

Date of Hearing: April 8, 2025

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE

Diane Papan, Chair

AB 1466 (Hart) – As Amended April 1, 2025

SUBJECT: Groundwater adjudication: burden of proof

SUMMARY: Makes changes to the comprehensive groundwater adjudication statute to set a higher burden of proof for certain challenges and ensure the court has technical information regarding groundwater pumpers that use less than five acre-feet (AF) of water annually or that are not a party to the comprehensive groundwater adjudication. Specifically, **this bill:**

- 1) Provides that a party to a comprehensive groundwater adjudication that seeks judicial review of an action taken by a groundwater sustainability agency (GSA) has the burden of proof using substantial evidence standard of review. This provision applies only to GSAs with a groundwater sustainability plan (GSP) that has been approved by the Department of Water Resources (DWR).
- 2) Requires the court, when presiding over a comprehensive groundwater adjudication in a basin managed pursuant to a GSP(s) approved by DWR, to request that the GSA provide a technical report that quantifies and describes the groundwater use of parties that have not otherwise appeared before the court.
- 3) Provides that the GSA's technical report may include parties that use five AF or less annually, parties that have been exempted from the adjudication action by the court, parties for which the court lacks jurisdiction, and parties that have been found, or are anticipated to be found, in default by the court.
- 4) Permits the GSA to provide the technical report at its own election and to include areas outside of its jurisdictional boundary if another GSA in the basin is unable or unwilling to provide a technical report covering those areas.
- 5) Provides a GSA that produces a technical report pursuant to this bill shall be paid or reimbursed for its expenses incurred for producing the technical report. The court shall apportion the costs for providing the technical report across all of the parties in the comprehensive groundwater adjudication in a manner that the court deems equitable.
- 6) Provides that a technical report produced pursuant to this bill shall be prima facie evidence of the physical facts in the report, but requires the court to hear evidence that may be offered by any party to rebut the report.

EXISTING LAW:

- 1) Declares, under the "reasonable use doctrine," that the waters of the state shall be put to beneficial use to the fullest extent they are capable, the waste or unreasonable use of water shall be prevented, and waters shall be conserved with a view the reasonable and beneficial use of such waters in the interest of the people and the public welfare. Provides the Legislature may enact laws in furtherance of this policy (California Constitution, Article X § 2).

- 2) Enacts the Sustainable Groundwater Management Act (SGMA) that requires local agencies to sustainably manage groundwater in high- or medium-priority basins by 2040. 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 §§ 10720 *et seq.*).
- 3) Requires the court to manage a comprehensive adjudication in a basin subject to SGMA in a manner that minimizes interference with the timely completion and implementation of a GSP, avoids redundancy and unnecessary costs in the development of technical information and a physical solution, and is consistent with SGMA (Water Code § 10737.2).
- 4) Outlines process and scope for a comprehensive adjudication of a groundwater basin [Code of Civil Procedure (CCP) §§ 830 *et seq.*].
- 5) Permits the court to exempt certain parties that pump minor quantities of water (no more than five AF annually) from a comprehensive groundwater adjudication if the use would not have a material effect on the groundwater rights of other parties. Permits exempted parties to elect to remain a party to the action if they so desire (CCP § 833).
- 6) Provides that a court may enter a judgment in a comprehensive groundwater adjudication if the court finds that the judgment meets all of the following criteria [CCP § 850(a)]:
 - a) It is consistent with Section 2 of Article X of the California Constitution;
 - b) It is consistent with the water right priorities of all non-stipulating parties and any persons who have claims that are exempted in the basin;
 - c) It treats all objecting parties and any persons who have claims that are exempted as compared to the stipulating parties; and
 - d) It considers the water use and accessibility of water for small farmers and disadvantaged communities.

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** The author maintains that “as SGMA implementation progresses, water rights lawsuits have surged across the state, often challenging both GSP mandates and the authority of GSAs. Legal disputes over groundwater cutbacks have led to costly litigation and delays in sustainability efforts, leaving communities vulnerable to further water shortages. State law does not clearly define who bears the burden of proof when challenging a [GSA] decision under a [GSP]. As a result, legal disputes over groundwater management can lead to prolonged litigation, increased costs for local agencies and communities, and delays in implementing sustainability measures necessary to protect California’s water resources.” The author further argues that “by ensuring that those seeking to overturn GSA actions must provide evidence to support their claims, [this bill] will streamline groundwater adjudication, reduce unnecessary litigation costs, and protect the implementation of sustainability plans that safeguard California’s water resources.”

