

Legislative Proposal

2025-2026 California Session

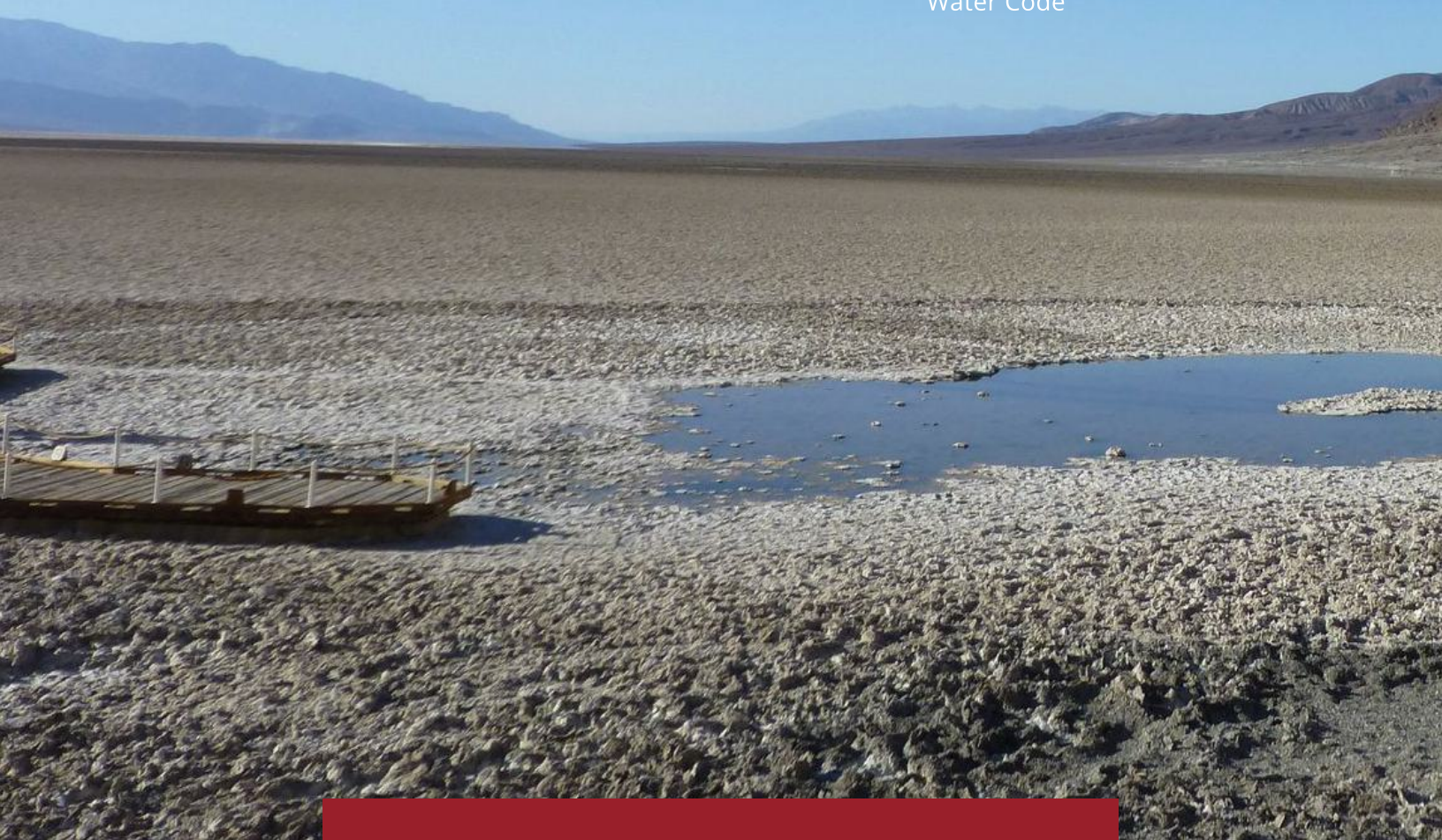
