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August 6, 2014

Senator Fran Pavley
California State Senate
State Capitol, Room 4035
Sacramento, CA 95814

Assembly Member Roger Dickinson
California State Assembly
State Capitol, Room 2013
Sacramento, CA 95814

Ms. Martha Guzman-Aceves
Deputy Legislative Secretary, Office of the Governor
State Capitol, First Floor
Sacramento, CA 95814

**Re: AB 1739 (Dickinson) & SB 1168 (Pavley) – Groundwater Management
(As Amended on August 4, 2014)
OPPOSE UNLESS AMENDED**

Dear Senator Pavley, Assembly Member Dickinson, and Ms. Guzman-Aceves:

On behalf of the California State Association of Counties (CSAC) and the Rural County Representatives of California (RCRC) we regret to inform you of our opposition to SB 1168 and AB 1739 unless and until amendments are taken that address our concerns.

The issues surrounding groundwater management are very complex, and the proposed timeframe to address this major policy issue is very short. While CSAC and RCRC appreciated the opportunity to participate in the July stakeholder meetings, as well as individual meetings to provide the county point of view, it is our understanding that the two bills will be significantly amended once again in the Appropriations Committee prior to the bills being sent to the Floor (SB 1168 to the Assembly Floor/AB 1739 to the Senate Floor), and that this second set of amendments has already been finalized. CSAC and RCRC will respond to this second set of amendments as soon as possible. Given the tight timeframe, CSAC and RCRC are very concerned that our proposed amendments to address major issues of concern, and possible new concerns as a result of the anticipated upcoming amendments, will not be addressed in the last set of amendments made to the bills on the respective Floors.

The following comments and proposed amendments are based upon our review of the August 4 amendments as well as the feedback we have received from our members. While our comments address a wide range of issues, there are specific provisions that are of utmost concern to our organizations and members. These include the need for assurances that cities and counties are consulted when basin boundary revisions are proposed; that actions by groundwater sustainability agencies do not conflict with or duplicate city or county rules, regulations, ordinances or resolutions; and that the bills exempt the development of groundwater sustainability plans from the California Environmental Quality Act (CEQA). Our organizations highest priority proposed amendments are highlighted in **yellow**.

As you know, the text of the two bills mirror each other. For purposes of these comments the page numbers refer to AB 1739 as amended on August 4, 2014.

Water Code Section 113 – Page 15:

CSAC and RCRC support the statement of policy that sustainable groundwater management is best achieved locally through the development, implementation, and updating of plans and programs. However, to ensure the success and acceptance of sustainable groundwater management at the local level the policy must acknowledge the role of cities and counties in this process as follows:

“It is the policy of the state that groundwater resources be managed sustainably for long-term water supply reliability and multiple economic, social, or 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, **by or in consultation and coordination with cities and counties and** based on the best available science.”

Chapter 2 – Definitions

Water Code Section 10721 (d) – Page 19:

“Coordinated agreement” is defined as a legal agreement adopted between two or more groundwater sustainability agencies that provides the basis for coordinating multiple agencies or groundwater sustainability plans within a basin pursuant to this part. CSAC and RCRC recommend that this definition be amended as follows:

(d) “Coordinated agreement” means an legal agreement adopted entered into by between two or more groundwater sustainability agencies that describe how the provides the basis for coordinating multiple agencies’ or groundwater sustainability plans within a basin satisfy Section 10727. ~~pursuant to this part.~~

Water Code Section 10721 (e) – Page 20:

“De minimus extractor” is defined as meaning a person who extracts for domestic purposes, two acre-feet or less per year. CSAC and RCRC urge that the words “for domestic purposes” be deleted. This change recognizes that a parcel that uses less than two acre-feet per year is de minimus. Although domestic water will comprise most de minimus uses, there are other non-domestic water uses that use less than two acre feet per year. By amending the definition of “de minimus extractor” it will encompass all minor water extractors.

(e) “De minimus extractor” means a person who extracts, ~~for domestic purposes,~~ two acre-feet or less per year.”

