

Date of Hearing: April 29, 2025

ASSEMBLY COMMITTEE ON JUDICIARY
Ash Kalra, Chair
AB 1413 (Papan) – As Amended April 10, 2025

SUBJECT: SUSTAINABLE GROUNDWATER MANAGEMENT ACT: GROUNDWATER ADJUDICATION

KEY ISSUE: SHOULD A SUSTAINABLE YIELD DETERMINATION BY A GROUNDWATER SUSTAINABILITY AGENCY, THAT HAS BEEN VALIDATED IN ACCORDANCE WITH LAW, SERVE AS THE SUSTAINABLE YIELD OF A GROUNDWATER BASIN IF THE BASIN IS LATER SUBJECTED TO A COMPREHENSIVE ADJUDICATION PROCEEDING TO DETERMINE WATER RIGHTS?

SYNOPSIS

Under California law, there are three legal classifications of freshwater: surface water, groundwater, and water in subterranean streams. Unlike water flowing in identifiable channels (surface water and subterranean streams), groundwater remained largely unregulated throughout California's history despite providing between 40 and 60 percent of the state's annual freshwater needs. As a result of the lack of clear statewide regulation, for much of the last 80 years disputes involving groundwater, and rights to that water, were resolved through costly and time consumer groundwater adjudications. In 2014, seeking to finally manage the state's groundwater resources, the Legislature enacted the Sustainable Groundwater Management Act. Pursuant to the Sustainable Groundwater Management Act, local groundwater sustainability agencies were tasked with developing management plans for the most at-risk groundwater basins to ensure that basins were being utilized in a sustainable manner. At the same time, water rights cases are still litigated in groundwater adjudications. Presently, even when a local groundwater agency establishes, and utilizes court processes to validate, a sustainable yield for a given basin, that yield may be re-litigated in an adjudication.

Contending that revisiting valid sustainable yield determination is a waste of time and expenses for litigants, this bill would prohibit a court in a comprehensive groundwater adjudication from adopting a sustainable yield that would result in more groundwater pumping in a basin than established in the groundwater sustainability plan. In order for groundwater sustainability plan's yield determination to be utilized in an adjudication, the bill requires the sustainability plan to have been valid in court, or by function of law. The bill also makes various findings on the ongoing need to continue to streamline and harmonize the Sustainable Groundwater Management Act with groundwater adjudication actions.

A coalition of local groundwater agencies, environmental groups, and clean water advocates support this bill. The proponents of the bill argue that the groundwater sustainability plans incorporate greater scientific input and highlight that the purpose of the Sustainable Groundwater Management Act was to streamline groundwater management and the resolution of disputes. This bill is opposed by a coalition of agricultural interests and business organizations. The opposition notes that adjudications remain the sole venue for apportioning groundwater rights and question if validation actions are sufficient to evaluate the merits of a groundwater sustainability plan in the courts. Despite the disagreements, stakeholder discussions and the sharing of proposed language remains ongoing and the author remains

committed to receiving input from all stakeholders. This bill was previously heard and approved by the Committee on Water, Parks and Wildlife by a vote of 9-4.

SUMMARY: Prohibits a court from adopting a sustainable yield in a comprehensive groundwater adjudication proceeding if such yield allows more total pumping from the basin annually or on average than the sustainable yield of the basin established in the latest validated groundwater sustainability plan covering the basin. Specifically, **this bill:**

