

Date of Hearing: July 12, 2017

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Cecilia Aguiar-Curry, Chair
SB 252 (Dodd) – As Amended June 28, 2017

SENATE VOTE: 23-14

SUBJECT: Water wells.

SUMMARY: Requires a city or county to provide public notice, receive public comment, and hold a public meeting for a well permit application if the well is proposed in a critically overdrafted basin, except in specified circumstances, and prescribes the conditions that must be met prior to permit issuance by the city or county. Specifically, **this bill:**

- 1) Requires the Department of Water Resources (DWR) to provide a city or county overlying a basin designated by DWR as subject to critical conditions of overdraft with ongoing technical assistance to implement the provisions listed below.
- 2) Requires a well completion report for a water well in a city or county overlying a critically overdrafted basin to include additional information, pursuant to 3c), below.
- 3) Requires an applicant for a new well permit in a city or county overlying a critically overdrafted basin, and where the proposed well is located within a critically overdrafted basin, to do all of the following as part of an application for a well permit:
 - a) Verify that the applicant has read a specified section of the Sustainable Groundwater Management Act (SGMA), and acknowledges that the extraction of groundwater may not be used as evidence of, or to establish or defend against, any claim of prescription in a medium- or high-priority basin between January 1, 2015, and the date of adoption of a groundwater sustainability plan (GSP) or the approval by DWR of an alternative, whichever is sooner;
 - b) Notify all contiguous landowners of the application for the well permit, where it can be found for review, and the public meeting and opportunity for public comment, pursuant to 4), below;
 - c) Include all of the following information to the extent that it can be reasonably known about the new well in the application for the well permit:
 - i) A map of the location, as well as information including, but not limited to, global positioning system coordinates and elevation of the proposed well;
 - ii) The depth;
 - iii) The proposed capacity, estimated pumping rate, anticipated pumping schedule, and estimated annual extraction volume;
 - iv) The geologic siting information, including, but not limited to, water table depth, seasonal fluctuations, recharge area and rate, if known, and location to flood plain;

- v) The distance from any potential sources of pollution onsite and on adjacent properties, including, but not limited to, existing or propose septic systems, wells, animal or fowl enclosures, transmission lines, or sewer lines;
 - vi) The distance from ponds, lakes, and streams within 300 feet;
 - vii) Any existing wells on the property, including well use, depth, diameter, screen interval, pumping rate, estimated or measured annual extraction volume, and, if available, information on specific capacity or other pumping tests completed;
 - viii) For a well below Corcoran clay, a map showing the location of canals, ditches, pipelines, utility corridors, and roads within two miles;
 - ix) The estimated cumulative extraction volume before January 1, 2020, and after 20 years;
 - x) The size in acres of the area to be served by the well; and,
 - xi) The planned category of water use, such as irrigation, stock, domestic, municipal, industrial, or other.
- d) Verify that the applicant has complied with all requirements of this section and include a list of all notified parties, pursuant to 3b), above.
- 4) Requires a city or county that receives an application for a well permit in a critically overdrafted basin to do both of the following:
- a) Make the information provided pursuant to 3c), above, publicly available and easily accessible and available to groundwater sustainability agencies (GSAs) located within the basin where the new well is located. Specifies that methods include, but are not limited to, posting the information on the city's or county's Internet Web site or providing the availability of an email mailing list management system for all interested parties; and,
 - b) Before issuing any new well permit for a well located within a critically overdrafted basin, undertake a notice and comment period that includes a public meeting, noticed pursuant to 5), below, that gives landowners, GSAs, and other groundwater extractors an opportunity to comment on the application for the new wells.
- 5) Requires notice of the meeting to be mailed or delivered at least 10 days prior to the meeting to all owners of real property as shown on the latest equalized assessment roll within the radius set by the city or county of the real property upon which the proposed well is located. Specifies, in lieu of using the latest equalized assessment roll, that the agency may use records of the county assessor that contain more recent information than the equalized assessment roll. Provides that the city or county, in lieu of mailed or delivered notice, may provide notice by placing a display advertisement of at least one-eighth page in at least one newspaper of general circulation within the city or county in which the proceeding is conducted at least 10 days prior to the meeting, if the number of owners to whom the notice would be mailed or delivered is greater than 1,000.