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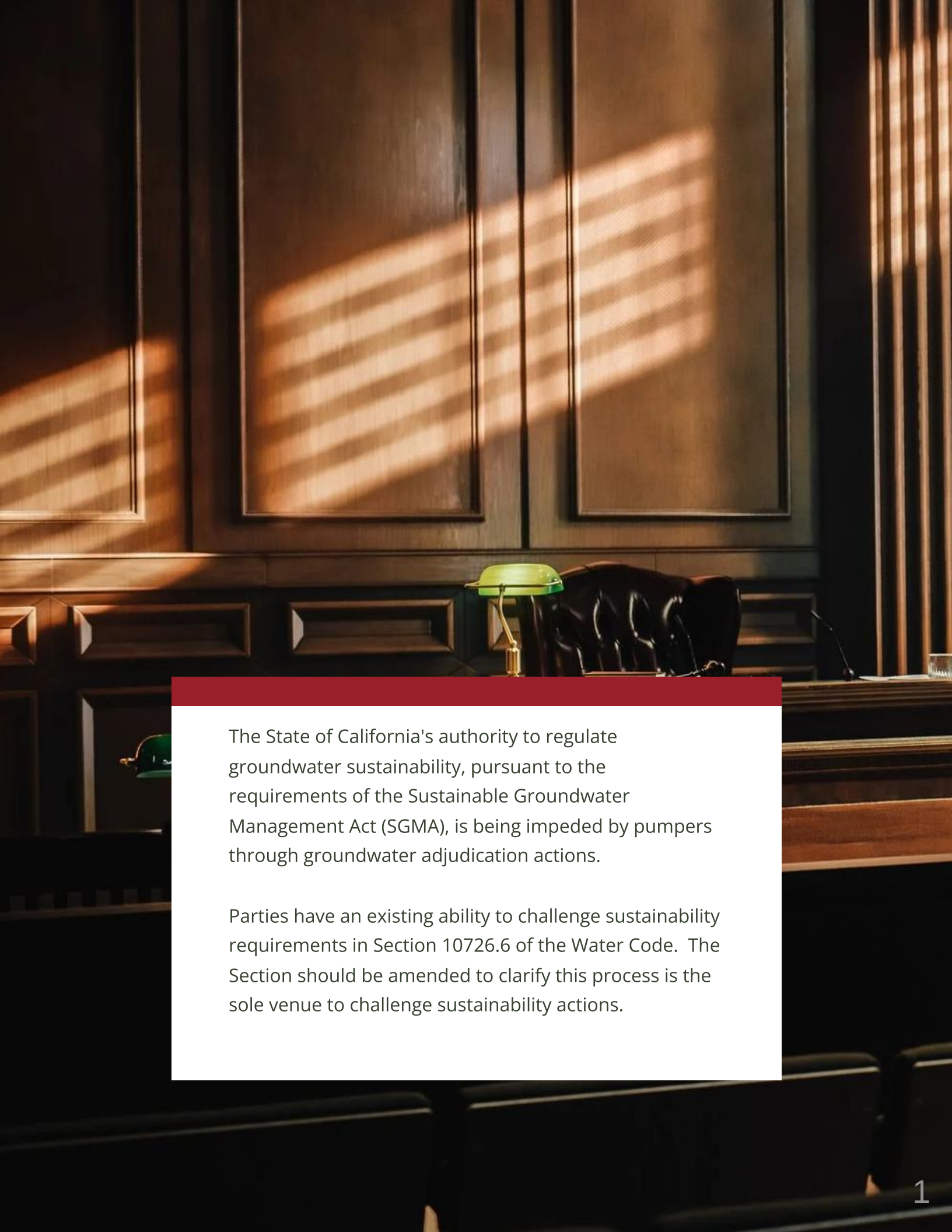
**INDIAN WELLS VALLEY
GROUNDWATER AUTHORITY**