- 1) Requires a groundwater adjudication involving an action against a groundwater sustainability agency that is located in that basin to be consolidated with the comprehensive groundwater adjudication if the action concerns the adoption, substance, or implementation of a groundwater sustainability plan, or the groundwater sustainability agency's compliance with the timelines in the Sustainable Groundwater Management Act.
- 2) Requires the court in an action consolidated pursuant to 1) to try the cause of action for judicial review of the groundwater sustainability plan's determination of a basin's sustainable yield before trying any other issue in the action.
- 3) Provides that a judgment in a comprehensive groundwater adjudication substantially impairs the ability of a groundwater sustainability agency, the State Water Resources Control Board, or the Department of Water Resources to comply with the Sustainable Groundwater Management Act and to achieve sustainable groundwater management if it allows more total pumping from the basin annually or on average than the sustainable yield of the basin established in the latest groundwater sustainability plans covering the basin and either of the following apply:
 - a) The groundwater sustainability plan or plans have been validated by a final judgment issuing from a validation action; or
 - b) The groundwater sustainability plan or plans have been validated by operation of law because no validation action was filed.
- 4) Prohibits in an adjudication action for a basin required to have a groundwater sustainability plan, the court from establishing a safe yield or sustainable yield for the basin that exceeds the sustainable yield of the basin as established in a valid groundwater sustainability plan for the basin, as specified.
- 5) State that in enacting this measure, it is the intent of the Legislature to do the following:
 - a) Ensure that a comprehensive adjudication of groundwater rights in a basin does not interfere with the timely completion and implementation of a groundwater sustainability plan;
 - b) Ensure that a comprehensive adjudication of groundwater rights in a basin avoids redundancy and unnecessary costs in the development of technical information and a physical solution;
 - c) Ensure that a comprehensive adjudication of groundwater rights in a basin is consistent with the attainment of sustainable groundwater management within the timeframes established by the Sustainable Groundwater Management Act;

- d) Ensure that courts shall not determine a basin's safe yield or sustainable yield to be greater than that of a groundwater sustainability agency's determination in a valid groundwater sustainability plan for a basin.

EXISTING LAW:

- 1) Establishes the Sustainable Groundwater Management Act to provide for enhanced local management of groundwater resources and to provide for the sustainable management of California's groundwater resources. (Water Code Section 10720 *et seq.*)
- 2) Provides that, unless otherwise specified in law, any local agency or combination of local agencies overlying a groundwater basin may decide to become a groundwater sustainability agency for that basin. (Water Code Section 10723 (a).)
- 3) Authorizes a groundwater sustainability agency to conduct investigations necessary for implementing the Sustainable Groundwater Management Act including the following:
 - a) To determine the need for groundwater management;
 - b) To prepare and adopt a groundwater sustainability plan and implementing rules and regulations;
 - c) To propose and update fees; and
 - d) To monitor compliance and enforcement. (Water Code Section 10725.4.)
- 4) Provides that all basins designated as high- or medium-priority basins by the Department of Water Resources, as specified, as basins that are subject to critical conditions of overdraft shall be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans. (Water Code Section 10720.7 (a).)
- 5) Requires a groundwater sustainability plan to include all of the following:
 - a) A description of the physical setting and characteristics of the aquifer system underlying the basin including historical data, groundwater levels, water quality, subsidence, and projected supply and demand, as specified;
 - b) Measurable objectives, as well as interim milestones in increments of five years, to achieve the sustainability goal in the basin within 20 years of the implementation of the plan;
 - c) A planning and implementation horizon;
 - d) Sections addressing the monitoring and management of groundwater levels, water quality, land subsidence;
 - e) Sections addressing overdraft mitigation and potential groundwater recharge;
 - f) A summary of the type of monitoring sites, type of measurements, and the frequency of monitoring for each location monitoring groundwater levels, groundwater quality, subsidence, streamflow, precipitation, evaporation, and tidal influence, as specified;

