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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1390

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

(Principal coauthors: Senators Cannella, *Hueso*, and Vidak)
**(Coauthors: Assembly Members Cooley, Cooper, Eggman, Frazier,
Gallagher, Ridley-Thomas, and Wilk Wilk, and Wood)**
(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 an adjudication action, which is defined as an action 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.

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.

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

1 CHAPTER 7. ACTIONS RELATING TO GROUNDWATER RIGHTS

2
3 Article 1. General Provisions
4

5 830. (a) The Legislature finds and declares all of the following:

6 (1) Diverse economic, environmental, and social interests are
7 implicated by sustainable groundwater management.

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

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

19 (4) In light of the scope and complexities of groundwater
20 adjudication actions, the state’s welfare will be promoted by the
21 development of specially tailored legal procedures to efficiently
22 process groundwater adjudication actions.

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

24 (1) Develop procedures to provide a more streamlined and
25 expeditious groundwater adjudication process, while at the same
26 time fully respecting established principles of water rights law and
27 providing participants appropriate due process.

28 (2) Establish procedures by which courts may conduct
29 comprehensive determinations of all rights to groundwater in a
30 basin.

31 (3) Encourage early resolution of groundwater rights disputes.

32 (4) Substantially reduce the time and expense of groundwater
33 adjudications, while ensuring fair procedures to protect all parties’
34 rights to groundwater.

35 (5) Ensure the judicial process is not used to unnecessarily delay
36 or thwart the goal of managing groundwater in a sustainable
37 manner.

38 (6) Reduce the burdens placed on the judiciary under the current
39 adjudication process.

1 830.5. For purposes of this chapter, the following definitions
2 apply:

3 (a) “Adjudication action” means an action filed in superior court
4 to determine the rights to extract groundwater within a basin or
5 store water from a basin, including, but not limited to, ~~actions an~~
6 *action* to quiet title respecting rights to extract or store groundwater
7 or an action brought to impose a physical solution on a basin.

8 (b) “Basin” means a groundwater basin or subbasin identified
9 pursuant to Section 839.

10 (c) “Bulletin 118” means the department’s report entitled
11 “California’s Groundwater: Bulletin 118” updated in 2003, as it
12 may be subsequently updated or revised.

13 (d) “Complaint” means a complaint filed in superior court to
14 determine rights to extract groundwater and includes any
15 cross-complaint that initiates an adjudication action in response
16 to a plaintiff’s complaint or other cross-complaint.

17 (e) “Department” means the Department of Water Resources.

18 (f) “Groundwater” means water beneath the surface of the earth
19 within the zone below the water table in which the soil is
20 completely saturated with water, but does not include water that
21 flows in known and definite channels.

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

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

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

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

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

35 831. (a) This chapter establishes special procedures for an
36 adjudication action. This chapter shall not alter groundwater rights
37 or the law concerning groundwater rights. The other provisions of
38 this code apply to procedures in an adjudication action to the extent
39 they do not conflict with the provisions of this chapter.

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

5 (c) The court’s final judgment in an adjudication action, as to
6 the right to groundwater of each party, may declare the priority,
7 amount, purposes of use, extraction location, and place of use of
8 the water, together with appropriate injunctive relief, subject to
9 terms adopted by the court to implement a physical solution in the
10 adjudication action.

11 (d) The procedures of this chapter shall govern all adjudication
12 actions, unless the court finds either of the following, in which
13 case the action shall proceed in accordance with other provisions
14 of law:

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

20 (2) The action concerns only claims to extract, or to prevent
21 interference with extractions of, a specific source of groundwater
22 recharge and does not involve an allocation of the basin’s
23 groundwater supply.

24 (e) In implementing this chapter and applying the other
25 provisions of this code in an adjudication action, the court should
26 expedite resolution of the adjudication action and, where a
27 groundwater sustainability plan is required pursuant to the
28 Sustainable Groundwater Management Act, the court should
29 encourage the parties to cooperatively develop a groundwater
30 sustainability plan that may serve as the basis of a stipulated
31 judgment setting forth a physical solution for management of the
32 basin.