- 2) **Background.** Groundwater is a critical source of supply that meets roughly 40% of water demand in an average year and more than 60% during drought years. There are three types of groundwater rights: overlying, appropriative, and prescriptive. The most common of these is the overlying right that entitles “an owner of land overlying groundwater to drill a well and pump groundwater for use of that land, within the basin or watershed” (Littleworth and Garner, 2019). No permit is required to obtain overlying rights and these rights are typically not quantified. Due to this, a landowner may pump as much groundwater as they desire so long as the water is put to beneficial use and the use is reasonable (Section 2, Article X of California Constitution). Overlying rights are “correlative” to other overlying right holders so that in a dispute amongst overlying landowners, all have equal rights. Due to a lack of a comprehensive framework for regulating and managing groundwater for most of California’s history, many groundwater basins in California are in a state of overdraft (a condition where average annual pumping exceeds average annual groundwater supply in a basin). SGMA was enacted in 2014 to address overdraft and the adverse effects of excessive groundwater pumping.

Groundwater adjudications. A groundwater adjudication occurs when one or more parties file a civil action to resolve conflicts over groundwater rights. According to the Water Education Foundation, “through adjudication, the courts can assign specific water rights to water users and can compel the cooperation of those who might otherwise refuse to limit their pumping of groundwater. Watermasters are typically appointed by the court to ensure that pumping conforms to the limits defined by the adjudication.” The overall limit or budget on groundwater pumping is typically referred to as “safe yield” in a settlement or judgment resulting from a groundwater adjudication. Out of 515 groundwater basins identified by DWR in Bulletin 118, 27 basins or sub-basins have been adjudicated. These are predominantly in urban and suburban parts of Southern California.

State law gives every overlying property owner a potential right in an unadjudicated groundwater basin. As such, determining who has groundwater rights that could be affected by an adjudication and the scope of those rights is difficult and can be a lengthy process; adjudications typically take more than a decade to resolve. Identifying and noticing every party that may have a right, completing technical work and sorting through disagreements over this technical work, and determining historic groundwater use which could affect the scope of one's rights are all factors that can increase the time and expense of an adjudication. In an attempt to streamline the groundwater adjudication process, SB 226 (Pavley) and AB 1390 (Alejo) were enacted in 2015.

The Committee is aware of five recent or pending groundwater adjudications:

- **Santa Clara Valley – Oxnard (No. 4-001.2) and Pleasant Valley (No. 4-006) groundwater basins.** A coalition of pumpers, the “OPV Coalition,” initiated this action in December 2022 against the Fox Canyon Groundwater Management Agency (FCGMA) (the GSA for the basins) asserting six causes of action: (1) seeking a comprehensive groundwater adjudication; (2) seeking quiet title to plaintiffs’ claims to use groundwater; (3), (4), and (5) writs of mandate challenging the GSP or FCGMA’s efforts to implement the GSP; and (6) alleging a violation of the California Environmental Quality Act. The court has stayed all causes of actions while it hears the comprehensive groundwater adjudication; this first phase is currently underway.

DWR approved the GSPs for both basins in November 2021.

