

Attachment F



March 21, 2023

TO: Members, Assembly Committee on Water, Parks, and Wildlife

SUBJECT: AB 560 (BENNETT) SUSTAINABLE GROUNDWATER MANAGEMENT ACT: GRUNDWATER ADJUDICATION HEARING SCHEDULED MARCH 28, 2023 OPPOSE – AS INTRODUCED FEBRUARY 8, 2023

The undersigned organizations respectfully **OPPOSE AB 560**, which proposes to require that the court provide a proposed judgment in a groundwater adjudication to the State Water Resources Control Board (State Water Board) for an advisory opinion on that judgment.

Comprehensive groundwater adjudications are notoriously complex, lengthy, and expensive legal proceedings. We are concerned that the bill as currently drafted is either duplicative of existing law or may serve as a means to provide a veto power over a judicial proceeding by the executive. We request that the bill be clarified to ensure that the separation of powers is honored and to ensure that provisions are not duplicative.

Under existing law, the court must make a finding that the judgment will not impair a groundwater sustainability agency's (GSA) or the state's ability to achieve sustainable groundwater management. Currently, the GSA is often the lead defendant in a groundwater adjudication, or if they are not initially named, a GSA has a right to intervene in an adjudication affecting its basin. (Code Civ. Proc., § 837.) This means that the perspective of GSAs, and their ability to meet their duties under the Sustainable Groundwater Management Act (SGMA), will be directly represented in the adjudication proceedings.

In addition, Water Code section 2000 already authorizes courts to refer issues, such as those relating to the sustainable yield of a basin and relative allocations, to the State Water Board. Many courts do take advantage of this ability. Importantly, the ability to refer specific questions, framed with input from the court and all parties, occurs within the pendency of the proceeding. Additionally, under Code of Civil Procedure (CCP) section 837, the state can intervene and become a party to a groundwater adjudication. A court can request the State Water Board's recommendations on individuals who would be suitable as a special master in an adjudication pursuant to CCP section 845. These consultations or intervention occur at a time when the State Water Board's input may be most helpful in informing the outcome of a judgment. That is, while the proceedings are still ongoing and allocations are being determined. In this sense, **AB 560** as currently drafted is duplicative of existing law and serves to further delay lengthy adjudication proceedings by adding yet a further consultation requirement that lacks any timeframe for the State Water Board's response. Perhaps a cross-reference to the provisions in Water Code section 2000 and/or CCP sections 837.5 and 845 would achieve **AB 560**'s goals without layering further steps on an already complex process.

If the bill is not intended to be substantially duplicative of the consultation abilities in Water Code section 2000 and CCP section 845, we are concerned that the bill is intended to give the State Water Board—an arm of the executive branch—"veto" power over a proposed judicial decision. This would be a violation of the separation of powers doctrine. This fundamental principle of United States government ensures that each branch of the government, executive, judicial,

and legislative, can act independently within their scope of powers to serve as a check on the other branches. Giving an executive agency the power to essentially disapprove of a judicial decision takes away a court's ability to independently find facts and make legal determinations regarding the rights and responsibilities of the parties before it. This is a critical issue, and we request that the bill be amended to prevent the possible interpretation that a consult between the State Water Board and the court would infringe upon the doctrine of separation of powers.

For these and other reasons, we must respectfully **OPPOSE AB 560**. We look forward to continuing discussions with the author.

Sincerely,



Brenda Bass

On behalf of

African American Farmers of California, Will Scott, Jr.
Agricultural Council of California, Tricia Geringer
California Apple Commission, Todd Sanders
California Blueberry Association, Todd Sanders
California Blueberry Commission, Todd Sanders
California Chamber of Commerce, Brenda Bass
California Fresh Fruit, Ian LeMay
California Food Producers, Margie Lie
California State Association of Counties (CSAC), Catherine Freeman
California Walnut Commission, Robert Verloop
Nisei Farmers League, Manuel Cunha, Jr.
Kings River Conservation District, Tomas Garza
Kings River Water Association, Tomas Garza
United Water Conservation District, Mauricio Guardado
Western Growers Association, Gail Delihant
Western Plant Health Association, Renee Pinel

Cc: Legislative Affairs, Office of the Governor
Candace Cotton, Office of Assemblymember Bennett
Pablo Garza, Assembly Committee on Water, Parks, and Wildlife
Brent Finkel, Assembly Republican Caucus