33

34 Article 2. Commencement of Action

35

36 832. (a) Unless a court orders otherwise for good cause, the
37 complaint in an adjudication action shall name all of the following
38 persons as defendants:

39 (1) All counties or cities that provide water service and overlie
40 the basin in whole or in part.

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

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

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

7 (b) Within 30 days of the filing of the complaint, all of the
8 following shall occur:

9 (1) The plaintiff shall serve the complaint on all persons named
10 as defendants pursuant to subdivision (a) in the manner prescribed
11 by Article 3 (commencing with Section 415.10) of Chapter 4 of
12 Title 5.

13 (2) The plaintiff shall publish notice of the complaint pursuant
14 to Section 6066 of the Government Code.

15 (3) The plaintiff, or its representative, shall personally appear
16 at a meeting of the board of supervisors of each county overlying
17 the basin at least in part, and announce that the plaintiff has filed
18 the adjudication action and where copies of the complaint may be
19 obtained.

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

25 832.5. (a) Within 180 days of the filing of a complaint to
26 adjudicate groundwater rights, the court shall conduct a preliminary
27 hearing to determine if the action should proceed to
28 comprehensively determine groundwater rights in the basin in
29 accordance with this chapter. At the preliminary hearing the court
30 may hear expert or lay testimony and the plaintiff shall demonstrate
31 one of the following:

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

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

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

39 (4) Consistent with Section 2 of Article X of the California
40 Constitution, the interests of groundwater rights holders will be

1 expeditiously and effectively served by the completion of the
 2 adjudication action.

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

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

14 (d) Before the preliminary hearing the court may allow expedited
 15 discovery consistent with this chapter. The court shall actively
 16 manage the expedited discovery to prevent delays in order to
 17 enable, to the greatest extent possible and pursuant to Section 833,
 18 service of landowners through the next mailing of property tax
 19 bills within the basin.

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

22 (1) A draft notice titled “NOTICE OF COMMENCEMENT OF
 23 GROUNDWATER BASIN ADJUDICATION” in no less than
 24 20-point font and the following text printed immediately below
 25 the draft notice title in no less than 14-point font:

26 “THIS NOTICE IS IMPORTANT. ANY RIGHTS YOU CLAIM
 27 TO PUMP OR STORE GROUNDWATER FROM THE BASIN
 28 IDENTIFIED IN THIS NOTICE MAY BE AFFECTED BY A
 29 LAWSUIT INITIATED BY THE COMPLAINT SUMMARIZED
 30 BELOW.

31 A copy of the complaint may be obtained by contacting the
 32 plaintiff or the plaintiff’s attorney identified in this notice. If you
 33 claim rights to pump or store groundwater within the basin, either
 34 now or in the future, you may become a party to this lawsuit by
 35 filing an answer to the lawsuit on or before the deadline specified
 36 in this notice by completing the attached form answer and filing
 37 it with the court indicated in this notice and by sending a copy of
 38 the form answer to the plaintiff or the plaintiff’s attorney.

39 Failing to participate in this lawsuit could have a significant
 40 adverse effect on any right to pump or store groundwater that you

1 may have. You may seek the advice of an attorney in relation to
2 this lawsuit. Such attorney should be consulted promptly. A case
3 management conference in this groundwater basin adjudication
4 proceeding shall occur on the date specified in this notice. If you
5 intend to participate in the groundwater adjudication proceeding
6 to which this notice applies, you are advised to attend the initial
7 case management conference in person or have an attorney
8 represent you at the initial case management conference.

9 Participation requires the production of all information regarding
10 your groundwater use. You must provide this information by the
11 date identified in this notice.

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

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

20 “The undersigned denies all material allegations in the complaint
21 or cross-complaint in this action that seeks to adjudicate rights in
22 the groundwater basin and asserts all applicable affirmative
23 defenses to that complaint.”