Water Code Section 10721 (v) – Page 21

“Undesirable result” is defined to mean one or more effects that occur after January 1, 2015, caused by specified groundwater conditions occurring throughout the basin.

CSAC and RCRC urge the deletion of (v) (6) as there is limited data on stream/aquifer interaction.

~~(6) Surface water depletions that have significant adverse impacts on beneficial uses.~~

Chapter 3 – Boundary Basins – Page 22

CSAC and RCRC support the intent of establishing a process to adjust basin boundaries. To improve upon the language, CSAC and RCRC recommend the following changes to Chapter 3.

10722.2. (a) A local agency may request that the department revise the boundaries of a basin, including the establishment of new subbasins. A local agency’s request shall be supported by the following information:

(1) Information demonstrating that the proposed adjusted basin can be the subject of sustainable groundwater management.

(2) Technical information regarding the boundaries of, and conditions in, the proposed adjusted basin.

(3) Information demonstrating that the entity proposing the basin boundary adjustment consulted with interested local agencies and public water systems in the affected basins before filing the proposal with the department.

(4) Information on legal, political, or institutional issues the local agency deems necessary to support the revision of the basin’s boundary.

(5) Other information the department deems necessary to justify revision of the basin’s boundary.

(b) By January 1, 2016, the department shall develop and publish guidelines regarding the information required to comply with subdivision (a), as well as a methodology and criteria to be used to evaluate the proposed revision. The guidelines and criteria required pursuant to this subdivision are exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Criteria to be considered in approving revised basin or subbasin boundaries include:

(i) the likelihood that the proposed basin can be sustainably managed,

(ii) whether the proposed basin or subbasin will limit sustainable management of neighboring areas, and

(ii) whether there is a history of sustainable management of groundwater levels in the proposed basin.

Water Code Section 10722.4(b) – Page 23:

This section specifies that, “The initial priority for each basin shall be established by the department pursuant to Section 10933 no later than January 1, 2017.” As acknowledged at the July 31 stakeholder meeting, this proposed timeline is unrealistic. CSAC and RCRC support the intent of the drafters to develop an alternative and more realistic timeline.

Chapter 5 – Powers and Authorities

Water Code Section 10752.2 – Page 25:

This section specifies that a groundwater sustainability agency may perform “any” act necessary to carry out the purposes of the Sustainable Groundwater Management Act (the Act), including the authority to adopt rules, regulations, ordinances, and resolutions. To avoid duplication and conflict with any city or county, rule, regulation, ordinance or resolution relating to groundwater management, CSAC and RCRC urge the following amendment to Section 10725 (b):

10725. (b) A groundwater sustainability agency that is not a city or county may adopt rules, regulations, ordinances, and resolutions for the purpose of this part, in compliance with any procedural requirements applicable to the adoption of a rule, regulation, ordinance or resolution by the groundwater sustainability agency, that are not duplicative of or in conflict with any adopted rule, regulation, ordinance or resolution adopted by a city or county relating to groundwater management.

Water Code Section 10726.4 (a) & (b) – Page 27 & 29:

This section specifies how a groundwater sustainability agency may utilize its authority to regulate groundwater pumping. CSAC and RCRC are concerned with specific aspects of the language that would conflict with county authority over well permitting and urge the following amendments to the language:

(1) To impose irrigation scheduling requirements ~~spacing requirements on new groundwater well construction to minimize well interference and impose reasonable operating regulations on existing groundwater wells~~ to minimize well interference, including requiring pumpers to operate on a rotation basis.

(2) To control groundwater extractions by regulating, limiting, or suspending extractions from individual groundwater wells or extractions from groundwater wells in the aggregate, the construction of new groundwater wells, the enlarging of existing groundwater wells, the reactivation of abandoned groundwater wells, or otherwise establishing groundwater extraction allocations. A limitation on extractions by a groundwater sustainability agency shall not be construed to be a final determination of rights to extract groundwater from the basin or any portion of the basin.

(3) To authorize temporary and permanent transfers of groundwater extraction allocations within the agency’s boundaries, if the total quantity of groundwater extracted in any water year is consistent with the provisions of the groundwater sustainability plan, provided that any such transfer shall be subject to applicable local ordinances.

