

Date of Hearing: March 28, 2023

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Rebecca Bauer-Kahan, Chair

AB 429 (Bennett) – As Amended March 2, 2023

SUBJECT: Groundwater wells: permits

SUMMARY: Prohibits a local agency from approving permits for groundwater wells in a critically overdrafted 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 determines that the well will not interfere with existing nearby wells. Only applies if one percent of domestic wells in the basin have gone dry. Specifically, **this bill:**

- 1) Provides that this bill shall only apply in critically overdrafted groundwater basins where one percent of the domestic wells have gone dry.
- 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 local agency to determine 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 neighboring wells.
- 4) 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.

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.** According to the author, “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 cause undesirable results (as defined by SGMA) or other adverse impacts.

Governor’s drought Executive Orders (EO). The Governor issued EO N-7-22 on March 28, 2022, to extend the existing drought emergency and require various administrative responses 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, 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 to for construction of high-speed rail. The Administration is unable to provide information regarding how implementation of the EO has unfolded.

- 3) **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 “would create a new permitting process for groundwater wells that will negatively impact agricultural businesses, rural communities that rely on a thriving agricultural economy for their livelihoods, and food security.” Finally, the Coalition is concerned that it is unclear how the one percent trigger in this bill will be implemented and by whom.

- 4) **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 1563 by the same author that is also before the Committee at this hearing. There are four primary differences between the two bills: 1) AB 1563 requires the permit applicant to engage a licensed professional to determine whether the well would interfere with nearby existing wells while this bill requires the permitting agency to make this determination; 2) AB 1563 applies once enacted while this bill contains a trigger so that it only takes effect if one percent of domestic wells in the basin go dry; 3) AB 1563 requires the permitting agency to post the application online for 30 days while this bill contains no such requirement; and 4) AB 1563 clarifies that the determinations it requires do not constitute a discretionary approval (thereby potentially avoiding review under the California Environmental Quality Act) while this bill contains no such clarification.

Implementation challenges. The domestic well trigger in this bill may pose implementation challenges as information on the total number of domestic wells in a basin may be incomplete and reporting of dry wells is voluntary at present. This may make it difficult for a LEA to determine whether or not the one percent threshold trigger in this bill has been met.

- 5) **Related legislation.** AB 1563 (Bennett), current session, is substantially similar to this bill except that it takes effect once enacted and requires a licensed professional engaged by the permit applicant (rather than the permitting agency) to determine that a well will not interfere with existing nearby wells before issuing a permit. AB 1563 is also 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

None on file

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 Food Producers
California Fresh Fruit Association
California Grain and Feed Association
California Manufacturers and Technology Association
California Seed Association
California Walnut Commission
CoLab of Ventura County
Kings River Conservation District
Kings River 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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