May 30, 2024

The Honorable Dave Min
Chair, Senate Natural Resources and Water Committee
1021 O Street, Suite 3220
Sacramento, CA 95814

RE: Assembly Bill 2079 (BENNETT) Groundwater extraction: large-diameter, high-capacity water wells: permits.
As amended, April 25, 2024 – Oppose Unless Amended
Set for Hearing on: June 11, 2024

Dear Senator Min,

On behalf of the California State Association of Counties (CSAC), representing all 58 of California Counties, the Rural County Representatives of California (RCRC) representing California's 40 rural California counties, and the California League of California Cities (Cal Cities), on behalf of 482 cities statewide, we respectfully oppose unless amended Assembly Bill 2079 (Bennett). This measure restricts the local control of groundwater previously guaranteed by the Sustainable Groundwater Management Act (SGMA). The proposed requirements in the bill would mandate ministerial permitting agencies deny all large-diameter, high-capacity wells within a quarter mile of a well used for supplying domestic water to one or more persons or to a community.

A Second Bite at the Apple? AB 2079 would attempt to fundamentally redirect groundwater management from the original intent of SGMA, which allowed for flexible local control based on hydrologic conditions. At this point in time, all basins above medium priority are required to be managed under a Groundwater Sustainability Plan (GSP) under Water Code Sec. 10720.7 (a)(2). Groundwater Sustainability Agencies (GSAs) must annually report to the Department of Water Resources (DWR) on progress towards sustainability (WC Sec. 10728). SGMA anticipated development of new locally-managed rules culminating with final approval and adoption of GSPs by 2025 in all required basins.

The DWR has already had an opportunity to review all GSPs and to make recommendations to approve and adopt, or to reject and move these basins to probationary hearings at the State Water Resources Control Board (SWRCB). The DWR will continue to review progress made towards these approved plans annually. This process is clearly set out within the SGMA legislation and subsequent guidance documents. Those basins that have moved to the SWRCB will move through the SGMA-outlined probationary hearing process and will be afforded due process through a public hearing schedule. Counties and cities, along with partner GSAs and water agencies, are closely following these probationary hearings.

In addition, counties, cities and GSAs have expended significant sums in their efforts to comply with SGMA and prepare paths forward toward sustainability. By essentially replacing the local control element of SGMA related to well interference and subsidence mitigation with a statewide, inflexible mandate, this

bill makes these expenditures superfluous. Keeping the focus on a holistic approach to groundwater sustainability that is driven by local knowledge will maintain meaning behind the public funds already invested in SGMA and will ensure that locals can tailor their strategies to local conditions.

Hydrology and Geology Matter. The bill seems to be intended to address well spacing issues but does not respect varying hydrology and geology throughout the state of California. SGMA anticipates that the state will continue to support our thriving California farming and manufacturing communities. Water supply is critical to these economies. The legislation anticipates that if an individual or business has a domestic well, even in a developed area, or an area with an abundance of groundwater, a large-diameter, modern well will interfere with a domestic well.The legislation would exempt the same large diameter well to be developed in a rural residential area regardless of the amount of water withdrawn.

When SGMA was developed, the focus on achieving groundwater sustainability was rightfully on the relative use of groundwater: on how much water is used. It did not focus on how many wells are or may be in existence. This is because achieving sustainability depends on inputs and outputs overall, not how many locations that can extract groundwater.

While we understand the seriousness of subsidence, the issue remains a question of overall use. A new well does not give a water user any entitlement to using a certain amount of water. The amount available to use is regulated by state law and the relevant groundwater sustainability plan developed pursuant to SGMA. Thus, this bill's focus purely on new wells is misplaced. Continued focus on sufficient GSPs and compliance with those GSPs is necessary to ensure that SGMA's goals are reached and negative consequences like subsidence are reduced.

Winners and Losers—An Unintended Consequence? The inflexibility of this bill's approach may result in another unintended consequence to the local agricultural community. As this letter explains, the distinction of what qualifies as a large-diameter, high-capacity well is not just a matter of volumetric measurements, but also of the groundwater extraction technology involved, the periodicity of operation, the energy resources available to the well owner to operate the well, among other factors not identified by this bill. This incomplete approach risks disproportionately impacting smaller and medium-sized agricultural producers, who may not have the surface access to the groundwater aquifer, or the sophistication of equipment to modify their well plans to accommodate this bill's prohibition. In some cases, a larger diameter well may be the only feasible and economically achievable approach for a smaller producer to size a well. The smaller producer may have the financial resources for only one or few primary production wells, and their smaller property may only be able to site one or few wells, especially if access to the groundwater aquifer from within property boundaries is limited due to the site's geology or topography.