24 (B) Notwithstanding any other law, the filing of an answer in
25 the form described in subparagraph (A) in an adjudication action
26 is sufficient to put at issue all material allegations and applicable
27 affirmative defenses to the complaint in the adjudication action.
28 If a party intends to seek adjustment of the basin’s boundaries, it
29 shall disclose that intention in the form answer described in
30 subparagraph (A).

31 (b) The draft notice described in paragraph (1) of subdivision
32 (a) shall include the following information immediately following
33 the text described in paragraph (1) of subdivision (a):

34 (1) The name of the basin that is the subject of the adjudication
35 action.

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

1 (3) The name, address, telephone number, and email address of
2 the plaintiff, or plaintiff's attorney, from which the complaint may
3 be obtained.

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

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

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

10 (c) Within 15 days of a court order authorizing service of
11 landowners pursuant to this section, the plaintiff shall file an ex
12 parte application that seeks the court's approval of plaintiff's draft
13 notice and draft form answer filed pursuant to subdivision (a). The
14 plaintiff shall give at least 24 hours' notice of the hearing on the
15 ex parte application to all parties identified in subdivision (a) of
16 Section 832 and any other party the plaintiff has served. The
17 plaintiff's notice of the ex parte application shall include a copy
18 of the draft notice and draft form answer filed pursuant to
19 subdivision (a).

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

23 (e) Following a court order authorizing service of landowners
24 pursuant to this section, the plaintiff shall identify, as expeditiously
25 as possible and using the records of the assessor or assessors of
26 the county or counties in which the basin to be adjudicated lies,
27 the names and addresses of all holders of fee title to real property
28 within the basin. The plaintiff shall provide the court and all parties
29 notice of its acquisition of, or sufficient access to, this information.
30 Upon receipt of the court order authorizing service of landowners
31 pursuant to this section and the plaintiff's draft notice and draft
32 form answer, as approved by an order of the court, the assessor or
33 assessors shall include the court-approved notice and form answer
34 with the next property tax bill sent to each landowner in the basin.
35 The plaintiff shall reimburse the assessor or assessors for the costs
36 of including the court-approved notice and form answer, unless
37 otherwise ordered by the court. The assessor or assessors may
38 appear at any court proceeding concerning the costs associated
39 with including the court-approved notice and form answer with
40 the property tax bills.

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

5 (g) Notwithstanding any other law, the fulfillment of the service
6 provisions of this section, the publication provisions of paragraph
7 (2) of subdivision (b) of Section 832, and the remaining service
8 and notice provisions of this chapter shall be deemed effective
9 service of process of the complaint and notice on all interested
10 parties of the adjudication action for purposes of establishing in
11 rem jurisdiction and the comprehensive effect of the adjudication
12 action.

13 834. Within 15 days of the service of a complaint against or
14 by a local agency in an adjudication action, and upon the motion
15 of any party, the court shall either transfer the adjudication action
16 for all purposes to a neutral county or request the chairperson of
17 the Judicial Council to assign a disinterested judge from a neutral
18 county to hear the adjudication action for all purposes. For purposes
19 of this section, “local agency” has the same definition as that term
20 is defined in subdivision (m) of Section 10721 of the Water Code.

21 835. In an adjudication action there may only be two
22 disqualifications of judges pursuant to Section 170.6,
23 notwithstanding the provisions of Section 170.6 concerning sides
24 in an action. A request or motion to disqualify a judge under
25 Section 170.6 shall be filed within 30 days of completion of service
26 pursuant to Section 833, or within 30 days of a transfer or
27 assignment pursuant to Section 834.

28 836. An adjudication action is presumed to be a complex case
29 within the meaning of Rule 3.400 of the California Rules of Court
30 unless a party demonstrates that the adjudication action is not
31 complex.

