
SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Henry Stern, Chair

2021 - 2022 Regular

Bill No: AB 2201 **Hearing Date:** June 14, 2022
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Urgency: No **Fiscal:** Yes
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Subject: Groundwater sustainability agency: groundwater extraction permit: verification

BACKGROUND AND EXISTING LAW

Under current law:

- 1) The Department of Water Resources (DWR) is responsible for issuing standards for constructing, altering, maintaining, and destroying wells to protect groundwater quality. DWR issues standards for four types of wells – water wells, monitoring wells, cathodic protection wells, and geothermal heat exchange wells. (Water Code (WC) §§ 13800 *et seq.*) Items addressed by the well standards include:
 - a) Siting of wells away from pollution sources
 - b) Casing materials
 - c) Annular seal materials, dimensions, and placement
 - d) Surface features—pads, locks, covers, backflow preventers, vaults
 - e) Well development
 - f) Rehabilitation, repair, and deepening
 - g) Destruction (decommissioning)

DWR published those standards in Bulletin 74-81, and issued a supplement in June 1991. Those standards are currently being revised. The target for completion is December 2022.

- 2) Each county, city, or water agency, where appropriate, is required to adopt a water well, cathodic protection well, and monitoring well drilling and abandonment ordinance that meets or exceeds the standards contained in Bulletin 74-81. Where a water agency that has permit authority over well drilling within the agency adopts a water well, cathodic protection well, and monitoring well drilling and abandonment ordinance that meets or exceeds the standards contained in Bulletin 74-81, a county or city shall not be required to adopt an ordinance for the same area. (WC §13801(c))

If a county, city, or water agency failed to adopt an ordinance establishing water well, cathodic protection well, and monitoring well drilling and abandonment standards, the model ordinance adopted by the state board November 1, 1989 would go into effect. (WC §13801(d))

- 3) Under the California Environmental Quality Act (CEQA), as recently interpreted by the California Supreme Court (*Protecting Our Water and Environmental Resources v. County Of Stanislaus* (2020) 10 Cal.5th 479):
 - a) The authorization of water well construction is a project subject CEQA.
 - b) The authorization may be a ministerial or discretionary action, depending on the specifics of the underlying ordinance and the facts associated with the authorization.
 - c) Discretionary projects require some level of environmental review; ministerial projects do not.

- 4) Under the Sustainable Groundwater Management Act (SGMA):
 - a) DWR is required to categorize each basin as one of the following priorities: High priority, medium priority, low priority, or very low priority. (WC §10722.4)
 - i) California has 515 groundwater basins and subbasins that provide about 40 percent of the state's water supply. Of these 515 basins, DWR has designated 127 basins as high- or medium-priority basins. These 127 basins account for about 96 percent of the state's groundwater use and are overlain by about 88 percent of the population served by groundwater. Additionally, 21 of these basins have been identified by DWR as being in a condition of critical overdraft.
 - ii) SGMA requires the formation of groundwater sustainability agencies (GSAs) in medium- and high-priority groundwater basins.
 - iii) GSAs are authorized but not required to be formed in low and very low priority basins.
 - b) Each high- and medium-priority basin is required to have one or more GSA. GSAs must then develop and implement a groundwater sustainability plan (GSP) to achieve groundwater sustainability. (WC §10727)
 - c) "Sustainable groundwater management" means the management and use of groundwater in a manner that can be maintained during the 50 year planning and implementation horizon without causing undesirable results. (WC §10721(v))
 - d) Undesirable result is further defined as one or more of the following effects caused by groundwater conditions occurring throughout the basin (WC §10721(x)):
 - i) Chronic lowering of groundwater levels indicating a significant and unreasonable depletion of supply if continued over the planning and implementation horizon. Overdraft during a period of drought is not sufficient to establish a chronic lowering of groundwater levels if extractions and groundwater recharge are managed as necessary to ensure that reductions in groundwater levels or storage during a period of drought are offset by increases in groundwater levels or storage during other periods.
 - ii) Significant and unreasonable reduction of groundwater storage.
 - iii) Significant and unreasonable seawater intrusion.
 - iv) Significant and unreasonable degraded water quality, including the migration of contaminant plumes that impair water supplies.
 - v) Significant and unreasonable land subsidence that substantially interferes with surface land uses.
 - vi) Depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses of the surface water.
 - e) Among the powers SGMA grants to GSAs are:

- i) “To control groundwater extractions by regulating, limiting, or suspending extractions from individual groundwater wells or extractions from groundwater wells in the aggregate, construction of new groundwater wells, enlargement of existing groundwater wells, or reactivation of abandoned groundwater wells, or otherwise establishing groundwater extraction allocations...”
 - ii) To impose spacing requirements on new groundwater well construction to minimize well interference and impose reasonable operating regulations on existing groundwater wells to minimize well interference, including requiring extractors to operate on a rotating basis.
 - iii) However, a GSA is not authorized to issue permits for the construction, modification, or abandonment of groundwater wells, except as authorized by a county with authority to issue those permits. A GSA may request of the county, and the county shall consider, that the county forward permit requests for the construction of new groundwater wells, the enlarging of existing groundwater wells, and the reactivation of abandoned groundwater wells to the groundwater sustainability agency before permit approval.
 - f) SMGA does not apply to the adjudicated areas or a local agency that conforms to the requirements of an adjudication of water rights for specified adjudicated areas (WC § 10720.8)
 - g) In enacting SGMA, it is the intent of the legislature, among other things, to manage groundwater basins through the actions of local governmental agencies to the greatest extent feasible, while minimizing state intervention to only when necessary to ensure that local agencies manage groundwater in a sustainable manner. (WC §10720.1(h))
- 5) Under the Governor’s March 28, 2022 executive order regarding drought, among its provisions was:
- a) During this drought emergency, a county, city, or other public agency shall not:
 - i) Approve a permit for a new groundwater well or for alteration of an existing well in a basin subject to SGMA and classified as medium- or high-priority 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; or
 - ii) Issue a permit for a new groundwater well or for alteration of an existing well without first determining that extraction of groundwater from the proposed well is (1) not likely to interfere with the production and functioning of existing nearby wells, and (2) not likely to cause subsidence that would adversely impact or damage nearby infrastructure.
 - b) This requirement does not apply to permits for wells that will provide less than two acre-feet per year of groundwater for individual domestic users, or that will exclusively provide groundwater to public water supply systems as defined in Section 116275 of the Health and Safety Code. (EO N-7-22, Paragraph 9)
- 6) Under the California Water District Law
- a) “Well interference” means a substantial water level decline in a short time period in a localized area caused by pumping from extraction facilities.

- b) This definition only applies to the Paso Robles Basin Water District. (WC §37900(a)(23))

PROPOSED LAW

This bill would:

- 1) Prevent a local agency from approving a permit for a new groundwater well or for an alteration to an existing well in a basin subject SGMA and classified as medium- or high-priority until it obtains a written verification from the GSA that manages the basin or area of the basin where the well is proposed to be located unless the GSA provide the written verification of all of the following:
 - a) The extraction by the proposed well is consistent with any sustainable groundwater management program established in any applicable GSP adopted by that GSA.
 - b) The extraction by the proposed well would not decrease the likelihood of achieving a sustainability goal for the basin covered by a GSP.
 - c) The extraction by the proposed well is not likely to interfere with the production and functioning of existing nearby wells and is not likely to cause subsidence that would adversely impact or damage nearby infrastructure.
- 2) Authorize a GSA to impose a fee upon a local agency in an amount that does not exceed the reasonable costs incurred by the GSA in making the determinations required for the written verification, issuing the written verification, or both.
- 3) Require the GSA to post notification of the well permit application on its internet website to allow the public to comment on the well permit application for at least 30 days before issuing the required determinations.
- 4) Not apply to a well that provides less than two acre-feet of water annually for domestic use or a well used by a public water supply system.

