July 3, 2023

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

Re: Assembly Bill 1563 (Bennett) – Oppose
As Amended June 28, 2023
Set for Hearing: July 12, 2023 – Senate Governance and Finance Committee

Senator Caballero,

On behalf of the California State Association of Counties (CSAC), League of California Cities (Cal Cities), and Rural County Representatives of California (RCRC), who together represent all 58 California counties and 477 cities throughout the state, we respectfully oppose AB 1563 (Bennett). Fundamentally, this bill amends the balanced approach to local control of groundwater previously assured by the Sustainable Groundwater Management Act (SGMA). In addition, recent amendments now require local governments to determine whether well permit approvals will impact nearby wells. These amendments are problematic for several reasons, including that local governments are not staffed or equipped to make complex hydrological determinations, and by requiring local governments to make discretionary determinations, those decisions are now likely subject to environmental review.

The June 28th amendments make major changes to this bill that warrant serious concern. Previously, the bill required permit applicants to provide the local permitting agency with a written report by a licensed professional that their well application would not impair nearby existing wells. While we sympathized with the burden this placed on permit applicants—particularly those with fewer economic resources—we did not oppose this language. However, requiring a local government to instead make this determination is inappropriate. The current process for approving new well permits is ministerial, meant to ensure that basic public and environmental health safeguards are in place before a new well is developed. Most local governments have no technical expertise or resources to determine hydrological impacts to surrounding wells, or subsidence impacts to the landscape and infrastructure.

Further, the June 28th amendments will require local governments to make discretionary determinations about the likelihood of hydrological or geological impacts. This transforms a ministerial, public health-based process into a discretionary permit process that would ostensibly require environmental review under the California Environmental Quality Act (CEQA)—not only lengthening the approval process but subjecting local governments to legal challenges. The extent of impacts to local governments by abandoning the ministerial process were not assessed by relevant committees of jurisdiction because

author's office is only introducing these amendments now, three of four policy committees having already heard the previous version of the bill. This same change to this bill was made at the very same stage of the committee process last year for this bill's predecessor, AB 1563. We believe it is important that major policy changes that are likely to have significant impacts—to water resources supply, to local approval processes, to raising the prospect of litigation with associated costs—be evaluated by all relevant committees, and not be introduced three-quarters of the way through the legislative process.

Further, by requiring local agencies to make discretionary decisions about hydrological impacts, this bill greatly departs from SGMA, despite the bill's stated intent to implement the goals of SGMA. SGMA was signed into law in 2014, with a clear and deliberate pathway to long-term groundwater sustainability based on collaborative, multiparty decision making through their participation in groundwater sustainability agencies. These GSAs are the very entities designated by SGMA to evaluate and determine how best to achieve long-term basin-wide groundwater sustainability. GSAs are the agencies that draft and adopt groundwater sustainability plans and interact with state agencies to set forth a local process for meeting long-term goals. While some local agencies participate in their GSAs, it is not a requirement, and many local agencies are unaware or are unable to make decisions that comport or comply with the sustainability objectives of a GSA.

This bill seems to answer that concern by requiring dual approval—that by a GSA, that the well permit is in accordance with its sustainability plan, and now a local agency approval that duplicates and potentially conflicts with the science-based process that GSAs engage to make decisions for their basins in accordance with their Department of Water Resources and State Water Board approved sustainability plans. When SGMA sets up a thorough process for determining a sustainability pathway for any basin, and state agencies approve and oversee plans to achieve that sustainability, it is highly inappropriate to ask local governments to supersede the scientific, management, political, and community decisions made by the very GSAs that SGMA contemplates would make such decisions.

On behalf of California counties and cities, we urge you to hold AB 1563 in light of far-reaching amendments only recently introduced, the many procedural and legal problems those amendments are likely to cause, and the infringement to original intent of SGMA that these new amendments occasion.

Sincerely,

Catherine Freeman
Legislative Representative
California State Association of Counties

Siddharth Nag
Policy Advocate
Rural County Representatives of California

Damon Conklin
Legislative Representative
League of California Cities

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