
SENATE COMMITTEE ON NATURAL RESOURCES AND WATER

Senator Monique Limón, Chair
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SUMMARY

This bill would make various changes to comprehensive groundwater adjudication procedures including, amongst others, providing that a court's judgment substantially interferes with the implementation of the Sustainable Groundwater Management Act (SGMA) if the judgment permits more total pumping from a basin annually or on average than a valid groundwater sustainability plan (GSP); and require that a validation action be filed within 180 days of the GSP's adoption.

BACKGROUND AND EXISTING LAW

Groundwater 101. Groundwater is a critical source of supply that meets more than 40 percent of water demand in an average year and more than 60 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 water, 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 (Section 2, Article X, California Constitution). Overlying rights are "correlative" to other overlying right holders. If there is a dispute amongst overlying landowners, each have equal rights to the groundwater. Due to this lack of regulation for the management of 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).

Sustainable Groundwater Management Act (SGMA). In 2014, to address overdraft and other adverse effects of excessive pumping, the Legislature passed SGMA, a statewide framework for groundwater management with the goal of managing and using groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results.

Under SGMA, a local agency or combination of local agencies overlying a groundwater basin may become a groundwater sustainability agency (GSA) for that basin. A GSA has broad management authority of the groundwater basin or basins under their jurisdiction, including defining the basin's or basins' sustainable yield, limiting groundwater extraction, and imposing fees. GSAs are required to consider the interests of all beneficial uses and users of groundwater, including, but not limited to, holders of overlying groundwater rights, municipal well operators, public water systems, local land

use planning agencies, environmental users of groundwater, surface water uses, the federal government, California Native American tribes, and disadvantaged communities. GSAs are authorized to perform any act necessary to carry out the purposes of SGMA, including adopting rules, regulations, and ordinances and developing the GSP.

SGMA requires GSAs in medium- and high-priority groundwater basins, which includes 21 critically overdrafted basins, to develop and implement GSPs. GSAs may customize their GSPs to their regional economic and environmental circumstances. Thus, while SGMA provides for the sustainable management of groundwater basins, it does so by empowering local agencies to manage groundwater basins, while minimizing state intervention.

SGMA also stipulated that it did not alter surface or groundwater rights.

Validation actions under SGMA. After a GSA has adopted its GSP, the GSA may file an action to determine the validity of the plan. This is commonly referred to as a “validation action.” Similarly, a party may challenge the validity of a GSP by filing a “reverse validation action.”

Validation actions are subject to a substantial evidence standard. Under this standard, if a court determines by a preponderance of the evidence that the substantial evidence on the record supports the agency, the agency’s decision is validated. In the context of a GSP, the court would examine all studies on the record, public comments, and findings of the GSA to determine if the GSP is supported by substantial evidence.

According to information provided by the author’s office, there appear to be at least two reverse validation actions challenging a GSP, both initiated by the California Sportfishing Protection Alliance. These are: Eastern San Joaquin Subbasin (Stanislaus Superior Court, Case no. CV-200-001720) and Butte Subbasin (Butte Superior Court, case no. 22CV0038).

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).

Groundwater adjudications can cover an entire basin, a portion of a basin, or a group of basins, and may include non-basin areas. Groundwater rights are defined for the overlying landowners and appropriators within the adjudicated area. The court decides who is allowed to extract groundwater, how much they are allowed to extract, and designates a watermaster who ensures the adjudicated areas are managed in accordance with the court ruling. According to Bulletin 118, as of 2020, there are 30 adjudicated areas, mostly in Southern California, that cover portions of 42 groundwater basins. Five of the 42 basins are covered with two or more adjudications.

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."

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 in the wake of SGMA's passage, the Legislature passed SB 226 (Pavley, Chapter 676, Statutes of 2015) and AB 1390 (Alejo, Chapter 672, Statutes of 2015). Together the two bills sought to establish the methods and procedures for a comprehensive adjudication. AB 1390 requires that these adjudication provisions be applied and interpreted consistently with all of the following, amongst others:

- Protecting water rights consistent with the reasonable and beneficial use doctrine;
- Conducting adjudication in a manner that promotes efficiency, reduces unnecessary delays, and provides due process; and
- Conducting adjudication that is consistent with the achievement of groundwater sustainability within the timeframes of SGMA.