(4) To establish accounting rules to allow unused groundwater extraction allocations issued by the agency to be carried over from one year to another and voluntarily transferred, if the

total quantity of groundwater extracted in any five-year period is consistent with the provisions of the groundwater sustainability plan.

(b) Nothing in this section shall be construed to grant a groundwater sustainability agency, if other than a city or county, the authority to issue permits for the construction, modification, or abandonment of groundwater wells. A county may authorize a groundwater sustainability agency to issue permits for the construction, modification, or abandonment of groundwater wells.

Chapter 6 – Groundwater Sustainability Plans

California Environmental Quality Act (CEQA) Exemption:

Given the timelines contained in the legislation, CSAC and RCRC believe that it is imperative that a CEQA exemption be included for both the creation of a “groundwater sustainability agency” as well as the development of the “groundwater sustainability plan”. Absent a CEQA exemption the timelines in the bill must be extended. One suggestion would be to utilize the exemption in section 10652 of the Water Code applicable to Urban Water Management Plans as follows:

§XXXXX. Exemption from California Environmental Quality Act

The California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code) does not apply to the preparation and adoption of plans pursuant to this part. Nothing in this part shall be interpreted as exempting from the California Environmental Quality Act any project that would significantly affect water supplies for fish and wildlife, or any project for implementation of the plan, or any project for expanded or additional water supplies.

Water Code Section 10727.2(a) (3) – Page 30:

CSAC and RCRC believe that it is important for Groundwater Management Sustainability Plans to address other locally adopted plans that are relevant to a groundwater basin’s sustainable management. To address this comment we suggest the following amendment:

(3) A general discussion of historical and projected water demands and supplies taking into consideration applicable county and city General Plans, urban water management plans and agricultural water management plans.

Water Code Section 10727.6 – Page 32:

This section addresses coordination of multiple plans for a basin and the sharing of data to support the development the plans. Extraction data is a subset of the “Total current water demand and supply by source (part of the water budget) and “Projected water demand by source for 20 years in 5-year increments”. The proposed amendments would ensure that the methodology for developing data will be coordinated.

Groundwater sustainability agencies intending to develop and implement multiple groundwater sustainability plans pursuant to paragraph (3) of subdivision (b) of Section 10727 shall coordinate with other agencies preparing a groundwater sustainability plan within the basin to ensure that the plans utilize the same data for the following assumptions in developing the plan: result in groundwater sustainability for the entire basin. In developing respective groundwater sustainability plans, the local agencies should identify and share data to ensure a common understanding and representation of basin setting and conditions. Data to be shared and coordinated shall include the following:

- (a) Groundwater elevation data.
- (b) Groundwater ~~extraction~~ quality data.
- (c) ~~Surface water supply.~~ Data related to subsidence.
- (d) ~~Total water use.~~ Total current water demand and supply by source
- (e) ~~Change in groundwater storage.~~ Projected water demand and supply by source for 20 years in 5-year increments.
- (f) ~~Water budget.~~
- (g) ~~Sustainable yield.~~

Water Code Section 10728.4 – Page 33:

This section would require groundwater sustainability agencies to obtain comments from cities and counties regarding an adopted or amended groundwater sustainability plan. CSAC and RCRC urge the following amendment to this section:

A groundwater sustainability agency may adopt or amend a groundwater sustainability plan if the groundwater sustainability agency holds a public hearing and more than 90 days have passed since the groundwater sustainability agency provided notice to a city or county within the area of the proposed plan or amendment. The groundwater sustainability agency shall **obtain review and consider** comments from any city or county that receives notice pursuant to this section and shall consult with a city or county that requests consultation within 30 days of receipt of the notice.

Chapter 7 – Technical Assistance

Water Code Section 10729 (c) (1) – Page 34:

Section 10729 authorizes the department to provide technical assistance. CSAC and RCRC believe that this section needs to be more explicit regarding the types of technical assistance to be provided and recommend the following revision to subdivision (c) (1):

(c) (1) By January 1, 2017, the department shall publish on its Internet Web site best management practices for the sustainable management of groundwater that will include without limitation, the topics listed in section 10727.2, section 10727.6 and sample Coordinated Agreement language.

