

# Full Bill Analysis for the Small Farmer Community

## AB 828 (Connolly, 2023-24 Legislative Session) Protecting Small Communities and Wetlands from Groundwater Restrictions

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**ASSEMBLY VOTE:** 53-17

**SUBJECT:** SUSTAINABLE GROUNDWATER MANAGEMENT: MANAGED WETLANDS

**KEY ISSUE:** SHOULD STATE LAW PROHIBIT GROUNDWATER SUSTAINABILITY AGENCIES (GSA) FROM IMPOSING A FEE UPON WATER SYSTEMS SERVING DISADVANTAGED COMMUNITIES, AS LONG AS USERS DOES NOT EXTRACT ABOVE THE ANNUAL EXTRACTION LIMIT DETERMINED BY THE GSA DURING 2015 TO 2020?

### SYNOPSIS

*This bill in print requires a groundwater sustainability plan (GSP) to include the plan's water supply and economic impacts on managed wetlands and small community water systems serving disadvantaged communities (DACs). This bill also temporarily exempts managed wetlands and small community water systems serving DACs from specified authorities of groundwater sustainability agencies (GSA) to regulate groundwater pumping under the Sustainable Groundwater Management Act (SGMA) until a GSP has been approved after January 1, 2025.*

**SUMMARY:** This bill exempts, until January 1, 2028, groundwater use by managed wetlands and small community water systems serving disadvantaged communities (DACs) from specified authorities of groundwater sustainability agencies (GSAs) to regulate groundwater pumping under the Sustainable Groundwater Management Act (SGMA). Specifically, this bill, among other things:

- 1) Provides that a GSA's authority to regulate groundwater extraction through the establishment of groundwater extraction allocations shall not apply to small community water systems serving DACs from permitted water supply wells nor to managed wetland extractors.
- 2) Provides that if a small water community water system or a managed wetland extractor increases its extraction of groundwater over the average amount extracted annually from 2015 to 2020, a GSA has the authority to regulate usage above that amount.
- 3) Provides that a small community water system serving a DAC or managed wetland extractor may receive a groundwater recharge credit established by a GSA.
- 4) Provides that if a GSA reasonably determines that groundwater extraction for a managed wetland is directly causing undesirable results; a GSA may exercise its authority to implement corrective actions, in cooperation with the affected managed wetland extractor.

5) Provides that a GSA shall not impose a fee on groundwater extraction on a small community water system serving a DAC or managed wetland purposes, provided the water use for each user does not increase above the extractor's average annual extraction from 2015 to 2020.

6) Terminates on January 1, 2028.

**EXISTING LAW:**

1) Provides, under SGMA, that local agencies must sustainably manage groundwater in high- or medium-priority basins by 2040.

2) Defines sustainable management of groundwater as the avoidance of the following six "undesirable results:" (a) chronic lowering of groundwater levels; (b) reduction of groundwater storage; (c) seawater intrusion; (d) degraded water quality; (e) land subsidence; and (f) depletions of interconnected surface water. (Water Code (WC) §§10720 et seq.)

3) Requires critically overdrafted groundwater basins to be managed under a GSP by January 31, 2020, and high- or medium-priority groundwater basins to be managed under a GSP by January 31, 2022. (WC §10720.7)

4) Requires a GSA to consider the interests of all beneficial uses and users of groundwater in implementing SGMA. (WC §10723.2)

5) Grants various authorities to GSAs, including the authority to impose spacing requirements on groundwater wells, to regulate, limit, or suspend pumping from groundwater wells, and to establish groundwater allocations and accounting rules for carrying over or transferring groundwater pumping extractions. (WC §10726.4)

6) Requires a GSA in a basin subject to SGMA to develop a GSP that has various components, including a description of the physical setting of the basin, measurable objectives to achieve sustainable management, how groundwater levels and quality will be monitored, and monitoring sites and protocols. (WC §10727)

7) Requires GSAs to encourage the involvement of diverse social, cultural, and economic elements of a basin's population during the development and implementation of a GSP. (WC §10727.8)

8) Provides that a GSA may impose fees on groundwater extraction to fund the costs of groundwater management. (WC §10730.2)

9) Defines "de minimis extractor" as a person who pumps two acre-feet (AF) or less of groundwater annually for domestic purposes. (WC §10721)

10) Defines "small community water system" as a community water system that serves no more than 3,300 service connections or a yearlong population of no more than 10,000 persons. (Health and Safety Code §116275)

