

AB 2201 (BENNETT) GROUNDWATER SUSTAINABILITY AGENCY: GROUNDWATER EXTRACTION PERMIT: VERIFICATION. OPPOSE/NON-CONCURRENCE



FLOOR ALERT

August 30, 2022

TO: Members of the California State Assembly

SUBJECT: AB 2201 (BENNETT) GROUNDWATER SUSTAINABILITY AGENCY: GROUNDWATER EXTRACTION PERMIT: VERIFICATION. OPPOSE/NON-CONCURRENCE – AS AMENDED

The California Chamber of Commerce and undersigned organizations must respectfully **OPPOSE AB 2201** as amended on August 11, 2022 because it interferes with the rights of landowners to beneficially use the groundwater beneath their property, imposes significant costs on well applicants, and increases the likelihood of legal challenges against counties and groundwater sustainability agencies (GSAs) for well permitting decisions. Small family farmers are the least likely to be able to afford these new requirements, particularly when these farmers are already struggling to keep their businesses running.

AB 2201 Is Untimely and Conflicts with Other Water Goals

The bill is similar to the Governor's March 2022 Executive Order (EO) in that it requires increased communication between the county and a GSA when the county considers well installation permit applications. However, the EO is temporary to address the impacts of the current drought; it is not intended to be a permanent change in law. Moreover, the bill is inconsistent with the EO and the goals outlined in the Governor's August 11, 2022 Water Supply Strategy. Specifically, the Strategy emphasizes the need for local agencies to have flexibility in managing groundwater resources. The Strategy also emphasizes the need for more groundwater storage, and the definition of "well interference" threatens the viability of water banking projects.

Onerous Technical Requirements Impose Unaffordable Costs on Well Applicants

AB 2201 requires well applicants to provide a permitting agency (i.e., a county) with a report written by a licensed professional engineer (PE) or professional geologist (PG) that indicates that extracting groundwater from a proposed well is unlikely to cause well interference. While simple in concept, this determination is difficult to reach. First, unlike surface water, groundwater has many layers, and not all aquifers are connected to one another. Thus, the question is three-dimensional. This is but one example of how this provision would require a comprehensive analysis of the aquifers in the basin, plus all other wells and overlying infrastructure. Addressing the complexity of these factors and variables means the required report will cost a significant sum. This is simply unaffordable for a typical well applicant, particularly small or family farmers.

Posting a Well Application May Invite Legal Challenge

This bill requires a permitting agency to post a well permit application to its website for 30 days. This requirement begins to make the bill appear as though it is making well permitting decisions discretionary actions, rather than ministerial as these actions are typically considered. Accordingly, well permitting decisions may face increased legal challenge pursuant to CEQA or other laws, which apply to discretionary (but not ministerial) government actions. Notwithstanding this concern, this requirement adds unnecessary time to a process that is otherwise ministerial. For example, livestock feeding operations rely on groundwater wells for livestock drinking water and sanitation. When groundwater wells run dry, delaying a well permit by at least 30 days jeopardizes the health and welfare of animals.

AB 2201 Reaches Even Sustainable Basins and Does Not Exempt Well Replacements

The scope of the bill remains overly broad. This bill imposes its permitting regime on 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. It does not make sense to impose further restrictions on those basins.

While the bill exempts certain kinds of new wells from its provisions, it does not exempt a new well that replaces an existing well. Recent amendments only exempt well *pump* replacements and work to maintain existing wells. This bill should not apply to well replacements due to situations such as eminent domain.

For these and other reasons, we **OPPOSE AB 2201 (Bennett)** and respectfully request your “**No**” vote and that you **NON-CONCUR** with Senate amendments when it comes before you for consideration.

Sincerely,



Brenda Bass
Policy Advocate
California Chamber of Commerce
On behalf of

African American Farmers of California
Agricultural Council of California
Almond Alliance of California
Brea Chamber of Commerce
California Association of Winegrape Growers
California Cattleman's Association
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 Groundwater Association
California League of Food Producers
California Pear Growers Association
California Seed Association
California Walnut Commission
Carlsbad Chamber of Commerce
Chico Chamber of Commerce
Desert Water Agency
Family Winemakers of California
Greater Coachella Valley Chamber of Commerce
Greater High Desert Chamber of Commerce
Imperial Valley Regional Chamber of Commerce
Kern County Water Agency
Kings River Conservation District
Kings River Water Association
La Cañada Flintridge Chamber of Commerce
Livermore Chamber of Commerce
Lodi Chamber of Commerce
Modesto Chamber of Commerce
Modesto Irrigation District
Murrieta/Wildomar Chamber of Commerce
Nisei Farmers League
Oceanside Chamber of Commerce
Orange County Business Council
Santa Maria Valley Chamber of Commerce

Solano County Water Agency
Southwest CA Legislative Council
Tri County Chamber Alliance
Tulare Chamber of Commerce
Valley Ag Water Coalition
Ventura County Coalition of Labor Agriculture and Business
Western Agricultural Processors Association
Western Growers Association
Western Plant Health Association
Wine Institute
Winegrowers of Napa County

Cc: Legislative Affairs, Office of the Governor
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