

Date of Hearing: March 28, 2023

ASSEMBLY COMMITTEE ON WATER, PARKS, AND WILDLIFE
Rebecca Bauer-Kahan, Chair
AB 560 (Bennett) – As Introduced February 8, 2023

SUBJECT: Sustainable Groundwater Management Act: groundwater adjudication

SUMMARY: Requires a court, before finalizing a groundwater adjudication, to refer the proposed adjudication to the State Water Resources Control Board (State Water Board) for an advisory determination as to whether it will impair the ability of a groundwater sustainability agency (GSA), the State Water Board, or the Department of Water Resources (DWR) to achieve sustainable groundwater management. The State Water Board must consult with DWR before making its determination.

EXISTING LAW:

- 1) 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.*).
- 2) 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 (Water Code § 10720.7).
- 3) Exempts 26 groundwater basins or sub-basins that are subject to existing adjudications from the requirements of SGMA; requires adjudicated areas to report groundwater elevation and other groundwater data to DWR annually (Water Code § 10720.8).
- 4) Outlines process and scope for a comprehensive adjudication of a groundwater basin (Code of Civil Procedure § 830 *et seq.*).
- 5) Permits a court to enter a judgment in a comprehensive groundwater basin adjudication if the judgment: a) is consistent with the reasonable use doctrine (Article X, Section 2 of the California Constitution); b) is consistent with the rights of parties exempted from the adjudication; and c) treats all objecting and exempted parties equitably. Allows the court to adopt a “stipulated judgement” (i.e., a settlement) proposed by a party or group of parties if the proposing parties represent 75 percent of the groundwater pumped in the basin or if 50 percent of the pumpers in the basin agree to the stipulated judgment (Code of Civil Procedure § 850).
- 6) Requires a court presiding over an adjudication to manage the proceedings in a manner that does not interfere with the completion and implementation of a GSP and that is consistent with sustainable groundwater management under SGMA (Water Code § 10737.2).

- 7) Permits a party or group of parties proposing a stipulated judgement under the procedures outlined in #6, above, to also submit the proposal to DWR for evaluation and assessment as an alternative to a GSP [Water Code § 10734.4(b)].
- 8) Permits the State Water Board to serve as a referee in a court case involving a water rights dispute upon the request of a state or federal court (Water Code § 2000 *et seq.*).

FISCAL EFFECT: Unknown. This bill is keyed fiscal.

COMMENTS:

- 1) **Purpose of this bill.** The impetus for this bill is the pending groundwater adjudication in the Las Posas Valley groundwater basin. The initial complaint in this adjudication was filed in March 2018 and it appears that a judgment may be imminent. The action was brought by a group of groundwater pumpers in the basin that asked the court to determine groundwater rights in the basin and to invalidate “Emergency Ordinance E” that was adopted by the basin’s GSA, the Fox Canyon Groundwater Management Agency (Fox Canyon), during the previous drought to limit groundwater extractions. The plaintiffs in this adjudication have proposed a “stipulated judgment” that the author and Fox Canyon maintain will result in unsustainable groundwater pumping in the basin. The author is concerned that, if successful, this adjudication would set a poor precedent for future groundwater adjudications and that by requiring the technical expertise of the State Water Board and DWR in the adjudication process, this bill “will ensure that SGMA is upheld” and prevent a single judge from undercutting the work of local agencies.
- 2) **Background.** Groundwater is a critical source of supply that meets more than 40 percent of water demand in an average year and more than 50 percent of demand 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, any landowner may pump as much groundwater as they want so long as the water is put to beneficial use and the use is reasonable (Article X, Section 2 of the California Constitution). As a result of this lack of regulation, 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). To address overdraft and other adverse effects of excessive pumping, SGMA put in place a statewide framework for groundwater management for the first time, but also stipulated that it did not alter surface or groundwater rights (Water Code § 10720.5).

