

**Assembly Bill No. 1390**

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Passed the Assembly September 10, 2015

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*Chief Clerk of the Assembly*

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Passed the Senate September 9, 2015

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2015, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

CHAPTER \_\_\_\_\_

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, Alejo. Groundwater: comprehensive 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 a comprehensive adjudication, which is defined as an action filed in superior court to comprehensively determine rights to extract groundwater in a basin. The bill would authorize the court to determine all groundwater rights of a basin, whether based on appropriation, overlying right, or other basis of right, and use of storage space in the basin. The bill would provide that these special procedures governing comprehensive adjudications do not apply in certain cases that do not involve a comprehensive allocation of a basin’s groundwater supply. The bill would authorize a judge of the superior court to determine if the action is a comprehensive adjudication, as specified.

This bill would require the plaintiff in a comprehensive adjudication to provide notice of the comprehensive adjudication within a specified amount of time after filing the complaint to certain persons including a city, county, or city and county that overlies the basin or a portion of the basin. The bill would require a draft notice and draft form answer, as specified, to be lodged by the plaintiff with the court when filing the complaint. Within 30 days of the assignment of a judge by the Chairperson of the Judicial Council, the bill would require the plaintiff to file a motion for

approval of the draft notice and draft form answer. Following a court order approving the notice and form answer and authorizing service of landowners, as specified, the bill would require the plaintiff to identify the assessor parcel numbers and physical addresses of all real property in the basin and the names and addresses of all holders of fee title to real property in the basin, as specified; mail the notice, complaint, and form answer to all holders of fee title to real property in the basin, as specified; and publish the notice in one or more newspapers of general circulation, as specified. The bill would require the plaintiff to file with the court a notice of the completion of the mailing. 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 comprehensive adjudication for purposes of establishing in rem jurisdiction and the comprehensive effect of the comprehensive adjudication.

This bill would authorize a groundwater sustainability agency for the basin or a portion of the basin, a city, county, or city and county that overlies the basin or a portion of the basin, and certain persons to intervene in a comprehensive adjudication.

This bill would require the court to convene a case management conference and would authorize the court to consider certain matters, including dividing the case into phases to resolve legal and factual issues, in the initial case management conference or as soon as practicable. In addition, the bill would require each party to serve within 6 months of appearing in the comprehensive adjudication, specified initial disclosures made under penalty of perjury to all other named parties and a special master, if one has been appointed in the action. 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 one or more special masters in a comprehensive adjudication, whose duties could include, among other things, investigating technical and legal issues, as directed by the court, and compiling a report of the findings, as specified. The bill would authorize the court to request the State Water Resources Control Board or the Department of Water Resources to recommend candidates for appointment as a special master or to review the qualifications of candidates.

This bill would authorize the court, upon a showing that the basin is in a condition of long-term overdraft, to issue a preliminary

injunction that could include, among other things, a moratorium on new or increased appropriations of water. The bill would provide that a judgment in a comprehensive adjudication is binding on the parties to the action, their agents and employees, and all their successors in interest. The bill would also provide the court with continuing jurisdiction to modify or amend a final judgment in a comprehensive adjudication in specified instances.

This bill would require the Department of Water Resources and each county and groundwater sustainability agency that overlies the basin or a portion of the basin to post and maintain the notice and form answer on their Internet Web sites, as specified. By requiring counties to take certain actions related to the comprehensive adjudication, the bill would impose a state-mandated local program.

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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

This bill would provide that it will only become effective if SB 226 is enacted and becomes effective.

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

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

CHAPTER 7. ACTIONS RELATING TO GROUNDWATER RIGHTS

Article 1. General Provisions

830. (a) This chapter establishes methods and procedures for a comprehensive adjudication.

(b) This chapter shall be applied and interpreted consistently with all of the following:

(1) Protecting water rights consistent with Section 2 of Article X of the California Constitution.

(2) Conducting a comprehensive adjudication in a manner that promotes efficiency, reduces unnecessary delays, and provides due process.

