



June 23, 2022

The Honorable Anna Caballero  
Chair, Senate Governance and Finance Committee  
1021 O Street, Suite 7620  
Sacramento, CA 95814

**Re: Assembly Bill 2201 (Bennett) – Groundwater sustainability agency: groundwater extraction permit: verification.  
As Amended June 22, 2022 – Oppose  
Set for Hearing: June 29, 2022 – Senate Governance and Finance Committee**

Senator Caballero,

On behalf of the California State Association of Counties (CSAC) and the Rural County Representatives of California (RCRC), who together represent all 58 California counties, along with the California Association of Environmental Health Administrators (CAEHA), we respectfully oppose AB 2201 (Bennett). This bill amends the local control of groundwater previously guaranteed by the Sustainable Groundwater Management Act (SGMA). We appreciate and support the majority of the amendments adopted in the Senate Natural Resources Committee. We support the work of the coalition of business and agriculture, and emphasize the need for the amendments as described below.

In addition, the amendments added on June 23 shift substantial procedural burdens from the well permittee to the local government, by requiring the local government to “consider” and “accept” the findings of the written report, and to consider public comment. This not only creates significant new costs to local agencies, but it arguably shifts the process in the direction of discretionary permitting that would subject local governments to legal challenges on both substantial and procedural grounds. This is counter to the intent of SGMA, which shifts the requirements for water management to the Groundwater GSA.

SGMA was signed into law in 2014, with a clear and deliberate pathway to long-term groundwater sustainability based fundamentally on local control—a pathway that anticipated adaptive management changes over multiple decades, with science and hydrology as its foundation. At the time, Governor Brown said that “groundwater management in California is best accomplished locally.” In enacting SGMA, Section 113 was added to the Water Code stating “it is the policy of the state that groundwater resources be managed sustainably for long-term reliability and multiple economic, social, and environmental benefits for current and future beneficial uses. Sustainable groundwater management is best achieved locally through the development, implementation, and updating of plans and programs based on the best available science.”

To further complicate implementation of SGMA as it was originally proposed, Governor Newsom issued Executive Order N-7-22 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. Serious questions have arisen about the change in ministerial versus discretionary nature of permits, the immediate need for an extraordinary change in permitting at the local level, and questions regarding litigation. According to the Department of Water Resources, the Executive Order will not be removed within this water year—meaning it will remain in place through *at least* November 2022. By then, we should know more about the efficacy of the order, litigation challenges, and necessary changes to align with local groundwater management.

The amendments adopted in Senate Natural Resources and Water Committee appropriately shift changes to well application to the water well section of the Water Code, with the burden of proof remaining with the project applicant. We believe this section could be made more clear for local government permitting agencies with additional amendments to require the permit applicant to attest to the rules and obligations of a GSA including:

(2) The permit applicant has acknowledged and certified the following in writing:

(A) The permit does not entitle or guarantee that the full capacity of the well will be allowed.

(B) The groundwater sustainability agency managing the basin or area of the basin where the well is proposed to be located has full authority to restrict pumping and apply fees for use of this will.

(C) The permit applicant has reviewed all applicable requirements of the groundwater sustainability agency managing the basin or area of the basin where the well is proposed to be located including but not limited to 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.

(D) The well will be operated in compliance the requirements in subparagraph (C).

A further recent amendment requires the permitting agency to post the permit for 30-days. We have concerns that this section of bill may be used as a means to test whether these well permitting decisions are subject to CEQA themselves and may increase the risks for litigation. We support the exclusion of a shift to a discretionary permit application from these amendments and further suggest that this be codified with a declaration of existing law stating: Nothing in this section subjects a permit application under this chapter to review under the California Environmental Quality Act, commencing with Section 21000 of the Public Resources Code."

On behalf of California counties and Environmental Health Administrators, we urge you to reconsider AB 2201 in light of current conditions, the Executive Order, and the original intent of SGMA.

Sincerely,



Catherine Freeman  
Legislative Representative  
California State Association of Counties



Siddharth Nag  
Policy Advocate  
Rural County Representatives of California

A handwritten signature in blue ink, appearing to read "J. Malan". The signature is fluid and cursive, with a large initial "J" and "M".

Justin Malan  
Executive Director  
California Association of Environmental Health Administrators

CC: Honorable members and staff, Senate Governance and Finance Committee  
Todd Moffitt, Senate Republican Caucus