

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 226

Introduced by Senator Pavley

February 13, 2015

An act to *amend Sections 10721 and 10735.8, and to add Chapter 12 (commencing with Section 10737) to Part 2.74 of Division 6, of the Water Code, relating to groundwater.*

LEGISLATIVE COUNSEL'S DIGEST

SB 226, as amended, Pavley. Sustainable Groundwater Management Act: groundwater rights.

Existing law, the Sustainable Groundwater Management Act, requires all groundwater basins designated as high- or medium-priority basins by the Department of Water Resources that are designated as basins subject to critical conditions of overdraft to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans by January 31, 2020, and requires all other groundwater basins designated as high- or medium-priority basins to be managed under a groundwater sustainability plan or coordinated groundwater sustainability plans by January 31, 2022, except as specified.

Existing law specifies the jurisdiction of the courts. Under existing law, courts may adjudicate rights to produce groundwater and exercise other powers relating to the supervision of a groundwater basin.

This bill would ~~provide~~ *find and declare* that it establishes a timely *and comprehensive method for determining rights to groundwater. The bill would provide that a court shall use the Code of Civil Procedure for determining rights to groundwater in furtherance of the objectives of groundwater, except as provided by the special procedures*

established in the act. bill. This bill would require the process for determining rights to groundwater to be available to any court of competent jurisdiction. The bill would provide that it applies to Indian tribes and the federal government. This The bill would require the boundaries of a basin to be as identified in Bulletin 118, unless other basin boundaries are established, as specified. The bill would authorize the Department of Water Resources and the Department of Fish and Wildlife to intervene in an action or proceeding if they claim an interest relating to the action or proceeding, as provided. The bill would specify service and notice procedures. The bill would require a party to provide specified initial disclosures to the other parties, including, among other disclosures, information relating to expert witnesses.

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

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

- 1 SECTION 1. Section 10721 of the Water Code is amended to
2 read:
- 3 10721. Unless the context otherwise requires, the following
4 definitions govern the construction of this part:
- 5 (a) “Adjudication action” means an action filed in the superior
6 or federal district court to determine the rights to extract
7 groundwater from a basin or store water within a basin, including,
8 but not limited to, actions to quiet title respecting rights to extract
9 or store groundwater or an action brought to impose a physical
10 solution on a basin.
- 11 (b) “Basin” means a groundwater basin or subbasin identified
12 and defined in Bulletin 118 or as modified pursuant to Chapter 3
13 (commencing with Section 10722).
- 14 (c) “Bulletin 118” means the department’s report entitled
15 “California’s Groundwater: Bulletin 118” updated in 2003, as it
16 may be subsequently updated or revised in accordance with Section
17 12924.
- 18 (d) “Coordination agreement” means a legal agreement adopted
19 between two or more groundwater sustainability agencies that
20 provides the basis for coordinating multiple agencies or
21 groundwater sustainability plans within a basin pursuant to this
22 part.

- 1 (e) “De minimis extractor” means a person who extracts, for
2 domestic purposes, two acre-feet or less per year.
- 3 (f) “*Expert witness*” means a witness qualified pursuant to
4 *Section 720 of the Evidence Code*.
- 5 ~~(f)~~
- 6 (g) “Governing body” means the legislative body of a
7 groundwater sustainability agency.
- 8 ~~(g)~~
- 9 (h) “Groundwater” means water beneath the surface of the earth
10 within the zone below the water table in which the soil is
11 completely saturated with water, but does not include water that
12 flows in known and definite channels.
- 13 ~~(h)~~
- 14 (i) “Groundwater extraction facility” means a device or method
15 for extracting groundwater from within a basin.
- 16 ~~(i)~~
- 17 (j) “Groundwater recharge” means the augmentation of
18 groundwater, by natural or artificial means.
- 19 ~~(j)~~
- 20 (k) “Groundwater sustainability agency” means one or more
21 local agencies that implement the provisions of this part. For
22 purposes of imposing fees pursuant to Chapter 8 (commencing
23 with Section 10730) or taking action to enforce a groundwater
24 sustainability plan, “groundwater sustainability agency” also means
25 each local agency comprising the groundwater sustainability
26 agency if the plan authorizes separate agency action.
- 27 ~~(k)~~
- 28 (l) “Groundwater sustainability plan” or “plan” means a plan
29 of a groundwater sustainability agency proposed or adopted
30 pursuant to this part.
- 31 ~~(l)~~
- 32 (m) “Groundwater sustainability program” means a coordinated
33 and ongoing activity undertaken to benefit a basin, pursuant to a
34 groundwater sustainability plan.
- 35 ~~(m)~~
- 36 (n) “Local agency” means a local public agency that has water
37 supply, water management, or land use responsibilities within a
38 groundwater basin.
- 39 ~~(n)~~

1 (o) “Operator” means a person operating a groundwater
2 extraction facility. The owner of a groundwater extraction facility
3 shall be conclusively presumed to be the operator unless a
4 satisfactory showing is made to the governing body of the
5 groundwater sustainability agency that the groundwater extraction
6 facility actually is operated by some other person.

