Date of Hearing: January 9, 2024

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE
Diane Papan, Chair
AB 828 (Connolly) – As Amended January 3, 2024

SUBJECT: Sustainable groundwater management: managed wetlands

SUMMARY: Exempts groundwater use by managed wetlands and small community water systems serving disadvantaged communities (DAC) from specified authorities of groundwater sustainability agencies (GSA) to regulate groundwater pumping under the Sustainable Groundwater Management Act (SGMA). Specifically, **this bill**:

1) Provides that a GSA's authority to regulate groundwater usage through the establishment of groundwater pumping allocations shall not apply to small community water systems serving DACs with water from a permitted public water supply well nor to managed wetland extractors. Provides, however, that a GSA may regulate any groundwater pumping by these users if their groundwater use increases above the average amount of groundwater they pumped annually from 2015 to 2020.

2) Provides that a small community water system serving a DAC or managed wetland extractor may receive a groundwater recharge credit established by a GSA.

3) Provides that a small community water system serving a DAC may increase its annual average groundwater usage by 10% over its extraction allocation to accommodate growth.

4) Provides that if a GSA reasonably determines that a managed wetland is directly causing undesirable results, including land subsidence or groundwater quality degradation, it may exercise its authority to regulate said managed wetland's groundwater pumping to implement corrective actions in cooperation with the managed wetland extractor.

5) Provides that a GSA shall not impose a fee on groundwater pumping for small community water systems serving DACs or managed wetland purposes unless pumping for either of these purposes exceeds its average annual groundwater use from 2015 to 2020. A small community water system serving a DAC may increase its average usage by 10% annually to accommodate population growth without incurring a groundwater pumping fee.

6) Defines the following terms for the purposes of this bill:

    a) "Disadvantaged community," consistent with Water Code §79505.5, as a community with an annual median household income that is less than 80% of the statewide annual median.

    b) "Managed wetland" as the portion of public or private property that is flooded to promote habitat and food production and that is designated or administered as any of the following: a state wildlife area or ecological reserve, a national wildlife refuge, a Central Valley Project Improvement Act (CVPIA) of 1992 wetland habitat area, a conservation easement held by a public agency or nongovernmental conservation organization, or a wildlife habitat contract of no less than 10 years in duration administered by specified agencies;

c) "Managed wetland extractor" as a person who extracts groundwater for managed wetlands; and

d) "Small community water system" as a system serving no more than 3,300 connections or a year-long population of no more than 10,000 individuals consistent with Health and Safety Code §116275.

EXISTING LAW:

1) Provides, under SGMA, that local agencies must 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 critically overdrafted groundwater basins to be managed under a groundwater sustainability plan (GSP) by January 31, 2020 and high- or medium-priority groundwater basins to be managed under a GSP by January 31, 2022 (Water Code § 10720.7).

3) Requires a GSA to consider the interests of all beneficial uses and users of groundwater in implementing SGMA (Water Code § 10723.2).

4) Grants various authorities to GSAs including the authority to impose spacing requirements on groundwater wells, to regulate, limit, or suspend pumping from groundwater wells, and to establish groundwater allocations and accounting rules for carrying over or transferring groundwater pumping extractions (Water Code § 10726.4).

5) Requires a GSA in a basin subject to SGMA to develop a GSP that has various components including, a description of the physical setting of the basin, measureable objectives to achieve sustainable management, how groundwater levels and quality will be monitored, and monitoring sites and protocols (Water Code § 10727).

6) Requires GSAs to encourage the involvement of diverse social, cultural, and economic elements of a basin's population during development and implementation of a GSP (Water Code § 10727.8).

7) Provides that a GSA may impose fees on groundwater extraction to fund the costs of groundwater management (Water Code § 10730.2).

8) Defines "de minimis extractor" as a person who pumps two acre-feet (AF) or less of groundwater annually for domestic purposes (Water Code § 10721).