32 837. Service of pleadings in an adjudication action, other than
33 the complaint initiating an adjudication action, shall occur
34 electronically to the greatest extent possible. If available, service
35 shall occur through a court-provided electronic service system. If
36 a court-provided electronic service system is unavailable, the
37 parties shall serve documents by email or other equivalent
38 electronic means to the greatest extent possible. To enable
39 electronic service of pleadings, the attorneys of record or parties

1 representing themselves shall include their email address in the
2 captions of pleadings they file in the adjudication action.

3

4

Article 3. Conduct of Action

5

6 838. (a) In managing an adjudication action, the court may,
7 notwithstanding any other law, convene a case management
8 conference within 60 days after service is completed pursuant to
9 Section 833.

10 (b) After the initial case management conference the court may
11 divide the adjudication action into phases. This section shall not
12 limit the court's discretion to order as many phases as the court
13 deems appropriate for the expeditious and appropriate resolution
14 of competing claims to the groundwater basin. The court shall
15 define the scope of any phase of the adjudication action by written
16 order and shall revisit that definition only upon a demonstration
17 that continuing with the phase as previously defined would
18 substantially impede the expeditious resolution of the adjudication
19 action.

20 (c) In a phase of an adjudication action, discovery shall be
21 strictly limited to the scope of the phase, as defined in the court's
22 written order. The court may make any appropriate orders to ensure
23 that discovery during a phase remains within the scope of the phase
24 and, unless an injustice would otherwise result, shall impose
25 monetary sanctions on parties, attorneys, or both parties and
26 attorneys, who, during the phase, propound discovery outside the
27 scope of the phase.

28 (d) Pursuant to Section 632, a court may issue a written
29 statement of decision at the completion of each phase of the
30 adjudication action. If the court issues a written statement of
31 decision, that written statement of decision shall be considered a
32 resolution of the phase and shall be binding for the remainder of
33 the adjudication action unless reversed or modified by an appellate
34 court. Appellate review of a court's written statement of decision
35 that concludes a phase of the adjudication action may be by writ
36 only and a party may only appeal the court's final judgment.

37 (e) A court may facilitate the formation of a class or classes of
38 overlying groundwater rights holders pursuant to the criteria
39 specified in Section 382.

1 839. (a) Subject to subdivision (b), the initial basin boundaries
2 for an adjudication action shall be the basin boundaries identified
3 in Bulletin 118 as of the date the complaint initiating the
4 adjudication action is filed. Based on these boundaries, the court
5 and the parties shall initiate the procedures to serve the complaint
6 in an adjudication action in accordance with Section 833.

7 (b) The court may consider adjusting a basin's boundaries at
8 the initial phase of an adjudication action. The court may refer
9 consideration of adjustment of a basin's boundaries to the
10 department for recommendations in accordance with the procedures
11 described in Section 10722.2 of the Water Code. The court may
12 stay any proceedings in the adjudication action pending the
13 department's resolution of any boundary adjustments, except the
14 court shall not stay the parties' initial disclosures made pursuant
15 to Section 840.

16 (c) If a court, based on department recommendations, adjusts
17 the basin's boundaries after completion of the initial phase of an
18 adjudication action, the basin's boundaries, as determined by the
19 court, shall be the basin's boundaries for all purposes in all
20 subsequent phases of the adjudication action. Appellate review of
21 a court's determination of the basin's boundaries after completion
22 of the initial phase of the adjudication action may be by writ only
23 and shall not be subject to any later writ or appeal.

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

28 (1) The name, address, telephone number, and email address of
29 the party completing the form developed pursuant to subdivision
30 (b).

31 (2) The quantity of any groundwater extraction from the basin
32 by the party, or the party's representative or agent, during each of
33 the 10 calendar years immediately preceding the filing of the
34 complaint.

35 (3) The beneficial purpose of any use of groundwater from the
36 basin or the beneficial use of any alternative water use that the
37 party claims as its use of groundwater.

