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S.B. 252, Reg. Sess. (Cali. 2017)

LEGISLATIVE REPORTS

CALIFORNIA

S.B. 252, Reg. Sess. (Cali. 2017) (requiring cities and counties to request certain information from new well permit applicants in critically overdrafted basins).

California Senate Bill 252 (“SB 252”) wades into the core of California’s water law overhaul by requiring cities and counties overlying critically overdrafted basins to request information about a potential well before approving an application for the well permit. The California Department of Water Resources (“DWR”) designates basins as critically overdrafted.¹ In making this determination, the DWR considers geological, hydrological, and political conditions.² However, people can still pump more water from these basins through new and existing wells. State leaders and water users alike are concerned that increased pumping from critically overdrafted basins puts current water users in jeopardy. During committee hearings, the bill’s sponsor explained the danger for infrastructure and human health created by the increased strain on critically overdrafted basins, while noting that state policy also guarantees clean drinking water for all Californians. Tulare County, a subject of discussion in committee arguments, exemplifies this problem. Between January 2014 and March 2017, Tulare County had 1600 reported well failures (as of March 28, 2017) but has still issued 6300 permits.

SB 252 aims to add transparency to both existing legal frameworks and the Sustainable Groundwater Management Act (“SGMA”). SGMA creates legal systems for constructing water wells and sustainability-focused agencies to oversee development and use of California’s water basins.³ However, the state will not implement SGMA until 2020. SB 252 fills the gap between now and SGMA’s implementation, and will expire when SGMA-required groundwater sustainability plans for critically overdrafted basins are due.⁴ Proponents of SB 252 anticipate that requiring cities and water authorities to collect publicly-accessible information from new well applicants in critically overdrafted basins will protect existing groundwater pumpers and critically overdrafted basins. Opponents argue that SGMA should take effect without modification and that the situation does not call for further government regulation. Senator Bill Dodd (D-Napa) sponsored and authored the bill. On September 12, 2017, SB 252 passed the senate with a vote of twenty-five to fourteen, with one vote not recorded. Governor Brown approved the bill on October 6, 2017.

As originally introduced, the bill created an affirmative requirement for the

1. CAL. WATER CODE § 12924 (2017).

2. *Id.*

3. *See* Sustainable Groundwater Management Act (SGMA), S.B. 226 (Cal. 2015).

4. *See generally* CAL. WATER CODE §§ 100-113 (West 2018).

applicants to provide certain information about a proposed well. The final version instead requires cities and counties to request that well applicants provide as much of the required information as they reasonably can. Cities, counties, and other well users will use this information to make informed decisions about common water in critically overdrafted basins. The required information includes:

- a map and GPS information;
- the well's depth, capacity, and nearby geological information;
- features near the proposed well, such as pollutants, other water sources, and existing wells; and
- information about the water to be drawn, such as volume and purpose.

Additionally, for wells below Corcoran clay, the city or county must request additional information regarding nearby water and infrastructure features (particularly nearby canals, ditches, pipelines, utility corridors, and roads).

However, SB 252 does not apply to everyone. It specifically exempts:

- *de minimis* extractors (a person who extracts 10 acre-feet or less per year);⁵
- applicants for replacement wells that do not increase the total amount of water extracted;
- city or counties that undergo an exemption process;
- county or municipal wells that provide water solely for residents of the city or county; and
- public agencies that substantially meet or exceed SB 252 requirements through another law.

The bill contains no moratoriums on new wells, does not impose limits on wells, and does not otherwise interfere with municipal ordinances.

Senator Andy Vidak (R-Hanford) led the opposition to the bill. He argued that SB 252 undermines the purpose of SGMA.⁶ Vidak contended that the purpose of SGMA was to ensure management of groundwater at a local level and management of basins in their entirety.⁷ He claimed that SB 252, instead, sections off basins by community and removes management from local hands.⁸

5. CAL. WATER CODE § 10721 (2017).

6. Letter from Senator Andy Vidak (R-Hanford) to Governor of California, Sept. 26, 2017, <http://district14.cssrc.us/content/vidak-governor-veto-anti-water-well-drilling-measure-sb-252> (requesting the Governor to veto SB 252).

7. *Id.*

8. *Id.*

SB 252, he claimed, will pit communities against each other rather than requiring them to work together to share water basins.⁹ Additionally, Vidak proposes that making too many changes to SGMA, such as this, will cause SGMA to collapse.¹⁰ Permit authorizers worried that the bill would move their authorizations from ministerial—approval conditioned on meeting predetermined criteria—to discretionary—approval requiring collection of information and a decision of whether to authorize the well. However, the authorizers did not strictly oppose SB 252.

SB 252's supporters, however, explained that SB 252 is necessary for SGMA. They argued that without the transparency provided by SB 252, well users simply do not have information about other people with basin access. The Union of Concerned Scientists suggested that this lack of information meant that well users could not make informed decisions about the water they rely on.¹¹ Senator Dodd stated that, while some believe California should wait for local sustainable groundwater agencies to prepare plans, SB 252 represents the minimum that any of these agencies would do. He also argues that stakeholders may not be able to wait any longer to protect critically overdrafted basins.¹² Dodd concluded one committee hearing by ensuring permit authorizers that this did not represent a trend towards granting them discretionary, rather than ministerial, power.

SB 252 does not solve California's water problems, and critically overdrafted basins continue to be of great concern for legislators and water users alike. While the state waits for SGMA to take effect, SB 252 at least provides information that may protect critically overdrafted basins and the people who rely on them.

Garrett Kizer

KANSAS

S.B. 46, 2017 Leg., Reg. Sess. (Kan. 2017) (clarifying the statutes governing Water Conservation Areas and altering the remedies and procedures available to water right holders for water impairment).

Kansas Senate Bill 46 ("SB 46") grew out of discussions among stakeholders—including the Kansas Department of Agriculture, Kansas Farm Bureau, and groundwater management districts—following the implementation of the state's newly established Water Conservation Areas ("WCAs"). In 2015, the Kansas Legislature created WCAs as a means to extend the useable lifetime of water supplies, specifically the Ogallala-High Plains aquifer. WCAs incentivize water rights owners in areas with particularly strong conservation needs to voluntarily decrease the total amount of water they use. The initial statute authorizing WCAs provided that the Chief Engineer of the Division of Water

9. *Id.*

10. *Id.*

11. Juliet Christian-Smith, *California's Water Bill Will Tell Us Who's Tapping Depleted Groundwater Basins*, UNION OF CONCERNED SCIENTISTS (May 30, 2017, 8:50 AM), <https://blog.ucsusa.org/juliet-christian-smith/californias-water-well-bill-will-tell-us-whos-tapping-depleted-groundwater-basins>.

12. *Id.*