Issue Area/Subject:

**GROUNDWATER
ADJUDICATIONS**

Proposed Amendment:
Section 10726.6 of the
Water Code





The State of California's authority to regulate groundwater sustainability, pursuant to the requirements of the Sustainable Groundwater Management Act (SGMA), is being impeded by pumpers through groundwater adjudication actions.

Parties have an existing ability to challenge sustainability requirements in Section 10726.6 of the Water Code. The Section should be amended to clarify this process is the sole venue to challenge sustainability actions.

POLICY QUESTIONS

Should opponents of State-approved groundwater sustainability measures be able to challenge those measures through both validation and groundwater adjudication proceedings?

Should a State-approved Groundwater Sustainability Plan be subject to de novo review years into its implementation?



Problem Statement

In three critically overdrafted groundwater basins, pumpers have used the adjudication process to bypass the statutory validation procedures and seek a de novo (complete with no deference given) review of State-approved Groundwater Sustainability Plans to thwart their implementation. If successful, the precedent set by these litigants will make the SGMA process moot.



Observation

Historically, groundwater adjudications have been required to establish a basin's "safe yield" and determine the available amount of water. Further, the courts have established a "physical solution" to maintain safe yield amounts.

With the adoption of SGMA, the courts' decisions in an adjudication proceeding are unnecessary. In an adjudication, the court does not need to reconsider the technical findings and safe yield determinations made in an approved GSP.

Challenges to a GSP are appropriately provided in a Writ as part of a reverse validation proceeding.





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DISCUSSION

SGMA requires that Groundwater Authorities implement potentially costly projects to sustainably maintain groundwater basins. To provide the certainty needed to obtain third-party funding, SGMA provides a validation procedure that prevents a plan from being challenged in court once the validation period has ended.

Opponents of a groundwater sustainability plan (GSP) have multiple opportunities to challenge the findings and the implemented measures through the regulatory review process at the Department of Water Resources (DWR) and ultimately through the courts in a validation action. Validation actions, appropriately, have a statute of limitations requiring opponents to seek redress in a timely manner. GSPs are updated every five years, opening potential new issues for validation actions.

By contrast, groundwater adjudications do not have a statute of limitations. Opponents of GSPs are using the mechanism of groundwater adjudication as a backdoor to bypass the validation procedures. They argue that the court is required to permit them to challenge the basins' sustainable yields and implement physical solutions outside, and in direct contradiction, of the sustainability measures implemented within the State-approved GSP. In many cases, the comprehensive groundwater adjudication is filed years after the adoption of the GSP and many years into the implementation of sustainability measures, placing the ability to fund and implement projects in jeopardy.

A CHILLING EFFECT ON SGMA AND THE STATE OF CALIFORNIA

“Once a final judgment is entered [in the adjudication], as a public agency, IWVGA will lack the discretion to act inconsistently with this Court’s orders pertinent to the imposition of a physical solution.”

[Mojave Pistachios, LLC v. Indian Wells Valley Groundwater Authority, Case No. 21-01187275, Mojave Pistachios, LLC Filing 06/03/2024, @ pg 9, lines 14-17]

“[T]hough not explicitly stated, the requirement of adhering to an existing GSP during an adjudication proceeding suggests that the GSP may be replaced as a result of the proceeding.”

[Minute Order, Judge William D. Claster, Superior Court Orange County, Department CX-101, Mojave Pistachios, LLC v. Indian Wells Valley Groundwater Authority, Case No. 21-01187275, 08/06/2024]

“Nothing in [Section 10726.6 of the Water Code] or SGMA requires the Court to rigidly adhere to all of the findings underlying the GSP or precludes it from considering relevant technical information in formulating a physical solution.”

[Minute Order, Judge William D. Claster, Superior Court Orange County, Department CX-101, Mojave Pistachios, LLC v. Indian Wells Valley Groundwater Authority, Case No. 21-01187275, 08/06/2024]

In three current SGMA-era groundwater adjudications, the court has set a trial to determine the groundwater basin's safe yield and establish a physical solution to meet sustainability. In all three basins, Fox Canyon, Cuyama Basin, and the Indian Wells Valley Basin, a State-approved GSP exists. These multi-year court actions essentially halt the sustainability measures within these critically over-drafted groundwater basins and allow litigants to continue to overdraft groundwater supplies while the court establishes the physical solution within the adjudication.