SB 226 requires the court, in an adjudication action to determine rights to groundwater in a basin that is required to have a GSP under SGMA, to manage the proceedings 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 the attainment of sustainable groundwater management within the timeframes established by SGMA.

The Committee is aware of five pending groundwater adjudications:

- **Santa Clara River Valley – Oxnard (No. 4-004.2) and Pleasant Valley (No. 4-006) groundwater basins**, commenced in December 2022. 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. The Department of Water Resources (DWR) approved the GSPs for both basins in November 2021.
- **Cuyama Valley groundwater basin (No. 3-013)**, commenced in March 2022. 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)**, commenced in November 2021. 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. 4-003.01), Ojai Valley (No. 4-002), 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. 4-008)**, commenced in November 2018. 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 will be supplanted by the judgment in the comprehensive groundwater adjudication. As a separate issue, it is unclear if all the landowners received proper notice of the 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.

Indian Wells Valley groundwater adjudication. According to the Assembly Water, Parks, and Wildlife committee analysis on this bill, a recent order by the trial court illustrates the need for further clarification from the Legislature on how to harmonize SGMA with groundwater adjudications and how courts are to comply with Water Code §10737.2. In June 2024, the trial court directly confronted the question of whether or not to proceed with adjudicating safe yield in the second phase of the trial. IWVGA argued that doing so was unnecessary and duplicative as it had already determined sustainable yield when developing the GSP. On the other hand, challengers Indian Wells Valley Water District (IWWVD), Mojave Pistachios, and Searles Valley Minerals,

among others, argued adjudicating safe yield was necessary and that the determination of sustainable yield in a GSP in a non-judicial setting is non-binding.

The court carefully weighed both arguments and relevant statutes: “Although the legislative history of the Streamlined Act acknowledges the possibility that dissatisfied parties potentially could undermine a GSP by filing an adjudication action..., no provision of either law specifically addresses how to proceed in such a situation. That being said, the thrust of the above-referenced statutes [i.e., Water Code (WAT) § 10737.2 and Code of Civil Procedure (CCP) § 850 *et seq.*] make clear that the Legislature has attempted to harmonize SGMA and the Streamlined Act. The catch, of course, is the lack of explicit guidance in a case such as the one before the Court.” The trial court ruled in favor of proceeding with adjudicating the basin’s safe yield.

IWVGA filed an appeal of the trial court’s ruling and Attorney General Rob Bonta filed an amicus brief on October 17, 2024 on behalf of DWR and the State Water Board supporting the appeal: “The State Agencies are concerned that two parallel undefined and competing processes—one by the courts in an adjudication and other by public agencies implementing GSPs—for determining how much water is available to be pumped from groundwater basins could frustrate the purposes of [SGMA] and result in significant and duplicative expenditures of resources.” The amicus brief goes on to note that “DWR has provided approximately \$500 million in assistance to local agencies to implement SGMA over the past decade.” The Court of Appeal declined to take up the petition for writ of mandate in November 2024.

Existing law

- 1) Enacts SGMA, which 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. (WAT §§ 10720 *et seq.*)
- 2) Requires local agencies in high- and medium-priority basins to form a GSA by June 30, 2017, unless statute designates an “exclusive local agency” for a given area. Provides that a county will be the default GSA for any area in a high- or medium-priority basin not managed by a GSA unless said county notifies DWR that it will not be the GSA for an uncovered portion of a high- or medium-priority basin. (WAT §§ 10723 – 10724)
- 3) 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. (WAT § 10720.7)
- 4) Requires a GSP 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, and 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 GSP may affect those plans.
(WAT §10727.2)
- 5) Requires, prior to initiating the development of a groundwater sustainability plan, the GSA 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 DWR a written statement describing the manner in which interested parties may participate in the development and implementation of the GSP. (WAT §10727.8)
- 6) Requires a GSA 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 GSP. (WAT §10727.8)
- 7) Authorizes a GSA that adopts a GSP to file an action to determine the validity of the GSP 180 days after the adoption of the GSP. (WAT §10726.6)
- 8) Provides that actions by a GSA are subject to judicial review pursuant to a writ of mandate. (WAT §10726.6(e))
- 9) Requires a GSA to submit the initial GSP to DWR, upon which the following must occur:
- a) DWR must post the plan on its website and provide 60 days for persons to submit comments about the plan;
 - b) DWR must review the plan and issue an assessment of the GSP and offer recommendations for any measures necessary to correct deficiencies in the plan.