- g) Monitoring protocols that are designed to detect changes in groundwater levels, groundwater quality, inelastic surface subsidence for basins for which subsidence has been identified as a potential problem, and flow and quality of surface water that directly affect groundwater levels or quality or are caused by groundwater extraction in the basin, as specified; and
 - h) A description of the consideration given to the applicable county and city general plans and 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 10727.2.)
- 6) Requires, prior to initiating the development of a groundwater sustainability plan, the groundwater sustainability agency to make available to the public, the legislative body of any city, county, or city and county located within the geographic area to be covered by the plan, the Public Utilities Commission, as specified, and the Department of Water Resources a written statement describing the manner in which interested parties may participate in the development and implementation of the groundwater sustainability plan. (Water Code Section 10727.8.)
- 7) Requires a groundwater sustainability agency to encourage the active involvement of diverse social, cultural, and economic elements of the population within the groundwater basin prior to and during the development and implementation of the groundwater sustainability plan. (*Ibid.*)
- 8) Requires a groundwater sustainability agency to submit the initial groundwater sustainability plan to the Department of Water Resources, upon which the following must occur:
- a) The Department must post the plan on the department's Internet Web site and provide 60 days for persons to submit comments to the department about the plan;
 - b) The Department must review the plan and issue an assessment of the groundwater sustainability plan and offer recommendations for any measures necessary to correct deficiencies in the plan. (Water Code Section 10733.4.)
- 9) Requires, at least every five years after initial submission of a groundwater sustainability plan, the Department of Water Resources to review any available groundwater sustainability plan or alternative submitted, and the implementation of the corresponding groundwater sustainability program for consistency with the Sustainable Groundwater Management Act including achieving the sustainability goal. (Water Code Section 10733.8.)
- 10) Explicitly exempts 27 groundwater basins that were subject to court adjudication prior to the enactment of the Sustainable Groundwater Management Act from the provisions of the Act. (Water Code Section 10720.8.)
- 11) Establishes the litigation procedures that guide comprehensive court adjudications of groundwater basins. (Code of Civil Procedure Section 830 *et seq.*)
- 12) Provides that in a comprehensive adjudication, the court may determine all groundwater rights of a basin, whether based on appropriation, overlying right, or other basis of right, and use of storage space in the basin. (Code of Civil Procedure Section 834.)

- 13) Requires an action against a groundwater sustainability agency that is located in a basin that is being adjudicated to be coordinated and consolidated with the adjudication, as appropriate, if the action concerns the adoption, substance, or implementation of a groundwater sustainability plan, or the groundwater sustainability agency's compliance with the timelines in the Sustainable Groundwater Management Act. (Code of Civil Procedure Section 8338.)
- 14) Requires a court to impose a physical solution on the parties subject to a comprehensive adjudication when necessary to comply with 17). (Code of Civil Procedure Section 849 (a).)
- 15) Authorizes a court to enter a judgement in an adjudication action for a basin required to have a groundwater sustainability plan under the Sustainable Groundwater Management Act if the court determines the judgment will not substantially impair the ability of a groundwater sustainability agency, the State Water Resources Control Board, or the department to comply with the Sustainable Groundwater Management Act and to achieve sustainable groundwater management, as specified. (Code of Civil Procedure Section 850 (b).)
- 16) Authorizes a public agency to, upon the existence of any matter which under any other law is authorized to be determined, as specified in the Code of Civil Procedure, to bring an action in the superior court of the county in which the principal office of the public agency is located to determine the validity of such matter, and that such action is to be in the nature of a proceeding in rem. (Code of Civil Procedure Section 860.)
- 17) Declares that because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented, and that the conservation of such waters is to be exercised with a view to the reasonable and beneficial use thereof in the interest of the people and for the public welfare. The right to water or to the use or flow of water in or from any natural stream or water course in this State is and shall be limited to such water as shall be reasonably required for the beneficial use to be served, and such right does not and shall not extend to the waste or unreasonable use or unreasonable method of use or unreasonable method of diversion of water. Riparian rights in a stream or water course attach to, but to no more than so much of the flow thereof as may be required or used consistently with this section, for the purposes for which such lands are, or may be made adaptable, in view of such reasonable and beneficial uses; provided, however, that nothing herein contained shall be construed as depriving any riparian owner of the reasonable use of water of the stream to which the owner's land is riparian under reasonable methods of diversion and use, or as depriving any appropriator of water to which the appropriator is lawfully entitled. This section shall be self-executing, and the Legislature may also enact laws in the furtherance of the policy in this section contained. (Cal. Const., art. X, Sec. 2.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: For much of California's history, the use of groundwater resources went wholly unregulated. As a result by the 1940s, many groundwater basins in the state were over drafted and at risk of running out of resources. Seeking to protect and allocate groundwater rights, the first comprehensive groundwater adjudication was conducted in 1949. Since then almost 30 groundwater basins across California have been subject to adjudication. Recognizing that basin-by-basin adjudications were both failing to protect water resources and costing Californians millions in legal fees, in 2014 the Legislature adopted the Sustainable Groundwater Management

Act. (AB 1739 (Dickinson) Chap. 347, Stats. 2014, SB 1168 (Pavley) Chap. 346, Stats. 2014, and SB 1319 (Pavley) Chap. 348, Stats. 2014.) In accordance with the Sustainable Groundwater Management Act (SGMA), local groundwater sustainability agencies (GSA) must adopt groundwater sustainability plans (GSP), that among other topics must establish a sustainable yield for the basin.

