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August 12, 2014

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

**Re: SB 1168 (Pavley) – Groundwater Management
(As Amended on August 6, 2014)
OPPOSE UNLESS AMENDED**

Dear Senator Pavley:

On behalf of the Rural County Representatives of California (RCRC) and the California State Association of Counties (CSAC) we write to inform you of our continued opposition to SB 1168 as amended August 6, 2014. The August 6 amendments both add to and address areas of concern. RCRC and CSAC appreciate the addition of language in the bill that specifies CEQA does not apply to the preparation and adoption of groundwater plans. This addition is very important given the timelines contained in the bill. RCRC and CSAC also urge this same exemption for agency formation. RCRC and CSAC have serious reservations regarding the proposed new state backstop language in Section 5207 (a) and (b). The remedies proposed to be imposed are, in our view, out of proportion to the violation (non-filing or late filing of a report).

The attached proposed amendments, which have been updated based on conversations with the Administration and legislative staff, are based upon our review of the August 6 amendments to SB 1168 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 interest and concern to our organizations and members, in particular as it relates to county local land use authority. RCRC and CSAC's highest priority is ensuring that the provisions of the bill do not negatively impact county local police powers.

In conclusion, RCRC and CSAC must oppose SB 1168 unless amendments are made to address our concerns.

Sincerely,

Karen Keene, CSAC
Senior Legislative Representative

Kathy Mannion, RCRC
Legislative Advocate

cc: Members, California State Legislature

RCRC/CSAC Proposed Amendments to SB 1168 (as amended August 6, 2014)

HIGH PRIORITY

Section 1. Findings/Intent Language Pages 7-9

RCRC and CSAC urge that language be added to the findings and/or intent language relating to the role of cities and counties in the management of groundwater resources as follows:

(b) (5) To recognize and preserve in full the authority of cities and counties to manage groundwater pursuant to their constitutional police powers, as articulated by the Court of Appeal in *Baldwin v. County of Tehama* (1994) 31 Cal.App.4th 166.

Section 11. Water Code Section 5200 – Pages 16-19

RCRC and CSAC have serious reservations regarding the proposed state backstop language in Section 5207 (a) and (b). The remedies proposed to be imposed are, in our view, out of proportion to the violation (non-filing or late filing of a report).

Chapter 5 – Powers and Authorities - Pages 28-33

Water Code Section 10726.4 (3) – Page 32

(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.

Water Code Section 10726.4 (b) – Page 32:

This section specifies how a groundwater sustainability agency may utilize its authority to regulate groundwater pumping. RCRC and CSAC are concerned with specific aspects of the language that would conflict with county authority. To address this concern we urge the following or similar to the language be added to the bill:

(b) This section does not authorize a groundwater sustainability agency to issue permits for the construction, modification, or abandonment of groundwater wells, except as authorized by a county with authority to issue those permits or to adopt a rule, regulation, ordinance or resolution that is duplicative of or in conflict with any rule, regulation, ordinance or resolution adopted by a city or county relating to groundwater management.

Chapter 6 – Groundwater Sustainability Plans. Pages 33-39

Cities and counties are obligated to balance many different competing public policies when adopting their General Plans such as planning for housing for all income levels, conserving open space, reducing greenhouse gas emissions, etc. In a groundwater basin, cities and counties' General Plans should be the overarching planning document.

Omnibus Local Control Section

(This section is proposed to be inserted near the beginning of the Chapter 6, relating to groundwater sustainability plan development – but contains provisions applicable throughout the entire part. It could alternatively be placed in Chapter 5, relating to the powers and authorities of groundwater sustainability agencies.)

Add Water Code Section 10727.1

- (a) Any portions of the groundwater sustainability plan affecting development policies, land use, or any other required element of a city or county general plan, as set forth in Section 65302 of the Government Code, including without limitation any provisions for regulating or limiting groundwater well construction or groundwater pumping, shall include and shall be based on the general plan of the city or county, as applicable, adopted pursuant to Article 5 (commencing with Section 65300) of Chapter 3 of Division 1 or Title 7 of the Government Code. Each groundwater sustainability plan shall further be reviewed before adoption for compatibility with any Sustainable Communities Strategy or alternative planning strategy adopted by a metropolitan planning organization and active Tentative Tract Maps approved under the Subdivision Map Act and alternative measures for groundwater availability and sustainability shall be considered to address any identified incompatibilities with these plans and approved maps.
- (b) A groundwater sustainability agency may not approve or carry out any action in violation of an applicable city or county zoning ordinance or other ordinance that restricts or prohibits the extraction, use, storage, transport, export, or transfer of water.
- (c) The governing body of a city or county, by vote of four-fifths of its members, may render a groundwater sustainability plan, or any rule, regulation, or action of a groundwater sustainability agency inapplicable to a proposed discretionary or ministerial project carried out or approved by the city, county, or city and county if the governing body at a noticed public hearing makes the following findings, based upon substantial evidence:
- (1) That there is no feasible alternative to its proposal.
 - (2) That the groundwater sustainability agency has been consulted regarding the proposal and any alternatives;
 - (3) That the proposal is consistent with the rights and priorities to use or store groundwater as provided in Section 2 of Article X of the California Constitution; and
 - (4) That the proposal is consistent with the purposes of this article, as stated in Section 10720.1.
- "Feasible" as used in this section means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors.
- (d) This part is not intended to occupy the field of groundwater management, and shall not prohibit the enactment, amendment, or enforcement of any ordinance by any city, county, or city and county relating to groundwater management that is not inconsistent with this part.