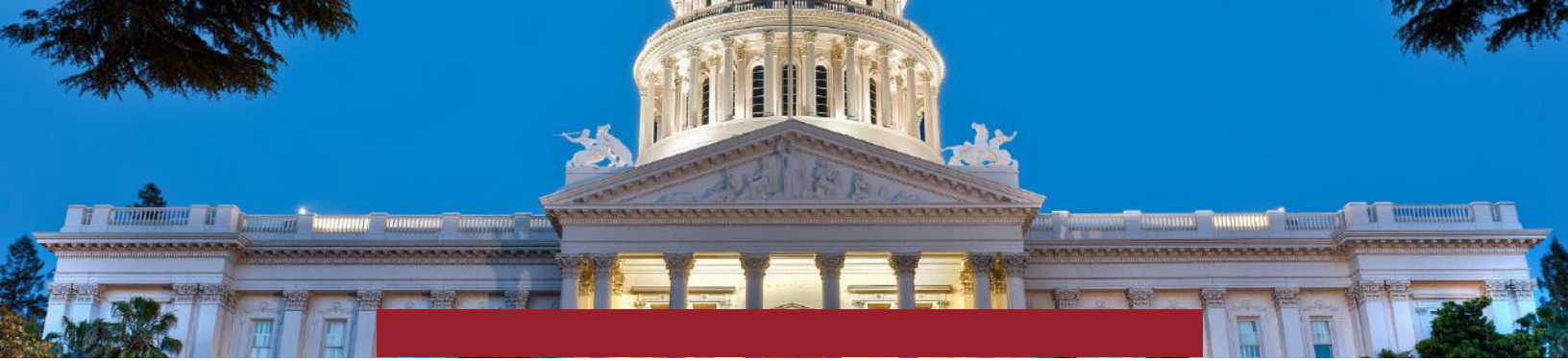
In at least two of these cases, opponents seek radically different safe yield amounts and sustainability requirements than those established within the GSP. The State, local taxpayers, and, in some cases, the federal government have invested tens of millions of dollars in implementing sustainability measures approved by the State that can now be overturned by the courts years after the State’s approval.

The courts' decisions within the adjudications are unnecessary. The adjudication court has sole authority to set groundwater allocations. However, to set these groundwater allocations, the court does not need to reconsider the technical findings and safe yield determinations made in the GSP. Instead, the adjudication process should be “streamlined” by directing the court to rely on the existing technical determinations as a basis for the allocation awards. This would ensure that the judgments reached in the adjudications are consistent with the work performed by the State.

The State is not immune from this action. Under current court precedents, the court can review state-ordered sustainability or enforcement measures through adjudication. This would apply to probationary groundwater basins.

The best-case scenario for the court's ability to review the approved GSP or State-ordered actions through an adjudication is a delay in implementing the sustainability measures. This allows for the continued overdraft of the groundwater basin, further damaging the environmental resource. The worst-case scenario is that the court's ability to review the approved GSP or the State-ordered actions through an adjudication renders SGMA meaningless by allowing the court to impose a physical solution outside of SGMA.

Should the latter scenario be upheld by a court, it calls into question the use of local taxpayer funds to implement sustainability measures that could simply be overturned or even stayed for a lengthy period of time through an adjudication. This would create the potential for nearly all groundwater basins to be managed by the State rather than through local GSAs.



THE LEGISLATURE HAS ATTEMPTED TO ADDRESS THE ISSUES

Several statutes address the court's ability to review an approved GSP, limit the ability to impair GSAs or the State's ability to implement sustainability and discuss appropriate guidance by the State Water Resources Control Board/DWR. They are simply being ignored.

Section 850(b) of the Code of Civil Procedure (as amended AB 779, Chapter 665, Statutes of 2023) authorizes a court to enter judgment in a comprehensive adjudication, in addition to existing requirements, if the court finds a) that the water use of small farmers and disadvantaged communities have been considered; and b) that the judgment will not substantially impair the ability of a GSA, SWRCB, or DWR to comply with SGMA and to achieve sustainable groundwater management. Unfortunately, the courts recently interpreted this section as a means to review the actions of the GSA, SWRCB, and DWR.

