

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1390**

---

**Introduced by Assembly Members Alejo and Perea**  
**(Principal coauthors: Assembly Members Bigelow, Gray, Olsen,**  
**and Salas)**

(Principal coauthors: Senators Cannella and Vidak)

**(Coauthors: Assembly Members Cooley, Cooper, Eggman, Frazier,**  
**Ridley-Thomas, and Wilk)**

(Coauthors: Senators Fuller, Galgiani, and Nielsen)

February 27, 2015

---

*An act to add Chapter 7 (commencing with Section 830) to Title 10 of Part 2 of the Code of Civil Procedure, relating to groundwater.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1390, as amended, Alejo. Groundwater: adjudication.

*The California Constitution requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable. Under the Sustainable Groundwater Management Act, which applies to all groundwater basins in the state, all basins designated as high- or medium-priority basins by the Department of Water Resources as basins that are subject to critical conditions of overdraft, as specified, are required to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans by January 31, 2020.*

*This bill would establish special procedures for adjudication actions, which are defined as actions filed in superior court to determine the rights to extract groundwater within a basin or store water from a basin, as specified. The bill would authorize the court to determine all rights to groundwater in a basin whether based on appropriation, overlying*

right, or other basis of right. The bill would require these special procedures to govern all adjudication actions except in specified cases not involving allocation of a basin's groundwater supply.

This bill would require a complaint filed in an adjudication action to name certain defendants, including all counties or cities that provide water service and overlie the basin in whole or in part, and to be served and published in a specified manner. The bill would require the complaint to be accompanied by a draft notice and draft form answer, as specified, and would require the court to hold a preliminary hearing within 180 days of the filing of the complaint to determine if the action should proceed to comprehensively determine groundwater rights in the basin in accordance with the special procedures for adjudication actions. If the court makes that determination, based on a finding that at least one of 4 specified conditions is met, the bill would require the court to issue an order declaring the case an adjudication action and authorizing the service of the landowners of the basin. After the court order authorizing service of the landowners of the basin, the bill would require the plaintiff to file an *ex parte* application seeking court approval of the draft notice and draft form answer filed with the complaint. If the court approves the draft notice and draft form answer, the bill would require the assessor or assessors of the county or counties in which the basin to be adjudicated lies to include the court-approved notice and form answer with the next property tax bill sent to each landowner in the basin. The bill would require the plaintiff to reimburse the assessor or assessors for the costs of including the court-approved notice and form answer with the property tax bills and, after those materials have been included with the property tax bills, would require the plaintiff to file a declaration under penalty of perjury with the court attesting to the completion of the mailing. By expanding the scope of an existing crime, the bill would impose a state-mandated local program. The bill would deem fulfillment of the service and publication provisions as effective service of process of the complaint and notice on all interested parties of the adjudication action for purposes of establishing in rem jurisdiction and the comprehensive effect of the adjudication action.

This bill would authorize the court to convene an initial case management conference within 60 days of completion of service of the complaint and notice, as described above, after which the court could divide the adjudication action into phases. The bill would require the court to define the scope of any phase of the adjudication action by

*written order and would provide that the court's discretion is not limited in ordering as many phases as the court deems appropriate for the expeditious and appropriate resolution of competing claims to the groundwater basin. In a phase of an adjudication action, the bill would require discovery to be strictly limited to the scope of the phase and would authorize the court to issue a written statement of decision at the completion of each phase. In addition, the bill would require each party to make, under penalty of perjury, specified initial disclosures within 60 days after the initial case management conference, except a plaintiff would be required to make the initial disclosures at the time it files the complaint. By expanding the scope of an existing crime, the bill would impose a state-mandated local program. The bill would authorize the court to appoint a special master in an adjudication action, and would provide that the special master's duties could include, among other things, initiating a technical committee to conduct joint factfinding regarding the basin and would require the special master to compile a technical report of the findings, as specified. On or before January 1, 2017, the bill would require the Department of Water Resources to establish and maintain a list of individuals who may serve as special masters in adjudication actions and would prescribe the experience needed for an individual to be placed on the list. Finally, upon entry of a final order or judgment finalizing an adjudication action under these special procedures, the bill would require the basin subject to the final order or judgment to be treated the same as certain adjudicated basins identified in the Sustainable Groundwater Management Act, including requiring the watermaster, or local agency within the basin, or a portion of the basin, identified in the final order or judgment to submit certain documents to the department.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

~~Under existing law, the right to water or to the use of water is limited to that amount of water that may be reasonably required for the beneficial use to be served. Existing law declares that the storing of water underground, and related diversions for that purpose, constitute a beneficial use of water if the stored water is thereafter applied to the beneficial purposes for which the appropriation for storage was made.~~

~~Existing law authorizes the State Water Resources Control Board, under certain circumstances, to grant a petition signed by one or more claimants to water of any stream system, as defined, requesting the determination of the rights of the various claimants to the water of that stream system. Existing law authorizes the board, upon the granting of that petition, to determine all rights to water of the stream system, whether based on appropriation, riparian right, or other basis of right.~~

~~This bill would declare the intent of the Legislature to enact legislation that would, among other things, develop procedures to provide a more streamlined and expeditious groundwater adjudication process by which courts may conduct comprehensive determinations of all rights to groundwater in a basin, while fully respecting established principles of water rights law and providing participants appropriate due process.~~

~~Vote: majority. Appropriation: no. Fiscal committee: no-yes. State-mandated local program: no-yes.~~

*The people of the State of California do enact as follows:*

1     SECTION 1. Chapter 7 (commencing with Section 830) is  
2     added to Title 10 of Part 2 of the Code of Civil Procedure, to read:

3  
4     CHAPTER 7. ACTIONS RELATING TO GROUNDWATER RIGHTS

5  
6                     Article 1. General Provisions

7  
8     830. (a) The Legislature finds and declares all of the following:  
9     (1) Diverse economic, environmental, and social interests are  
10    implicated by sustainable groundwater management.