Chapter 10 – State Evaluation and Assessment

Water Code Section 10733 – Page 39:

This section specifies the process that will be followed by the Department of Water Resources (the department) when reviewing groundwater sustainability plans. CSAC and RCRC believe that the following addition to the language will clarify the process that DWR will use to evaluate and assess plans as it relates to multiple plans for a basin and adjacent basin plans:

10733. (a) The department shall periodically review the groundwater sustainability plans developed by groundwater sustainability agencies pursuant to this part to evaluate whether a plan conforms with Sections 10727.2 and 10727.4 and is likely to achieve the sustainability goal for the basin covered by the groundwater sustainability plan.

(b) If a groundwater sustainability agency develops multiple groundwater sustainability plans for a basin, the department shall evaluate whether the plans conform with Sections 10727.2, 10727.4, and 10727.6 and are together likely to achieve the sustainability goal for the basin covered by the groundwater sustainability plans.

(c) The department shall evaluate whether a groundwater sustainability plan adversely affects the ability of an adjacent basin from implementing their groundwater sustainability plan or causes an undesirable result in an adjacent basin.

Water Code Section 10733.4 – Page 40:

10733.4. (a) Upon completion of a groundwater sustainability plan, a groundwater sustainability agency shall submit the groundwater sustainability plan to the department for review pursuant to this chapter.

(b) ~~If~~ For groundwater sustainability agencies that develop multiple groundwater sustainability plans for a basin, the submission required by subdivision (a) shall ~~not occur until the entire basin is covered by~~ occur as respective groundwater sustainability plans for each portion of the basin are completed. ~~When the entire basin is covered by groundwater sustainability plans,~~ The groundwater sustainability agencies located within a common basin or subbasin shall jointly submit to the department all of the following at the time of submission of the first sustainability plan to be completed:

~~(1) The groundwater sustainability plans.~~

~~(2)~~ (1) An explanation of how the groundwater sustainability plans when completed and implemented together satisfy Section ~~10729~~ 10727 for the entire basin.

~~(3)~~ (2) A copy of the coordination agreement between the groundwater sustainability agencies to ensure the coordinated implementation of the groundwater sustainability plans for the entire basin.

Water Code Section 10733.6 – Page 40 & 41

10733.6. (a) If there is not a groundwater sustainability plan for a basin or a portion of a basin thereof, but a local agency believes that an alternative plan, such as a plan developed pursuant to Part 2.75 (commencing with Section 10750), satisfies the objectives of this part, the local agency may submit the alternative plan to the department for evaluation and assessment of whether the plan is the functional equivalent of a groundwater sustainability plan pursuant to this part. ~~In evaluating an alternative plan, the department shall, to the extent feasible, use the guidelines developed pursuant to Section 10733.2.~~

(b) A basin or a portion of a basin thereof shall be in compliance with this part if a groundwater agency ~~for a basin~~ or other local agency submits to the department, no later than January 31, 2020, and every five years thereafter, any of the following documents:

(1) A copy of a governing final judgment or other judicial order or decree establishing a groundwater sustainability program for the basin.

(2) A report approved by a groundwater agency that shows that current management or operations activities have been consistent with the sustainable yield of the basin or a portion of the basin thereof over a period of at least 10 years. The report shall be prepared by a registered professional engineer or geologist who is licensed by the state and submitted under that engineer's or geologist's seal. The report may demonstrate compliance with the

sustainability goal in the basin by presenting a balanced water budget for the basin, a technical analysis demonstrating stable groundwater levels over the relevant period, or other sufficient technical analyses.

Water Code Section 10733.8 – Page 41

10733.8. At least every five years after submission, the department, in consultation with the board, shall review any available groundwater sustainability plan, alternative plan submitted in accordance with Section 10729.6, and the implementation of the corresponding groundwater sustainability program for consistency with this part, including achieving the sustainability goal. The department shall issue an assessment for each basin or portion of a basin thereof for which a plan has been submitted in accordance with this chapter. The assessment may include recommended corrective actions to address any deficiencies identified by the department.

