



May 4, 2022

The Honorable Steve Bennett
California State Assembly
1021 O Street, Suite 4140
Sacramento, CA 95814

**Re: Assembly Bill 2201 (Bennett) – Oppose
As Amended April 27, 2022**

Dear Mr. Bennett,

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, we must respectfully oppose your AB 2201. This bill restricts the local control of groundwater previously guaranteed by the Sustainable Groundwater Management Act (SGMA). We are supportive of the comments raised by coalitions, including the California Chamber of Commerce and various agricultural interests, and offer our additional comments from the county perspective.

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.”

AB 2201 is at odds with this stated policy of local control. Instead, AB 2201 would create a new permitting process for groundwater wells that will negatively impact agricultural businesses, food security, and rural communities that rely on a thriving agricultural economy for their livelihoods. This bill imposes a strict new mandate on how groundwater sustainability agencies (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.

It is important to note that GSAs currently possess the authority to manage groundwater and impose restrictions on groundwater extraction and use. The difference is that each GSA is not *required* to make the specific findings in the manner prescribed by AB 2201. In that sense, the bill imposes a state

mandate and circumvents local control. SGMA acknowledges that not every groundwater basin is the same, and that no single management solution is the right fit for every basin. AB 2201 does not afford GSAs the necessary flexibility to tailor management to local conditions as required under SGMA.

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.

Both the Executive Order and AB 2201 require GSAs to determine that a new or altered well will not impact other nearby wells or cause subsidence that impacts nearby infrastructure. This is both difficult and costly to assess, and is duplicative of authorities currently in law. SGMA already authorizes a GSA to impose spacing requirements on new wells to minimize well interference, control groundwater extractions, and regulate the construction of new wells (Wat. Code, § 10726.4), as part of its overarching mandate to achieve long-term basin sustainability. Many high- and medium-priority basin plans have yet to clear initial Department of Water Resources review, and the imposition of new requirements that are duplicative of existing ones is inappropriate, as GSAs have yet to even implement their authority inherent in SGMA.

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

On behalf of California counties 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