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

- 1 (5) The location of any beneficial use of groundwater from the
2 basin or beneficial use of any alternative water use that the party
3 claims as its use of groundwater.
- 4 (6) The quantity of any beneficial use of any alternative water
5 use that the party claims as its use of groundwater under any
6 applicable law, including, but not limited to, Section 1005.1,
7 1005.2, or 1005.4 of the Water Code.
- 8 (7) Identification of all surface water rights and contracts that
9 the party claims provides the basis for its water right claims in the
10 adjudication action.
- 11 (8) The quantity of any replenishment of water to the basin that
12 augmented the basin’s native water supply, resulting from the
13 intentional storage of imported or non-native water in the basin,
14 managed recharge of surface water, or return flows resulting from
15 the use of imported water or non-native water on lands overlying
16 the basin by the party, or the party’s representative or agent, during
17 each of the 10 calendar years immediately preceding the filing of
18 the complaint.
- 19 (9) The names, addresses, telephone numbers, and email
20 addresses of all persons possessing information that supports the
21 party’s disclosures.
- 22 (10) Any other information deemed appropriate by the court
23 for initial disclosure in an adjudication action.
- 24 (b) The Judicial Council shall develop a form for initial
25 disclosures made pursuant to subdivision (a) to facilitate the
26 consistent, independent, impartial, and accessible administration
27 of adjudication actions.
- 28 (c) (1) Unless otherwise stipulated by the parties or ordered by
29 the court, and not including the plaintiff that initiates the
30 adjudication action, a party shall make the initial disclosures
31 described in subdivision (a) within 60 days after the initial case
32 management conference in the adjudication action.
- 33 (2) A plaintiff that initiates the adjudication action shall make
34 the initial disclosures described in subdivision (a) at the time it
35 files the complaint by lodging the required information with the
36 court in an electronic format. The plaintiff shall serve the required
37 information on the defendants or cross-defendants that it names
38 when it serves the complaint.
- 39 (3) The court may order, after the initial case management
40 conference, any supplemental disclosures, other than those

1 described in subdivision (a), that may expedite resolution of the
2 adjudication action.

3 (d) Unless otherwise ordered by the court, a party that is first
4 served, or otherwise joined to the adjudication action, after the
5 initial case management conference shall make the disclosures
6 described in subdivision (a) within 30 days after being served or
7 joined, unless a different time is set by stipulation of the parties
8 or an order of the court. The court shall liberally consider any
9 motions or applications to extend the time for a newly-served or
10 -joined party to make the disclosures described in subdivision (a).

11 (e) A party shall make its initial disclosures based on the
12 information then reasonably available to it. A party is not excused
13 from making its initial disclosures because it has not fully
14 investigated the case, because it challenges the sufficiency of
15 another party's disclosures, or because another party has not made
16 its disclosures.

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

21 (1) In a timely manner if the party learns that in some material
22 respect the disclosure or response is incomplete or incorrect and
23 the additional or corrective information has not otherwise been
24 made known to the other parties during the disclosure or discovery
25 process.

26 (2) As ordered by the court.

27 (g) To the greatest extent possible, a party shall serve his or her
28 initial disclosures electronically through a court-provided electronic
29 service system, email, or another method of electronic transmission.
30 If it is not possible for the party to serve his or her disclosures
31 electronically, he or she shall serve the disclosures in an electronic
32 format saved on a portable storage media device such as a compact
33 disc or flash drive.

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

37 (i) A party's disclosures under this section shall be verified
38 under penalty of perjury as being true and correct to the best of
39 the party's knowledge.

1 841. (a) In addition to all other disclosures required by this
2 chapter, a party shall disclose to the other parties the identity of
3 any expert witness it may use at trial to present evidence. For
4 purposes of this chapter, “expert witness” means a witness qualified
5 pursuant to Section 720 of the Evidence Code.

6 (b) Unless otherwise stipulated by the parties or ordered by the
7 court, the disclosure made pursuant to subdivision (a) shall be
8 accompanied by a written report prepared and signed by the expert
9 witness if the witness is retained or specially employed by the
10 party offering the expert witness to testify as an expert in the action,
11 or if the expert witness’s duties as the party’s employee regularly
12 involves giving expert testimony. The report shall include all of
13 the following:

14 (1) A complete statement of all opinions the witness will express
15 and the basis and reasons for those opinions.