(3) Encouraging the compromise and settlement of comprehensive adjudications.

(4) Conducting a comprehensive adjudication in a manner that is consistent with the achievement of groundwater sustainability within the timeframes of the Sustainable Groundwater Management Act.

(5) Establishing procedures by which courts may conduct comprehensive determinations of all rights and priorities to groundwater in a basin.

(6) Providing for the conduct of a comprehensive adjudication consistent with *Winters v. United States* (1908) 207 U.S. 564, the McCarran Amendment (codified at 43 U.S.C. Sec. 666), and any other federal laws regarding the determination of federal or tribal water rights, as applicable.

(7) Providing notice and due process sufficient to enable a court in a comprehensive adjudication conducted pursuant to this chapter to determine and establish the priority for unexercised water rights. The court may consider applying the principles established in *In re Waters of Long Valley Creek Stream System* (1979) 25 Cal.3d 339. Except as provided in this paragraph, this chapter shall not alter groundwater rights or the law concerning groundwater rights.

(c) The other provisions of this code apply to procedures in a comprehensive adjudication to the extent they do not conflict with the provisions of this chapter.

831. Article 6 (commencing with Section 68630) of Chapter 2 of Title 8 of the Government Code applies to a comprehensive adjudication conducted pursuant to this chapter.

832. For purposes of this chapter, the following definitions apply:

(a) “Basin” has the same meaning as defined in Section 10721 of the Water Code.

(b) “Complaint” means a complaint filed in superior court to determine rights to extract groundwater and includes any

cross-complaint that initiates a comprehensive adjudication in response to a plaintiff's complaint or other cross-complaint.

(c) "Comprehensive adjudication" means an action filed in superior court to comprehensively determine rights to extract groundwater in a basin.

(d) "Condition of long-term overdraft" means the condition of a groundwater basin where the average annual amount of water extracted for a long-term period, generally 10 years or more, exceeds the long-term average annual supply of water to the basin, plus any temporary surplus. Overdraft during a period of drought is not sufficient to establish a condition of long-term overdraft if extractions and recharge are managed as necessary to ensure that reductions in groundwater levels or storage during a period of drought are offset by increases in groundwater levels or storage during other periods.

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

(f) "Expert witness" means a witness qualified pursuant to Section 720 of the Evidence Code.

(g) "Groundwater" means water beneath the surface of the earth within the zone below the water table in which the soil is completely saturated with water, but does not include water that flows in known and definite channels.

(h) "Groundwater extraction facility" means a device or method for extracting groundwater from within a basin.

(i) "Groundwater recharge" means the augmentation of groundwater, by natural or artificial means.

(j) "Person" includes, but is not limited to, counties, local agencies, state agencies, federal agencies, tribes, business entities, and individuals.

(k) "Plaintiff" means the person filing the complaint initiating a comprehensive adjudication and includes a cross-complainant who initiates a comprehensive adjudication by cross-complaint.

(l) "Public water system" has the same meaning as defined in Section 116275 of the Health and Safety Code.

(m) "State small water system" has the same meaning as defined in Section 116275 of the Health and Safety Code.

(n) "Sustainable Groundwater Management Act" means the provisions of Part 2.74 (commencing with Section 10720) of Division 6 of the Water Code.

Article 2. Scope of Action

833. (a) Except as provided in subdivision (b), this chapter applies to actions that would comprehensively determine rights to extract groundwater in a basin, whether based on appropriation, overlying right, or other basis of right.

(b) This chapter does not apply to any of the following:

(1) An action that concerns only allegations that a groundwater extraction facility, or group of facilities, is interfering with another groundwater extraction facility or facilities and does not involve a comprehensive allocation of the basin's groundwater supply.

(2) An action that concerns only claims to extract, or to prevent interference with extractions of, a specific source of groundwater recharge and does not involve a comprehensive allocation of the basin's groundwater supply.

(3) An action that can be resolved among a limited number of parties and does not involve a comprehensive determination of rights to extract groundwater within the basin.