11    (2) Efficient resolution of conflicts concerning right to use and  
12    manage groundwater will promote beneficial use of the waters of  
13    the state consistent with Section 2 of Article X of the California  
14    Constitution, the state water policies mandated in Chapter 1  
15    (commencing with Section 100) of Division 1 of the Water Code,  
16    and as intended by the Sustainable Groundwater Management Act  
17    (Part 2.74 (commencing with Section 10720) of Division 6 of the  
18    Water Code).

19    (3) Previous groundwater adjudication actions have taken more  
20    than a decade before issuance of a final judgment by the court in  
21    an adjudication action.

1 (4) *In light of the scope and complexities of groundwater*  
2 *adjudication actions, the state's welfare will be promoted by the*  
3 *development of specially tailored legal procedures to efficiently*  
4 *process groundwater adjudication actions.*

5 (b) *It is the intent of the Legislature to do all of the following:*

6 (1) *Develop procedures to provide a more streamlined and*  
7 *expeditious groundwater adjudication process, while at the same*  
8 *time fully respecting established principles of water rights law*  
9 *and providing participants appropriate due process.*

10 (2) *Establish procedures by which courts may conduct*  
11 *comprehensive determinations of all rights to groundwater in a*  
12 *basin.*

13 (3) *Encourage early resolution of groundwater rights disputes.*

14 (4) *Substantially reduce the time and expense of groundwater*  
15 *adjudications, while ensuring fair procedures to protect all parties'*  
16 *rights to groundwater.*

17 (5) *Ensure the judicial process is not used to unnecessarily*  
18 *delay or thwart the goal of managing groundwater in a sustainable*  
19 *manner.*

20 (6) *Reduce the burdens placed on the judiciary under the current*  
21 *adjudication process.*

22 830.5. *For purposes of this chapter, the following definitions*  
23 *apply:*

24 (a) *"Adjudication action" means an action filed in superior*  
25 *court to determine the rights to extract groundwater within a basin*  
26 *or store water from a basin, including, but not limited to, actions*  
27 *to quiet title respecting rights to extract or store groundwater or*  
28 *an action brought to impose a physical solution on a basin.*

29 (b) *"Basin" means a groundwater basin or subbasin identified*  
30 *pursuant to Section 839.*

31 (c) *"Bulletin 118" means the department's report entitled*  
32 *"California's Groundwater: Bulletin 118" updated in 2003, as it*  
33 *may be subsequently updated or revised.*

34 (d) *"Complaint" means a complaint filed in superior court to*  
35 *determine rights to extract groundwater and includes any*  
36 *cross-complaint that initiates an adjudication action in response*  
37 *to a plaintiff's complaint or other cross-complaint.*

38 (e) *"Department" means the Department of Water Resources.*

39 (f) *"Groundwater" means water beneath the surface of the earth*  
40 *within the zone below the water table in which the soil is completely*

1 saturated with water, but does not include water that flows in  
2 known and definite channels.

3 (g) “Groundwater extraction facility” means a device or method  
4 for extracting groundwater from within a basin.

5 (h) “Groundwater recharge” means the augmentation of  
6 groundwater, by natural or artificial means.

7 (i) “Person” includes, but is not limited to, counties, local  
8 agencies, state agencies, federal agencies, tribes, business entities,  
9 and individuals.

10 (j) “Plaintiff” means the person filing the complaint initiating  
11 an adjudication action and includes a cross-complainant who  
12 initiates an adjudication action by cross-complaint.

13 (k) “Sustainable Groundwater Management Act” means the  
14 provisions of Part 2.74 (commencing with Section 10720) of  
15 Division 6 of the Water Code.

16 831. (a) This chapter establishes special procedures for  
17 adjudication actions. This chapter shall not alter groundwater  
18 rights or the law concerning groundwater rights. The other  
19 provisions of this code apply to procedures in adjudication actions  
20 to the extent they do not conflict with the provisions of this chapter.

21 (b) In an adjudication action subject to this chapter, the court  
22 may determine, in the proceedings provided for in this chapter,  
23 all rights to groundwater in a basin whether based on  
24 appropriation, overlying right, or other basis of right.

25 (c) The court’s final judgment in an adjudication action, as to  
26 the right to groundwater of each party, may declare the priority,  
27 amount, purposes of use, extraction location, and place of use of  
28 the water, together with appropriate injunctive relief, subject to  
29 terms adopted by the court to implement a physical solution in the  
30 adjudication action.

31 (d) The procedures of this chapter shall govern all adjudication  
32 actions, unless the court finds either of the following, in which  
33 case the action shall proceed in accordance with other provisions  
34 of law:

35 (1) The action concerns only claims that the operation of a  
36 party’s groundwater extraction facility is interfering with the  
37 physical availability of groundwater to one or more other parties’  
38 groundwater extraction facility or facilities and does not involve  
39 an allocation of the basin’s groundwater supply.

1 (2) *The action concerns only claims to extract, or to prevent*  
2 *interference with extractions of, a specific source of groundwater*  
3 *recharge and does not involve an allocation of the basin's*  
4 *groundwater supply.*

5 (e) *In implementing this chapter and applying the other*  
6 *provisions of this code in an adjudication action, the court should*  
7 *expedite resolution of the adjudication action and, where a*  
8 *groundwater sustainability plan is required pursuant to the*  
9 *Sustainable Groundwater Management Act, the court should*  
10 *encourage the parties to cooperatively develop a groundwater*  
11 *sustainability plan that may serve as the basis of a stipulated*  
12 *judgment setting forth a physical solution for management of the*  
13 *basin.*

14  
15 *Article 2. Commencement of Action*

16  
17 832. (a) *Unless a court orders otherwise for good cause, the*  
18 *complaint in an adjudication action shall name all of the following*  
19 *persons as defendants:*

20 (1) *All counties or cities that provide water service and overlie*  
21 *the basin in whole or in part.*