Section 10737.2 of the Water Code (as amended AB 779, Chapter 665, Statutes of 2023) requires the court to manage the adjudication proceedings in a manner that minimizes interference with the timely completion and implementation of a groundwater sustainability plan, avoids redundancy and unnecessary costs in the development of technical information and a physical solution, and is consistent with the attainment of sustainable groundwater management. In the current adjudications, this is being ignored, and a full-scale review of the GSPs is taking place within the adjudication process.



THE GSP CAN BE CHALLENGED: PARTIES HAVE EXISTING REDRESS

Section 10726.6 of the Water Code allows parties to challenge a GSP through a validation action. The SGMA statute actually provides longer time frames to file such a challenge in that it provides 180 days to file such a challenge. Typical validation statutes provide parties 60 days. Even with this additional ability, parties are being afforded the additional opportunity to challenge the GSP through the adjudication process.

In the Indian Wells Valley case, a party filed both a validation challenge to the GSP's implementation and an action challenging the imposition of a mitigation fee designed to purchase imported water supplies. The party has stayed the validation challenge in favor of pursuing a de novo review of the GSP through the adjudication. In its challenge to the mitigation fee, the party lost. The same set of facts is now being litigated in the adjudication process. Litigants are being allowed to forum-shop through various court actions, the findings, and the implementation of the GSP. The GSA may or may not be a named party within the adjudication. IWVGA intervened in the groundwater adjudication, recognizing the potential challenge to the GSP.

Adjudications are being perceived as a loophole within the law to provide for additional redress and review of the State-approved GSP. These actions are tantamount to a reverse validation action.

Sufficient redress currently exists. Parties aggrieved by the requirements of a GSP may challenge the GSA's finding through the regulatory process at DWR or by seeking a writ as required in the validation action. That process is subject to review by the Superior Court at a deferential standard similar to CEQA litigation. Litigants should not be allowed to seek de novo review of the GSP (a standard of review that provides no deference to the GSP) through the adjudication process. A GSA should not be subject to multiple court reviews of sustainability measures.



SMALL FARMERS, DISADVANTAGED COMMUNITY MEMBERS AND LOCAL TAXPAYERS BEAR THE COST BURDEN

Groundwater adjudication is a lengthy and expensive process. Litigants must be able to bear the substantial costs associated with such litigation to provide evidence to the court in defense of their water rights. Small farmers and disadvantaged communities with small water pumping operations (e.g., community service districts, mutuals, and individual well owners) often lack the substantial financial means necessary to become involved in the adjudication process. The Legislature again attempted to address this simple issue of due process in Section 850(b) of the Code of Civil Procedure. However, the three current adjudications have provided no such representation for small farmers and disadvantaged community members. In fact, litigants have successfully argued against the appointment of class counsel to provide the court with evidence on their behalf. Instead, small farmers and disadvantaged community members must rely upon the consideration of a judge, who may or may not be at some time in consultation with the SWRCB and who is without the provision of evidence in the adjudication trial, to consider their water rights.

As previously stated, groundwater adjudication is a lengthy and expensive process. The cost to a GSA to defend a GSP will reach millions of dollars. Those costs come from [volumetric] fees imposed on water users throughout the basin. In most cases, local agencies have already incurred significant costs in developing and beginning the implementation of sustainability measures. Litigation to satisfy an aggrieved party in multiple lawsuits should not be the responsibility of local residents. GSAs are in an unenviable position of deciding to cease operations and remand control of the basin to the State (through the SWRCB). This shifts the litigation costs associated with groundwater adjudication to the State.

WHAT HAPPEN'S NEXT

ORANGE COUNTY COURTHOUSE

The Fox Canyon and Cuyama Basin cases are pending trial. In the Indian Wells Valley case, a Writ to the California State Supreme Court is pending. The State's imposed sustainability measures in the probationary Kings County basin have been stayed pending trial. If the appellate court does not take up the IWVGA appeal or it is denied, it is hard to imagine a scenario where work on SGMA would continue.