This bill recognizes that some parties in adjudication are seeking to re-litigate the sustainable yield determinations in comprehensive adjudications. By forcing courts to reconsider valid, scientific, determinations by regulatory agencies, the existing process is adding time and expense to groundwater adjudications, and substituting valid scientific determinations with that of a judge. Seeking to avoid duplicative legal proceedings, this measure would prohibit a judge in a groundwater adjudication from adopting a sustainable yield that is in excess of the sustainable yield established in a validated GSP. In support of this common sense measure, the author states:

This bill will prevent pumpers from filing a comprehensive groundwater adjudication to get around and delay a GSP while rehashing the sustainable yield (or groundwater budget) established in a GSP. Unfortunately, this is occurring in pending groundwater adjudications in basins subject to SGMA. This delays sustainable groundwater management and is redundant. While the court has an important role to play in determining individual groundwater rights, the GSP development and implementation processes are the best forums for determining the sustainable yield for a given groundwater basin (akin to land use planning and zoning). This is even more the case when taking into account the fact that the two state agencies with technical expertise in water management – DWR and the State Water Board – take an active and ongoing role in overseeing SGMA implementation. To avoid delay in reversing groundwater overdraft and avoid shutting out smaller actors, this bill directs courts to not exceed the sustainable yield identified in a valid GSP when entering a judgment in a comprehensive groundwater adjudication.

The state and local agencies have invested hundreds of millions of dollars and more than a decade in SGMA implementation to make California more resilient to climate change. SGMA is a landmark law that embodies a collaborative approach to groundwater management and mandates the inclusion of all actors and groundwater pumpers (“interested parties”) in GSP development and implementation. This requirement is meant to ensure everyone has a seat at the table in the management of groundwater. All of the effort that has gone into developing, reviewing, and implementing GSPs to date can be nullified when parties that are unhappy with a GSP’s groundwater budget (i.e., sustainable yield) seek to re-do it via a comprehensive groundwater adjudication.

If a pumper believes the GSA has missed the mark on a basin’s sustainable yield and that DWR is incorrect in approving a GSP (and, therefore, the sustainable yield), a pumper can obtain judicial review through a reverse validation action. Revisiting sustainable yield in a groundwater adjudication is inefficient, duplicative, and expensive. If such actions are not halted, SGMA will be undermined.

Finally, this bill directs the court to resolve challenges to the sustainable yield where multiple causes of action have been consolidated into a comprehensive adjudication. This fulfills the Legislature’s intent that a groundwater adjudication minimally interfere with SGMA implementation. It is unclear how a GSP can be implemented if challenges to the sustainable yield are not resolved before the adjudication of individual pumpers’ groundwater rights

proceeds. If future groundwater adjudications proceed in a similar manner, it could significantly undermine the state's ability to meet the goals of SGMA.

What is groundwater? By the time it reaches Californians' taps, water is indistinguishable regardless of its source. However, under California law there are three distinct "types" or categories of water: surface water (including water from streams, rivers and lakes); percolating groundwater (water found in subterranean basins); and subterranean streams (flowing through recognizable channels). Legally, surface water and subterranean flows are largely treated alike, and both are subject to oversight and permitting from the State Water Resources Control Board. Groundwater, however, is governed by a distinct set of statutes and case law that can trace its roots back to English Common Law. Due in large part to the fact that groundwater regularly makes up at least 40 percent of the state's annual water supply, it is unsurprising that groundwater has been the subject of over a century of contentious disputes that have shaped modern groundwater law.