By imposing a one-size-limits-all approach, this bill greatly risks exacerbating the challenges faced by small agricultural producers, who already must compete with larger growers that are likely to have access to better technologies, and the market power to ultimately squeeze out its competitors. While larger producers are often organized under cooperative or corporate banners that can absorb some loses, smaller producers are often the families or sole proprietors whose livelihoods are entirely dependent on their smaller properties and holdings. The state often speaks about the immense value of family farmers, as anchors of their local communities, as economic support for future generations, and as producers of

much of the state's specialty crop diversity. Yet, AB 2079 is likely to further stack the deck against small and medium-sized growers by increasing the costs of production, potentially out of their reach, and by restricting their operations with rules they will not have the resources to adapt to in the same way as larger producers.

A Better Option—Model Ordinance. We believe that this bill is too prescriptive, inflexible, and incapable of adapting to local conditions. The rigidity of this bill's requirements will adversely impact permit applicants with legitimate and community-responsible interests when they seek a new well permit. The bill may result in unintended and inequitable consequences that result in the rejection of well applications that would otherwise be allowed and be allowed responsively to local groundwater conditions.

We request that the committee consider an alternate approach which has worked in several other instances where the Legislature has wanted to advance statewide interests but still allow for local flexibility. We believe that a model ordinance would better suit the goals of this legislation, because it would ensure that certain baseline policy be uniformly required across the state, but that local leaders are able to adapt state-informed rules to local conditions and local circumstance. Such model ordinances are successful in effectuating local implementation of state priorities across issue areas, from certain building and community standards to local renewables permitting. This model ordinance should be specific to well spacing, leaving SGMA to govern subsidence issues. We believe here too, groundwater well permitting is better suited to local adoption of rules with state-provided guardrails through model ordinance legislation. We believe this cooperative approach will result in better implementation, and greater participation by permit applicants in responsible operation of wells and adherence to local needs.

Notifications Cumbersome and Expensive. This bill imposes difficult reporting requirements on local agencies, directing local agencies to provide extensive information before proceeding on a permit decision. It should not be a surprise that many local governments--particularly smaller and more rural jurisdictions--do not have the staff or fiscal resources to implement the reporting provisions of this bill. In fact, even larger and more well-resourced local governments may not have staff with the kind of hydrological expertise or may not have the means to reasonably collect and maintain the data required by this bill. Furthermore, the furnishing of data necessary for local governments to make ministerial well permitting decisions have traditionally been provided by the well permit applicants themselves.

Applicants work with hydrologists and well engineers to scope their proposed well, and those experts provide the applicant and agency the information necessary to complete the permit application. This reflects the highly local nature of wells, including potential surrounding impacts. This reliance on applicant-provided information also alleviates local governments the costs of having to keep experts on staff, especially in smaller jurisdictions when that expertise may not be constantly required, presenting a dilemma of having to hire for expertise without the full-time work or financial resources to attract and retain that expertise. We strongly recommend Section 13807.2(a) be amended to retain the burden of information within the project applicant package. This may include providing maps of nearby domestic and public wells (often a requirement of local well permits) and written approval from other regulatory agencies (including GSAs).

With many newly created state-mandated programs, the state has historically provided local governments with resources, expertise, and technical assistance to assist local implementation, including with

implementation of SGMA itself. With SGMA, the Legislature and DWR recognized that the complexity of the new law necessitated the state provide local officials with financial assistance to organize local groundwater management agencies, as well as technical assistance to better understand their local groundwater basin. However, AB 2079 breaks from this formula for implementation by instead shifting costs and responsibilities to local agencies with often inadequate expertise and resources on hand. And, due to tight constitutional rules for local governments to impose fees, there is strong possibility that local fee-setting to try and recuperate costs may be limited or successfully legally challenged. We instead suggest that the several reporting provisions of AB 2079 be amended to conform with the long-standing practice of strong state support and state-provided data and technical information to fill gaps that local agencies are unable to address.

Moving Forward. Counties and cities are working with the Administration and will continue to increase communication and information sharing regarding SGMA, with our partners at the GSAs. Local governments support a continued focus on groundwater, basin management and the implementation of local water policies with support from state and federal partners. We encourage legislation that focuses on movement toward groundwater sustainability through the local implementation of SGMA, dedicated groundwater recharge, and expedited permitting for recharge events. We remain committed to establishing strong Groundwater Sustainability Plans, driven at the local level, and look forward to continuing to work with our county partners to achieve water sustainability statewide.

For these reasons we must respectfully oppose unless amended AB 2079. For more information, please contact Catherine Freeman (CSAC) at cfreeman@counties.org; Siddarth Nag (RCRC) at snag@rcrcnet.org; or Melissa Sparks-Kranz (Cal Cities) at msparkskranz@calcities.org.

Sincerely,

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cc: The Honorable Steve Bennett, Member of the California State Senate
Honorable Members, Senate Natural Resources and Water Committee
Paul Jacobs, Senate Natural Resources and Water Committee
Todd Moffitt, Senate Republican Caucus