22 (2) *All general or special districts empowered to manage or*  
23 *replenish groundwater resources of the basin in whole or in part.*

24 (3) *The operator of a public water system that uses groundwater*  
25 *from the basin to supply water service.*

26 (4) *The operator of a state small water system that uses*  
27 *groundwater from the basin to supply water service.*

28 (b) *Within 30 days of the filing of the complaint, all of the*  
29 *following shall occur:*

30 (1) *The plaintiff shall serve the complaint on all persons named*  
31 *as defendants pursuant to subdivision (a) in the manner prescribed*  
32 *by Article 3 (commencing with Section 415.10) of Chapter 4 of*  
33 *Title 5.*

34 (2) *The plaintiff shall publish notice of the complaint pursuant*  
35 *to Section 6066 of the Government Code.*

36 (3) *The plaintiff, or its representative, shall personally appear*  
37 *at a meeting of the board of supervisors of each county overlying*  
38 *the basin at least in part, and announce that the plaintiff has filed*  
39 *the adjudication action and where copies of the complaint may be*  
40 *obtained.*

1 (4) The court shall allow any person to intervene in the  
2 adjudication action upon an ex parte application that demonstrates  
3 that the person holds fee simple ownership in a parcel in the basin.  
4 A person filing the ex parte application shall give notice to the  
5 plaintiff consistent with the California Rules of Court.

6 832.5. (a) Within 180 days of the filing of a complaint to  
7 adjudicate groundwater rights, the court shall conduct a  
8 preliminary hearing to determine if the action should proceed to  
9 comprehensively determine groundwater rights in the basin in  
10 accordance with this chapter. At the preliminary hearing the court  
11 may hear expert or lay testimony and the plaintiff shall demonstrate  
12 one of the following:

13 (1) There is substantial evidence that declining groundwater  
14 levels may cause an undesirable result in the basin.

15 (2) The court cannot provide adequate relief among the potential  
16 claimants to a groundwater right in the basin subject to the  
17 adjudication action unless the adjudication action is completed.

18 (3) The parties sufficient to comply with Section 847 have agreed  
19 to a proposed judgment in the adjudication action.

20 (4) Consistent with Section 2 of Article X of the California  
21 Constitution, the interests of groundwater rights holders will be  
22 expeditiously and effectively served by the completion of the  
23 adjudication action.

24 (b) If, after the preliminary hearing, the court finds that any  
25 condition described in paragraphs (1) to (4), inclusive, of  
26 subdivision (a) is met, the court shall issue an order declaring that  
27 the case is an adjudication action subject to this chapter and  
28 authorizing service of landowners in accordance with Section 833.

29 (c) If, after the preliminary hearing, the court finds that no  
30 condition described in paragraph (1) to (4), inclusive, of  
31 subdivision (a) is met, the court shall either dismiss the  
32 adjudication action without prejudice, or find that the action is  
33 not subject to this chapter under Section 831 and permit the action  
34 to proceed pursuant to the other provisions of this code.

35 (d) Before the preliminary hearing the court may allow  
36 expedited discovery consistent with this chapter. The court shall  
37 actively manage the expedited discovery to prevent delays in order  
38 to enable, to the greatest extent possible and pursuant to Section  
39 833, service of landowners through the next mailing of property  
40 tax bills within the basin.



1 833. (a) Together with the filing of the complaint, the plaintiff  
2 shall file both of the following:

3 (1) A draft notice titled “NOTICE OF COMMENCEMENT OF  
4 GROUNDWATER BASIN ADJUDICATION” in no less than  
5 20-point font and the following text printed immediately below the  
6 draft notice title in no less than 14-point font:

7 “THIS NOTICE IS IMPORTANT. ANY RIGHTS YOU CLAIM  
8 TO PUMP OR STORE GROUNDWATER FROM THE BASIN  
9 IDENTIFIED IN THIS NOTICE MAY BE AFFECTED BY A  
10 LAWSUIT INITIATED BY THE COMPLAINT SUMMARIZED  
11 BELOW.

12 A copy of the complaint may be obtained by contacting the  
13 plaintiff or the plaintiff’s attorney identified in this notice. If you  
14 claim rights to pump or store groundwater within the basin, either  
15 now or in the future, you may become a party to this lawsuit by  
16 filing an answer to the lawsuit on or before the deadline specified  
17 in this notice by completing the attached form answer and filing  
18 it with the court indicated in this notice and by sending a copy of  
19 the form answer to the plaintiff or the plaintiff’s attorney.

20 Failing to participate in this lawsuit could have a significant  
21 adverse effect on any right to pump or store groundwater that you  
22 may have. You may seek the advice of an attorney in relation to  
23 this lawsuit. Such attorney should be consulted promptly. A case  
24 management conference in this groundwater basin adjudication  
25 proceeding shall occur on the date specified in this notice. If you  
26 intend to participate in the groundwater adjudication proceeding  
27 to which this notice applies, you are advised to attend the initial  
28 case management conference in person or have an attorney  
29 represent you at the initial case management conference.

30 Participation requires the production of all information  
31 regarding your groundwater use. You must provide this information  
32 by the date identified in this notice.

33 A form answer is provided for your convenience. You may fill  
34 out the form answer and file it with the court. Should you choose  
35 to file the form answer, it will serve as an answer to all complaints  
36 and cross-complaints filed in this case.”

37 (2) (A) A draft form answer titled “ANSWER TO  
38 ADJUDICATION COMPLAINT” in no less than 20-point font and  
39 the following text printed immediately below the draft form answer  
40 title in no less than 14-point font:

1 “The undersigned denies all material allegations in the  
2 complaint or cross-complaint in this action that seeks to adjudicate  
3 rights in the groundwater basin and asserts all applicable  
4 affirmative defenses to that complaint.”

5 (B) Notwithstanding any other law, the filing of an answer in  
6 the form described in subparagraph (A) in an adjudication action  
7 is sufficient to put at issue all material allegations and applicable  
8 affirmative defenses to the complaint in the adjudication action.  
9 If a party intends to seek adjustment of the basin’s boundaries, it  
10 shall disclose that intention in the form answer described in  
11 subparagraph (A).