16 (2) The facts or data considered by the witness in forming his
17 or her opinions.

18 (3) Any exhibits the witness will use to summarize or support
19 his or her opinions.

20 (4) The witness’s qualifications, including a list of all
21 publications authored by the witness in the previous 10 years.

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

24 (6) A statement of the compensation to be paid for the witness’s
25 work and testimony in the adjudication action.

26 (c) If subdivision (b) does not apply to an expert witness because
27 of a stipulation by the parties or an order of the court, the witness’s
28 disclosure shall include both of the following:

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

31 (2) A summary of the witness’s opinions, and the facts or data
32 considered by the witness in forming his or her opinions.

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

1 (1) At least 30 days after the court’s entry of an order
2 establishing the scope of the relevant phase of the adjudication
3 action.

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

7 (3) For a supplemental expert witness who will express an
8 opinion on a subject to be covered by another expert witness
9 designated by an adverse party that was not among the subjects
10 covered by an expert witness initially disclosed by the party
11 offering the supplemental expert witness, no more than 20 days
12 after the initial expert witness disclosure date.

13 (e) The court may modify the disclosure requirements of
14 subdivisions (b) to (d), inclusive, for expert witnesses presented
15 solely for purposes of impeachment or rebuttal. In modifying the
16 disclosure requirements, the court shall adopt disclosure
17 requirements that expedite the court’s consideration of the issues
18 presented and shall ensure that expert testimony presented solely
19 for purposes of impeachment or rebuttal is strictly limited to the
20 scope of the testimony that it intends to impeach or rebut.

21 (f) (1) A party whose expert witness has made a disclosure
22 pursuant to this section shall promptly supplement or correct the
23 expert witness’s disclosure in either of the following instances:

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

28 (B) As ordered by the court.

29 (2) A party’s duty to supplement or correct its expert witness’s
30 disclosure includes the information included in the report and the
31 information given during the expert witness’s deposition. Unless
32 otherwise stipulated by the parties or ordered by the court, any
33 supplementation or correction shall occur at least 14 days before
34 trial of the applicable phase of the adjudication action.

35 (3) The court may authorize a supplemental deposition of an
36 expert witness based on a supplemental disclosure made pursuant
37 to this subdivision. The court shall appropriately condition the
38 authorization of a supplemental deposition of an expert witness to
39 ensure the expeditious completion of the applicable phase of the
40 adjudication action. The court may require the party whose expert

1 makes the supplemental disclosure to pay some or all of the costs
2 associated with the supplemental deposition.

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

11 (h) If a party or its expert witness fails to comply with this
12 section, the court may exclude the expert witness's testimony from
13 trial, authorize additional depositions of the expert witness at the
14 party's expense, or take other appropriate action upon the noticed
15 motion, or ex parte application, of a party.

16 842. (a) A court in an adjudication action may require the
17 parties to submit written testimony of relevant witnesses in the
18 forms of affidavits or declarations under penalty or perjury in lieu
19 of presenting live testimony. The required written testimony may
20 include, but is not limited to, expert witness opinions and testimony
21 that authenticates documentary evidence. The court may order that
22 the written testimony constitutes the entirety of the witness's direct
23 testimony, require the written testimony to include any exhibits
24 offered in support of the written testimony, and, in the case of
25 written testimony of an expert witness, require a statement of the
26 witness's qualifications.

27 (b) If the court requires the submission of written testimony
28 pursuant to subdivision (a), a complete copy of the direct testimony
29 shall be served at least 21 days before trial of the applicable phase
30 of the adjudication action. A complete copy of any rebuttal
31 testimony shall be served no later than the first day of trial of the
32 applicable phase of the adjudication action. The court shall ensure
33 the rebuttal testimony is strictly limited to the scope of the direct
34 testimony to which it responds.