(4) An adjudicated area described in subdivisions (a) to (d), inclusive, of Section 10720.8 of the Water Code, unless a court with jurisdiction over a proposed expansion of the adjudicated area orders that the proceeding be conducted in accordance with this chapter.

(c) If the court finds that including an interconnected surface water body or subterranean stream flowing through known and definite channels is necessary for the fair and effective determination of the groundwater rights in a basin, the court may require the joinder of persons who claim rights to divert and use water from that surface water body or subterranean stream in a comprehensive adjudication conducted pursuant to this chapter.

(d) If the court finds that claims of right to extract or divert only minor quantities of water, not to exceed five acre-feet of water per year, would not have a material effect on the groundwater rights of other parties, the court may exempt those claimants with respect to those claims for only minor quantities of water, but a person who is exempted may elect to continue as a party to the comprehensive adjudication.

834. (a) In a comprehensive adjudication conducted pursuant to this chapter, the court may determine all groundwater rights of

a basin, whether based on appropriation, overlying right, or other basis of right, and use of storage space in the basin.

(b) The court’s final judgment in a comprehensive adjudication, for the groundwater rights of each party, may declare the priority, amount, purposes of use, extraction location, place of use of the water, and use of storage space in the basin, together with appropriate injunctive relief, subject to terms adopted by the court to implement a physical solution in the comprehensive adjudication.

Article 3. Notice and Service of Complaint

835. (a) The plaintiff shall provide notice of the comprehensive adjudication to all of the following:

(1) A groundwater sustainability agency that overlies the basin or a portion of the basin.

(2) A city, county, or city and county that overlies the basin or a portion of the basin.

(3) A district with authority to manage or replenish groundwater resources of the basin in whole or in part.

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

(5) A California Native American tribe that is on the contact list maintained by the Native American Heritage Commission.

(6) The Attorney General, the State Water Resources Control Board, the department, and the Department of Fish and Wildlife.

(7) A federal department or agency that manages a federal reservation that overlies the basin or a portion of the basin.

(8) A person identified under Section 836.5 who is not a party to the comprehensive adjudication.

(9) A person who is on a list, maintained by a groundwater management agency, of interested parties that have requested notice under the Sustainable Groundwater Management Act.

(b) The plaintiff may provide notice under this section by first class mail or electronic mail.

(c) (1) Except as provided in paragraph (2), the plaintiff shall provide notice under this section as follows:



(A) To any person entitled to notice under paragraphs (1) to (7), inclusive, of subdivision (a) within 15 days of the filing of the complaint.

(B) To any person entitled to notice under paragraphs (8) and (9) of subdivision (a) within 30 days of receipt of the name and address of the person entitled to notice.

(2) The plaintiff may take additional time as is reasonably necessary before providing notice under this section if the plaintiff determines that additional time is necessary to identify a person entitled to notice under this section, confirm the accuracy of the names or addresses of a person, or to determine if the conditions requiring notice have been satisfied.

(d) The plaintiff is not required to provide notice under this section to a person who has already been served or intervened in the action.

836. (a) When the plaintiff files the complaint, the plaintiff shall also lodge with the court both of the following:

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

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

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

Failing to participate in this lawsuit could have a significant adverse effect on any right to pump or store groundwater that you may have. You may seek the advice of an attorney in relation to this lawsuit. Such attorney should be consulted promptly. A case management conference in this groundwater basin adjudication

proceeding shall occur on the date specified in this notice. If you intend to participate in the groundwater adjudication proceeding to which this notice applies, you are advised to attend the initial case management conference in person or have an attorney represent you at the initial case management conference.

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

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

(B) The following information shall be provided immediately following the text described in subparagraph (A):

(i) The name of the basin that is the subject of the comprehensive adjudication and a link to the Internet Web site address where the department has posted a map of the basin.

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

(iii) The name, address, telephone number, and email address of the plaintiff, or plaintiff’s attorney, from whom the complaint may be obtained and to whom a copy of the form answer should be sent.

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

(v) A date by which persons receiving the notice must appear in the comprehensive adjudication.

