

Date of Hearing: March 28, 2023

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Rebecca Bauer-Kahan, Chair

AB 1563 (Bennett) – As Introduced February 17, 2023

**SUBJECT:** Groundwater sustainability agency: groundwater extraction permit: verification

**SUMMARY:** Prohibits a local agency from approving permits for groundwater wells in a critically over-drafted basin until it obtains a written verification from the relevant groundwater sustainability agency (GSA) determining that the well is consistent with sustainable groundwater management and a report by a licensed professional that the well will not interfere with existing nearby wells. Specifically, **this bill:**

- 1) Requires a county to forward permit applications for new groundwater wells, enlargement of existing wells, or reactivation of an abandoned well to the applicable GSA before approval.
- 2) Prohibits a local agency from approving a permit for a new well or alteration of an existing well in a critically overdrafted groundwater basin until it obtains written verification from the GSA that manages the basin where the well is proposed to be located that pumping by the well meets the following conditions:
  - a) The proposed well would not be inconsistent with the applicable groundwater sustainability plan (GSP) or alternate plan for the basin; and
  - b) The proposed well would not decrease the likelihood of achieving the sustainability goal for the basin.
- 3) Requires a well permit applicant to provide a local agency with a written report completed by a licensed professional that indicates that pumping by a proposed well is not likely to interfere with existing nearby wells and is not likely to cause subsidence that would adversely impact or damage nearby infrastructure.
- 4) Defines “licensed professional” as a professional engineer or geologist who holds a license from the appropriate California licensing body.
- 5) Exempts the following from the requirements of this bill:
  - a) Permits for wells that will provide less than two-acre feet of water annually for individual domestic users;
  - b) Permits for wells that will exclusively provide water to a public water supply system or state small water system;
  - c) Permits for wells in adjudicated basins excluded from the Sustainable Groundwater Management Act (SGMA);
  - d) Maintenance of a well;
  - e) Alterations to, replacement of, or maintenance of a well pump;

- f) Replacement of an existing well that will produce the same or less water as the existing well if the existing well will be decommissioned or used for storage;
  - g) Extension of the well casing for an existing well if the extension does not increase the pumping capacity of the existing casing and well; and
  - h) Permits for wells to replace existing wells with new wells that produce an equivalent amount of water if the existing well is being replaced because it has been acquired by eminent domain or acquired while under threat of condemnation.
- 6) Provides that any findings required by this bill do not constitute discretionary approval for the purposes of the California Environmental Quality Act (CEQA) and that this bill does not alter any existing obligations related to CEQA compliance in issuing well permits.

**EXISTING LAW:**

- 1) Enacts SGMA that requires 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 the Department of Water Resources (DWR) to designate groundwater basins as high-, medium-, low-, or very low-priority for the purposes of SGMA 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) Requires DWR to identify groundwater basins that are subject to critical conditions of overdraft (Water Code § 12924).
- 4) Requires local agencies in high- and medium-priority basins to form a GSA by June 30, 2017, unless statute designates an “exclusive local agency” for a given area. Provides that a county will be the default GSA for any area in a high- or medium- priority basin not managed by a GSA unless said county notifies DWR that it will not be the GSA for an uncovered portion of a high- or medium-priority basin (Water Code §§ 10723 – 10724).
- 5) Permits a GSA to require registration of any groundwater extraction facility (e.g., groundwater well) within its management area (Water Code § 10725.6).
- 6) 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)].
- 7) Defines a *de minimus* extractor as a person who extracts, for domestic purposes, two acre-feet or less per year (Water Code § 10721).
- 8) Provides that 26 adjudicated basins are not subject to SGMA (Water Code § 10720.8).

- 9) Defines a “state small water system” as a piped water system that provides water for human consumption and serves between five and 14 service connections and does not regularly serve drinking water to more than an average of 25 individuals for more than 60 days out of the year (Health and Safety Code § 116275).

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

**COMMENTS:**

- 1) **Purpose of this bill.** The author maintains that groundwater well permitting is a recognized gap in SGMA and that the lack of consideration of sustainable groundwater management goals in approving groundwater well permits is undermining the goals of SGMA. The author points to analysis conducted by the Los Angeles Times in December 2021 that more than 6,200 groundwater wells that provide water for agriculture had been drilled in the San Joaquin Valley since the passage of SGMA as evidence that this bill is necessary. Furthermore, data obtained through DWR’s voluntary dry well reporting system indicates that more than 2,700 groundwater wells have gone dry statewide since the beginning of 2020. While DWR’s data also indicates that many of these dry wells have been mitigated by either an interim solution (e.g., hauled or bottled water or tapping into a neighbor’s supply) or resolved by a replacement well or groundwater level recovery, the number of voluntary reports indicates a significant problem. The author argues that this bill is a “common sense step” that helps address this problem and furthers the goals of SGMA.

