



News & Publications

Going To The Well: State Imposes More Stringent New Well Permitting Requirements

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After California's driest January and February on record, water supply cutbacks, rampdowns, and other regulatory actions are making water harder to come by across the State. Landowners planning to drill new groundwater wells or alter existing wells should be aware of two such regulatory actions - one already in effect and another one proposed - that could limit the installation or alteration of wells in basins designated as medium- or high-priority and regulated under the Sustainable Groundwater Management Act ("SGMA").^[1]

Executive Order N-7-22 and AB 2201

In March of this year, Governor Newsom issued Executive Order N-7-22 directing state and local agencies to take a variety of steps to address the current drought. Among other things, the Executive Order imposes new requirements on the construction or alteration of wells. With a few exceptions, the Order prevents counties, cities, and other public agencies from approving permits for the construction of new groundwater wells, or the alteration of existing wells, in SGMA-regulated medium- or high-priority groundwater basins unless:

1. the Groundwater Sustainability Agency ("GSA") managing the basin verifies in writing that the proposed groundwater extractions (i) would be consistent with any applicable Groundwater Sustainability Plan, and (ii) would not decrease the likelihood of achieving a sustainability goal for the basin; and
2. the well-permitting agency determines that extraction of groundwater from the proposed or modified well is (a) not likely to interfere with the production and functioning of existing nearby wells, and (b) not likely to cause subsidence that would adversely

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impact or damage nearby infrastructure.

Following on the heels of Executive Order N-7-22, a new bill in Sacramento known as AB 2201 has been proposed to codify the Executive Order's well permitting requirements. However, AB 2201 would go further than the Executive Order in a few ways. For example, AB 2201 would require the GSA to post notification of well permit applications on its website. The bill would also require a 30-day public comment period on applications prior to GSA issuance of determinations regarding GSP consistency, achieving basin sustainability goals, and well interference and subsidence-related infrastructure impacts. As drafted at the time of this alert, AB 2201 would not apply to wells producing from an adjudicated groundwater basin, wells producing less than 2 acre-feet per year for individual domestic users, or wells that would exclusively provide groundwater to public water supply systems or state small water systems. AB 2201 has passed the Assembly and is being heard by the Senate.

Effects on Well Permitting and Project Development

It is too early to predict the combined effects of the Executive Order and AB 2201 with certainty, but landowners should be aware of the following:

- **Well Permitting Timing/Cost:** The Executive Order's and AB 2201's requirements mandating GSA involvement in well permitting and requiring consideration of impacts to nearby wells and infrastructure prior to permit approval may significantly increase both the costs and time necessary to obtain permits. GSAs and well permitting agencies may find themselves short-staffed to complete the required analysis, and AB 2201 would require the applicant to submit a report from a licensed engineer or geologist regarding impacts of the proposed well on nearby wells and infrastructure.
- **Murky Terminology:** Both the Executive Order and AB 2201 would require analysis of whether water extraction by a proposed well is likely to interfere with the production and function of existing nearby wells or cause subsidence that would adversely impact nearby infrastructure. Unfortunately, neither defines the term "nearby," making it difficult for would-be permittees to predict the extent of analysis that might be required to support a well permit application.
- **Exacting Standards:** Neither the Executive Order nor AB 2201 require the permitting agency to evaluate the severity of any interference on neighboring wells or impacts to nearby infrastructure. Instead, a proposed new or altered well would be prohibited if it would cause *any* interference or adverse impacts. These exacting requirements could result in limitations on pumping capacity or well placement, even where anticipated impacts would be minor.
- **Increased Exposure to Legal Challenges:** By compelling GSAs and well permitting agencies to make several potentially discretionary determinations regarding well impacts, the Executive Order and AB 2201 could trigger California Environmental Quality Act compliance requirements and provide new grounds for legal challenges to development projects. Additionally, AB 2201's public notice and comment period requirements could increase the likelihood for legal challenges to permit issuance.

To limit potential delays caused by these issues, developers and business owners should consider starting the well permitting process early on during project development and possibly concurrently with project entitlement.



Our natural resources team is available to help navigate the well permitting process, as well as water sourcing, water permitting, water supply assessments, obtaining water rights and other water-related issues. If you have any questions about the Executive Order or AB 2201 or would like further information on our water-related services, please feel free to reach out to us.

[1] SGMA, a landmark piece of legislation enacted in 2014, required the formation of Groundwater Sustainability Agencies to implement Groundwater Sustainability Plans in groundwater basins designated by the California Department of Water Resources as medium- or high-priority.