35 (c) If the contents of the written testimony would have been
36 admissible if the witness testified orally, the written testimony
37 shall be received by the court as a documentary exhibit if, at the
38 trial of the applicable phase of the adjudication action, the witness
39 whose written testimony is being offered is made available for
40 cross-examination by all parties.

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

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

9 (2) Conducting or facilitating mediation or settlement
10 discussions.

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

12 (b) The special master may be employed by the court as a
13 full-time or part-time employee, or retained as an independent
14 contractor. A special master's compensation and other expenses
15 related to the conduct of an adjudication action shall be fixed by
16 the court, apportioned pro rata to the extent reasonably feasible to
17 do so, and paid by all parties unless the parties agree to another
18 allocation or the court determines that, in the interests of justice,
19 another allocation is necessary. The court may provide for the
20 collection and disbursement of special master fees as it deems
21 appropriate.

22 (c) (1) To assist trial courts in selecting special masters the
23 department shall, on or before January 1, 2017, establish and
24 maintain a list of individuals who may serve as special masters in
25 adjudication actions. To be placed on the list an individual shall
26 have at least 10 years experience as either of the following:

27 (A) A licensed professional engineer, professional hydrologist,
28 or professional geologist.

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

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

33 844. (a) If a technical committee is established pursuant to
34 Section 843, the special master shall provide all parties with a copy
35 of a draft technical report he or she prepares and a notice setting
36 a day at least 60 days after the draft technical report has been
37 provided to all parties before which the parties may submit to the
38 special master written objections to the draft technical report.

39 (b) An objection to the draft technical report shall identify the
40 specific grounds and evidence on which the objection is based.

1 Within 10 days after the close of the period for filing objections,
2 the special master shall provide copies of the objections to all
3 parties.

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

7 (d) The special master shall consider the objections to the draft
8 technical report and develop a final certified copy of the technical
9 report that shall be filed with the court, together with a certified
10 copy of all evidence considered by the special master in preparing
11 the draft technical report, all evidence identified in the objections
12 to the draft technical report, and all evidence considered by the
13 special master in preparing the final technical report.

14 845. Chapter 2 (commencing with Section 1115) of Division
15 9 of the Evidence Code shall apply to all mediations, settlement
16 conferences, and other similar out-of-court negotiations in
17 adjudications actions subject to this chapter.

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

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

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

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

29 (ii) If the court stays an adjudication action for purposes of
30 facilitating timely progress on a groundwater sustainability plan,
31 the court may direct the parties to provide the court with regular
32 updates on the progress in developing the groundwater
33 sustainability plan.

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

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

1 (D) Compromise and settlement of the adjudication action, a
2 phase of the adjudication action, or any subject matter of the
3 adjudication action or a phase of the adjudication action.

4 (2) Schedule mandatory mediation and appointment of a neutral
5 mediator concerning the adjudication action, a phase of the
6 adjudication action, or any subject matter of the adjudication action
7 or a phase of the adjudication action.

8 (3) Schedule phases of trial in combination with mandatory
9 mediation for purposes of fostering compromise concerning the
10 adjudication action, a phase of the adjudication action, or any
11 subject matter of the adjudication action or a phase of the
12 adjudication action.

13 (c) A stay may be extended for up to one year at a time. If a
14 party opposes an extension of a stay, a stay may only be granted
15 after a showing that there is good progress being made on the
16 issues that were identified as the reasons for the stay. The total
17 time period an adjudication action may be stayed shall not exceed
18 3 years.

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

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

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

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

36 (3) It treats all objecting parties equitably as compared to the
37 stipulating parties.

38 (b) A party objecting to a proposed stipulated judgment shall
39 demonstrate, by a preponderance of the evidence, that the proposed
40 stipulated judgment does not satisfy the criteria described in

1 paragraphs (1) to (3), inclusive, of subdivision (a). If the objecting
2 party is unable to make this showing, the court may impose the
3 proposed stipulated judgment on all parties.

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