- **Cuyama Valley groundwater basin (No. 3-013).** Two large agricultural pumpers, Bolthouse Land Company and Grimmway Enterprises initiated this action in March 2022 seeking a comprehensive groundwater adjudication and quiet title to plaintiffs' claims to use groundwater. DWR approved the GSP for this basin in May 2023 and it is currently undergoing its first 5-year review.
- **Indian Wells groundwater basin (No. 6-54).** A number of legal actions have taken place in this basin in recent years. The Indian Wells Valley Water District (not part of the basin's GSA) filed the action seeking a comprehensive groundwater adjudication in June 2021; however, this was a cross-complaint to another action filed by an agricultural pumper, Mojave Pistachios, challenging the GSP for the basin. The crux of the conflict is that various parties in the basin disagree about the basin's sustainable yield; some pumpers allege the Indian Wells Valley Groundwater Authority (IWVGA), the GSA for the basin, underestimated it. The adjudication is in the first phase to determine the U.S. Navy's federal reserved rights to groundwater in the basin. It is expected that there will be at least two more phases on safe yield and then individual groundwater rights. DWR approved the GSP for this basin in January 2022.
- **Upper Ventura River (No. 4-3.01), Ojai Valley (No. 4-2), Lower Ventura River (No. 4-3.02), and Upper Ojai Valley (No. 4-1) groundwater basins,** commenced in November 2019. Santa Barbara Channelkeeper initiated a suit against the City of Ventura in 2014 to limit the city's use of water from the Ventura River. The City of Ventura filed a cross-complaint in December 2019 alleging nine claims for relief, one of which seeks a comprehensive groundwater adjudication of these basins. DWR approved the GSP for Ventura River in May 2023 and for Ojai Valley in October 2023.
- **Las Posas Valley groundwater basin (No. 4-8).** A coalition of pumpers, the "Las Posas Valley Water Rights Coalition," initiated this action in October 2018 against FCGMA (i.e., the GSA for the basin) seeking a comprehensive groundwater adjudication. Parties reached a settlement in spring 2023 that the court adopted in July 2023. DWR approved the GSP for this basin in January 2022; this would be supplanted by the judgment in the comprehensive groundwater adjudication.

An additional adjudication in the Borrego Valley groundwater subbasin (No. 7-024.1) commenced in July 2020; the court approved a stipulated judgment to settle this adjudication on April 8, 2021 and the case is no longer active.

- 3) **Arguments in support.** The Indian Wells Groundwater Management Agency (IWGMA) supports this bill arguing it closes "loopholes within the groundwater adjudication process that are being used to impede the implementation of SGMA," and that it "is a necessary change as litigants seek to utilize groundwater adjudications to provide de novo review – complete and without deference – of groundwater sustainability agency's, [DWR's], and/or [the State Water Board's] findings through the [SGMA] process." Further, IWGMA asserts this bill will help to "defend the rights of small water users, often small farmers and

disadvantaged community members, by requiring a report by the [GSA] describing the use by all water pumpers within the basin.”

- 4) **Dual referral.** This bill has also been referred to the Assembly Judiciary Committee.
- 5) **Related legislation.** AB 1413 (Papan) of the current legislative session provides that a judgment in a comprehensive groundwater adjudication that allows more total pumping from a basin annually or on average than a valid GSP shall be deemed to substantially interfere with implementation of SGMA and makes other changes relative to comprehensive groundwater adjudications and validation actions. AB 1413 is also set for hearing before this Committee.

AB 560 (Bennett) of 2024 would have required parties to a comprehensive groundwater adjudication to submit a proposed settlement to the State Water Board for a nonbinding advisory determination regarding its impact on sustainable groundwater management and small and disadvantaged users prior to filing it with the court, among other provisions. AB 560 was held in the Senate Appropriations Committee.

AB 779 (Wilson), Chapter 665, Statutes of 2024, makes various changes regarding proceedings in a comprehensive groundwater adjudication to increase transparency and account for the needs of disadvantaged communities and small farmers in a final judgment. Provides that groundwater pumpers in a basin subject to an adjudication continue to comply with any applicable GSP while the adjudication is pending.

SB 226 (Pavley), Chapter 676, Statutes of 2015, integrates and streamlines the groundwater adjudication process for groundwater basins that are subject to SGMA.

AB 1390 (Alejo), Chapter 672, Statutes of 2015, establishes requirements and procedures for a comprehensive groundwater adjudication to ensure the proceedings and final judgment are consistent with sustainable groundwater management.

REGISTERED SUPPORT / OPPOSITION:

Support

City of Ridgecrest
Fox Canyon Groundwater Management Agency
Indian Wells Valley Groundwater Authority

Opposition

None on file

Analysis Prepared by: Pablo Garza / W., P., & W. / (916) 319-2096