The author cites studies that find Latino communities are disproportionately impacted by nitrate pollution, low income and minority communities face serious water quality problems, and households headed by people of color are 35 percent more likely to lack access to piped water as compared to white households. The author maintains that this bill will help to address these disparities in access to safe drinking water for disadvantaged and low-income communities and communities of color.

- 2) **Background.** According to DWR, groundwater supplies approximately 40 percent of California’s water supply in a “normal” year and as much as 60 percent 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. These local enforcing agencies (LEA), at a minimum, ensure compliance with well standards set by DWR before issuing a permit. Some LEA’s adopt standards for wells that surpass DWR guidelines.

Oftentimes, a permit for a groundwater well is deemed a “ministerial” action by an 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). This bill would set a higher standard of review for permitting of groundwater wells to ensure that the well does not result in specified adverse impacts.

*Governor's drought Executive Orders (EO).* The Governor issued EO N-7022 on March 28, 2022, to extend the existing drought emergency and require various administrative response to the 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 requires that a 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 drought emergency and the provisions related to groundwater well permitting except that it exempts well permits to replace existing wells that have been acquired by eminent domain or acquired while under threat of condemnation. This provision is intended to address any wells that must be moved related to construction of high-speed rail. The Administration has not provided information regarding how implementation of the EO has unfolded.

- 3) **Policy considerations.** This bill has many similarities with the EO; however, the EO is not permanent and, given current hydrologic conditions, is likely to be lifted in the near future. This bill raises the issue of whether an ongoing change in how local agencies permit groundwater wells is needed.

*Substantially similar bills.* This bill is similar to AB 429 by the same author that is also before the Committee at this hearing. There are four primary differences between the two bills: 1) this bill requires the permit applicant to engage a licensed professional to determine whether the well would interfere with nearby existing wells while AB 429 requires the permitting agency to make this determination; 2) this bill applies once enacted while AB 429 contains a trigger so that it only takes effect if one percent of domestic wells in the basin go dry; 3) this bill requires the permitting agency to post the application online for 30 days while AB 429 contains no such requirement; and 4) this bill clarifies that the determinations it requires do not constitute a discretionary approval (thereby potentially avoiding review under the California Environmental Quality Act) while AB 429 contains no such clarification.

- 4) **Arguments in support.** The Climate Reality Project supports this bill asserting that drilling of new wells is an ongoing problem and that it will better protect human safety and public health from excessive drilling. The Project maintains that “there have been incidents in which local drinking water in the Central Valley has become scarce when adjacent large wells have been drilled” and that this bill will address this problem.
- 5) **Arguments in opposition.** The California Chamber and California Farm Bureau Federation along with a number of agricultural and business organizations and GSAs (Coalition) oppose this bill arguing that it restricts access to water for food production, circumvents local control in the management of groundwater resources provided by SGMA, and is premature given ongoing implementation of EO N-7-22. The Coalition maintains that this bill “imposes significant costs upon well applicants and increases the likelihood of legal challenges to well permitting decisions. Small family farmers are the least likely to be able to afford the new requirements in this bill, particularly when these farmers are already.”

- 6) **Related legislation.** AB 429 (Bennett), current session, is substantially similar to this bill except that it only applies if one percent of the domestic wells in a basin go dry and requires the permitting agency (rather than a licensed professional engaged by the permit applicant) to determine that a well will not interfere with existing nearby wells before issuing a permit. AB 429 is set for hearing before this Committee on March 28, 2023.

AB 2201 (Bennett), 2021-22 Session, would have required local agencies 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. Would have exempted specified types of wells (e.g., domestic) and activities (e.g., maintenance) from its provisions. AB 2201 died on the Assembly Floor.

SB 1317 (Wolk), 2015-16 Session, 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**

Climate Reality Project, California Coalition  
Community Alliance with Family Farmers

### **Opposition**

Agricultural Council of California  
California Alfalfa & Forage Association  
California Association of Winegrape Growers  
California Cattlemen's Association  
California Chamber of Commerce  
California Cotton Ginners & Growers Association  
California Farm Bureau Federation  
California Fresh Fruit Association  
California Grain and Feed Association  
California League of Food Producers  
California Manufacturers & Technology Association  
California Seed Association  
California Walnut Commission  
CoLab Ventura County  
Kings River Conservation District  
Northern California Water Association  
United Water Conservation District  
Valley Ag Water Coalition  
Western Agricultural Processors Association  
Western Growers Association  
Western Plant Health Association

Wine Institute  
Winegrowers of Napa County

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