- 6) Requires, if the notice is mailed or delivered, pursuant to 5), above, the notice to be any of the following:
 - a) Published, pursuant to a specified section of the Government Code, in at least one newspaper of general circulation within the city or county at least 10 days prior to the meeting;
 - b) Posted at least 10 days prior to the meeting in at least three public places within the boundaries of the city or county, including one public place in the area directly affected by the proceeding; and,
 - c) Published on a publicly available Internet Web site with the available feature of an email mailing list management system for receipt of postings on this Internet Web site.
- 7) Requires the notice to include the date, time, and place of the meeting, the identity of the officer or body responsible for issuing the well permit or his or her designee who will conduct the meeting, a general explanation of the matter to be considered, and a general description, in text or by diagram, of the location of the real property upon which the proposed well would be located.
- 8) Allows a city or county to issue a new well permit within a critically overdrafted basin when the requirements of this bill are met, in addition to any requirements set forth in an ordinance adopted by the city or county or the standards adopted by a regional board for an area under the jurisdiction of the city or county, pursuant to existing law, as applicable.
- 9) Provides that the provisions of the bill do not apply to any of the following:
 - a) An applicant for a new water well who would be a de minimis extractor;
 - b) An applicant for a replacement water well that would not increase the amount of extractions above the amount of water extracted from the existing well;
 - c) A city or county with a process for the issuance of a well permit that substantially complies with the requirements of this bill, as certified in a public finding by the city or county that it has an ordinance in effect that substantially complies with the requirements of this bill;
 - d) An applicant for a new water well that is not located within a critically overdrafted basin;
 - e) An applicant for a new water well located within a basin that is not designated as a probationary basin by the state board and that has a GSP adopted in accordance with existing law; and,
 - f) A public agency that substantially meets or exceeds the requirements of the bill through another requirement of law. Specifies that in order to be exempt, the applicant shall document the laws that substantially meet or exceed the requirements and how the requirements of those laws are met.
- 10) States that the bill's provisions do not, in any manner, alter, change, affect, modify, or enlarge the authority of the city or county to deny, condition, or otherwise modify the proposed well, nor the standards, measurements, or criteria applicable to the approval of the

proposed well permit, under an ordinance adopted by the city or county or under the standards adopted by a regional board for an area under the jurisdiction of the city or county pursuant to existing law, as specified.

- 11) Defines terms for purposes of the bill.
- 12) Makes a number of findings and declarations pertaining to critically overdrafted basins and the need for greater transparency.
- 13) States that no reimbursement is required because a local agency has the authority to levy service charges, fees, or assessment sufficient to pay for the program or level of service mandated by this act, as specified.

EXISTING LAW:

- 1) Assigns cities and counties a number of different responsibilities, including issuing permits for water well construction.
- 2) Specifies that cities and counties have a number of different responsibilities, including land use planning and permitting, and issuing permits for water well construction.
- 3) Prohibits a groundwater extractor who increases pumping after January 1, 2015, during the time the GSP is under development, from using that pumping increase, as the basis of an expanded claim to groundwater against other user's rights.
- 4) Establishes SGMA to provide local groundwater agencies with the authority and the technical and financial assistance necessary to sustainably manage groundwater.
- 5) Requires, by January 31, 2020, all basins designed as high- or medium-priority basins by DWR that have been designated in Bulletin 118, as may be updated or revised on or before January 1, 2017, as basins that are subject to critical conditions of overdraft, to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans.
- 6) Requires, by January 31, 2022, all basins designed as high- or medium-priority basins by DWR that are not subject to 5), above, to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans.
- 7) Allows any local agency or combination of local agencies overlying a groundwater basin to elect to be a GSA for that basin, except as specified.
- 8) Requires the local agency or agencies to hold a public hearing in the county or counties overlying the basin, prior to electing to be a GSA, and to provide specified notice of that hearing, pursuant to existing law.
- 9) Requires a local agency or combination of local agencies that elects to be the GSA to submit a notice of intent to DWR, as specified.
- 10) Allows a combination of local agencies to form a GSA by using any of the following methods:
 - a) A joint powers agreement (JPA); or,

