

Date of Hearing: June 20, 2023

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Rebecca Bauer-Kahan, Chair

SB 651 (Grove) – As Amended April 27, 2023

SENATE VOTE: 37-0

SUBJECT: Water storage and recharge: California Environmental Quality Act

SUMMARY: Streamlines judicial review for specified groundwater management projects that are challenged under the California Environmental Quality Act (CEQA). Specifically, **this bill:**

- 1) Defines “project” as a project approved to implement an approved groundwater sustainability plan (GSP) or an interim plan developed by the State Water Resources Control Board (State Water Board) for a probationary basin for purpose of judicial streamlining in this bill.
- 2) Requires the Judicial Council to adopt a rule of court to streamline judicial review of an action brought against certification of an environmental impact report for, or approval of, a project so that the proceeding is resolved within 270 days, to the extent feasible.
- 3) Declares it is the policy of the state to accelerate approvals for projects that capture high precipitation events for local storage or recharge.

EXISTING LAW:

- 1) Enacts the Sustainable Groundwater Management Act (SGMA) that requires local agencies to sustainably manage groundwater in basins that the Department of Water Resources (DWR) deems high- or medium-priority 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 local agencies in groundwater basins DWR designates as high- or medium-priority to form a groundwater sustainability agency by June 30, 2017 (Water Code § 10723). Requires high- or medium-priority basins to be managed under a GSP by January 31, 2022 (Water Code § 10727.7).
- 3) Requires DWR to identify groundwater basins that are subject to critical conditions of overdraft (Water Code § 12924). Requires these critically overdrafted basins to be managed under a GSP by January 31, 2020 (Water Code § 10720.7).
- 4) Requires a GSP to include a description of the aquifer system in the basin, measureable objectives to achieve the sustainability goal within 20 years, a planning and implementation horizon, monitoring sites and protocols, and other specified contents (Water Code § 10727–10727.8).
- 5) Exempts the preparation and adoption of a GSP from CEQA but clarifies that projects to implement a GSP are not exempt from CEQA (Water Code § 10728.6).

- 6) Authorizes the State Water Board to adopt an interim plan for the management of groundwater in a basin that is designated “probationary” (Water Code § 10735.6).
- 7) Requires, under CEQA, lead agencies with the principal responsibility for carrying out or approving a project to prepare a negative declaration, mitigated negative declaration, or environmental impact report (EIR) for the project, unless the project is exempt from CEQA (Public Resources Code §21000 *et seq.*). If a project may have a significant effect on the environment, the lead agency must prepare a draft EIR [CEQA Guidelines 15064(a)(1), (f)(1)].
- 8) Requires an “environmental leadership development project” (ELDP), which includes certain housing projects, challenged under CEQA, to be resolved in 270 days, including appeals to the court of appeal and the Supreme Court (Public Resources Code §21185).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** According to the author, this bill is necessary to accelerate implementation of GSPs so that groundwater resources are better managed. The author asserts: “Our GSAs have 17 years to achieve groundwater sustainability, and we are running critically behind in reaching those goals. [This bill] makes the judicial review process more efficient and gets our local agencies building instead of waiting. Projects deserve to be built in a manner that minimizes time-consuming and burdensome lawsuits and appeals while preserving environmental quality.” The author cites an example where a project in a groundwater basin managed by the Eastern Tule GSA was subject to a CEQA challenge that delayed implementation; this bill would expedite review of such a challenge.

The author indicates the Governor’s executive order N-7-22 which extended the drought emergency in 2022 and exempted groundwater recharge projects from CEQA, among other provisions, as an impetus for this bill.