9) Defines "small community water system" as a community water system that serves no more than 3,300 service connections or a yearlong population of no more than 10,000 persons (Health and Safety Code § 116275).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

1) **Purpose of this bill**. Nearly 10 years have passed since the enactment of SGMA and local agencies around the state have begun SGMA implementation in earnest. The deadlines for GSP submittal were in January 2020 for critically overdrafted basins and January 2022 for the remaining high- and medium- priority basins. At this point, DWR has issued determinations regarding the adequacy of GSPs for critically overdrafted basins and a handful of medium- and high- priority basins. Despite meeting this important milestone, the author argues that, generally speaking, GSPs did not do a thorough job identifying managed wetlands and small community water systems in their basins, the groundwater needs of these users, or the adverse impacts that GSP management actions will have on these users. The co-sponsors of this bill, Audubon California and Clean Water Action, were joint authors of an analysis (Groundwater Sustainability Assessments, August 2022) that finds that many GSPs for critically overdrafted basins did not adequately account for the groundwater needs of DACs and the environment.

   The author asserts that this is problematic because the value of "California's managed wetlands and their contribution to vital ecosystems cannot be understated" and that GSAs "should recognize these important regions in their plans as well as the impact their plans are having on our small, rural water systems." The author maintains that this bill will help to ensure that the groundwater needs of managed wetlands and small, rural water systems are better-accounted for in GSPs going forward.

2) **Background**. Passed in 2014, SGMA provides a comprehensive framework to manage groundwater resources in overdrafted groundwater basins (i.e., those basins deemed high- or medium-priority by DWR). To comply with SGMA, local agencies in overdrafted basins had to form a GSA by 2017 and develop GSPs by 2020 or 2022 that will lead to sustainable groundwater management over 20 years. SGMA defines sustainable groundwater management as the avoidance of "undesirable results" (see #1, above, under Existing Law). SGMA's explicit intent is to keep management of groundwater resources at the local level while allowing for state intervention if local agencies are unsuccessful or get off track in meeting their sustainability goals. SGMA also intends for GSAs to have flexibility to address conditions unique to their particular basin and states that it does not alter groundwater rights.

   One of the first steps GSAs have had to take is to identify groundwater users and uses in their basins and develop a corresponding groundwater budget. In many instances GSAs have developed, or are still developing, groundwater pumping allocations that apportion an allowable amount of groundwater pumping to groundwater users in the basin that the GSA manages. GSPs vary, but in many cases the groundwater pumping allocation represents the amount of groundwater a user may pump in a given year without incurring fees or penalties. Oftentimes, a user may pump and use more groundwater than their allocation, but the GSA will typically charge a pumper a significant fee per AF of water pumped in excess of their allocation in order to dissuade groundwater pumpers from exceeding their pumping allocations (in some GSPs, certain groundwater users have received a pumping allocation of zero and typically have to pay fees for every AF of groundwater pumped and used). In some cases, GSAs also permit the trade or sale of groundwater pumping extractions amongst users in their basin. A groundwater pumping allocation does not represent a given landowner's groundwater rights.

   GSPs for critically overdrafted basins. These plans were submitted in January 2020 and

DWR deemed the GSPs for 11 basins to be "adequate" (or approved) and the GSPs for six basins (Tule, Tulare Lake, Kern County, Kaweah, Delta-Mendota, and Chowchilla) to be "inadequate." The inadequate basins have been referred to the State Water Resources Control Board for further corrections and/or designation as a probationary basin. Of the remaining three critically overdrafted basins, one is being managed pursuant to an approved alternative submittal (Pajaro Valley), one is adjudicated (Los Osos), and the final is in an adjudication proceeding (Borrego Valley).

DWR cites various deficiencies in the GSPs for the six inadequate basins. The majority do not adequately address chronic lowering of groundwater levels and land subsidence; several that involve multiple agencies do not use consistent data or definitions of undesirable results; the Chowchilla GSP does not adequately examine whether there are interconnected surface waters in the basin; and the Tule and Tulare GSPs do not adequately address degraded water quality, among other deficiencies. Generally, these inadequate GSPs do not adequately account for groundwater use by small community water systems serving DACs or managed wetlands, but DWR does not identify these as deficiencies that need to be corrected in the GSPs either.

