managing the basin in which the activities covered in the application would occur.

(3) Information on regulations or ordinances adopted by the groundwater sustainability agency relevant to the construction and operation of the proposed well, if applicable.

(4) If applicable, notice Notice to the applicant that the approval of the application and granting of any associated permit is subject to the regulatory authority of any groundwater sustainability agency managing the portion of the basin in which the activities covered in the application would occur. The notice shall specifically inform the applicant that in addition to any regulatory authority already being exercised, a groundwater sustainability agency or the state board for a probationary groundwater basin may exercise authority to limit groundwater extraction, the imposition of fees, and metering.

- 7) **Related legislation.** AB 1563 (Bennett) of 2023 would have prohibited a county, city, or any other well permitting agency from approving a permit for a new groundwater well or for alteration of an existing well in a critically overdrafted basin subject to SGMA unless certain conditions are met. AB 1563 died in the Senate Natural Resources and Water Committee.

AB 429 (Bennett) of 2023 was substantially similar to AB 1563. AB 429 was referred to this Committee but never heard.

AB 2201 (Bennett) of 2022 would have required local agencies that permit groundwater wells to obtain written verification stating that a proposed well will not undermine sustainable groundwater management or cause well interference prior to approving a permit application for a groundwater well, unless the well was exempted. AB 2201 returned to the Assembly for a concurrence vote, but was never taken up.

SB 1317 (Wolk) of 2016 would have required a city or county overlying a high- or medium-priority basin to prohibit the issuance of a permit for a new groundwater extraction facility or require a permit applicant to demonstrate that extraction of groundwater from the proposed facility would not contribute to, or create, an undesirable result. SB 1317 was referred to this committee but never heard.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

California Coastkeeper Alliance  
California Rural Legal Assistance Foundation  
Civicwell  
Clean Water Action  
Cleaneearth4kids.org  
Community Water Center  
Environmental Law Foundation  
Leadership Counsel for Justice & Accountability  
Natural Resources Defense Council  
Restore Hetch Hetchy  
Sierra Club California  
We Advocate Through Environmental Review

**Opposition**

South San Joaquin Irrigation District  
Valley Ag Water Coalition

**Oppose Unless Amended**

Agricultural Council of California  
Association of California Water Agencies  
California Apple Commission  
California Association of Wheat Growers  
California Association of Winegrape Growers  
California Bean Shippers Association  
California Blueberry Association  
California Blueberry Commission  
California Cattlemen's Association  
California Chamber of Commerce  
California Citrus Mutual  
California Cotton Ginners and Growers Association  
California Farm Bureau Federation  
California Fresh Fruit Association  
California Groundwater Association  
California League of Food Producers  
California Municipal Utilities Association  
California Pear Grower Association  
California Seed Association  
California State Association of Counties  
California Walnut Commission  
Cucamonga Valley Water District  
Desert Water Agency  
Eastern Municipal Water District  
Grower-Shipper Association of Central California

Inland Empire Utilities Agency  
Jurupa Community Services District  
Kern County Water Agency  
Kings River Conservation District  
Modesto Irrigation District  
Northern California Water Association  
Olive Growers Council of California  
Rancho Water  
Regional Water Authority  
Solano County Water Agency  
Southern California Water Coalition  
United Ag  
United Water Conservation District  
Water Replenishment District of Southern California  
Western Agricultural Processors Association  
Western Growers Association  
Western Municipal Water District  
Wine Institute

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