12 (b) The draft notice described in paragraph (1) of subdivision  
13 (a) shall include the following information immediately following  
14 the text described in paragraph (1) of subdivision (a):

15 (1) The name of the basin that is the subject of the adjudication  
16 action.

17 (2) A space to be completed with the case number assigned to  
18 the adjudication action, and the name and address of the court  
19 and department to which the action is assigned.

20 (3) The name, address, telephone number, and email address  
21 of the plaintiff, or plaintiff’s attorney, from which the complaint  
22 may be obtained.

23 (4) A space to be completed with a date upon which the court  
24 will hold a case management conference. The court shall determine  
25 the date for the case management conference.

26 (5) The date an answer must be filed with the court.

27 (6) A summary of the causes of action alleged in the complaint  
28 and the relief sought. The summary shall not exceed 25 lines.

29 (c) Within 15 days of a court order authorizing service of  
30 landowners pursuant to this section, the plaintiff shall file an ex  
31 parte application that seeks the court’s approval of plaintiff’s draft  
32 notice and draft form answer filed pursuant to subdivision (a).  
33 The plaintiff shall give at least 24 hours’ notice of the hearing on  
34 the ex parte application to all parties identified in subdivision (a)  
35 of Section 832 and any other party the plaintiff has served. The  
36 plaintiff’s notice of the ex parte application shall include a copy  
37 of the draft notice and draft form answer filed pursuant to  
38 subdivision (a).

1 (d) Once the court approves the draft notice, the draft notice  
2 shall substitute for the summons otherwise provided for in civil  
3 actions pursuant to Section 412.20.

4 (e) Following a court order authorizing service of landowners  
5 pursuant to this section, the plaintiff shall identify, as expeditiously  
6 as possible and using the records of the assessor or assessors of  
7 the county or counties in which the basin to be adjudicated lies,  
8 the names and addresses of all holders of fee title to real property  
9 within the basin. The plaintiff shall provide the court and all parties  
10 notice of its acquisition of, or sufficient access to, this information.  
11 Upon receipt of the court order authorizing service of landowners  
12 pursuant to this section and the plaintiff's draft notice and draft  
13 form answer, as approved by an order of the court, the assessor  
14 or assessors shall include the court-approved notice and form  
15 answer with the next property tax bill sent to each landowner in  
16 the basin. The plaintiff shall reimburse the assessor or assessors  
17 for the costs of including the court-approved notice and form  
18 answer, unless otherwise ordered by the court. The assessor or  
19 assessors may appear at any court proceeding concerning the  
20 costs associated with including the court-approved notice and  
21 form answer with the property tax bills.

22 (f) After the assessor or assessors include the court-approved  
23 notice and form answer with the property tax bills pursuant to  
24 subdivision (e), the plaintiff shall file with the court a declaration  
25 under penalty or perjury attesting to the completion of the mailing.

26 (g) Notwithstanding any other law, the fulfillment of the service  
27 provisions of this section, the publication provisions of paragraph  
28 (2) of subdivision (b) of Section 832, and the remaining service  
29 and notice provisions of this chapter shall be deemed effective  
30 service of process of the complaint and notice on all interested  
31 parties of the adjudication action for purposes of establishing in  
32 rem jurisdiction and the comprehensive effect of the adjudication  
33 action.

34 834. Within 15 days of the service of a complaint against or  
35 by a local agency in an adjudication action, and upon the motion  
36 of any party, the court shall either transfer the adjudication action  
37 for all purposes to a neutral county or request the chairperson of  
38 the Judicial Council to assign a disinterested judge from a neutral  
39 county to hear the adjudication action for all purposes. For  
40 purposes of this section, "local agency" has the same definition

1 *as that term is defined in subdivision (m) of Section 10721 of the*  
2 *Water Code.*

3 *835. In an adjudication action there may only be two*  
4 *disqualifications of judges pursuant to Section 170.6,*  
5 *notwithstanding the provisions of Section 170.6 concerning sides*  
6 *in an action. A request or motion to disqualify a judge under*  
7 *Section 170.6 shall be filed within 30 days of completion of service*  
8 *pursuant to Section 833, or within 30 days of a transfer or*  
9 *assignment pursuant to Section 834.*

10 *836. An adjudication action is presumed to be a complex case*  
11 *within the meaning of Rule 3.400 of the California Rules of Court*  
12 *unless a party demonstrates that the adjudication action is not*  
13 *complex.*

14 *837. Service of pleadings in an adjudication action, other than*  
15 *the complaint initiating an adjudication action, shall occur*  
16 *electronically to the greatest extent possible. If available, service*  
17 *shall occur through a court-provided electronic service system. If*  
18 *a court-provided electronic service system is unavailable, the*  
19 *parties shall serve documents by email or other equivalent*  
20 *electronic means to the greatest extent possible. To enable*  
21 *electronic service of pleadings, the attorneys or record or parties*  
22 *representing themselves shall include their email address in the*  
23 *captions of pleadings they file in the adjudication action.*

24

### Article 3. Conduct of Action

25

26  
27 *838. (a) In managing an adjudication action, the court may,*  
28 *notwithstanding any other law, convene a case management*  
29 *conference within 60 days after service is completed pursuant to*  
30 *Section 833.*

31 *(b) After the initial case management conference the court may*  
32 *divide the adjudication action into phases. This section shall not*  
33 *limit the court's discretion to order as many phases as the court*  
34 *deems appropriate for the expeditious and appropriate resolution*  
35 *of competing claims to the groundwater basin. The court shall*  
36 *define the scope of any phase of the adjudication action by written*  
37 *order and shall revisit that definition only upon a demonstration*  
38 *that continuing with the phase as previously defined would*  
39 *substantially impede the expeditious resolution of the adjudication*  
40 *action.*