ARGUMENTS IN SUPPORT

According to the author, “In 2014, amidst a historic drought, SGMA was passed to establish a statewide framework to help protect groundwater resources over the long-term and reach sustainability. Various stakeholders, including GSAs, have identified well permitting as a gap in constructing and evaluating GSPs. Currently, counties have the responsibility and authority to issue well permits. However, counties are not tasked with reaching groundwater sustainability and typically issue permits without consideration to prevent undesirable impacts or permanent damage to aquifers, communities, and infrastructure. AB 2201 furthers the legislative intent of SGMA, which granted authority to GSAs to regulate extraction.”

The authors of SGMA, former Senator Fran Pavley and former Assemblymember Roger Dickinson write “A central pillar of SGMA has been local implementation. Specifically, those who are closest to the basins are best equipped to sustainably manage the

basins, namely through the formation of new local Groundwater Sustainability Agencies (GSAs) and Groundwater Sustainability Plans (GSPs). However, a clear gap has been identified between land use and groundwater management for local GSAs entrusted to manage the basin. GSAs currently do not have uniform mechanisms to verify the alignment of new groundwater wells with their GSPs, which will directly impact the groundwater basin they manage. Currently, the responsibility and authority to issue well permits lie solely at the county level. However, counties are not tasked with reaching groundwater sustainability and typically issue permits without considering the prevention of undesirable impacts or permanent damage to aquifers, communities, and infrastructure. More recently, Governor Newsom issued an Executive Order to prevent new wells from being approved unless they are consistent with groundwater sustainability and do not adversely impact domestic wells or public infrastructure. However, it is our belief that this long-standing gap must be addressed with a long-term solution beyond declared drought emergencies. AB 2201 offers a legislative solution to help protect groundwater for communities.”

ARGUMENTS IN OPPOSITION

A coalition of agricultural and other business interests raise a number of objections. These include:

- **Local Control.** “AB 2201 imposes a strict new mandate on how [GSAs] must operate and manage their own groundwater basins. Rather than allowing GSAs to determine which management options are best suited for local conditions, this bill would require that GSAs make specific findings related to new groundwater wells before a county could authorize such a well.
- **Untimely.** The EO was issued “on March 28, 2022, which imposes substantially similar requirements on counties and GSAs related to new well permitting. Counties and GSAs are currently struggling to determine how to best implement the Executive Order’s requirements. Keep in mind that the Executive Order is tied to the declaration of a drought emergency. Thus, the Executive Order may address current drought concerns, but is not a permanent change in law. AB 2201 would codify the Executive Order at a time when it is not appropriate.”
- **Applies To Sustainable Basins.** “This bill creates mandates for all medium- and high-priority basins; it is not limited to those basins subject to critical overdraft. SGMA treats critically overdrafted basins differently than other medium- or high-priority basins, the vast majority of which are being sustainably managed. The process for prioritizing basins is based more on population and the relative reliance on groundwater for water supply than how sustainably the basin is managed.”
- **Litigation Risk.** “This bill also requires a GSA to allow for a 30-day public comment period before making a determination about a proposed new well. This makes all permit actions de facto discretionary, which either add a new duplicative public comment process to those already established under CEQA or would make well permitting decisions subject to CEQA themselves. In all, this increases the risks for litigation, both within the CEQA context and in relation to groundwater adjudication proceedings.”

The Association of California Water Agencies adds “AB 2201 seeks to impose significant new responsibilities on GSAs. The executive order requires counties to determine whether a new groundwater well would interfere with other nearby wells or cause subsidence that would impact nearby infrastructure. AB 2201 would require GSAs to make this determination. This would be a technical and time-consuming analysis that would likely force GSAs, particularly those with limited staff and resources, to divert staff and resources away from implementing GSPs and toward this new application review process.”

COMMENTS

1. Stay In Lanes. In crafting SGMA, the authors paid careful attention to ensure that local governments did not encroach on GSAs’ powers and responsibilities under SGMA to achieve sustainability for the basin as a whole, and that GSAs did not encroach on other local governments’ existing powers and responsibilities. Regarding wells, this included preserving cities’ and counties’ existing authorities regarding permitting individual new wells, while granting GSAs basin-wide authorities to limit extraction, requiring pumpers to rotate their operations, and establish well spacing rules to minimize the potential for well interference. This bill blurs that separation of authorities by requiring GSAs to essentially approve individual new wells.