- b) A memorandum of agreement or other local agreement.
- 11) Requires a GSP to be developed and implemented for each medium- or high- priority basin by a GSA to meet the sustainability goal established, pursuant to SGMA.
- 12) Specifies that a GSP may be any of the following:
- a) A single plan covering the entire basin developed and implemented by one GSA;
 - b) A single plan covering the entire basin developed and implemented by multiple GSAs; or,
 - c) Multiple plans implemented by multiple GSAs and coordinated, pursuant to a single coordination agreement that covers the entire basins, as specified.
- 13) Allows the State Water Board, after notice and public hearing, to designate a basin as a probationary basin, if the board makes certain specified findings.
- 14) Requires DWR, in conjunction with other public agencies, to conduct an investigation of the state's groundwater basins, and requires DWR to identify the state's groundwater basins on the basis of geological and hydrological conditions and consideration of policy boundary lines whenever practical. Requires DWR to also investigate existing general patterns of groundwater extraction and groundwater recharge within those basins to the extent necessary to identify basins that are subject to critical conditions of overdraft. Allows DWR to revise the boundaries of groundwater basins based on its own investigations or information provided by others. Requires DWR to report its findings to the Governor and Legislature in years ending in 5 or 0.

FISCAL EFFECT: This bill is keyed fiscal and contains a state-mandated local program.

COMMENTS:

- 1) **Background.** Groundwater is the portion of water from precipitation that does not run into surface streams but rather infiltrates (either naturally or deliberately) under the surface of the ground. In a sense, all groundwater starts as some form of surface water, meaning that the two types of water are integrally connected. Much like a sponge, the ground, depending on soil type, soaks up the groundwater into basins available for use. This can happen over a period ranging from several years to over a millennium in some cases. Areas where groundwater is present or saturated are called aquifers, which generally have boundaries defined as basins. As water is drawn out of these basins, via wells or seepage into surface streams, groundwater availability can be reduced.

Groundwater supplies about 30% of California's overall dedicated water supplies in average precipitation years. In dry years, this increases statewide to about 40%. This is because when surface water supplies are restricted, both local water agencies and irrigators (farmers) increase groundwater pumping to meet water supply needs. At least 43% of Californians obtain at least a portion of their drinking water annually from groundwater sources.

During years where surface water deliveries are not available and rainfall is scarce, groundwater may provide up to 100% of irrigation water for certain areas. In some areas

where surface supplies are not accessible or economically feasible, groundwater provides 100 % of a community's public water.

The DWR estimates that there are between one to two million water wells (irrespective of condition or whether used or idle) scattered throughout the state. On average, 10,000 to 15,000 more wells are added to this total each year. Most are situated in the 515 groundwater basins/sub-basins in California, although many are located in the foothill and mountainous areas.

In 2009, the Legislature passed SB 677 (Steinberg), Chapter 1, Statutes of 2009, Seventh Extraordinary Session, mandating a statewide groundwater elevation monitoring program to track seasonal and long-term trends in groundwater elevations in California's groundwater basins. As a result, the DWR developed the California Statewide Groundwater Elevation Monitoring (CASGEM) program. The law anticipates that the monitoring of groundwater elevations required by the legislation will be done by local entities. The first two statewide CASGEM reports have been submitted, but do not yet paint a complete groundwater picture for the state.

Of the 515 basins, groundwater basins and sub-basins in California, 127 have been designated by the DWR as high- or medium-priority basins. The 127 basins account for about 96% of the state's groundwater use. Additionally, 21 basins have been identified by the DWR as being in a condition of critical overdraft. While critically overdraft basins are spread throughout the state, most of the San Joaquin Valley basins have been designated as being in a condition of critical overdraft.

- 2) **Local Groundwater Management and SGMA.** The Legislature passed SGMA [SB 1168 (Pavley), AB 1739 (Dickinson) and SB 1319 (Pavley), Statutes of 2014], creating a statewide requirement to sustainably manage groundwater resources. The package of bills was signed by Governor Brown with the objective to ensure the long-term reliability of groundwater resources and connected surface water resources by requiring sustainable management. GSAs must be formed by 2017, GSPs for critically overdrafted basins must be written by 2020, and sustainability must be reached by 2040. Prior to 2014, there was no statutory mandate to manage groundwater in California.