GSPs for "high" and "medium" priority groundwater basins. These plans were due January 30, 2022. Of these, six GSPS that were submitted in advance of the January 2022 deadline have been deemed "adequate" and DWR determined that GSPs for an additional 10 basins are "adequate" in July 2023. DWR must release determinations for the remaining non-critically overdrafted basins by the end of January.

Central Valley wetlands. According to the 2020 Central Valley Joint Venture (CVJV) Implementation Plan, roughly 220,000 acres of managed wetlands remain in the Central Valley. This number represents less than 5% of the Central Valley's historic wetlands. The Implementation Plan estimates that wetlands need between 2.5 AF and 7.4 AF per acre annually depending on habitat type (5.1 AF for seasonal wetlands, 7.4 AF for semi-permanent wetlands, 2.5 AF for winter flooding of rice fields, and 5 AF for rice growing), time of year, and other factors. A lot of this water demand is met with surface water supplied through the federal Central Valley Project as required under CVPIA. Under CVPIA, refuges are supposed to receive their historical average supplies ("Level 2") of 422,251 AF annually and incremental ("Level 4") supplies of an additional 133,264 AF. Level 4 supplies usually go unmet, particularly in dry years. What portion of the remaining wetland need is met by surface water and groundwater supplies is not well-defined.

The CVJV Implementation Plan does note that SGMA implementation is likely to pose challenges for wetland managers, particularly in the southern San Joaquin Valley as these wetlands "rely on groundwater as a source – and for some the only source – of water supply…. Implementation of SGMA in these areas is likely to reduce groundwater availability to a fraction of what is needed to manage wetlands." Finally, the CVJV Implementation Plan contends that it will be difficult for wetland managers to compete with other users (e.g., agriculture) in the groundwater trading programs that many GSPs are proposing.

Small community water systems. This bill exempts these systems if they serve a DAC from certain regulatory authorities of GSAs. These systems have up to 3,300 service connections or serve a year-long population no greater than 10,000 individuals. There are approximately

2,500 small community water systems in California (Public Policy Institute of California, April 2023) representing more than half of the 4,002 systems regulated for drinking water by the State Water Resources Control Board, though it is unclear how many of these systems serve a DAC. In many of the basins covered by SGMA, it is very likely that small community water systems are serving a DAC and would, therefore, be subject to this bill. It is challenging to estimate how much groundwater a small community water system uses in a basin subject to SGMA. A typical rule of thumb is that one AF of water is sufficient to meet the needs of two average California households for one year; however, water use varies greatly across regions and between rural and urban settings. If a system serves several hundred (or more) connections and relies exclusively on groundwater, it would represent a not insignificant use of groundwater in a basin's overall groundwater budget.

3) **Proposed committee amendments**. The current version of this bill represents a significant policy change to SGMA. To ensure that this bill is narrowly directed at achieving its goals of better protecting small community water systems and managed wetlands, limit the scope of this bill to the current groundwater use of small community water systems and managed wetlands, and allow GSAs more time to adequately ensure these groundwater users are adequately accounted for in their GSPs, the Committee may wish to consider the following amendments:

Amendment 1

As currently drafted, this bill is somewhat ambiguous. It provides that small community water systems serving DACs and managed wetlands are exempt from a GSA's authority to establish "groundwater extraction allocations" but references Water Code §10726.4(a) which grants a number of authorities, including the imposition of well-spacing requirements, the establishment of trading programs, and the establishment of accounting rules, among others. The sponsors maintain that their intent is only to exempt these users from a GSA's authority relating to the establishment of groundwater allocations. In order to be more precise and avoid confusion as to the application of this bill, amend proposed Water Code §10726.4(b) of this bill as follows:

On page 9, line 25 following "Subdivision (a)" insert: ***(2)***.