(WAT §10733.4)

- 10) Requires, at least every five years after initial submission of a GSP, DWR to review any available GSP or alternative submitted, and the implementation of the corresponding groundwater sustainability program for consistency with SGMA including achieving the sustainability goal. (WAT §10733.8)
- 11) Exempts 27 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. (WAT §10720.8)
- 12) Outlines process and scope for a comprehensive adjudication of a groundwater basin. (CCP §830 *et seq.*)
- 13) 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. (CCP §834.)
- 14) Requires an action against a GSA 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 GSP, or the GSA's compliance with the timelines in SGMA. (CCP §838)
- 15) Requires a court to impose a physical solution on the parties subject to a comprehensive adjudication when necessary to ensure the water is put to reasonable and beneficial use. (CCP §849 (a))
- 16) Authorizes a court to enter a judgment in an adjudication action for a basin required to have a GSP if the court determines the judgment will not substantially impair the ability of a GSA, the State Water Board, or DWR to comply with SGMA and to achieve sustainable groundwater management, as specified. (CCP §850(b))
- 17) Declares that the conditions in the State require that water resources be put to beneficial use to the fullest extent of which they are capable and that waste or unreasonable use be prevented. (Cal. Const., Art. X, Sec. 2.)

PROPOSED LAW

This bill would:

- 1) Require an action against a GSA in a basin that is subject to a pending comprehensive adjudication be consolidated with the comprehensive adjudication and require the court to resolve the cause of action for judicial review of a GSP's sustainable yield before trying any other issue in the action.
- 2) Provide that a judgment substantially impairs the ability of a GSA, State Water Board, or DWR to comply with SGMA and achieve sustainable groundwater management if the judgment permits more total pumping from the basin annually or on average than the latest GSP or GSPs covering the basin and if the GSP or GSPs

meet both of the following:

- a) The GSP or GSPs have received a determination from DWR that the GSP or GSPs are likely to achieve the sustainability goal of the basin.
 - b) Either of the following:
 - i) The GSP or GSPs have been validated by a final judgment issuing from a validation action; or
 - ii) The GSP or GSPs has been validated by operation of law because no validation action was filed.
- 3) Authorize a GSA that adopts a GSP to file an action to determine the plan's validity within 180 days of the plan's adoption, instead of allowing the GSA to file the action 180 days after the plan's adoption.
 - 4) Require a challenge to GSA actions be filed within 90 days of the challenged action or determination by the agency. If judicial review is sought of an action or determination that is concurrently being reviewed by DWR or the State Water Board pursuant to SGMA, require the court to consider whether, in the interest of efficiency or justice, to stay the challenge until DWR or the State Water Board completes its evaluation.
 - 5) Require a GSA, by January 1, 2027, to reevaluate its sustainable yield to determine whether an adjustment to the basin's sustainable yield is necessary to achieve sustainable groundwater management. Such reevaluation must rely on the best available information and include a written explanation supporting the GSA's determination.
 - a) Require the GSA to provide public notice and allow at least 30 days for public comment before making a final determination.
 - b) Require DWR to review this reevaluation.
 - 6) Provide that this reevaluation may only be challenged pursuant to a writ of mandate and require the challenge be filed within 90 days of the GSA's final determination of the reevaluation.
 - 7) Permits a person to seek judicial review only if that person submitted comments to the GSA during the public comment period.
 - 8) Prohibit a court from entering a judgment that permits more total pumping from the basin annually or on average than allowed in the latest GSP or GSPs covering the basin if the GSP or GSPs:
 - a) Have been validated by a final judgment issuing from a validation action or have been validated by operation of law because no validation action was filed; and