- 2) **Background.** In the midst of a severe drought, the Legislature enacted SGMA in 2014 to reverse the adverse impacts caused by groundwater overdraft and to protect groundwater resources for future use by California’s economy, communities, and ecosystems. Under SGMA, “medium” and “high” priority groundwater basins must form a GSA and develop a GSP. The 21 groundwater basins designated as being in a condition of critical overdraft were required to develop GSPs and submit them to DWR for review by January 31, 2020. The remaining medium- and high-priority groundwater basins had until January 31, 2022, to submit GSPs to DWR for review. Basins that were already actively managing their groundwater resources at the time of SGMA’s passage were permitted to submit an “alternative” plan to DWR for review to ensure the plan met the objectives of SGMA.

As noted above in #5 under “Existing Law,” SGMA exempts the development and adoption of a GSP from CEQA. After submission of a GSP to DWR, DWR reviews the GSPs and determines whether a GSP is “approved,” “incomplete,” or “inadequate.” Approved basins may implement their plans, subject to periodic state review; “incomplete” basins have six months to correct deficiencies identified by DWR; and “inadequate” basins are referred to the State Water Board for possible designation as a “probationary” basin subject to state management (or “state intervention”).

How many GSPs? Currently, DWR has deemed 23 GSPs that cover six critically overdrafted basins to be “inadequate” and have referred those GSPs to the State Water Board for consideration of whether probationary status for the basin is warranted. Of the remaining GSPs, DWR has determined that 15 GSPs covering six basins are still “incomplete” (submittal of a corrected GSP is pending) and 25 GSPs are “complete.” DWR is reviewing another 54 GSPs (“review in progress”) that have been submitted and has until January 2024 to complete this review. This bill would apply to the 25 GSPs that are deemed “complete” and (presumably) to the nine alternative submittals that DWR has approved. However, if this bill were enacted, it is very likely that a significant number of the 54 GSPs currently being reviewed by DWR would be deemed “complete” shortly after this bill takes effect on January 1, 2024, and would, therefore, be able to take advantage of the judicial streamlining provided by this bill.

- 3) **Arguments in support.** The Valley Ag Water Coalition (Coalition) supports this bill pointing out that it is similar to the Governor’s drought EO and arguing that “time is of the essence” to implement local projects to capture and recharge critically overdrafted groundwater basins. The Coalition maintains these groundwater projects must come to fruition “given the cyclical nature of water supply availability and the impact severe drought has on groundwater resources.”
- 4) **Arguments in opposition.** The Sierra Club opposes this bill arguing that “this attempt to streamline CEQA’s judicial review process undermines the environmental safeguards, public transparency, and promotes streamlining of projects.” Sierra Club contends that it is “imperative that groundwater storage and recharge projects comply with CEQA review to ensure that they have no potentially significant adverse consequences, such as aquifer contamination, and to provide public information and transparency.”
- 5) **Policy considerations.** It is not clear the extent to which the implementation of SGMA is being delayed by legal challenges under CEQA to groundwater management projects outlined in GSPs. The author has only referenced one example where a groundwater project described in a GSP has been challenged under CEQA. Given that 117 distinct GSPs (25 of which have been approved) covering more than 100 groundwater basins were submitted to DWR as of January 2022, lengthy legal challenges to groundwater management projects does not appear to be a widespread problem. The Committee may wish to ask the author why this judicial streamlining is necessary given the record, or lack thereof.
- 6) **Suggested committee amendments.** This bill offers judicial streamlining for CEQA challenges to *any* project that implements an approved GSP or an interim plan for a probationary basin. This covers a wide range of projects over a period of at least two decades. Some examples of projects identified in GSPs approved to date include groundwater recharge projects, water use efficiency projects (e.g., efficient fixtures for residences or drip irrigation for agriculture), land fallowing or repurposing programs, water recycling, stormwater capture, and new or enhanced water conveyance infrastructure, among others. The Committee may wish to ask the author to narrow the scope of this bill similar to other CEQA judicial streamlining bills (e.g., ELDPs) so that only those projects that are likely to have environmental benefits rather than environmental impacts receive the benefit of streamlining. The following amendment would address this concern:

Public Resources Code, Section 21168.6.11. (a) For purposes of this section, “project” means a *groundwater recharge* project that ~~is approved to~~ implements a groundwater sustainability plan that the department determines is in compliance with the requirements of Sections 10727.2 and 10727.4 of the Water Code or ~~to implement~~ an interim groundwater sustainability plan adopted pursuant to Section 10735.6 of the Water Code.