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

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

(B) Notwithstanding any other law, the filing of an answer in the form described in subparagraph (A) in a comprehensive adjudication is sufficient to put at issue all material allegations and applicable affirmative defenses to the complaint in the

comprehensive adjudication. If a party intends to seek adjustment of the basin's boundaries, it shall disclose that intention in the form answer described in subparagraph (A).

(b) Within 30 days of the assignment of a judge by the Chairperson of the Judicial Council, the plaintiff shall file a motion for approval of the draft notice and draft form answer filed pursuant to subdivision (a). The plaintiff's motion shall include a copy of the draft notice and draft form answer filed pursuant to subdivision (a).

(c) Once the court approves the draft notice, service of that notice in accordance with this section shall substitute for the summons otherwise provided for in civil actions pursuant to Section 412.20.

(d) (1) Following a court order approving the notice and form answer and authorizing service of landowners pursuant to this section, the plaintiff shall do all of the following:

(A) Identify the assessor parcel numbers and physical addresses of all real property in the basin and the names and addresses of all holders of fee title to real property in the basin using the records of the assessor or assessors of the county or counties in which the basin to be adjudicated lies. The plaintiff shall provide the court and all parties with notice of its acquisition of, or sufficient access to, this information.

(B) Mail, by registered mail or certified mail, return receipt requested, the notice, complaint, and form answer to all holders of fee title to real property in the basin. If the physical address of the real property differs from the address of the holder of fee title, the notice, complaint, and form answer shall be mailed by registered or certified mail, return receipt requested, to the physical address of the real property and the address of the holder of fee title.

(C) If return receipt is not received for a parcel of real property, the plaintiff shall post a copy of the notice, complaint, and form answer in a conspicuous place on the real property.

(D) Within 20 days of the court order, publish the notice at least once per week for four consecutive weeks in one or more newspapers of general circulation in each county overlying the basin in whole or in part.

(2) Service pursuant to this subdivision is not required if the real property is owned by a person in a class of water users that

are otherwise noticed in accordance with this chapter. If the owner is part of a class of water users proposed for certification, service is not required until the court acts on the proposal for certification.

(e) After completing the mailing pursuant to subdivision (d), the plaintiff shall file with the court a notice of the completion of the mailing.

(f) A property owner who has received notice of the comprehensive adjudication and transfers property during the pendency of the comprehensive adjudication shall disclose, on the Real Estate Transfer Disclosure Statement, that the property is subject to a comprehensive adjudication and shall attach the court-approved notice to the Real Estate Transfer Disclosure Statement.

(g) Following a court order authorizing service of landowners pursuant to this section, the plaintiff shall serve any known person that pumps groundwater who would not otherwise be served pursuant to subdivision (d) of this section, except those who have been exempted by the court pursuant to subdivision (d) of Section 833 or those who are part of a class certified pursuant to paragraph (2) of subdivision (d) of this section. Service pursuant to this subdivision shall be by personal delivery or by mail in the manner prescribed by Article 3 (commencing with Section 415.10) of Chapter 4 of Title 5.

(h) Service on the United States shall be made in accordance with Section 666 of Title 43 of the United States Code.

(i) The court may authorize any other procedures it finds appropriate and necessary to provide notice to persons who may hold groundwater rights in the basin.

(j) Compliance with the service and notice provisions of this chapter shall be deemed effective service of process of the complaint and notice on all interested parties of the comprehensive adjudication for purposes of establishing in rem jurisdiction and the comprehensive effect of the comprehensive adjudication.

(k) Whenever proceedings are instituted under this chapter, it shall be the duty of all claimants interested in the proceedings and having notice of the proceedings pursuant to this chapter to appear in the proceedings and to submit proof of their claims at the time, and in the manner, required by this chapter.

(l) The court may require notice to be made available in languages other than English.

(m) Within 15 days of the court order approving the notice and form answer, the plaintiff shall provide the notice and form answer to the department and each county and groundwater sustainability agency that overlies the basin or a portion of the basin. The department, and each county and groundwater sustainability agency that overlies the basin or a portion of the basin and has an Internet Web site shall do all of the following:

(1) Within 15 days of receiving the notice and form answer, post those documents on its Internet Web site.