- b) Have received a determination from DWR that the GSP(s) are likely to achieve the sustainability goal of the basin.
- 9) Declare that it is the intent of the Legislature, in enacting this bill, to:
- a) To provide specific terms supporting implementation of specified existing law to ensure that a comprehensive adjudication of groundwater rights in a basin does not interfere with the timely completion and implementation of a GSP.
 - b) To provide specific terms supporting implementation of specified existing law to ensure that a comprehensive adjudication of groundwater rights in a basin avoids redundancy and unnecessary costs in the development of technical information and physical solution.
 - c) To provide specific terms supporting implementation of specified existing law to 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 SGMA.
 - d) Ensure that courts shall not permit more total pumping annually or on average under a judgment in a comprehensive groundwater adjudication than would be allowed by a valid GSP(s) for a basin.
 - e) Ensure that the filing of a comprehensive groundwater adjudication not be used as a means of delaying or undermining the implementation of SGMA.

ARGUMENTS IN SUPPORT

According to the author, “Successful implementation of SGMA is of vital importance to California. A minority of pumpers should not be able to use the groundwater adjudication process to get around, delay, or undermine SGMA. AB 1413 will limit abuse of the groundwater adjudication process. To accomplish this goal, this bill prevents pumpers from filing a comprehensive groundwater adjudication to get around a GSP and rehash the sustainable yield (or groundwater budget) established in a GSP.

“Unfortunately, it appears this is occurring in pending groundwater adjudications in basins subject to SGMA. Revisiting the question of sustainable yield in a groundwater adjudication delays sustainable groundwater management and is redundant. While the court has an important role to play in determining individual groundwater water 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 administrative planning process is bolstered by review and oversight by the state agencies with technical expertise in water management – DWR and the State Water Board – that take an active and ongoing role in SGMA implementation. To avoid delay in reversing groundwater overdraft and avoid shutting out smaller actors, this bill directs courts to not permit more groundwater pumping than would be allowed under a valid GSP when entering a judgment in a comprehensive groundwater adjudication.”

ARGUMENTS IN OPPOSITION

According to the Association of California Water Agencies, “AB 1413 proposes making the sustainable yield established in a valid GSP controlling in an adjudication action, effectively insulating agency decisions from judicial review and removing court’s constitutionally granted authority to determine water rights. This approach would allow a GSA to set a potentially unreasonable sustainable yield that would then be used to make an adjudication determination. ACWA believes this approach is inconsistent with SGMA and would deny parties to an adjudication of due process and leave them with little to no recourse.”

Various agricultural groups, water agencies, business groups, and GSAs write in opposition with concerns that AB 1413 “blurs the line” between GSAs managing groundwater through GSPs and courts determining groundwater rights and “in doing so, infringes upon water rights holders’ due process.” According to the groups, AB 1413 would prohibit courts from being able to “review the best available technical information outside the administrative record develop by the GSA during GSP development or cross examine witnesses.” The group argues that a validation action is “not an adequate replacement for the court’s role as fact-finder” and expresses further concern that AB 1413 would prohibit a court from finding a safe yield that exceeds the GSP’s sustainable yield and that “it is critical to have the courts retain the ability to review the best available technical evidence” to protect property rights and due process.

COMMENTS

Double referral. This bill is double referred with the Senate Judiciary Committee, with this committee being the committee of first referral. Elements of this bill under the jurisdiction of the Senate Judiciary Committee are included here for context and completeness only and will be discussed before that committee.

This bill. As discussed above, there have been a number of comprehensive adjudications filed in basins that have approved GSPs. According to the author, this bill was introduced to prevent parties and pumpers from using a groundwater adjudication to avoid compliance with a GSP or to delay the implementation of SGMA. To achieve this, the bill does 4 main things:

- Specifies that a judgment regarding comprehensive groundwater adjudication substantially impairs the ability of a GSA, the State Water Board, or DWR to comply with SGMA and achieve groundwater sustainability if:
 - DWR has determined that the GSP(s) are likely to achieve the sustainability goal;
 - The judgment permits more total pumping from the basin annually or on average than the sustainable yield of the basin established in the latest GSP or GSPs covering the basin; and
 - The GSP or GSPs have been validated either by a final judgment issuing from a validation action or by operation of law because no validation action was filed.
- Requires validation actions be filed within 180 days of the GSP adoption.