Chapter 11 – State Intervention

Water Code Section 10735.2(a) (3) – Page 43:

This section specifies the process to be followed by the State Water Resources Control Board (Board) when designating a basin as a probationary basin. Currently there is limited data on stream/aquifer interaction. CSAC and RCRC therefore believe that limiting the criteria to long-term overdraft will cover most instances of stream depletion. CSAC and RCRC recommend the following revision:

(3) After January 31, 2020, either both of the following have occurred:

(A) The department has determined that a groundwater sustainability plan is inadequate or that the groundwater sustainability program is not being implemented in a manner that will likely achieve the sustainability goal.

(B) The basin is in a condition of long-term overdraft. ~~or in a condition where groundwater extractions result in significant depletions of interconnected surface waters.~~

Water Code Section 10735.8 – Page 45:

This section specifies the contents of an interim plan for a probationary basin. Subdivision (d) limits the protection of water rights. CSAC and RCRC recommend that the section be amended as follows:

10735.8(d) ~~To the extent feasible, consistent with Sections 100 and 275 and subdivision (e), t~~
The interim plan shall be consistent with water right priorities.

Water Code Section 10750.1(a) – Page 49:

CSAC and RCRC believe that reference to Section 10727 which permits a groundwater sustainability agency to develop a groundwater sustainability plan that incorporates, *extends* or is based on an AB 3030 Plan should be included in Section 10750.1(a) to avoid inconsistency and confusion:

(a) Beginning January 1, 2015, a new plan shall not be adopted and an existing plan shall not be renewed pursuant to this part, except as provided in subdivision (b) and Section 10727. A plan adopted before January 1, 2015, shall remain in effect until a groundwater sustainability plan is adopted pursuant to Part 2.74 (commencing with Section 10720).

Water Code Section 10933 (H) (2) – Page 51:

This section addresses the prioritization of groundwater basins and subbasins (CASGEM). CSAC and RCRC believe that it would be efficient and cost effective, as the Department of Water Resources reviews basins for prioritization utilizing the adverse impacts to habitat and surface water resources criteria, to also identify basins

(H) Any other information determined to be relevant by the department including the identification and development of prioritization criteria for the purpose of identifying groundwater basins and subbasins that should be prioritized based on adverse impacts to habitat and surface water resources, and for purpose of exclusion, the identification of low and very low priority basins that do not warrant elevation monitoring and sustainable groundwater management due to nonuse or minimal use of the resource.

~~(2) The department, in consultation with the Department of Fish and Wildlife, shall identify and develop prioritization criteria for the purpose of identifying groundwater basins and subbasins that should be prioritized based on adverse impacts to habitat and surface water resources. The criteria in (H) shall be incorporated into the determination of basin and subbasin prioritization at the department's next update of basin and subbasin prioritization that occurs after January 1, 2017.~~

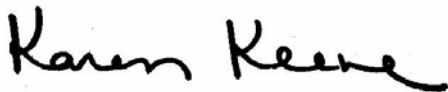
Water Code Section 12924(b) – Page 52:

This subdivision specifies, "The department may revise the boundaries of groundwater basins identified in subdivision (a) based on its own investigations or information provided by others." To ensure consultation with cities and counties in the event of a proposed boundary revision by the department, CSAC and RCRC urge that this subdivision be revised as follows: (b) Following consultation with cities and counties, the department may revise the boundaries of groundwater basins identified in subdivision (a) based on its own investigations or information provided by others."

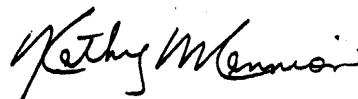
Conclusion:

In conclusion, CSAC and RCRC must oppose both SB 1168 and AB 1739 until amendments are made to address our concerns. We would welcome the opportunity to discuss our proposed amendments and answer any questions you may have.

Sincerely,



Karen Keene, CSAC
Senior Legislative Representative



Kathy Mannion, RCRC
Legislative Advocate

cc: Members and Consultant, Senate Appropriations Committee
Members and Consultant, Assembly Appropriations Committee