(2) Provide a link to the notice and form answer on the home page of its Internet Web site.

(3) Maintain the posting and link described in paragraphs (1) and (2) for the entire time the comprehensive adjudication is pending. The plaintiff shall notify the department and each county and groundwater sustainability agency when the comprehensive adjudication is no longer pending.

836.5. (a) Within 15 days of the court order approving the notice and form answer under Section 836, the plaintiff shall request from the following entities the names and addresses of persons reporting extractions within the basin under the Sustainable Groundwater Management Act, or Part 5 (commencing with Section 4999) or Part 5.2 (commencing with Section 5200) of Division 2 of the Water Code:

(1) The State Water Resources Control Board.

(2) A local agency designated under Section 5009 of the Water Code as the local agency for a board-designated local area that includes the basin or a portion of the basin.

(3) A groundwater sustainability agency for the basin or a portion of the basin.

(b) The entities described in paragraphs (1) to (3), inclusive, of subdivision (a) shall provide the plaintiff with the names, mailing addresses, and email addresses, if available, within 45 days of the plaintiff's request. The State Water Resources Control Board shall also provide the mailing address and email addresses, if available, of any person known to the board who holds a permit or license authorizing underground storage in the basin or who claims a right to divert water for underground storage in the basin.

(c) Upon request, the plaintiff shall reimburse the reasonable costs incurred under this section by an entity described in paragraphs (1) to (3), inclusive, of subdivision (a).

(d) An entity shall not be held civilly liable for complying with this section.

#### Article 4. Intervention

837. (a) A groundwater sustainability agency for the basin or a portion of the basin may intervene in a comprehensive adjudication conducted pursuant to this chapter.

(b) A city, county, or city and county that overlies the basin or a portion of the basin may intervene in a comprehensive adjudication conducted pursuant to this chapter.

(c) The court shall allow any person to intervene in a comprehensive adjudication conducted pursuant to this chapter upon an ex parte application that demonstrates that the person holds fee simple ownership in a parcel in the basin, or extracts or stores water in the basin. A person filing an ex parte application pursuant to this subdivision shall give notice to the plaintiff consistent with the California Rules of Court.

(d) A person may apply to intervene in a comprehensive adjudication conducted pursuant to this chapter pursuant to Section 387.

#### Article 5. Judge

838. (a) (1) In a comprehensive adjudication conducted pursuant to this chapter, a judge of a superior court of a county that overlies the basin or any portion of the basin shall be disqualified. The Chairperson of the Judicial Council shall assign a judge to preside in all proceedings in the comprehensive adjudication.

(2) A judge of the superior court in which an action is filed may, on the court's own motion or the motion of a party, determine if the action is a comprehensive adjudication under Section 833. A motion for a determination pursuant to this paragraph shall receive calendar preference within the action and shall be resolved before other procedural or dispositive motions.

(b) A comprehensive adjudication is presumed to be a complex action under Rule 3.400 of the California Rules of Court.

(c) Sections 170.6 and 394 shall not apply in a comprehensive adjudication.

(d) Notwithstanding subdivision (b) of Section 10726.6 of the Water Code, an action against a groundwater sustainability agency that is located in a basin that is being adjudicated pursuant to this chapter shall be subject to transfer, coordination, and consolidation with the comprehensive adjudication, as appropriate, if the action concerns the adoption, substance, or implementation of a groundwater sustainability plan, or the groundwater sustainability agency's compliance with the timelines in the Sustainable Groundwater Management Act.

(e) The judge assigned by the Chairperson of the Judicial Council pursuant to subdivision (a) shall determine if transfer, coordination, or consolidation is appropriate.