- Prohibits a court from establishing a safe yield or sustainable yield that exceeds the sustainable yield established in a valid GSP.
- Require challenges to GSA actions be filed within 90 days of the challenged action or determination.

Opponents of the bill argue that this bill would violate water rights holders' right to due process.

Tenets of comprehensive adjudication. When the Legislature enacted SB 226 and AB 1390 in 2015, specific directives were included to provide direction on how the comprehensive adjudication procedures were to be implemented. Adjudication provisions are required to be applied and interpreted consistently with seven listed tenets which include, among other things, (1) the protection of water rights consistent with the reasonable use doctrine, (2) conducting the adjudication in a manner that promotes efficiency, reduces unnecessary delays, and provides due process, and (3) conducting the adjudication in a manner that is consistent with the achievement of groundwater sustainability within the timeframes of SGMA (CCP §830(b)). Thus, while one of the tenets of the comprehensive adjudication provisions is to protect water rights consistent with reasonable and beneficial use, the other tenets are to do so efficiently, without unnecessary delays, with due process, and consistent with achieving groundwater sustainability within SGMA's timeframes. All seven tenets are to guide the interpretation and application of the adjudication methods and procedures.

SGMA encourages robust stakeholder participation in GSP development and approval. Under SGMA, a GSP can be subject to multiple levels of review during the development and approval process with multiple opportunities for parties to participate or interject. Before development of a GSP even begins, SGMA requires GSAs to make available to the public a written statement describing how interested parties can participate in the development and implementation of the GSP (WAT §10727.8). GSAs are required to encourage the active involvement of diverse social, cultural, and economic elements of the population within the groundwater basin. Before adopting a GSP, a GSA must hold a public hearing on the GSP and review and consider comments (WAT §10728.4).

Following adoption of a GSP by the GSA, DWR evaluates the GSP to determine whether the plan contains all of the required information and achieves the sustainability goal for the basin (WAT §10733). DWR's evaluation includes posting the GSP on DWR's website and a 60 day comment period. Under SGMA, the sustainability goal is the existence and implementation of one or more GSPs that achieve sustainable groundwater management by identifying and implementing measures targeted to ensure that the basin is operated within its sustainable yield (WAT §10721(u)).

Additionally, GSAs are required to periodically evaluate its GSP, and GSPs are subject to ongoing review by DWR during their implementation (WAT §§ 10728.2, 10733.8). Any amendment to a GSP is subject to the same notice and public comment period requirements that apply when the GSP is initially being developed (WAT §10728.4).

Thus, the author and supporters of the bill argue that interested parties have ample opportunity to participate in the development, approval, and ongoing implementation of

a GSP. However, providing any opportunity for stakeholder engagement does not guarantee that people will.

What is the appropriate avenue for determining the sustainable yield? One of the central issues of AB 1413 is whether a validation action or an adjudication is the appropriate venue to determine the sustainable yield. On one hand, through a validation action, a GSP is subject to a substantial evidence standard. The court, in its determination of whether a GSP is “valid” and supported by substantial evidence, considers all studies on the record, public comments, and findings from the GSA. It is argued that the GSP process incorporates extensive public participation, scientific studies, and expert opinions to develop a GSP that will reach sustainability for the basin. By extension, if a party fails to raise a concern during the GSP development process, it is not within the record and therefore not considered by the courts. This deference is similar to the deference that courts have often applied to administrative agencies when evaluating the validity of quasi-legislative actions.

On the other hand, in an adjudication action, parties are able to offer evidence that was not before the GSA during GSP development which, according to a letter submitted by the opposition, might be the “best available technical information.” Groups in opposition contend that SGMA does not require water rights holders to participate in the GSP process, which is why there may be information available that is outside of the GSA’s record. The opposition also argues that an adjudication action allows a court to cross-examine witnesses, whereas a validation action does not.