Water Code Section 10727.2 (g) - Page 36:

RCRC and CSAC 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:

- (g) A description of the consideration given to the applicable county and city General Plans and a A description of the various adopted water resources-related plans and programs within the basin and an assessment of how the groundwater sustainability plan may affect those plans.

Water Code Section 10728.4 – Page 38:

This section would require groundwater sustainability agencies to obtain comments from cities and counties regarding an adopted or amended groundwater sustainability plan. To be consistent with Government Code Section 65350.5 RCRC and CSAC urge the following amendment to this section:

A groundwater sustainability agency may adopt or amend a groundwater sustainability plan after a public hearing, held at least 90 days after providing 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.

Water Code Section 10933 (H) (2) – Page 58:

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

TECHNICAL/CLARIFYING/OTHER:

Chapter 2 – Definitions. Pages 22-24

Water Code Section 10721 (d) – Page 23:

“Coordination 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. There currently are cooperating/ coordinating agreements between entities managing a basin. The use of the term “legal” raises the question as to whether these existing agreements must be recast to meet this definition. RCRC and CSAC recommend that this definition be amended as follows:

(d) “Coordination 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 of groundwater sustainability plans within a basin satisfy Section 10727.pursuant to this part.

Water Code Section 10721 (e) – Page 23:

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

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

Water Code Section 10721 (v) – Pages 24-25

“Undesirable result” is defined to mean one or more effects caused by specified groundwater conditions occurring throughout the basin.

RCRC and CSAC recommend the deletion of (v) (6). There currently is limited data on stream/aquifer interaction. Acquiring the data to make a determination may add considerable cost to the process.

Additionally, a decision by a groundwater management entity not to pursue the data collection and analysis is likely to result in litigation.

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

Chapter 3 – Basin Boundaries. Pages 25-27

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

Water Code Section 10722.2 (b) – Page 26

10722.2. (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 26:

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.”

RCRC and CSAC suggest that language be added to ensure that local agencies will not be negatively impacted if the department does not meet the stated deadline.

Chapter 6 – Groundwater Sustainability Plans. Pages 33-39

Water Code Section 10727.6 – Pages 36-37:

This section addresses coordination of multiple plans for a basin and the sharing of data to support the development the plans. RCRC and CSAC recommend language to clarify and to remove impediments to implementation. 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 suggested language will ensure the agencies produce and share water supply and demand baseline and future projected data. Some agencies may not have the technical means to produce data required for a “water budget” as it is defined in Section 107219 (w) and “sustainable yield” is undefined. The proposed amendments would ensure that the methodology for developing data will meet groundwater management objectives and will be coordinated.

10727.6. 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.~~

Chapter 7 – Technical Assistance. Page 39

Water Code Section 10729 (c) (1) – Page 39:

Section 10729 authorizes the department to provide technical assistance. RCRC and CSAC 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. Pages 44-48

Water Code Section 10733 – Page 44-45:

This section specifies the process that will be followed by the department when reviewing groundwater sustainability plans. RCRC and CSAC believe that all of the following additions to the language will clarify the process that the department 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 – Pages 45-46:

10733.4. (a) Upon adoption 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, t~~ 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)~~ (21) An explanation of how the groundwater sustainability plans when completed and implemented together satisfy Sections 10727, 10727.2, 10727.4, and 10727.6 for the entire basin.

~~(3)~~ (32) 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 47

Currently there are multiple agencies managing a basin or a portion of a basin. With than in mind, RCRC and CSAC suggest the following amendments:

10733.6 (a) If there is no groundwater sustainability plan for a basin or a portion thereof, but a local agency believes that an alternative described in subdivision (b) satisfied the objectives of this part, the local agency may submit the alternative to the department for evaluation and assessment of whether the alternative satisfies the objectives of this part.

(b) An alternative is any of the following:

(1) A plan developed pursuant to Part 2.75 (commencing with Section 10750) or other law authorizing groundwater management.

(2) Management pursuant to an adjudication action.

(3) An analysis of basin conditions that demonstrates that the basin or a portion thereof has operated within its sustainable yield over a period of at least 10 years. The submission of an alternative described by this paragraph shall include a report prepared by a registered professional engineer or geologist who is licensed by the state and submitted under that engineer's or geologist's seal.

(c) A local agency shall submit an alternative pursuant to this section no later than January 1, 2017, and every five years thereafter.

(d) The assessment required by subdivision (a) shall include an assessment of whether the alternative is within a basin or a portion thereof that is in compliance with Part 2.11 (commencing with Section 10920). If the alternative is within a basin or a portion thereof that is not in compliance with Part 2.11 (commencing with Section 10920), the department shall find the alternative does not satisfy the objectives of this part.

Water Code Section 10733.8 – Pages 47-48

Currently there are multiple agencies managing a basin or a portion of a basin. With than in mind, RCRC and CSAC suggest the following amendments:

10733.8. At least every five years after initial submission of a plan pursuant to Section 10733.4, the department, in consultation with the board, shall review any available groundwater sustainability plan, alternative submitted in accordance with Section 10733.6, 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 thereof for which a plan has been submitted in accordance with this chapter, with an emphasis on assessing progress in achieving the sustainability goal within the basin or portion thereof. The assessment may include recommended corrective actions to address any deficiencies identified by the department.

Water Code Section 10750.1(a) – Page 56:

RCRC and CSAC 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).