The right to utilize groundwater is classified in three categories: overlying rights, appropriative rights; and prescriptive rights. As it relates to overlying rights California has, to a degree, adopted the English Common Law notion that whoever owns the soil owns the depths, however, as early as 1903, California courts recognized that this state's climate does not lend itself to a pure application of the common law. (*Katz v. Walkinshaw* (1903) 141 Cal. 116.) The *Katz* court recognized scarcity is a critical element of California water law and that when a groundwater basin cannot support the needs of all water users each user is entitled to a "fair and just" proportion of the water supply. (*Id.* at 134.) Appropriative rights applies to surplus groundwater drawn from a basin but not utilized on the overlying land. In this scenario, the court provides that "first in time first in right" approach applies to determining water rights. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal.4th 1224, 1241.) Finally, prescriptive rights are established by showing an adverse use against prior rights holders. These rights are most commonly held by municipal water agencies who pump groundwater for use outside the overlying basin. Because many of the groundwater basins utilized by municipal pumpers are overdrawn, and thus by definition no surplus water exists, the municipalities rights are considered "adverse" to other rights holders. (See, *City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 299-300.)

Comprehensive adjudications are the primary method for determining groundwater rights.

Given the overlapping priorities of various groundwater rights holders, when a groundwater basin becomes oversubscribed (i.e., the groundwater basin lacks sufficient water supplies to sustainably provide for the needs of all water rights holders), historically, court adjudication was required to establish water rights. The first groundwater basin adjudicated in California was the Raymond Basin underlying the City of Pasadena. Seeking to establish water rights between several municipalities and overlying agricultural water users, the court adopted the doctrine of "mutual prescription" whereby rights were determined based on the highest continuous use during the five-year period in which the basin was over drafted. The court then held that each water users was entitled to a right proportionate to the amount taken during the study period. (*Pasadena v. Alhambra* (1949) 33 Cal.2d 908, 933.)

Twenty-five years later the courts were forced to deal with the issue of a groundwater basin in which varying water rights holder held truly unique priorities to a groundwater basin necessitating the appointment of a water master. In *Los Angeles v. San Fernando* (1975) 14 Cal.3d 199, the court rejected strict application of mutual prescription and moved toward a "physical solution" whereby the court sought to establish a "true equitable apportionment"

through ongoing monitoring of a basin. (*Id.* at 274.) The *Los Angeles* court's preference for establishing a physical solution in groundwater adjudications was reaffirmed in 2000 when the California Supreme Court held that, "If Californians expect to harmonize water shortages with a fair allocation of future use, courts should have some discretion to limit the future groundwater use of an overlying owner who has exercised their water right and to reduce to a reasonable level the amount the overlying user takes from an over drafted basin." (*City of Barstow v. Mojave Water Agency, supra*, at 1249.)

Guided by the *Los Angeles* and *Mojave* decisions, seeking physical solutions to apportion water rights has been the guiding principal in modern groundwater adjudications. However, the adjudications are time consuming, expensive, and frequently require ongoing monitoring by courts. Furthermore, due to the expense of adjudicating groundwater basins, many small water users are left out of the existing process, as they are unable to afford the expense of obtaining legal counsel and the scientific experts necessary to represent their interests in court. Additionally, the historic practice of adjudicating groundwater basins on case-by-case basis precluded any comprehensive statewide oversight of groundwater management.

The Sustainable Groundwater Management Act ensures that groundwater is used sustainably and seeks to minimize future groundwater basin adjudications. Recognizing that groundwater adjudications are inefficient and do not necessarily produce comprehensive strategies for protecting water and the environment, in 2014, the Legislature adopted the SGMA to provide statewide standards for groundwater management. A critical aspect of the SGMA framework is the adoption of GSPs by local groundwater agencies. The GSPs must be developed locally, with input from public stakeholders, and are subject to review by the Department of Water Resources. Critically, SGMA guides local agencies to avoid six "undesirable results" associated with poor groundwater management: chronic lowering of groundwater levels; significant and unreasonable reductions in groundwater storage; significant and unreasonable seawater intrusion; significant and unreasonable groundwater quality degradation; significant and unreasonable land subsidence; and depletions of interconnected surface water. (Water Code Section 10721 (d).)