Prior to SGMA, there were several ways that groundwater was managed at the local level. A local agency that provided water service was authorized to develop and implement a groundwater management plan, known as AB 3030 plans. The Legislature also created a number of "special act special districts" that addressed groundwater management – these local agencies were created via statute to establish unique governance structures and grant powers that were customized to the problems and solutions of a particular groundwater basin. The acts creating these special act special districts are located in the Water Appendix.

Local Control and Governance Options under SGMA. SGMA requires local entities in medium- and high-priority basins to establish GSAs by June 2017, to avoid state intervention. GSAs must self-identify by June 30, 2017, to DWR, and can include a city, a county, a special district, or a combination of these agencies organized via a legal agreement, like a JPA or Memorandum of Agreement. One agency can form a GSA for the entire basin, or multiple agencies can form individual GSAs and coordinate for basin sustainability. There are multiple options for local agencies to manage groundwater under SGMA, including

alternatives to forming a GSA and developing a GSP. SGMA does not specify exactly how GSAs should govern local groundwater resources to achieve sustainability goals.

All groundwater basins designated as medium- or high-priority and identified as subject to critical conditions of overdraft must be managed under one or more GSPs by January 31, 2020. The deadline is two years later (January 31, 2022) for other medium- or high-priority basins. The goal of the GSPs is to achieve operation within the basins' sustainable yield within 20 years of plan implementation.

- 3) **Bill Summary.** This bill requires a city or county to provide public notice, receive public comment, and hold a public meeting for a well permit application if the well is proposed in a critically overdrafted basin, and prescribes the contents of the application that must be met prior to permit issuance by the city or county. The applicant must include all of the following information to the extent that it can be reasonably known about the new well in the application for the well permit:
- a) A map of the location, as well as information including, but not limited to, global positioning system coordinates and elevation of the proposed well;
 - b) The depth;
 - c) The proposed capacity, estimated pumping rate, anticipated pumping schedule, and estimated annual extraction volume;
 - d) The geologic siting information, including, but not limited to, water table depth, seasonal fluctuations, recharge area and rate, if known, and location to flood plain;
 - e) The distance from any potential sources of pollution onsite and on adjacent properties, including, but no limited to, existing or proposed septic systems, wells, animal or fowl enclosures, transmission lines, or sewer lines;
 - f) The distance from ponds, lakes, and streams within 300 feet;
 - g) Any existing wells on the property, including well use, depth, diameter, screen interval, pumping rate, estimated or measured annual extraction volume, and, if available, information on specific capacity or other pumping tests completed;
 - h) For a well below Corcoran clay, a map showing the location of canals, ditches, pipelines, utility corridors, and roads within two miles;
 - i) The estimated cumulative extraction volume before January 1, 2020, and after 20 years;
 - j) The size in acres of the area to be served by the well; and,
 - k) The planned category of water use, such as irrigation, stock, domestic, municipal, industrial, or other;

Once in receipt of this information, the city or county must make the information publicly available and easily accessible and available to GSAs located within the basin where the new well is located. Before the city or county can issue the new well permit, that city or county must undertake a notice and comment period that includes a public meeting, as specified, that

gives landowners, GSAs, and other groundwater extractors an opportunity to comment on the application for the new well.

Provisions in the bill also require well permit applicants to notify all contiguous landowners of the application, where it can be found for review, and the public meeting and opportunity for public comment that is required in the bill, in addition to verifying that the applicant has read specified provisions of SGMA related to extraction of groundwater between January 1, 2015, and the date of adoption of the GSP. The applicant must also self-certify that they have complied with requirements for additional information for the well permit, and that they have notified the required parties of the well permit application.