1 (c) *In a phase of an adjudication action, discovery shall be*  
2 *strictly limited to the scope of the phase, as defined in the court’s*  
3 *written order. The court may make any appropriate orders to*  
4 *ensure that discovery during a phase remains within the scope of*  
5 *the phase and, unless an injustice would otherwise result, shall*  
6 *impose monetary sanctions on parties, attorneys, or both parties*  
7 *and attorneys, who, during the phase, propound discovery outside*  
8 *the scope of the phase.*

9 (d) *Pursuant to Section 632, a court may issue a written*  
10 *statement of decision at the completion of each phase of the*  
11 *adjudication action. If the court issues a written statement of*  
12 *decision, that written statement of decision shall be considered a*  
13 *resolution of the phase and shall be binding for the remainder of*  
14 *the adjudication action unless reversed or modified by an appellate*  
15 *court. Appellate review of a court’s written statement of decision*  
16 *that concludes a phase of the adjudication action may be by writ*  
17 *only and a party may only appeal the court’s final judgment.*

18 (e) *A court may facilitate the formation of a class or classes of*  
19 *overlying groundwater rights holders pursuant to the criteria*  
20 *specified in Section 382.*

21 839. (a) *Subject to subdivision (b), the initial basin boundaries*  
22 *for an adjudication action shall be the basin boundaries identified*  
23 *in Bulletin 118 as of the date the complaint initiating the*  
24 *adjudication action is filed. Based on these boundaries, the court*  
25 *and the parties shall initiate the procedures to serve the complaint*  
26 *in an adjudication action in accordance with Section 833.*

27 (b) *The court may consider adjusting a basin’s boundaries at*  
28 *the initial phase of an adjudication action. The court may refer*  
29 *consideration of adjustment of a basin’s boundaries to the*  
30 *department for recommendations in accordance with the*  
31 *procedures described in Section 10722.2 of the Water Code. The*  
32 *court may stay any proceedings in the adjudication action pending*  
33 *the department’s resolution of any boundary adjustments, except*  
34 *the court shall not stay the parties’ initial disclosures made*  
35 *pursuant to Section 840.*

36 (c) *If a court, based on department recommendations, adjusts*  
37 *the basin’s boundaries after completion of the initial phase of an*  
38 *adjudication action, the basin’s boundaries, as determined by the*  
39 *court, shall be the basin’s boundaries for all purposes in all*  
40 *subsequent phases of the adjudication action. Appellate review of*

1 a court's determination of the basin's boundaries after completion  
2 of the initial phase of the adjudication action may be by writ only  
3 and shall not be subject to any later writ or appeal.

4 840. (a) Except as otherwise stipulated by the parties or  
5 ordered by the court, and without waiting for a discovery request,  
6 a party shall provide the court or special master initial disclosures  
7 that include all of the following information:

8 (1) The name, address, telephone number, and email address  
9 of the party completing the form developed pursuant to subdivision  
10 (b).

11 (2) The quantity of any groundwater extraction from the basin  
12 by the party, or the party's representative or agent, during each  
13 of the 10 calendar years immediately preceding the filing of the  
14 complaint.

15 (3) The beneficial purpose of any use of groundwater from the  
16 basin or the beneficial use of any alternative water use that the  
17 party claims as its use of groundwater.

18 (4) The location of any extraction of groundwater from the basin  
19 by the party, or the party's representative or agent.

20 (5) The location of any beneficial use of groundwater from the  
21 basin or beneficial use of any alternative water use that the party  
22 claims as its use of groundwater.

23 (6) The quantity of any beneficial use of any alternative water  
24 use that the party claims as its use of groundwater under any  
25 applicable law, including, but not limited to, Section 1005.1,  
26 1005.2, or 1005.4 of the Water Code.

27 (7) Identification of all surface water rights and contracts that  
28 the party claims provides the basis for its water right claims in  
29 the adjudication action.

30 (8) The quantity of any replenishment of water to the basin that  
31 augmented the basin's native water supply, resulting from the  
32 intentional storage of imported or non-native water in the basin,  
33 managed recharge of surface water, or return flows resulting from  
34 the use of imported water or non-native water on lands overlying  
35 the basin by the party, or the party's representative or agent,  
36 during each of the 10 calendar years immediately preceding the  
37 filing of the complaint.

38 (9) The names, addresses, telephone numbers, and email  
39 addresses of all persons possessing information that supports the  
40 party's disclosures.

1     (10) Any other information deemed appropriate by the court  
2 for initial disclosure in an adjudication action.

3     (b) The Judicial Council shall develop a form for initial  
4 disclosures made pursuant to subdivision (a) to facilitate the  
5 consistent, independent, impartial, and accessible administration  
6 of adjudication actions.

7     (c) (1) Unless otherwise stipulated by the parties or ordered  
8 by the court, and not including the plaintiff that initiates the  
9 adjudication action, a party shall make the initial disclosures  
10 described in subdivision (a) within 60 days after the initial case  
11 management conference in the adjudication action.

12     (2) A plaintiff that initiates the adjudication action shall make  
13 the initial disclosures described in subdivision (a) at the time it  
14 files the complaint by lodging the required information with the  
15 court in an electronic format. The plaintiff shall serve the required  
16 information on the defendants or cross-defendants that it names  
17 when it serves the complaint.

18     (3) The court may order, after the initial case management  
19 conference, any supplemental disclosures, other than those  
20 described in subdivision (a), that may expedite resolution of the  
21 adjudication action.

22     (d) Unless otherwise ordered by the court, a party that is first  
23 served, or otherwise joined to the adjudication action, after the  
24 initial case management conference shall make the disclosures  
25 described in subdivision (a) within 30 days after being served or  
26 joined, unless a different time is set by stipulation of the parties  
27 or an order of the court. The court shall liberally consider any  
28 motions or applications to extend the time for a newly-served or  
29 -joined party to make the disclosures described in subdivision (a).