In a comprehensive adjudication, a judge’s determination would replace that of the GSA’s expertise. A judge may or may not be an expert in water law, let alone the specific complexities of a particular basin. Thus, it would seem that a validation action may be the appropriate place to determine the sustainable yield for a basin.

Court deference to a GSP’s sustainable yield. Existing law prohibits a court from entering a judgment in an adjudication action unless the court finds that the judgment will not substantially impair the ability of a GSA, the State Water Board, or DWR to comply with SGMA and achieve sustainable groundwater management. AB 1413 provides that a judgment substantially impairs an ability to achieve groundwater sustainability if it, among other things, permits more pumping annually or on average than the sustainable yield established in a valid GSP approved by DWR, and prohibits the court from establishing a safe yield or sustainable yield that exceeds the sustainable yield established by a valid GSP. In effect, AB 1413 would require that a court give deference to the sustainable yield of a GSP.

On one hand, judicial deference to a GSP’s sustainability yield could help promote efficiency, a directive from Code of Civil Procedure §830. An argument could be made that if judicial deference is not given to the GSP’s sustainability yield, there is risk of the work being done twice, leading to unnecessary delays.

On the other hand, opponents argue that requiring a court to defer to a GSP’s sustainable yield assumes that the GSA was correct in its determination. According to the opponents, “[w]hile the vast majority of GSAs seem to have done a good job of determining the sustainable yield for their basins, there is always the possibility that a GSA has not done so. In such scenarios, it is critical to have the courts retain the ability

to review the best available technical evidence to protect the property rights and due process of those water rights holders regulated by the agency.”

Although connected, determining water rights and establishing a sustainable yield are two different processes. While a GSP establishes the sustainable yield, under AB 1413, the court still ultimately determines the rights of each user in an adjudication, within the confines of the sustainable yield established by the GSP. The two are connected, however, because if the total amount of property rights claimed exceeds the sustainable yield, a court will likely have to reduce the amount of each water rights holder property right in order to conform with the sustainable yield.

It is also worth noting that parties have the opportunity to participate in the development of, and protest the determination of, the sustainable yield during the public comment period before GSA approval of a GSP, during the public comment period of DWR’s review of the GSP, and through a reverse validation action following the adoption of a GSP. However, as noted above, under the existing processes, a party may have not engaged in the GSP process.

Making participation necessary. Opponents argue that other changes proposed by AB 1413, when taken in context of the above discussed changes relating to determining sustainable yield and the deference to be given by courts, would affect a water rights holder’s ability to defend their water rights in court, depriving them of due process.

Under existing law, a person could file a reverse validation action 180 *after* the approval of the GSP. Under this bill, a person is required to file *within* 180 days. For many GSPs, this timeframe has already passed, and a party may not bring a reverse validation action. Thus, AB 1413 would effectively prohibit future challenges to GSPs that are past the new validation action statute of limitations. This new timeframe is important to note because if a party wants to challenge the sustainable yield of a GSP, AB 1413 would require those parties to have done so through a validation action which may have already passed. The next time a party may have to challenge a GSP would be when the GSP is amended.

In cases where a GSP has been approved and the window to file a reverse validation action has not closed, if a party failed to participate in the GSP development process and later wishes to challenge the sustainable yield, that party will be precluded from bringing forward any new evidence that was not before the GSA during the GSP development process. In other words, the party missed their chance to “preserve” their arguments during the GSP approval process for a potential reverse validation action later.

While one may question why a party did not bring a reverse validation action sooner or did not participate in the GSP development or approval process, opponents argue that SGMA explicitly states that the act does not alter water rights and, as such, some may not have found it necessary to engage. AB 1413 now makes that engagement a necessity.

These issues have merit and might be further discussed in the Senate Judiciary Committee, should the bill be approved by this committee.

Rules and consequences. As noted above, there are five comprehensive adjudications that are currently underway and to which AB 1413 would apply. Changing how a court is required to handle a GSP's sustainable yield could impact the overall outcome of the actions.