**FISCAL EFFECT:** As currently in print this bill is determined to not have a budgetary impact on the government.

**COMMENTS: *Background. SGMA.*** Signed into law in 2014, SGMA established a statewide framework to help protect groundwater resources over the long- term. SGMA requires local agencies to form GSAs for medium- and high-priority basins as designated by DWR. A GSA, which is made up of one or more local agencies overlying a groundwater basin, is required to develop and implement a GSP. GSPs provide a roadmap for how groundwater basins will reach long-term sustainability without causing specific undesirable results. DWR has issued determinations regarding the adequacy of GSPs for critically over drafted basins and a handful of medium and high-priority basins. DWR has approved some of the plans and found others to be inadequate, thereby triggering state intervention. State intervention is a process that could result in the State Water Board temporarily managing groundwater resources until local agencies are able and willing to do so adequately.

***Wetlands and Small Community Water Systems.*** According to the supporters of the bill, while SGMA requires a GSA to consider the interests of environmental users and small drinking water systems in its GSP, in practice, many GSAs are falling short of this requirement. They note that several GSPs propose a one-size-fits-all cap on groundwater allocations, which will cut supplies for small community water systems and managed wetlands at the same rates as agricultural users – thereby depriving some small communities of access to safe and affordable water and causing some of the state’s last wetlands to go dry.

***Fees.*** SGMA authorizes a GSA that adopts a GSP to impose fees on the extraction of groundwater from the basin to fund the costs of groundwater management. One of the first steps GSAs have had to take under SGMA is to identify groundwater users and uses in their basins and develop corresponding groundwater budgets. In many instances, GSAs have developed, or are still developing, groundwater pumping allocations that apportion an allowable amount of groundwater pumping to groundwater users in the basin that the GSA manages. Oftentimes, a user may pump and use more groundwater than their allocation, but the GSA will typically charge a pumper a significant fee per acre-foot of water pumped more than their allocation in order to dissuade pumpers from exceeding their allocations. This bill prohibits a GSA from imposing a fee on a small community water system serving a DAC or managed wetland purposes, provided the water use for each user does not increase above the extractor’s average annual extraction from 2015 to 2020.

As noted earlier, the State Water Board may place a basin on probation if DWR finds that the GSA is failing to sustainably manage its groundwater. As part of the state intervention process, the State Water Board is required to recover its programmatic costs. Most groundwater pumpers in basins subject to state intervention will be required to pay the State Water Board fees. This bill does not impact fees imposed by the State Water Board.

As part of the fiscal year (FY) 2023-24 budget, the State Water Board received \$4.8 million to support 19 new positions in response to an increase in workload resulting from DWR determining that six basins have inadequate GSPs, thereby triggering State Water Board authority for those basins. However, fee revenues are difficult to predict and depend on many factors, and the State Water Board may not receive SGMA fees for two years or more after its state intervention work begins – thereby necessitating General Fund support to begin its work. While it is theoretically possible that exempting small community water systems serving disadvantaged communities (DACs) and managed wetlands from a GSA’s authority to establish groundwater extraction allocations could result in a Groundwater Sustainability Plan (GSP) being deemed inadequate by DWR, which could then trigger state intervention and increased General Fund costs for the State Water Board. However, this outcome appears unlikely. While it is not clear precisely how much groundwater is used by small community water systems serving DACs or managed wetlands, the overwhelming majority of groundwater in basins subject to SGMA is used for irrigated agriculture.

**Arguments in Opposition.** Writing in opposition, a coalition of business and agricultural groups argue that prohibiting GSAs from regulating certain uses of water and prioritizing two uses of groundwater above all other beneficial uses is “counterintuitive to the purpose of SGMA, which envisioned a comprehensive and well-informed groundwater regulatory framework.” They further argue that exempting certain groundwater pumpers from paying GSA fees undercuts the ability of GSAs to raise funds to implement their GSPs. Finally, the opposition contends that by exempting certain classes of water users from the fee base, this bill may prevent GSAs from complying with constitutional requirements to assess proportionate and fair charges on all beneficiaries of their services, per Propositions 218 and 26. The coalition notes: “This means that the remaining water users, such as agricultural uses and municipal uses not covered by the narrow definition of a small community water system, would face disproportionately high fees.”

