

Date of Hearing: May 18, 2022

ASSEMBLY COMMITTEE ON APPROPRIATIONS

Chris Holden, Chair

AB 2201 (Bennett) – As Amended April 27, 2022

Policy Committee: Water, Parks and Wildlife Vote: 8 - 5

Urgency: No State Mandated Local Program: Yes Reimbursable: No

SUMMARY:

This bill prohibits a local agency from approving a permit for a new groundwater well or for an alteration to an existing well in a medium- or high-priority basin until it obtains a written verification from the relevant groundwater sustainability agency (GSA) determining that specified factors are present.

Specifically, this bill:

- 1) Prohibits a local agency from approving a permit for a new groundwater well or for an alteration to an existing well in a medium- or high-priority basin, with specified exemptions, 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 determining that specified factors are present.
- 2) Prohibits the GSA from providing the written verification unless it determines that specified factors are present.
- 3) Authorizes the 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.
- 4) Requires the GSA to post notification of the well permit application on its website to allow the public to comment on the well permit application for at least 30 days before issuing the required verification.

FISCAL EFFECT:

Unknown costs, but likely in excess of \$150,000 (Special Fund), to the State Water Resources Control Board (State Water Board) in instances where the State Water Board might need to make determinations for permits in unmanaged areas or probationary basins. The board may be able to recover costs for its activities via fees imposed on groundwater extractors.

This bill authorizes 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. This bill only applies to medium- and high-priority basins. 94 basins or sub-basins have been identified as medium- or high-priority through the basin prioritization technical process and are required to form GSAs and develop Groundwater Sustainability Plans (GSPs.)

COMMENTS:1) **Purpose.** According to the author:

In 2021 one thousand domestic water wells went dry in the San Joaquin Valley alone. Many of these wells serve low income and disadvantaged communities. Meanwhile thousands of new wells are being drilled, many in proximity to wells that have run dry. In 2014 the State created Groundwater Sustainability Agencies (GSA) to ensure basins reach groundwater sustainability. However, these local GSA agencies do not have the authority to evaluate whether these new well permits are consistent with the plans and policies of the GSA and do not have known negative impacts on surrounding wells. AB 2201 requires counties to obtain written approval from their local GSA before approving new wells. The application of this law only applies to areas with medium- and high-priority groundwater basins that have a GSA in place.

2) **Background.**

- a) **Sustainable Groundwater Management Act (SGMA).** According to the Department of Water Resources (DWR), groundwater is a critical source of water for both farms and cities in California, supplying 40% of water in a typical year and as much as 60% in drought years. Signed into law in 2014, after nearly a century of mismanagement of the state's groundwater resources, SGMA established a statewide framework to help protect groundwater resources over the long-term. SGMA requires local agencies to form GSAs for medium- and high-priority basins as designated by DWR. GSAs, which are made up of one or more local agencies overlying a groundwater basin, are required to develop and implement GSPs. GSPs provide a roadmap for how groundwater basins will reach long-term sustainability without causing undesirable results, namely significant groundwater level declines, groundwater storage reductions, seawater intrusion, water quality degradation, land subsidence and surface water depletions. DWR estimates there are currently two million groundwater wells in California, and between 7,000 and 15,000 new wells are constructed each year.
- b) **Permitting New Groundwater Wells.** As noted in the Assembly Water, Parks and Wildlife Committee analysis of this bill, permitting for the construction, alteration or destruction of groundwater wells is handled by local agencies; typically this is handled by 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 LEAs adopt standards for wells that surpass DWR guidelines. Often, a permit for a groundwater well is deemed a "ministerial" action by a local agency. Ministerial actions do not require the exercise of any discretion by the agency. GSAs, on the other hand, do not currently have express authority to regulate new well permits even though new wells can directly impact their ability to reach sustainability goals within their basin. This bill would set a higher standard of review for permitting of groundwater wells by equipping local GSAs with the necessary authority to reach groundwater sustainability by ensuring that local agencies do

not approve new wells unless they obtain a written verification from the relevant GSA determining that specified factors are present.

- c) **Governor's Drought Executive Order (EO).** On March 28, 2022, Governor Newsom issued EO N-7-22, which extends the existing drought emergency and requires state and local agencies to take various actions to respond to the drought conditions present across the state. The EO also prevents new wells from being approved unless they are consistent with groundwater sustainability and do not injure other water users. Amendments taken in the Assembly Water, Parks and Wildlife Committee align this bill's language with the EO and make the EO's requirements permanent rather than just during a drought emergency.
- d) **Support.** This bill is supported by a coalition of environmental and environmental justice organizations:

We cannot continue an unregulated race to the bottom of our precious groundwater resources. The result of this path would be to leave entire communities throughout the state without a reliable source of clean, safe and affordable drinking water. Residents on private wells are the most impacted as once their well runs dry or the water becomes contaminated, they are forced to rely on bottled and tanked water to drink, prepare food, and sanitary purposes...AB 2201 will address these inequities and empower GSAs to ensure that they can enforce their GSPs and fulfill the goals of SGMA.

- e) **Opposition.** This bill is opposed by a coalition of agricultural groups and the California Chamber of Commerce, who contend that the bill restricts the water available for agriculture, restricts local control of groundwater previously guaranteed by SGMA, exacerbates the impacts that SGMA is already having on job and revenue loss in the San Joaquin Valley, is not limited to critically over-drafted basins (but rather applies to all medium- and high-priority basins) and increases litigation risks.

It is not clear how this bill limits local control when GSAs are comprised of one or more local agencies overlying a groundwater basin.

Analysis Prepared by: Nikita Koraddi / APPR. / (916) 319-2081