#### Article 6. Electronic Service

839. Service of pleadings and papers in a comprehensive adjudication, other than the complaint initiating a comprehensive adjudication, shall occur electronically to the greatest extent possible. The court may provide, or authorize the use of, an electronic service system. If an electronic service system is not provided or authorized by the court, the court and the parties shall serve documents by email or other equivalent electronic means to the greatest extent possible. To enable electronic service of pleadings and papers, the attorneys of record or parties representing themselves shall include an email address for service in the captions of all pleadings they file in the comprehensive adjudication.

#### Article 7. Case Management

840. (a) In managing a comprehensive adjudication, the court shall convene a case management conference as provided by the California Rules of Court.

(b) In an initial case management conference, or as soon as practicable, the court may consider the following in addition to other matters:

- (1) Determining whether to seek adjustment of the basin boundaries pursuant to Section 841.
- (2) Staying the action pursuant to Section 848.
- (3) Appointing a special master pursuant to Section 845.

(4) Scheduling a hearing on a preliminary injunction pursuant to Section 847.

(5) Dividing the case into phases to resolve legal and factual issues.

(6) Issuing orders to ensure that issues resolved in one phase are not relitigated in another phase.

(7) Limiting discovery to correspond to the phases.

(8) Scheduling early resolution of claims to prescriptive rights.

(9) Forming a class or classes of overlying groundwater rights holders pursuant to the criteria specified in Section 382.

#### Article 8. Basin Boundaries

841. (a) Except as otherwise provided in this section, the boundaries of the area subject to a comprehensive adjudication shall be consistent with the boundaries of a basin.

(b) If the department revises the boundaries of a basin pursuant to Section 10722.2, or subdivision (b) of Section 12924, of the Water Code after a comprehensive adjudication has been initiated, the court may revise the boundaries of the area subject to the comprehensive adjudication as the interests of justice and the objectives of this chapter require.

(c) Upon a showing that a revision of the basin boundaries would further a fair and effective determination of water rights, the court may direct any of the following to submit a request to the department pursuant to Section 10722.2 of the Water Code to revise the basin boundaries:

(1) A party to the comprehensive adjudication.

(2) The State Water Resources Control Board, if the court has made a reference pursuant to Part 3 (commencing with Section 2000) of Division 2 of the Water Code.

(3) A special master, if one has been appointed.

(d) A determination of the department on a submission made pursuant to subdivision (c) is subject to judicial review pursuant to Section 1085. Venue shall be in the court with jurisdiction over the comprehensive adjudication and the case shall be coordinated with the comprehensive adjudication.



Article 9. Initial Disclosures

842. (a) Except as otherwise stipulated by the parties or ordered by the court, within six months of appearing in a comprehensive adjudication, a party shall serve on the other parties and the special master, if one is appointed, an initial disclosure that includes all of the following information:

(1) The name, address, telephone number, and email address of the party and, if applicable, the party's attorney.

(2) The quantity of any groundwater extracted from the basin by the party and the method of measurement used by the party or the party's predecessor in interest for each of the previous 10 years preceding the filing of the complaint.

(3) The type of water right or rights claimed by the party for the extraction of groundwater.

(4) A general description of the purpose to which the groundwater has been put.

(5) The location of each well or other source through which groundwater has been extracted.

(6) The area in which the groundwater has been used.

(7) Any claims for increased or future use of groundwater.

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

(9) Identification of all surface water rights and contracts that the party claims provides the basis for its water right claims in the comprehensive adjudication.

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

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

(12) Any other facts that tend to prove the party's claimed water right.

(b) The Judicial Council may develop a form for initial disclosures made pursuant to subdivision (a) to facilitate the consistent, independent, impartial, and accessible administration of comprehensive adjudications. The Judicial Council may coordinate with the department in developing the form.

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

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

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

(2) If the party extracts groundwater from the basin after the complaint is filed. A supplement filed pursuant to this paragraph shall report the quantity of water extracted and be filed within 90 days after the end of the calendar year.

(3) As ordered by the court.

(e) To the greatest extent possible, a party shall serve his or her initial disclosures electronically. If it is not possible for the party to serve his or her disclosures electronically, he or she shall serve the disclosures in an electronic format saved on a portable storage media device such as a compact disc or flash drive.