Amendment 2

To limit the exceptions in this bill to the average annual use by a small community water system during a baseline period of 2015 to 2020 and ensure that any increase in groundwater use above this baseline is subject to all authorities of a GSA, amend proposed Water Code §10726.4(c) this bill as follows:

On page 9, line 39, strike the following:

(c) ~~***A small community water system serving a disadvantaged community may increase its annual average usage by 10 percent over its average annual extraction to accommodate population growth without incurring restrictions from a groundwater sustainability agency.***~~
~~***(d)***~~

Amendment 3

Similar to Amendment 2, in order to ensure a GSA can assess fees on increases in groundwater use by a small community water system serving a DAC above the 2015 to 2020 baseline, amend proposed Water Code§10730.2(f) of this bill as follows:

On page 11, beginning on line 19, strike the following:

(f) ~~***A small community water system serving a disadvantaged community may increase its annual average usage by 10 percent over its average annual extraction between 2015 and 2020 to accommodate population growth without incurring fees from a groundwater sustainability agency, provided that it continues to meet the requirements to qualify as a small community water system.***~~
~~***(g)***~~

Amendment 4

To encourage GSAs to better account for the groundwater needs of small community water systems and managed wetlands in their GSPs, sunset the provisions of this bill after three years on December 31, 2027.

4) **Arguments in support**. Audubon California and Clean Water Action are co-sponsors of this bill and argue that SGMA requires that a GSA considers the interests of all groundwater users, including environmental users and disadvantaged communities, in its implementation of a GSP, but that in practice, many GSAs are falling short of this requirement. The co-sponsors maintain that small water systems are often solely dependent on groundwater and face affordability and technical challenges and need to be accounted for in GSPs. Likewise, the co-sponsors assert that less than 5% of the state's historic wetlands remain and, given the many public benefits these wetlands provide, the state cannot afford to lose more. The co-sponsors contend that this bill "protects small community water systems and managed wetlands from pumping reductions and fines under [SGMA] to ensure that vulnerable communities and wildlife have safe and affordable water supplies."

5) **Arguments in opposition**. The Valley Ag Water Coalition (Coalition) opposes this bill arguing that it is premature and problematic given that basins have already submitted their GSPs and are working diligently to implement those GSPs, including six basins that are working with the State Water Board and DWR to correct deficiencies in their GSPs. The Coalition also maintains that this bill is not necessary given that SGMA already requires GSAs to consider the interests of small community water systems and groundwater dependent ecosystems in their GSPs. Finally, the Coalition maintains that this bill "places the use of groundwater to grow food and fiber at the bottom of the priority list, which threatens food security, on-farm investment, investment in the storage and delivery systems that provide agricultural water supply, farmworker jobs, and the overall socioeconomic health of rural communities."

6) **Related legislation**. AB 321 (Mathis), Chapter 67, Statutes of 2017, clarifies the definition of "agricultural users" to include "farmers, ranchers, and dairy professionals" for the purposes of defining the beneficial users of groundwater that a GSA must consider in the implementation of SGMA.

REGISTERED SUPPORT / OPPOSITION:

Support

Audubon California (co-sponsor)
Clean Water Action (co-sponsor)
American Rivers
Ban SUP (Single Use Plastic)
Black Brant Group, The
CAL-ORE Wetlands and Waterfowl Council
California Bowmen Hunters/State Archery Association
California Coastkeeper Alliance
California Hawking Club
California Houndsmen for Conservation
California Rural Legal Assistance Foundation (CRLA Foundation)
California Waterfowl Association
Civicwell
Communitiy Water Center
Delta Waterfowl
Environmental Working Group
Friends of the River
Grassland Water District
Leadership Counsel for Justice & Accountability
North County Watch
Point Blue Conservation Science
Restore Hetch Hetchy
San Diego County Wildlife Federation
Sustainable Conservation
The Nature Conservancy
Tulare Basin Wetlands Association
Tuolumne River Trust
UC Santa Barbara Department of Anthropology

Opposition

California Chamber of Commerce
California Association of Wheat Growers
California Association of Winegrape Growers
California Bean Shippers Association
California Farm Bureau
California Grain & Feed Association
California Seed Association
Kings River Conservation District
Modesto Irrigation District
Pacific Egg & Poultry Association
Valley Ag Water Coalition
Western Growers Association

Analysis Prepared by: Pablo Garza / W., P., & W. / (916) 319-2096