30     (e) A party shall make its initial disclosures based on the  
31 information then reasonably available to it. A party is not excused  
32 from making its initial disclosures because it has not fully  
33 investigated the case, because it challenges the sufficiency of  
34 another party's disclosures, or because another party has not  
35 made its disclosures.

36     (f) A party that has made its initial disclosures, as described in  
37 subdivision (a), or that has responded to another party's discovery  
38 request, shall supplement or correct a disclosure or response in  
39 either of the following situations:

1 (1) *In a timely manner if the party learns that in some material*  
2 *respect the disclosure or response is incomplete or incorrect and*  
3 *the additional or corrective information has not otherwise been*  
4 *made known to the other parties during the disclosure or discovery*  
5 *process.*

6 (2) *As ordered by the court.*

7 (g) *To the greatest extent possible, a party shall serve his or*  
8 *her initial disclosures electronically through a court-provided*  
9 *electronic service system, email, or another method of electronic*  
10 *transmission. If it is not possible for the party to serve his or her*  
11 *disclosures electronically, he or she shall serve the disclosures in*  
12 *an electronic format saved on a portable storage media device*  
13 *such as a compact disc or flash drive.*

14 (h) *A party's obligations under this section may be enforced by*  
15 *a court on its own motion or the motion of a party pursuant to*  
16 *Section 2030.300.*

17 (i) *A party's disclosures under this section shall be verified*  
18 *under penalty of perjury as being true and correct to the best of*  
19 *the party's knowledge.*

20 841. (a) *In addition to all other disclosures required by this*  
21 *chapter, a party shall disclose to the other parties the identity of*  
22 *any expert witness it may use at trial to present evidence. For*  
23 *purposes of this chapter, "expert witness" means a witness*  
24 *qualified pursuant to Section 720 of the Evidence Code.*

25 (b) *Unless otherwise stipulated by the parties or ordered by the*  
26 *court, the disclosure made pursuant to subdivision (a) shall be*  
27 *accompanied by a written report prepared and signed by the expert*  
28 *witness if the witness is retained or specially employed by the party*  
29 *offering the expert witness to testify as an expert in the action, or*  
30 *if the expert witness's duties as the party's employee regularly*  
31 *involves giving expert testimony. The report shall include all of*  
32 *the following:*

33 (1) *A complete statement of all opinions the witness will express*  
34 *and the basis and reasons for those opinions.*

35 (2) *The facts or data considered by the witness in forming his*  
36 *or her opinions.*

37 (3) *Any exhibits the witness will use to summarize or support*  
38 *his or her opinions.*

39 (4) *The witness's qualifications, including a list of all*  
40 *publications authored by the witness in the previous 10 years.*



1 (5) A list of all other cases in which the witness testified as an  
2 expert at trial or by deposition in the last five years.

3 (6) A statement of the compensation to be paid for the witness's  
4 work and testimony in the adjudication action.

5 (c) If subdivision (b) does not apply to an expert witness because  
6 of a stipulation by the parties or an order of the court, the witness's  
7 disclosure shall include both of the following:

8 (1) The subject matter on which the witness is expected to  
9 present evidence.

10 (2) A summary of the witness's opinions, and the facts or data  
11 considered by the witness in forming his or her opinions.

12 (d) Unless otherwise stipulated by the parties, a party shall  
13 make the disclosures of any expert witness it intends to present at  
14 trial, except for an expert witness presented solely for purposes  
15 of impeachment or rebuttal, at the times and in the sequence  
16 ordered by the court. If there is no stipulation or court order, the  
17 disclosures of an expert witness shall be made as follows:

18 (1) At least 30 days after the court's entry of an order  
19 establishing the scope of the relevant phase of the adjudication  
20 action.

21 (2) Except for a supplemental expert witness described in  
22 paragraph (3), at least 60 days before the date set for trial of the  
23 relevant phase of the adjudication action.

24 (3) For a supplemental expert witness who will express an  
25 opinion on a subject to be covered by another expert witness  
26 designated by an adverse party that was not among the subjects  
27 covered by an expert witness initially disclosed by the party  
28 offering the supplemental expert witness, no more than 20 days  
29 after the initial expert witness disclosure date.

30 (e) The court may modify the disclosure requirements of  
31 subdivisions (b) to (d), inclusive, for expert witnesses presented  
32 solely for purposes of impeachment or rebuttal. In modifying the  
33 disclosure requirements, the court shall adopt disclosure  
34 requirements that expedite the court's consideration of the issues  
35 presented and shall ensure that expert testimony presented solely  
36 for purposes of impeachment or rebuttal is strictly limited to the  
37 scope of the testimony that it intends to impeach or rebut.

38 (f) (1) A party whose expert witness has made a disclosure  
39 pursuant to this section shall promptly supplement or correct the  
40 expert witness's disclosure in either of the following instances:

1 (A) *In a timely manner if the party learns that in some material*  
2 *respect the disclosure is incomplete or incorrect, if the additional*  
3 *or corrective information has not otherwise been made known to*  
4 *the other parties during the disclosure or discovery process.*

5 (B) *As ordered by the court.*

6 (2) *A party's duty to supplement or correct its expert witness's*  
7 *disclosure includes the information included in the report and the*  
8 *information given during the expert witness's deposition. Unless*  
9 *otherwise stipulated by the parties or ordered by the court, any*  
10 *supplementation or correction shall occur at least 14 days before*  
11 *trial of the applicable phase of the adjudication action.*

12 (3) *The court may authorize a supplemental deposition of an*  
13 *expert witness based on a supplemental disclosure made pursuant*  
14 *to this subdivision. The court shall appropriately condition the*  
15 *authorization of a supplemental deposition of an expert witness*  
16 *to ensure the expeditious completion of the applicable phase of*  
17 *the adjudication action. The court may require the party whose*  
18 *expert makes the supplemental disclosure to pay some or all of*  
19 *the costs associated with the supplemental deposition.*