Under SGMA, a newly developed GSA has the power to adopt rules, regulations and ordinances to carry out the GSP. The plan itself must be developed in a manner that considers the interests of all beneficial water users in a basin. While the statute does not specify the exact manner in which a GSA must engage the public and receive comment on a proposed GSP, the statute does specify the parties a GSA is to seek input from when constricting a GSP. (Water Code Section 10723.2.)

The critical determination in developing the GSP is the selection of a sustainable yield for a groundwater basin, essentially the amount of groundwater that can be safely pumped on an annual basis without risking an undesirable result. Once the sustainable yield is determined and the GSP is completed, the plan is sent to the Department of Water Resources where the public is entitled to submit comments to the Department regarding the accuracy of the plan and the Department's experts review the findings of the GSA. Even after a GSP has been approved by the Department of Water Resources and implemented by the GSA, the plan must be reviewed by the Department every five years. Like other public agency decisions, a GSA seeking to legally solidify the GSP may file a validation action to preemptively prevent challenges to an approved GSP.

This bill seeks to build on prior Legislative efforts to streamline groundwater proceedings and synchronize the GSP development and approval process with groundwater adjudications. First, this bill requires a court to consolidate any action against a GSA in a basin subject to groundwater adjudication into the comprehensive adjudication proceedings. Once the proceedings have been consolidated, the bill requires the court to try the issues related to a GSP's sustainable yield prior to adjudicating other issues. The bill also provides that a judgment in an adjudication impermissibly impairs the ability of the GSA to regulate groundwater if the court's sustainable yield determination exceeds the amount of total pumping from a basin that is specified in a GSP that has been subject to a validation action or deemed valid by operation of law. This provision essentially applies the estoppel principle to an adjudication when the sustainable yield was previously approved by a court in a validation action. Finally, the bill makes various findings and declarations related to comprehensive groundwater adjudications and these adjudications interplay with SGMA.

How valid are validation actions? Recognizing that some government actions need finality in order to be effective, existing law authorizes a government agency to "validate" their action by bringing an action in court. (Code of Civil Procedure Section 860 *et seq.*) In a validation action, the government agency essentially sues itself and then invites interested parties to intervene to challenge the agency's decision making in court. If a court upholds the agency's decision it is "validated" and therefore becomes binding and conclusive. Members of the public can also file "reserve validation" actions and force the validation proceedings as a means of contesting a governmental decision.

Like other litigation reviewing agency decision making, validation actions adopt a substantial evidence standard. (*Community Youth Athletic Association v. National City* (2013) 220 Cal.App.4th 1385, 1408.) Utilizing the substantial evidence standard of review, the court is directed to resolve all "reasonable doubts and inferences" in the administrative record in favor of the agency. Based on this standard, if the court determines by a preponderance of the evidence that the substantial evidence on the record supports the agency, the agency's decision is to be validated. (*Ibid.*) As applied to the validity of the GSP, a court would be able to examine all studies on the record, public comments, and findings of the GSA to determine whether or not the sustainable yield is supported by substantial evidence. Typically, these reviews are limited to evidence in the administrative record and extrinsic evidence is disallowed. (*County of Los Angeles v. Glendora Redevelopment Project* (2010) 185 Cal.App. 4th 817, 827.) Of note to this bill, because validation actions generally are tied to the evidence in the agency's record, persons seeking to invalidate the GSP would have had to raise comments or other concerns at some point during the administrative process, either to the GSA or the Department of Water Resources. The failure to raise concerns through public comment means that the concerns would be on the record and therefore largely outside the scope of evidence permitted in the validation proceedings.

Opponents to this bill claim that validation proceedings fail to properly protect the due process interests of water rights holders. The proponents of this measure, including clean water advocates, environmental organizations, and some GSAs, note that this bill is critical to streamline groundwater litigation and prevent parties for seeking a subsequent review of an otherwise valid, but disputed, sustainable yield determination. To this point, in support of the bill, the Indian Wells Groundwater Authority writes, "groundwater adjudications should not be used as an additional means to challenge or as a means to overturn the technical findings of a GSP."