(f) A party's obligations under this section may be enforced by a court on its own motion or the motion of a party to compel disclosure.

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

Article 10. Expert Witnesses

843. (a) In addition to all other disclosures required by this chapter, a party shall disclose to the other parties the identity of any expert witness it may use at trial to present evidence.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) As ordered by the court.

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

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

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

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

#### Article 11. Written Testimony

844. (a) A court may require the parties in a comprehensive adjudication to submit written testimony of relevant witnesses in the forms of affidavits or declarations under penalty of perjury in lieu of presenting live testimony. The required written testimony may include, but is not limited to, expert witness opinions and testimony that authenticates documentary evidence. The court may order that the written testimony constitutes the entirety of the witness's direct testimony, require the written testimony to include any exhibits offered in support of the written testimony, and, in the case of written testimony of an expert witness, require a statement of the witness's qualifications.

(b) If the court requires the submission of written testimony pursuant to subdivision (a), a complete copy of the direct testimony shall be served at least 21 days before trial. A complete copy of any rebuttal testimony shall be served no later than the first day of trial.

(c) If the contents of the written testimony would have been admissible if the witness testified orally, the written testimony shall be received by the court as a documentary exhibit if the witness whose written testimony is being offered is made available for cross-examination by all parties.

#### Article 12. Special Master

845. (a) The court may appoint one or more special masters whose duties may include the following:

(1) Investigating technical and legal issues, as directed by the court. The special master shall compile a report of findings in accordance with Section 846.

(2) Conducting joint factfinding with the parties, their designees, or both.

(3) Investigating the need for, and developing a proposal for, a preliminary injunction pursuant to Article 13 (commencing with Section 847).

(4) Performing other tasks the court may deem appropriate.

(b) The court shall fix the special master's compensation on the basis and terms stated in the appointing order, and the court may set a new basis and new terms after giving the parties notice and an opportunity to be heard. The court shall allocate payment of the special master's compensation among the parties in an amount and a manner that the court deems equitable. The court may waive a party's obligations to pay the special master's compensation upon a showing of good cause.

(c) The court may request the State Water Resources Control Board or the department to recommend candidates for appointment as a special master or to review the qualifications of candidates.

(d) This section does not limit the authority of the court to make a reference pursuant to Chapter 1 (commencing with Section 2000) of Part 3 of Division 2 of the Water Code.

(e) This section does not limit the authority to appoint a watermaster pursuant to Chapter 3 (commencing with Section 4050) of Part 4 of Division 2 of the Water Code or any other law.

846. (a) The special master shall make a draft report available to the parties and provide at least 60 days for the parties to submit written objections to the draft report.

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

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

(d) The special master shall consider the objections to the draft report and develop a final report that shall be filed with the court, together with supporting evidence.

Article 13. Preliminary Injunction

847. (a) Upon a showing that the basin is in a condition of long-term overdraft, the court may, upon notice and hearing, issue a preliminary injunction.

(b) Bulletins and other reports of the department, and a report of a special master indicating that a condition of long-term overdraft exists in the basin, shall be admissible as evidence of a condition of long-term overdraft. This subdivision does not limit the admissibility of other relevant evidence.

(c) The preliminary injunction may include any of the following terms:

(1) A moratorium on new or increased appropriations of water.

(2) A limitation on, or reduction in, the diversion or extraction of water.

(3) An allocation among the parties establishing amounts of extraction allowed during the pendency of the comprehensive adjudication.

(4) Procedures for voluntary transfers.

(d) The court shall issue a preliminary injunction upon determining all of the following:

(1) The basin is in a condition of long-term overdraft.

(2) The basin has been designated as a probationary basin or the planning deadlines in subdivision (a) of Section 10720.7 of the Water Code are not being complied with.

(3) There is no interim plan in effect under Section 10735.8 of the Water Code.

(e) The court may provide a schedule for further reductions in extractions over a period of years if it finds that doing so appears reasonably necessary to achieve groundwater sustainability within the timelines provided in subdivision (b) of Section 10727.2 of the Water Code.