The bill specifically deals with those basins that are in critical overdraft, and exempts certain types of well permits from the provisions of the bill, including the following:

- a) An applicant for a new water well who would be a de minimis extractor;
- b) An applicant for a replacement water well that would not increase the amount of extractions above the amount of water extracted from the existing well;
- c) A city or county with a process for the issuance of a well permit that substantially complies with the requirements of this bill, as certified in a public finding by the city or county that it has an ordinance in effect that substantially complies with the requirements of this bill;
- d) An applicant for a new water well that is not located within a critically overdrafted basin;
- e) An applicant for a new water well located within a basin that is not designated as a probationary basin by the state board and that has a GSP adopted in accordance with existing law; and,
- f) A public agency that substantially meets or exceeds the requirements of the bill through another requirement of law. Specifies that in order to be exempt, the applicant shall document the laws that substantially meet or exceed the requirements and how the requirements of those laws are met.

This bill allows a city or county to issue a new well permit when the requirements above have all been met, in addition to any requirements set forth in an ordinance adopted by the city or county or the standards adopted by a regional board for an area under the jurisdiction of the city or county, as applicable. This bill is sponsored by the author.

- 4) **Author's Statement.** According to the author, "Cumulatively, critical water basins experience nearly 2 million acre feet of overdraft annually. Subsidence in some locations has exceeded more than 20 feet in the last two decades. Subsidence leads to crumbling roads, bridges, aqueducts, pipelines, and more. Those are state assets that state taxpayers and ratepayers paid for, and for which they will have to pay to repair. Public health is at risk as aquifer depletion leads to higher concentrations of pollutant contamination. State policy guarantees clean drinking water for all Californians.

"Depleted aquifers place stress on alternative water supplies from the delta, much of which is in my Senate District. This stress makes it more difficult to balance competing needs for

Delta water. Some suggest that we do nothing until SGMA plans are prepared and adopted several years from now. The longer we wait to consider the undesirable results of drilling, the more difficult it will be to achieve groundwater sustainability once the plans are adopted.

“Notwithstanding the enactment of SGMA in 2014, the increased pumping from irrigation wells has resulted in more than 3,100 domestic and small community wells in critical basins to go dry. Drilling costs for everyone have increased, and we are hard-pressed to clean up what’s left in the ground. Transparency will help all stakeholders to contemplate innovative solutions and assist the implementation of SGMA plans as they are adopted.”

5) **Policy Considerations.** The Committee may wish to consider the following:

a) **Filling the Gap.** GSAs are required to address undesirable results that occur after January 1, 2015. By January 31, 2020, high-and medium-priority basins identified as subject to critical conditions of overdraft must be managed by a GSP. This means that in the next two years, these GSAs will be working diligently, with support from the state, to develop and adopt a GSP. Cities and counties are allowed to, but are not required to, participate in GSAs. In the interim period, before the adoption of a GSP, existing local well permitting rules, common law, the state constitutional provisions related to water, and existing state laws (including those pertaining to groundwater basin adjudications), present the current means to manage the groundwater.

Supporters argue that groundwater levels have continued to decline since SGMA passed, and that this bill is necessary to bridge the gap by requiring greater scrutiny and transparency prior to GSPs being in place in 2020. Opponents, to the contrary, argue that any additional mandates on top of SGMA will take away from the ability of GSAs to dedicate their resources toward developing a GSP, and will only serve as a distraction to meeting the requirements of SGMA.

b) **Transparency.** Supporters argue that greater transparency – including the notification to contiguous land owners, list of specified requirements in the well application, public noticing, public comment and public meeting requirements – is needed to provide existing pumpers and landowners with important information about the use of shared groundwater resources. Opponents, however, argue that requiring the city or county to hold a notice and comment period that includes a public meeting for each well application requires the city or county to expend resources for a meeting in which no decision is made and no new information is collected, and would not actually achieve meaningful transparency.

c) **Litigation Concerns.** Opposition argues that provisions in the bill will open well permit applicants up to potential litigation, specifically in the list of information an applicant must provide that is “reasonably known” by that applicant. Opposition also argues that the requirement to “notify contiguous landowners” of the well permit is vague and unclear in terms of how to satisfy such requirements, and might be used against the applicant should the notification be found inadequate.