However, the coalition of agricultural and business interests opposing this measure contend that validation actions, and their limited scope, provide insufficient reviews of agency decision making as it relates to sustainable yields. The opposition coalition writes on this point, “A validation proceeding asks whether the agency complied with the law when taking the challenged action. If the court finds that the agency did something wrong, all the court can do is direct the agency to redo the action, this time following the law. The court cannot review the best available technical information outside the administrative record developed by the GSA during development of the GSP or cross-examine witnesses.” Furthermore, the opposition points out that at the time most GSPs would have been subject to validation, this bill was not in place and litigating a GSP may not have seemed necessary. The opposition now contends that because the bill would “validate” a GSP through function of law (i.e. no lawsuit was filed in a timely manner) this bill could cost them their day in court. While one could argue that stakeholders should have litigated concerns surrounding the validity of the GSPs regardless of their impact on adjudications, *the author may wish to consider a one-time special reopening of the statute of limitations to permit parties to contest previously validated GSPs that would be subject to this bill.*

Regardless of the timing issues, the two above outlined positions underpin the fundamental issue surrounding this bill; whether a validation action or an adjudication is the proper venue for establishing a sustainable yield determination for a groundwater basin. Each side’s arguments have merit. The GSP process seeks to incorporate scientific investigation, the opinions of subject matter experts, and public input into a basin’s management then produce a balanced decision that avoids the six aforementioned “undesirable results.” However, as the opposition correctly notes, the review of these decisions is generally limited to the official record. If a party failed to raise their objections, while not a due process violation, the party loses the right to raise certain objection. Conversely, while groundwater adjudications offer greater opportunities to present evidence outside of an official agency record, the ultimate decision maker is not a scientific or subject matter expert but a judge who may lack meaningful experience and training in water law. Indeed, in light of the Judicial Council of California’s ability to stymie prior legislative efforts to develop water law training for judges (see, AB 2313 (Bloom, 2022)), deferring to scientific experts and the GSP development process may be the more appropriate approach. Accordingly, while the Committee encourages stakeholders to continue discussions on the topic, the Committee is not proposing amendments at this time.

Opponents contend that consolidating GSP reviews and groundwater adjudications eliminates judicial discretion. The opposition to this measure also argues that mandating the consolidation of GSP reviews and groundwater adjudications removes judicial discretion. The opposition notes that the existing law already permits a judicial officer to consolidate the two proceedings. They note flexibility is especially critical when an adjudication involves a basin governed by multiple GSPs. However, given the Legislature’s prior efforts to streamline groundwater adjudications, the current consolidation proposal appears appropriate.

Opponents proposed amendments seek to utilize sustainable yield determinations while maintaining the primacy groundwater adjudications for determining basin yields. It should be noted that the opposition presented the author with a comprehensive set of amendments that would require a sustainable yield determination from a GSP to be provided presumptive effect in an adjudication. Although this proposal does not give the GSP’s findings the same estoppel effect as provided in the bill in print, the proposal reflects an attempt at compromise. Unfortunately, due to the rapidly approaching legislative deadlines, stakeholders have been

unable to reach an agreement before this bill is slated to be heard in Committee. Although the opponents proposed amendments would retain comprehensive adjudications as the preferred venue for litigating groundwater cases, the proposal is not without merit. Thus, should the bill advance, *the author and stakeholders are encouraged to continue dialogue in order to reach a solution that streamlines groundwater proceedings and avoids duplicative court rulings in a manner that all parties can agree to.*

ARGUMENTS IN SUPPORT: As stated, this bill is supported by a coalition of environmental and clean water advocates, as well as several GSAs. A coalition letter in support of the bill states:

Prior to the Legislature's 2014 adoption of the SGMA, adjudication was the only legal route for settling groundwater disputes. SGMA has created another route, relying on locally established groundwater agencies to develop and implement plans to manage groundwater sustainably, and on the Department of Water Resources (DWR) to ensure that those plans are adequate. SGMA expressly does NOT confer or redistribute water rights, which remain the role of the court through adjudication. Legislation adopted in 2015 attempted to clarify these roles, but adjudication actions continue to challenge the determination of sustainable yield in plans that have been found adequate by DWR.