(b) For purposes of the section, a “project” shall not include a project where any water is diverted or applied to any of the following:

(1) Any barn, ponds, or lands, to which manure or waste from an animal facility that generates waste from the feeding and housing of animals for more than 45 days per year in a confined area that is not vegetated are applied.

(2) Any agricultural field that has been identified as an outlier, either by an agricultural coalition charged with implementation of the Irrigated Lands Regulatory Program or by the appropriate regional water board, with respect to nitrogen application.

(3) Any agricultural field where pesticide or fertilizer application has occurred in the prior 30 days or in the period prohibited by applicable law, whichever is longer.

(4) Any area that could cause damage to critical levees, infrastructure, wastewater and drinking water systems, drinking water wells or drinking water supplies, or exacerbate the threat of flood and other health and safety concerns.

(5) Any area that has not been in active irrigated agricultural cultivation within the past three years, including grazing lands, annual grasslands, and natural habitats. This limitation does not apply to facilities already constructed for the purpose of groundwater recharge or managed wetlands.

Legislative intent or broad policy? This bill also adds a new section to Division 1 of the Water Code that declares it is the policy of the state that the State Water Board and Regional Water Boards prioritize the approval of permits necessary to implement groundwater recharge projects that capture water from “high precipitation events.” This reads more like legislative intent than other statements of broad policy such as the Human Right to Water (Water Code § 106.3), domestic use preference (Water Code § 106), or public ownership of water (Water Code § 102) that are more typically enshrined in statute in Division 1 of the Water Code. The Committee may wish to request that the author not codify this statement and instead include it as legislative intent to this bill.

- 7) **Dual-referral.** This bill is also referred to the Natural Resources Committee.
- 8) **Related legislation.** SB 861 (Dahle) of 2023 would have required the Judicial Council to adopt rules of court to ensure any CEQA-related challenges to five specific water conveyance projects are resolved by the courts in 270 days if feasible. SB 861 was held on suspense in the Senate Appropriations Committee.

SB 420 (Becker) of 2023 allows certain electric transmission projects to become ELDPs and have any CEQA-related challenges be resolved by the courts in 270 days if feasible. SB 420 is pending in the Assembly Utilities and Energy Committee.

AB 1488 (Wallis) of 2023 classifies water storage, water conveyance, and groundwater recharge projects as ELDPs, which requires any CEQA-related challenges be resolved by the courts in 270 days if feasible. This bill is pending in the Assembly Natural Resources Committee.

SB 315 (Hurtado) of 2023 would have required the State Water Board to provide an 18-month grace period to a GSA whose basin has been designated as a “probationary basin,” before the probationary status takes effect. It also would have removed the State Water Board’s authority to develop an interim plan for a probationary basin if a GSA has not cured the deficiencies in the GSP. SB 315 was held on suspense in the Senate Appropriations Committee.

SB 7 (Atkins), Chapter 19, Statutes of 2021, re-enacts and revises the expedited CEQA administrative and judicial review procedures for ELDPs. For these projects, a 270-day judicial review deadline would apply and includes appeals to the Court of Appeal and the Supreme Court. It also extended eligibility to housing projects that will result in an investment of \$15–\$100 million, provided at least 15% of the project is affordable to lower income households and the project is not used as a short-term rental.

REGISTERED SUPPORT / OPPOSITION:

Support

California Farm Bureau Federation
Valley Ag Water Coalition

Opposition

Center for Biological Diversity
Defenders of Wildlife
Natural Resources Defense Council
Sierra Club

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