The Merced Subbasin Groundwater Sustainability Agency (MSGSA) opposes AB 828, urging Governor Newsom to veto the bill. One of their primary concerns is that AB 828 exempts small community water systems and managed wetlands from a GSA’s authority to regulate groundwater extractions and impose fees. The MSGSA argues that regulating all groundwater users is essential to achieving sustainability under the Sustainable Groundwater Management Act (SGMA), and these exemptions would weaken the ability of GSAs to manage groundwater resources effectively.

The agency also highlights the financial implications of AB 828. GSAs rely on regulatory and parcel fees authorized under SGMA to fund the development and implementation of Groundwater Sustainability Plans (GSPs). By prohibiting fees on exempt users, the bill would reduce local revenue streams necessary for carrying out sustainable groundwater management, potentially hindering the ability of GSAs to meet SGMA’s goals. Another significant concern raised by the MSGSA is that AB 828 may incentivize non-exempt groundwater users to pursue legal adjudication of their groundwater rights. SGMA was designed to avoid costly and time-consuming court adjudications by allowing GSAs to manage groundwater at the local level. By creating exemptions, AB 828 could increase the likelihood that non-exempt users will seek judicial intervention to determine pumping rights, which would complicate and undermine the SGMA process.

Lastly, the MSGSA warns that AB 828 sets a dangerous precedent. They believe that if small water systems and managed wetlands are granted exemptions, other groundwater users may seek similar legislative measures to avoid their responsibilities under SGMA. This could weaken the overall framework of sustainable groundwater management, leading to further fragmentation of regulatory authority and jeopardizing the success of local groundwater management efforts.

**Arguments in Support.** According to the author, “Wetlands are a critical natural resource for our state, and small, rural communities are being hit the hardest by the state’s depleting groundwater resources. These disadvantaged communities usually depend on a single source for their water supply, leaving them vulnerable to drought and affordability challenges. AB 828 brings California closer to protecting safe and clean water accessibility for all California communities.” A coalition of environmental and community water organizations writes, “SGMA requires a GSA to consider the interests of environmental users and small drinking water systems<sup>1</sup> in GSPs. However, several proposed GSPs did not thoroughly identify managed wetlands and small water systems serving disadvantaged communities, or their water needs, and did not analyze the impacts from GSA management actions on those users. Moreover, several GSPs propose a one-size-fits-all cap on groundwater allocations, which will cut supplies for small community water systems and managed wetlands at the same rates as agricultural users. This approach will deprive some small communities of access to safe and affordable water and will cause some of the state’s last wetlands to go dry.

**REGISTERED SUPPORT / OPPOSITION** (Verified 8/20/24):

**Support**

Audubon California (co-source)  
Clean Water Action (co-source)  
American Rivers  
Backcountry Hunters and Anglers, California Chapter  
Ban Single Use Plastic  
Cal-ore Wetlands and Waterfowl Council  
California Bowmen Hunters/State Archery Association  
California Coastkeeper Alliance  
California Democratic Party  
California Hawking Club  
California Houndsmen for Conservation  
California Rural Legal Assistance Foundation  
California Waterfowl Association  
Civicwell  
Cleaneearth4kids.org  
Community Water Center  
Delta Waterfowl  
East Grasslands Wetland Association  
Environmental Working Group  
Facts: Families Advocating for Chemical & Toxics Safety  
Friends of the River  
Grassland Water District  
Leadership Counsel for Justice & Accountability  
League of Women Voters of California  
North County Watch  
Point Blue Conservation Science  
Restore Hetch Hetchy  
San Diego County Wildlife Federation  
Sea and Sage Audubon Society  
Sustainable Conservation  
The Black Brant Group  
The Nature Conservancy  
Tulare Basin Wetlands Association  
Tuolumne River Trust  
University of California Santa Barbara Department of Anthropology

**Opposition**

Association of California Water Agencies  
Cal Chamber  
California Association of Wheat Growers  
California Association of Winegrape Growers  
California Bean Shippers Association  
California Farm Bureau  
California Grain & Feed Association California  
Municipal Utilities Association California Seed  
Association  
Elsinore Valley Municipal Water District  
Kern County Water Agency  
Kings River Conservation District  
Modesto Irrigation District

Merced Subbasin Groundwater Sustainability Agency  
Pacific Egg & Poultry Association  
South San Joaquin Irrigation District  
Valley Ag Water Coalition  
Western Growers Association