Thus far, State Agencies have adopted a wait-and-see approach, opting not to engage in the adjudications. That approach has led to recent court decisions, as the State has not asserted its jurisdiction over SGMA. If the court undermines the State-approved GSP, GSAs may disband and require the State to enforce SGMA requirements. What is the incentive for public agencies to continue spending millions of dollars to develop and implement GSPs if the courts disregard that work at a de novo standard of review? Simply put, if the court is to provide no deference to the local agency's determinations, it would behoove the agency to bypass the GSA process altogether and file an adjudication suit.

The need for the California Legislature to clarify the State's role in the governance of groundwater sustainability is critical. Perceived loopholes being used by litigants to initiate multiple challenges and reverse validation actions years after the implementation of a State-approved GSP must be closed. During these court actions, groundwater overdrafts in the basins continue. The need to 1) stop environmental damage caused by over-drafting; 2) the impact on small farmers and disadvantaged community members created by the lack of representation; and 3) the overall financial burden on taxpayers/ratepayers within the adjudicating groundwater basin must be addressed.

The state urgently needs to address policy issues. What happens in the building pictured above in 2025 may render SGMA moot. The historical requirements of the courts to determine a "safe yield" and impose a physical solution to address sustainability are no longer necessary in the era of SGMA. Parties have sufficient redress to challenge a GSP and its sustainability requirements through existing regulatory and legal proceedings.





LEGISLATIVE PROPOSAL

An Act relating to groundwater adjudication.

Amend Section 10726.6 of the Water Code to read as follows:

§10726.6. Action to determine validity of plan.

(a)

(1) A groundwater sustainability agency that adopts a groundwater sustainability plan may file an action to determine the validity of the plan pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure no sooner than 180 days following the adoption of the plan.

(2) *Notwithstanding any other provision of law, this provision shall be the sole venue and process for challenging the validity of any part or determination in an adopted groundwater sustainability plan, including, but not limited to, any technical information and/or technical findings including the determination of the Basin's safe and/or sustainable yield or the amount of groundwater in storage that may be safely extracted from the Basin. The information, findings and determinations in any part of an adopted groundwater sustainability plan, including, without limitation, a Basin's safe and/or sustainable yield may not be challenged in any other proceeding including a comprehensive adjudication.*

(3) *The court shall employ an abuse of discretion standard in reviewing any discretionary decisions, findings and/or determinations made by the groundwater sustainability agency, including but not limited to any technical information and/or technical findings in any part of an adopted groundwater sustainability plan, including the determination of the Basin's safe and/or sustainable yield or the amount of groundwater in storage that may be safely extracted from the Basin.*

(4) *This subdivision shall not apply to matters delegated to the department for evaluation under Section 10733 or regulations adopted pursuant to Section 10733.2*

(5) *The provisions set forth herein are reflective of existing law and shall apply to any comprehensive adjudication that has yet to become final.*

(b) Subject to Sections 394 and 397 of the Code of Civil Procedure, the venue for an action pursuant to this section shall be the county in which the principal office of the groundwater management agency is located.

(b) Subject to Sections 394 and 397 of the Code of Civil Procedure, the venue for an action pursuant to this section shall be the county in which the principal office of the groundwater management agency is located.

(c) Any judicial action or proceeding to attack, review, set aside, void, or annul the ordinance or resolution imposing a new, or increasing an existing, fee imposed pursuant to Section 10730, 10730.2, or 10730.4 shall be commenced within 180 days following the adoption of the ordinance or resolution.

(d) Any person may pay a fee imposed pursuant to Section 10730, 10730.2, or 10730.4 under protest and bring an action against the governing body in the superior court to recover any money that the governing body refuses to refund. Payments made and actions brought under this section shall be made and brought in the manner provided for the payment of taxes under protest and actions for refund of that payment in Article 2 (commencing with Section 5140) of Chapter 5 of Part 9 of Division 1 of the Revenue and Taxation Code, as applicable.

(e) Except as otherwise provided in this section, actions by a groundwater sustainability agency are subject to judicial review pursuant to Section 1085 of the Code of Civil Procedure.