2. Communication Between GSAs And Local Governments. A common thesis among those involved in crafting SGMA was that by requiring GSAs to share GSPs and other reports with local governments, and to require local governments to share general plans and similar documents with GSAs, the two sets of agencies would begin ongoing discussions and regularly volunteer information of interest to the other parties. While some of this has happened in some areas, it doesn’t appear to be wide spread or common practice.

3. Why Make This Permanent? The EO is in force only so long as the drought emergency exists. When the emergency ends, so will the provisions of the EO. A likely result of the end of the drought emergency will be a big rush to permit new wells, without verifying that such wells are consistent with GSPs and won’t interfere with other nearby wells, exacerbate subsidence, or interfere with the achievement of the sustainability goal. Making those provisions permanent now helps avoid that rush to the bottom.

4. Why Not Limit To Just Critically Overdrafted Basins? The purpose of SGMA wasn’t just to address the problems of critically overdrafted basins, it was also to prevent other extensively used basins from becoming critically overdraft. These provisions would likely help do that.

5. Why Put These Provisions In SGMA? The Governor’s EO and the basic policy of the bill is not addressing a flaw in SGMA, but a flaw in how counties (mostly) approve wells. So it might make more sense to move the provision of this bill to the part of the Water Code that governs requirements for issuing well permits: Chapter 10 Water Wells and Cathodic Protection Wells, commencing with Section 13700, of Division 7 of the Water Code.

6. Keep All Permitting Responsibilities With Existing Permitting Agencies. As noted above, one of the objectives in the crafting of SGMA was to respect existing agencies responsibilities. And as noted under existing law, well permitting agencies have numerous responsibilities in permitting water wells. It might make sense, in addition to the other requirements of Chapter 10, having the new section prevent the permitting agency from approving the permit unless specific conditions are met.

7. Keep Verification By The GSA, that the proposed well is consistent with its GSP and will not jeopardize achieving the sustainability goal. The GSA adopts the GSP and defines the sustainability goal – it makes sense for them to report whether a proposed well meets those criteria. In addition to GSPs, GSAs can comply with SGMA by having an alternative plan. It makes sense to tweak the language making clear that the GSA would, where appropriate, find consistency with an alternate plan approved or under review by the DWR.

8. Well Interference. Instead of having the GSA determine whether the proposed well would interfere with nearby wells or would adversely affect nearby infrastructure, it might make better sense to require the permit applicant to provide a written report prepared by a licensed engineer or geologist that makes those conclusions.

GSAs are focused on basin sustainability. They don't have the information or the expertise to determine if a specific well is likely to interfere with another well or cause subsidence. Such determinations require detailed site specific information which the GSAs don't have and there is no generally accepted method for making that determination. It will rely on professional judgement by qualified experts. This will place the onus of getting that opinion on the person wanting to have the well. This is how Sacramento County does it.

9. 30 Days Notice. GSAs have no discretion in this process, having them post well permit applications on their website suggests they do. It is the permit issuing entity that is in control of the permitting process, they should post this information on their website.

10. Exclusions. There is some sense to keeping the exclusions from these provisions that are in the existing bill, namely domestic wells with under 2 acre feet annual yield and wells for public supply systems.

If so, it also makes sense to exclude wells for small water systems. Under Health & Safety Code §116575 (n) "State small water system" means a system for the provision of piped water to the public for human consumption that serves at least five, but not more than 14, service connections and does not regularly serve drinking water to more than an average of 25 individuals daily for more than 60 days out of the year. These systems are smaller than a public supply system and larger than domestic wells – typically serving mobile home parks, etc.

It also might make sense to make clear that adjudicated basins are also excluded from these provisions, as they are governed by a court decree.