20 (g) *To the greatest extent possible, the parties shall serve expert*  
21 *witness disclosures electronically through a court-provided*  
22 *electronic service system, email, or another method of electronic*  
23 *transmission. If it is not possible for the party to serve his or her*  
24 *expert witness disclosures electronically, he or she shall serve the*  
25 *expert witness disclosures in an electronic format saved on a*  
26 *portable storage media device such as a compact disc or flash*  
27 *drive.*

28 (h) *If a party or its expert witness fails to comply with this*  
29 *section, the court may exclude the expert witness's testimony from*  
30 *trial, authorize additional depositions of the expert witness at the*  
31 *party's expense, or take other appropriate action upon the noticed*  
32 *motion, or ex parte application, of a party.*

33 842. (a) *A court in an adjudication action may require the*  
34 *parties to submit written testimony of relevant witnesses in the*  
35 *forms of affidavits or declarations under penalty or perjury in lieu*  
36 *of presenting live testimony. The required written testimony may*  
37 *include, but is not limited to, expert witness opinions and testimony*  
38 *that authenticates documentary evidence. The court may order*  
39 *that the written testimony constitutes the entirety of the witness's*  
40 *direct testimony, require the written testimony to include any*

1 exhibits offered in support of the written testimony, and, in the  
2 case of written testimony of an expert witness, require a statement  
3 of the witness's qualifications.

4 (b) If the court requires the submission of written testimony  
5 pursuant to subdivision (a), a complete copy of the direct testimony  
6 shall be served at least 21 days before trial of the applicable phase  
7 of the adjudication action. A complete copy of any rebuttal  
8 testimony shall be served no later than the first day of trial of the  
9 applicable phase of the adjudication action. The court shall ensure  
10 the rebuttal testimony is strictly limited to the scope of the direct  
11 testimony to which it responds.

12 (c) If the contents of the written testimony would have been  
13 admissible if the witness testified orally, the written testimony shall  
14 be received by the court as a documentary exhibit if, at the trial  
15 of the applicable phase of the adjudication action, the witness  
16 whose written testimony is being offered is made available for  
17 cross-examination by all parties.

18 843. (a) In an adjudication action, the court may appoint a  
19 special master whose duties may include the following:

20 (1) Initiating a technical committee consisting of the parties,  
21 the parties' designated representatives, or both, to conduct joint  
22 factfinding as to the basin's safe yield of groundwater, water  
23 demand, and any other technical issues, as directed by the court.  
24 The special master shall compile a technical report of the findings  
25 in accordance with Section 844.

26 (2) Conducting or facilitating mediation or settlement  
27 discussions.

28 (3) Performing other tasks the court may deem appropriate.

29 (b) The special master may be employed by the court as a  
30 full-time or part-time employee, or retained as an independent  
31 contractor. A special master's compensation and other expenses  
32 related to the conduct of an adjudication action shall be fixed by  
33 the court, apportioned pro rata to the extent reasonably feasible  
34 to do so, and paid by all parties unless the parties agree to another  
35 allocation or the court determines that, in the interests of justice,  
36 another allocation is necessary. The court may provide for the  
37 collection and disbursement of special master fees as it deems  
38 appropriate.

39 (c) (1) To assist trial courts in selecting special masters the  
40 department shall, on or before January 1, 2017, establish and

1 maintain a list of individuals who may serve as special masters in  
2 adjudication actions. To be placed on the list an individual shall  
3 have at least 10 years experience as either of the following:

4 (A) A licensed professional engineer, professional hydrologist,  
5 or professional geologist.

6 (B) An attorney licensed to practice law in the state.

7 (2) The department shall establish any other qualifications that  
8 may be appropriate to ensure that individuals placed on the list  
9 are qualified to assist a court in an adjudication action.

10 844. (a) If a technical committee is established pursuant to  
11 Section 843, the special master shall provide all parties with a  
12 copy of a draft technical report he or she prepares and a notice  
13 setting a day at least 60 days after the draft technical report has  
14 been provided to all parties before which the parties may submit  
15 to the special master written objections to the draft technical  
16 report.

17 (b) An objection to the draft technical report shall identify the  
18 specific grounds and evidence on which the objection is based.  
19 Within 10 days after the close of the period for filing objections,  
20 the special master shall provide copies of the objections to all  
21 parties.

22 (c) The special master may notice and hold hearings, as he or  
23 she deems appropriate, to gather information or address issues  
24 raised in the objections to the draft technical report.

25 (d) The special master shall consider the objections to the draft  
26 technical report and develop a final certified copy of the technical  
27 report that shall be filed with the court, together with a certified  
28 copy of all evidence considered by the special master in preparing  
29 the draft technical report, all evidence identified in the objections  
30 to the draft technical report, and all evidence considered by the  
31 special master in preparing the final technical report.

32 845. Chapter 2 (commencing with Section 1115) of Division  
33 9 of the Evidence Code shall apply to all mediations, settlement  
34 conferences, and other similar out-of-court negotiations in  
35 adjudications actions subject to this chapter.

36 846. (a) It is the policy of the state to encourage the  
37 compromise and settlement of adjudication actions.

38 (b) Upon the motion of any party to an adjudication action, a  
39 court may do any of the following:

1     (1) Stay an adjudication action for a period of up to one year,  
2     subject to renewal in the court's discretion upon a showing of  
3     good cause, in order to facilitate any of the following:

4     (A) (i) Timely development of a groundwater sustainability  
5     plan under the Sustainable Groundwater Management Act that  
6     may serve as the basis of a stipulated judgment setting forth a  
7     physical solution for management of the basin.

8     (ii) If the court stays an adjudication action for purposes of  
9     facilitating timely progress on a groundwater sustainability plan,  
10    the court may direct the parties to provide the court with regular  
11    updates on the progress in developing the groundwater  
12    sustainability plan.

13    (B) Technical studies that may be useful to the parties in  
14    developing a stipulated judgment or physical solution.

15    (C) Voluntary mediation on all, or a portion of, the subject  
16    matters or legal questions identified in the adjudication action or  
17    any phase of the adjudication action.