- 6) **Committee Amendments.** In order to address some of the concerns raised above, the Committee may wish to consider the following amendments:
- a) **Require Cities and Counties to request estimates on well permit application.** In Section 13808, require cities and counties overlying a critically overdrafted basin in which there is a well permit application to request estimates of the information from the applicant or the applicant's agent (instead of requiring an applicant to provide the information as part of an application for a well permit).
 - b) **Remove provisions, as follows:**
 - i) Strike the requirement to verify that the applicant has read the specified section of SGMA pertaining to extraction of groundwater contained in Section 13808 of the bill, and strike the requirement to provide notice to contiguous landowners of the well permit in Section 13808.
 - ii) Strike the requirements for cities and counties to undertake the notice and comment period that includes a public meeting in Section 13808.2 of the bill.
 - c) **No ordinance update.** Add language to ensure that nothing in the bill's requirements for the list of information specified in the well permit application in Section 13808 triggers a city or county to amend its existing ordinance.
 - d) **Accessible information.** Clarify that information provided in the well application needs to be made available to the public for each pending well application.
 - e) **Municipal Wells.** Add, to the list of exemptions contained in Section 13808.4, "A city or county municipal well to provide water supply solely for residents of the city or county."
- 7) **Arguments in Support.** Supporters argue that this bill will improve transparency and accountability of new wells by improving reporting requirements in overdrafted basins, including the proposed depth and capacity, estimated extraction volume, planned use, location, and other details about these new wells. They argue that increased drilling in the recent past years in critically overdrafted basins is driving down aquifer levels and drying up shallower wells, including domestic wells. Overdrafting of groundwater has been shown to damage infrastructure, and they are concerned that continued overdraft will affect expensive state infrastructure, such as highways and canals.
- 8) **Arguments in Opposition.** Opposition argues that this bill undermines the intent of SGMA to achieve groundwater sustainability through local management. Requiring cities and counties that overlay overdraft basins to take specific actions regarding new wells is counter to SGMA's goal and hinders the ability of local agencies to analyze and determine the necessary management tools required to achieve sustainability in each basin. Opponents also argue that the bill imposes significant burdens on well applicants and cities and counties that could open the door for litigation, and creates an extensive list of information an applicant must provide, which opponents feel are overly burdensome.
- 9) **Double-referral.** This bill was heard in the Water, Parks and Wildlife Committee on June 27, 2017, and passed with a 9-6 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Audubon California
Borrego Water District
California Climate and Agriculture Network
California Coastal Protection Network
California Coastkeeper Alliance
California Groundwater Coalition
California League of Conservation Voters
CERES
Clean Water Action
Community Alliance with Family Farmers
Community Water Center
Condor's Hope
Environmental Defense Fund
Environmental Justice Coalition for Water
Karuk Tribe
Leadership Counsel for Justice and Accountability
North Coast Streamflow Coalition
North County Water
Planning and Conservation League
Sierra Club
The Nature Conservancy
Union of Concerned Scientists

Opposition

African-American Farmers of California
Agricultural Council of California
Almond Alliance of California
Association of California Egg Farmers
Association of California Water Agencies
California Association of Nurseries and Garden Centers
California Association of Wheat Growers
California Association of Winegrape Growers
California Bean Shippers Association
California Building Industry Association
California Business Properties Association
California Chamber of Commerce
California Citrus Mutual
California Cotton Ginners and Growers Association, Inc.
California Dairies, Inc.
California Farm Bureau Federation
California Fresh Fruit Association
California Grain and Feed
California Groundwater Association
California League of Food Processors

Opposition (continued)

California Pear Grower Association
California Seed Association
California State Association of counties
California Strawberry Commission
California Tomato Growers Association
California Warehouse Association
Family Winemakers of California
Far West Equipment Dealers Association
Fresno County Board of Supervisors
Kern County Water Agency
Kern County Board of Supervisors
Kings River Conservation District
Kings River Water Association
League of California Cities (unless amended)
Milk Producers Council
Nisei Farmers League
Northern California Water Association (unless amended)
San Joaquin River Exchange Contractors
Tulare County Board of Supervisors
Valley Ag Water Coalition
Western Agricultural Processors Association
Western Growers Association
Western Plant Health Association
Wine Institute

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