(f) The terms of a preliminary injunction shall not determine the rights in a final judgment of the comprehensive adjudication.

(g) A bond or undertaking shall not be required for the issuance of a preliminary injunction pursuant to this section.

(h) The court may appoint a watermaster to oversee enforcement of the preliminary injunction.

## Article 14. Stay

848. (a) Upon the court's own motion or the motion of any party to a comprehensive adjudication, a court may stay a comprehensive adjudication for a period of up to one year, subject to renewal in the court's discretion upon a showing of good cause, in order to facilitate any of the following:

(1) Adoption of a groundwater sustainability plan that provides for a physical solution or otherwise addresses issues in the comprehensive adjudication.

(2) The development of technical studies that may be useful to the parties in the comprehensive adjudication.

(3) Voluntary mediation or participation in a settlement conference on all, or a portion of, the subject matters or legal questions identified in the comprehensive adjudication.

(4) Compromise and settlement of the comprehensive adjudication or issues in the comprehensive adjudication.

(b) Before renewing a stay granted pursuant to subdivision (a), the parties shall report on the progress being made on the issues that were identified as the reasons for the stay.

(c) A stay pursuant to this section shall not stay, or otherwise delay, the parties' obligations to provide initial disclosures pursuant to Section 842 unless the court determines the initial disclosures will not benefit resolution of the comprehensive adjudication.

## Article 15. Physical Solution

849. (a) The court shall have the authority and the duty to impose a physical solution on the parties in a comprehensive adjudication where necessary and consistent with Article 2 of Section X of the California Constitution.

(b) Before adopting a physical solution, the court shall consider any existing groundwater sustainability plan or program.

## Article 16. Judgment

850. (a) The court may enter a judgment if the court finds that the judgment meets all of the following criteria:

(1) It is consistent with Section 2 of Article X of the California Constitution.



(2) It is consistent with the water right priorities of all non-stipulating parties and any persons who have claims that are exempted pursuant to Section 833 in the basin.

(3) It treats all objecting parties and any persons who have claims that are exempted pursuant to Section 833 equitably as compared to the stipulating parties.

(b) If a party or group of parties submits a proposed stipulated judgment that is supported by more than 50 percent of all parties who are groundwater extractors in the basin or use the basin for groundwater storage and is supported by groundwater extractors responsible for at least 75 percent of the groundwater extracted in the basin during the five calendar years before the filing of the complaint, the court may adopt the proposed stipulated judgment, as applied to the stipulating parties, if the proposed stipulated judgment meets the criteria described in subdivision (a). A party objecting to a proposed stipulated judgment shall demonstrate, by a preponderance of evidence, that the proposed stipulated judgment does not satisfy one or more criteria described in subdivision (a) or that it substantially violates the water rights of the objecting party. If the objecting party is unable to make this showing, the court may impose the proposed stipulated judgment on the objecting party. An objecting party may be subject to a preliminary injunction issued pursuant to Section 847 while his or her objections are being resolved.

#### Article 17. Judgment Binding on Successors

851. The judgment in a comprehensive adjudication conducted pursuant to this chapter shall be binding on the parties to the action and all their successors in interest, including, but not limited to, heirs, executors, administrators, assigns, lessees, licensees, the agents and employees of the parties to the action and all their successors in interest, and all landowners or other persons claiming rights to extract groundwater from the basin whose claims have not been exempted and are covered by the notice provided in the comprehensive adjudication.

## Article 18. Continuing Jurisdiction

852. The court shall have continuing jurisdiction to modify or amend a final judgment in a comprehensive adjudication in response to new information, changed circumstances, the interests of justice, or to ensure that the criteria of subdivision (a) of Section 850 are met. When feasible, the judge who heard the original action shall preside over actions or motions to modify or amend the judgment.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because, in that regard, this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 3. This act shall only become effective if Senate Bill 226 of the 2014–15 Regular Session is enacted and becomes effective.











Approved \_\_\_\_\_, 2015

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*Governor*