One solution, as noted in one opposition letter, is to apply the bill's provisions to actions filed after a certain date. However, current pending adjudication is the impetus for the introduction of this bill and such an amendment will likely undermine the author's goals.

This is another issue that might be further discussed in Senate Judiciary Committee, should the bill be approved by this committee.

Invitation to validate? Opponents of the bill argue that AB 1413 will encourage additional reverse validation actions to be filed as parties will want to preserve arguments for potential future adjudication. However, if a party were to file a reverse validation action, it is likely that it would have been involved in the development of the GSP. If, after participating in the GSP process a party is dissatisfied with the development of the GSP, it should file a reverse validation action.

To be continued.... AB 1413 proposes changes to the existing comprehensive adjudication processes that could help further the purposes of SGMA; the bill helps promote court efficiency, gives more certainty to GSAs, stimulates participation in the GSP development process, and aids to advance achieving groundwater basin stability. However, the bill is not without its concerns. Both sides have provided various proposals, none of which have allowed parties to come to a mutual agreement. The author and stakeholders should continue discussions with each other and committee staff to resolve the issues that have been identified in this analysis. It is important to get California's groundwater basins into sustainability, it is also important to ensure that affected parties are able to adequately defend their water right.

Related legislation

AB 1466 (Hart) of the current legislative session requires the court, when hearing a groundwater adjudication in a basin subject to SGMA that has an approved GSP, to request a technical report from a GSA that quantifies and describes the groundwater use of parties that have not appeared before the court in the adjudication proceedings. AB 1466 is pending before this committee.

AB 560 (Bennett, 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 on the suspense file.

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.

SUGGESTED AMENDMENTS: none**SUPPORT**

California Rural Legal Assistance Foundation, INC.
City of Ridgecrest
Clean Water Action
Community Alliance With Family Farmers
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

Agricultural Council of California (unless amended)
Almond Alliance (unless amended)
Alta Irrigation District (unless amended)
Arvin Groundwater Sustainability Agency (unless amended)
Association of California Water Agencies (ACWA) (unless amended)
California Alfalfa and Forage Association (unless amended)
California Association of Realtors
California Association of Wheat Growers (unless amended)
California Association of Winegrape Growers (unless amended)
California Chamber of Commerce (unless amended)
California Citrus Mutual (unless amended)
California Farm Bureau (unless amended)
California Fresh Fruit Association (unless amended)
California Grain and Feed Association (unless amended)
California Groundwater Coalition
California Municipal Utilities Association (unless amended)
California Seed Association (unless amended)
California Tomato Growers Association (unless amended)
California Water Association (unless amended)
Cawelo Groundwater Sustainability Agency (unless amended)
Central Delta-Mendota Groundwater Sustainability Agency (unless amended)
Central Kings Groundwater Sustainability Agency (unless amended)
East Turlock Subbasin Groundwater Sustainability Agency (unless amended)

El Rico Groundwater Sustainability Agency (unless amended)
Fresno County Farm Bureau (unless amended)
Golden State Water Company
Henry Miller Water District Groundwater Sustainability Agency (unless amended)
Indian Wells Valley Economic Development Corporation (unless amended)
Indian Wells Valley Water District (unless amended)
Kern County Farm Bureau (unless amended)
Kern County Taxpayers Association (unless amended)
Kern Non-districted Land Authority (unless amended)
Kern Water Bank Groundwater Sustainability Agency (unless amended)
Kern-Tulare Water District Groundwater Sustainability Agency (unless amended)
Mission Springs Water District (unless amended)
Nisei Farmers League (unless amended)
North Kern Groundwater Sustainability Agency (unless amended)
Ridgecrest Area Association of Realtors (unless amended)
Searles Valley Minerals (unless amended)
Semitropic Water Storage District (unless amended)
South San Joaquin Irrigation District (unless amended)
Tejon-Castac Water District Groundwater Sustainability Agency (unless amended)
United Water Conservation District (unless amended)
Valley Ag Water Coalition (unless amended)
West Turlock Subbasin Groundwater Sustainability Agency (unless amended)
Western Growers Association (unless amended)
Western Plant Health Association (unless amended)

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