11. Suggested amendments (below) reflect the changes suggested in comments 5 through 10.

12. Double Referred. This bill is also referred to the Senate Governance & Finance Committee, which should this bill pass, will explore issues within their jurisdiction.

SUGGESTED AMENDMENTS

Delete Section 1 and insert:

Section 1. Article 5 (commencing with Section 13807) is added to Chapter 10 of Division 7 of the Water Code, to read:

Article 5. Water Wells

13807. (a) In addition to meeting the other requirements of this chapter, a county, city, or any other water well permitting agency shall not approve a permit for a new groundwater well or for alteration of an existing well in a basin subject to the Sustainable Groundwater Management Act (Part 2.74 (commencing with Section 10720) of Division 6 of the Water Code) and classified as medium- or high-priority unless all of the following conditions are met.

(1) The permitting agency obtains written verification from the groundwater sustainability agency managing the basin or area of the basin where the well is proposed to be located that groundwater extraction by the proposed well meets both of the following conditions.

(A) The proposed well would not be inconsistent with any sustainable groundwater management program established in any applicable groundwater sustainability plan adopted by that groundwater sustainability agency or an alternate plan approved or under review by the Department of Water Resources.

(B) The proposed well would not decrease the likelihood of achieving a sustainability goal for the basin covered by such a plan.

(2) The permit applicant has provided the permitting agency a written report prepared by a licensed professional that concludes the extraction by the proposed well is not likely to interfere with the production and functioning of one or more existing nearby wells and is not likely to cause subsidence that would adversely impact or damage nearby infrastructure. As used in this paragraph, "licensed professional" means a professional engineer licensed pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, or a professional geologist licensed pursuant to Chapter 12.5 (commencing with section 7800) of division 3 of the Business and Professions Code.

(3) The permitting agency has posted the well permit application on its internet website for at least 30 days.

(b) Subdivision (a) does not apply to the following:

(1) Permits for wells that will provide less than two acre-feet per year of groundwater for individual domestic users.

(2) Permits for wells that will exclusively provide groundwater to public water supply systems or state small water systems as defined in Section 116275 of the Health and Safety Code.

(3) Permits for wells in adjudicated basins identified in Section 10720.8.

SUPPORT

Active San Gabriel Valley
American Rivers
Audubon California
California Climate & Agricultural Network (If amended)
California Coastkeeper Alliance
California Environmental Voters (formerly CLCV)
California Rural Legal Assistance Foundation
Center for Climate Change & Health
CivicWell (formally the Local Government Commission)
Clean Water Action
Community Alliance With Family Farmers (If amended)
Community Water Center
Dolores Huerta Foundation
Environmental Defense Center
Environmental Working Group
Former California State Assemblymember Roger Dickinson
Former California State Senator Fran Pavley
Leadership Counsel for Justice & Accountability
League of Women Voters California
Mono Lake Committee
Natural Resources Defense Council
North County Watch
Physicians for Social Responsibility - Los Angeles
Planning and Conservation League
Policylink
Sierra Club California
The Nature Conservancy
Tuolumne River Trust
Union of Concerned Scientists
Water Foundation
We Advocate Through Environmental Review

OPPOSITION

African American Farmers of California
Agricultural Council of California
Almond Alliance of California
Association of California Water Agencies
CA Cotton Ginners & Growers Association
California Association of Winegrape Growers
California Chamber of Commerce
California Citrus Mutual
California Cotton Ginners and Growers Association
California Farm Bureau Federation
California Fresh Fruit Association
California Grain and Feed Association
California League of Food Producers
California Municipal Utilities Association (Unless amended)
California Pear Grower Association
California Seed Association

California State Association of Counties
California Walnut Commission
County of Kern
County of San Joaquin
County of Stanislaus
Desert Water Agency (Unless amended)
Family Winemakers of California
Nisei Farmers League
Regional Water Authority (Unless amended)
Rural County Representatives of California
Solano County Water Agency (Unless amended)
Valley Ag Water Coalition
Western Agricultural Processors Association
Western Growers Association
Western Plant Health Association
Wine Institute

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