18    (D) Compromise and settlement of the adjudication action, a  
19    phase of the adjudication action, or any subject matter of the  
20    adjudication action or a phase of the adjudication action.

21    (2) Schedule mandatory mediation and appointment of a neutral  
22    mediator concerning the adjudication action, a phase of the  
23    adjudication action, or any subject matter of the adjudication  
24    action or a phase of the adjudication action.

25    (3) Schedule phases of trial in combination with mandatory  
26    mediation for purposes of fostering compromise concerning the  
27    adjudication action, a phase of the adjudication action, or any  
28    subject matter of the adjudication action or a phase of the  
29    adjudication action.

30    (c) A stay may be extended for up to one year at a time. If a  
31    party opposes an extension of a stay, a stay may only be granted  
32    after a showing that there is good progress being made on the  
33    issues that were identified as the reasons for the stay. The total  
34    time period an adjudication action may be stayed shall not exceed  
35    3 years.

36    (d) A stay pursuant to this section shall not stay, or otherwise  
37    delay, the parties' obligations to provide initial disclosures  
38    pursuant to Section 840 unless the court determines the initial  
39    disclosures will not benefit resolution of the adjudication action.

1 847. (a) If a party, or a group of parties, submits a proposed  
2 stipulated judgment that is supported by (1) more than 50 percent  
3 of all named parties in the adjudication action and (2) groundwater  
4 rights holders holding title to at least 75 percent of the  
5 groundwater production during the past 10 years in the basin, the  
6 court shall impose any physical solution that is part of the  
7 stipulated judgment as a component of the final judgment in the  
8 adjudication action if the physical solution satisfies all of the  
9 following criteria:

10 (1) It furthers the interests of the state in ensuring that the water  
11 resources of the state are put to beneficial use to the fullest extent  
12 that they are capable, as required by Section 2 of Article X of the  
13 California Constitution.

14 (2) It is consistent with all water right priorities in the basin.

15 (3) It treats all objecting parties equitably as compared to the  
16 stipulating parties.

17 (b) A party objecting to a proposed stipulated judgment shall  
18 demonstrate, by a preponderance of the evidence, that the proposed  
19 stipulated judgment does not satisfy the criteria described in  
20 paragraphs (1) to (3), inclusive, of subdivision (a). If the objecting  
21 party is unable to make this showing, the court may impose the  
22 proposed stipulated judgment on all parties.

23 848. Upon entry of a final order or judgment finalizing an  
24 adjudication action under this chapter, the basin subject to that  
25 order or judgment shall, for purposes of compliance with the  
26 Sustainable Groundwater Management Act, be treated the same  
27 as if it were identified in subdivision (a) of Section 10720.8 of the  
28 Water Code. The watermaster, or a local agency within the basin,  
29 or a portion of the basin, identified in the final order or judgment  
30 shall do all of the following:

31 (a) Within 90 days of entry of the final order or judgment, submit  
32 to the department a copy of the governing final judgment, or other  
33 judicial order or decree, and any amendments thereto.

34 (b) Within 90 days of entry by a court, submit to the department  
35 a copy of an amendment made to the governing final judgment, or  
36 other judicial order or decree.

37 (c) Annually submit to the department a report containing the  
38 following information, to the extent available, for the basin, or the  
39 portion of the basin, subject to the adjudication:

1 (1) Groundwater elevation data unless otherwise submitted  
2 pursuant to Section 10932 of the Water Code.

3 (2) Annual aggregated data identifying groundwater extraction  
4 for the preceding water year.

5 (3) Surface water supply used for, or available for use for,  
6 groundwater recharge or in-lieu use.

7 (4) Total water use.

8 (5) Change in groundwater storage.

9 (6) The annual report submitted to the court.

10 SEC. 2. No reimbursement is required by this act pursuant to  
11 Section 6 of Article XIII B of the California Constitution because  
12 the only costs that may be incurred by a local agency or school  
13 district will be incurred because this act creates a new crime or  
14 infraction, eliminates a crime or infraction, or changes the penalty  
15 for a crime or infraction, within the meaning of Section 17556 of  
16 the Government Code, or changes the definition of a crime within  
17 the meaning of Section 6 of Article XIII B of the California  
18 Constitution.

19 ~~SECTION 1. The Legislature finds and declares all of the~~  
20 ~~following:~~

21 ~~(a) Diverse economic, environmental, and social interests are~~  
22 ~~implicated by sustainable groundwater management.~~

23 ~~(b) Previous groundwater adjudication actions have taken more~~  
24 ~~than a decade before issuance of a final judgment by the court in~~  
25 ~~an adjudication action.~~

26 ~~(c) In light of the scope and complexities of groundwater~~  
27 ~~adjudication actions, the state's welfare will be promoted by the~~  
28 ~~development of specially tailored legal procedures to efficiently~~  
29 ~~process groundwater adjudication actions.~~

30 ~~SEC. 2. It is the intent of the Legislature to enact legislation~~  
31 ~~that would do all of the following:~~

32 ~~(a) Develop procedures to provide a more streamlined and~~  
33 ~~expeditious groundwater adjudication process, while at the same~~  
34 ~~time fully respecting established principles of water rights law and~~  
35 ~~providing participants appropriate due process.~~

36 ~~(b) Establish procedures by which courts may conduct~~  
37 ~~comprehensive determinations of all rights to groundwater in a~~  
38 ~~basin.~~

39 ~~(c) Encourage early resolution of groundwater rights disputes.~~

- 1     ~~(d) Substantially reduce the time and expense of groundwater~~
- 2     ~~adjudications, while ensuring fair procedures to protect all parties'~~
- 3     ~~rights to groundwater.~~
- 4     ~~(e) Ensure the judicial process is not used to delay or thwart the~~
- 5     ~~goal of managing groundwater in a sustainable manner.~~
- 6     ~~(f) Reduce the burdens placed on the judiciary under the current~~
- 7     ~~adjudication process.~~

O