Adjudications. A groundwater adjudication is when parties ask a court to resolve conflicts over groundwater rights. An adjudication is initiated when one or more groundwater pumpers files a civil action asking the court to intervene to determine groundwater rights and/or limit pumping to a basin’s “safe yield” (the amount of groundwater pumped that is equal to the average replenishment rate of a groundwater basin). 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.” 27 basins or sub-basins are

adjudicated out of 515 groundwater basins identified by DWR in Bulletin 118. 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 contribute to increasing the time and expense of an adjudication. In an attempt to streamline the groundwater adjudication process, the Legislature passed SB 226 (Pavley), Chapter 676, Statutes of 2015, and AB 1390 (Alejo), Chapter 672, Statutes of 201, in the wake of SGMA's passage.

The Committee is aware of five pending groundwater adjudications:

- Santa Clara Valley – Oxnard (No. 4-001.2) and Pleasant Valley (No. 4-006) groundwater basins, commenced in December 2022.
- Cuyama Valley groundwater basin (No. 3-013), commenced in March 2022.
- Indian Wells groundwater basin (No. 6-54), commenced in November 2021.
- 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.
- Las Posas Valley groundwater basin (No. 4-8), commenced in November 2018.

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 Community Alliance with Family Farmers (CAFF) supports this bill asserting that it is a step in the right direction to bring the state in to review adjudication judgments. CAFF states that small farms and rural residents are at a disadvantage in the adjudication process due to the costs of legal representation and laments that “this legal proceeding is an option to circumvent the SGMA process.” CAFF points to examples in the Cuyama and Indian Wells basins where large growers initiated an adjudication because they did not agree with the direction the SGMA process was going. Finally, CAFF contends that “the idea of SGMA – that all stakeholders would be represented and their interests considered, and that there would be local community processes to achieve sustainability – will mean nothing if these overdrafted basins end up in court.”
- 4) **Arguments in opposition.** The California Chamber of Commerce (CalChamber) and several agricultural trade associations write in opposition to this bill. CalChamber et al. argue that this bill is duplicative of existing law and “may serve as a means to provide a veto power over a judicial proceeding by the executive.” These groups argue that the existing adjudication process allows for input from the State Water Board at various junctures and that the step added by this bill comes at the end of the adjudication process and will serve “to further delay lengthy adjudication proceedings by adding yet a further consultation requirement that lacks any timeframe for the State Water Board’s response.” Finally, CalChamber et al. maintain that this bill violates the separation of powers doctrine and gives “an executive agency the power to essentially disapprove of a judicial decision” thereby

taking away “a court’s ability to independently find facts and make legal determinations regarding the rights and responsibilities of the parties before it.”

- 5) **Double referral.** This bill is also referred to the Assembly Judiciary Committee.
- 6) **Related legislation.** AB 779 (Wilson), current session, makes various changes relating to the process for groundwater adjudication proceedings, including adding requirements that a court invite DWR or the State Water Board to provide technical assistance in a proceeding and take into account the needs of disadvantaged communities and small farmers when entering a judgement. AB 779 is set for hearing before the Assembly Committee on Water, Parks, and Wildlife on March 28, 2023.

SB 1372 (Stern), Chapter 682, Statutes of 2022, provides that the approval of a GSP by DWR shall not be construed as a determination or opinion by DWR that the allocation of pumping rights in a GSP is consistent with groundwater rights law.

AB 2313 (Bloom), 2021-22 Session, would have required the Judicial Council to establish a program to train judges in water law and expanded the utilization of special experts in complex cases involving water law.

AB 938 (Rodriguez), 2015-16 Session, would have permitted a local agency or water master administering an adjudicated groundwater basin to elect that the adjudicated basin be subject to SGMA. AB 928 died in the Senate Committee on Natural Resources and Water.

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 methods and procedures for comprehensive groundwater adjudications that are consistent with sustainable groundwater management.

REGISTERED SUPPORT / OPPOSITION:

Support

Community Alliance with Family Farmers

Opposition

African American Farmers of California
 Agricultural Council of California
 California Apple Commission
 California Blueberry Commission
 California Chamber of Commerce
 California Farm Bureau Federation
 California Food Producers
 California Fresh Fruit Association
 California State Association of Counties
 California Walnut Commission
 Kings River Conservation District

Kings River Water Association
Nisei Farmers League
United Water Conservation District
Western Growers Association
Western Plant Health Association

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