AB 1413 provides further clarification of these roles in statute by requiring that any litigation of a Plan's determination of sustainable yield be settled prior to, or as an initial issue in, an adjudication action. This provides clear direction to all parties on the process for addressing issues and concerns. Importantly, this language does not limit the ability of a plaintiff to seek judicial review of all or a portion of a Plan, preserving the rights of interested parties to bring an action if they feel a Plan is inadequate.

We believe that this bill addresses a real need in an appropriately targeted fashion that preserves the legal rights of would-be plaintiffs while ensuring that the adjudication process is focused on the task of appropriating water rights.

ARGUMENTS IN OPPOSITION: A coalition of business and agricultural concerns oppose this measure unless amended. The coalition, including the California Chamber of Commerce, the California Farm Bureau, and the Western Growers Association, jointly write:

Since SGMA prohibits GSAs from determining water rights, groundwater users do not present evidence during the GSP development process to prove the extent or validity of their rights. This means that the administrative record does not include evidence of an individual user's water rights.

In contrast, a groundwater adjudication is a comprehensive proceeding that requires notice and consideration of all water rights holders. It also asks the court to determine three things: the safe yield (the size of the pie), the relative water rights (how much of the pie each rights holder gets), and a physical solution to assist the basin in being sustainable (how we can refill and sustainably maintain the pie without causing undesirable results). The court evaluates evidence and the arguments of the parties, in its role as a fact finder, to make determinations on these issues. Alternatively, some of the parties can come to an agreement, as has often been the case in adjudications, and propose a judgment that the court may approve. Importantly, existing law requires adjudications to be consistent with the goals of SGMA, ensuring this process results in sustainable groundwater management. Indeed, case law

requiring courts to protect the groundwater resource and manage it sustainably existed for more than 65 years prior to the adoption of SGMA and still exists today. A validation action lacks these comprehensive steps, meaning it is not an adequate replacement for the court's role as fact-finder in a groundwater adjudication.

AB 1413 would make the GSA the lone arbiter of the size of the pie, and, in effect, determine water rights, which SGMA expressly prohibits. Each water rights holder's slice of that pie is affected by how big the entire pie is. Appropriative and prescriptive water rights, two types of water rights claims that very frequently arise in groundwater adjudications, are partially if not fully dependent on the safe yield determination for the basin. By forcing courts to essentially defer to a GSP's sustainable yield, AB 1413 removes the authority reserved to courts to determine water rights and deprives water rights holders of the due process that SGMA guarantees.

REGISTERED SUPPORT / OPPOSITION:

Support

California Rural Legal Assistance Foundation, Inc.
 City of Ridgecrest
 Clean Water Action
 Community Alliance with Family Farmers (if amended)
 Community Water Center
 FACTS: Families Advocating for Chemical & Toxics Safety
 Fox Canyon Groundwater Management Agency
 Indian Wells Valley Groundwater Authority
 Leadership Counsel Action
 Planning and Conservation League
 Regional Water Authority
 Sierra Club California
 The Nature Conservancy
 W.A.T.E.R.

Opposition

California Association of Realtors

Opposition (unless amended)

Agricultural Council of California
 Almond Alliance
 Association of California Water Agencies
 California Alfalfa and Forage Association
 Cal Chamber
 California Association of Wheat Growers
 California Citrus Mutual
 California Farm Bureau
 California Fresh Fruit Association
 California Grain and Feed Association
 California Seed Association

California Tomato Growers Association
California Water Association
Indian Wells Valley Economic Development Corporation
Indian Wells Valley Water District
Mission Springs Water District
Nisei Farmers League
Ridgecrest Area Association of Realtors
Searles Valley Minerals
South San Joaquin Irrigation District
United Water Conservation District
Valley Ag Water Coalition
Western Growers Association
Western Plant Health Association

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