7 ~~(o)~~

8 (p) “Owner” means a person owning a groundwater extraction
9 facility or an interest in a groundwater extraction facility other
10 than a lien to secure the payment of a debt or other obligation.

11 ~~(p)~~

12 (q) “Personal information” has the same meaning as defined in
13 Section 1798.3 of the Civil Code.

14 ~~(q)~~

15 (r) “Planning and implementation horizon” means a 50-year
16 time period over which a groundwater sustainability agency
17 determines that plans and measures will be implemented in a basin
18 to ensure that the basin is operated within its sustainable yield.

19 ~~(r)~~

20 (s) “Public water system” has the same meaning as defined in
21 Section 116275 of the Health and Safety Code.

22 ~~(s)~~

23 (t) “Recharge area” means the area that supplies water to an
24 aquifer in a groundwater basin.

25 ~~(t)~~

26 (u) “Sustainability goal” means the existence and
27 implementation of one or more groundwater sustainability plans
28 that achieve sustainable groundwater management by identifying
29 and causing the implementation of measures targeted to ensure
30 that the applicable basin is operated within its sustainable yield.

31 ~~(u)~~

32 (v) “Sustainable groundwater management” means the
33 management and use of groundwater in a manner that can be
34 maintained during the planning and implementation horizon
35 without causing undesirable results.

36 ~~(v)~~

37 (w) “Sustainable yield” means the maximum quantity of water,
38 calculated over a base period representative of long-term conditions
39 in the basin and including any temporary surplus, that can be

1 withdrawn annually from a groundwater supply without causing
2 an undesirable result.

3 ~~(w)~~

4 (x) “Undesirable result” means one or more of the following
5 effects caused by groundwater conditions occurring throughout
6 the basin:

7 (1) Chronic lowering of groundwater levels indicating a
8 significant and unreasonable depletion of supply if continued over
9 the planning and implementation horizon. Overdraft during a period
10 of drought is not sufficient to establish a chronic lowering of
11 groundwater levels if extractions and recharge are managed as
12 necessary to ensure that reductions in groundwater levels or storage
13 during a period of drought are offset by increases in groundwater
14 levels or storage during other periods.

15 (2) Significant and unreasonable reduction of groundwater
16 storage.

17 (3) Significant and unreasonable seawater intrusion.

18 (4) Significant and unreasonable degraded water quality,
19 including the migration of contaminant plumes that impair water
20 supplies.

21 (5) Significant and unreasonable land subsidence that
22 substantially interferes with surface land uses.

23 (6) Depletions of interconnected surface water that have
24 significant and unreasonable adverse impacts on beneficial uses
25 of the surface water.

26 ~~(x)~~

27 (y) “Water budget” means an accounting of the total
28 groundwater and surface water entering and leaving a basin
29 including the changes in the amount of water stored.

30 ~~(y)~~

31 (z) “Watermaster” means a watermaster appointed by a court
32 or pursuant to other law.

33 ~~(z)~~

34 (aa) “Water year” means the period from October 1 through
35 the following September 30, inclusive.

36 ~~(aa)~~

37 (bb) “Wellhead protection area” means the surface and
38 subsurface area surrounding a water well or well field that supplies
39 a public water system through which contaminants are reasonably
40 likely to migrate toward the water well or well field.

1 *SEC. 2. Section 10735.8 of the Water Code is amended to read:*

2 10735.8. (a) The board, after notice and a public hearing, may
3 adopt an interim plan for a probationary basin.

4 (b) The interim plan shall include all of the following:

5 (1) Identification of the actions that are necessary to correct a
6 condition of long-term overdraft or a condition where groundwater
7 extractions result in significant depletions of interconnected surface
8 waters, including recommendations for appropriate action by any
9 person.

10 (2) A time schedule for the actions to be taken.

11 (3) A description of the monitoring to be undertaken to
12 determine effectiveness of the plan.

13 (c) The interim plan may include the following:

14 (1) Restrictions on groundwater extraction.

15 (2) A physical solution.

16 (3) Principles and guidelines for the administration of rights to
17 surface waters that are connected to the basin.

18 (d) Except as provided in subdivision (e), the interim plan shall
19 be consistent with water right priorities, subject to Section 2 of
20 Article X of the California Constitution.

21 (e) The board shall include in its interim plan a groundwater
22 sustainability plan, or any element of a plan, that the board finds
23 complies with the sustainability goal for that portion of the basin
24 or would help meet the sustainability goal for the basin. Where,
25 in the judgment of the board, an adjudication action can be relied
26 on as part of the interim plan, either throughout the basin or in an
27 area within the basin, the board may rely on, or incorporate
28 elements of, that adjudication into the interim plan adopted by the
29 board.

30 (f) In carrying out activities that may affect the probationary
31 basin, state entities shall comply with an interim plan adopted by
32 the board pursuant to this section unless otherwise directed or
33 authorized by statute and the state entity shall indicate to the board
34 in writing the authority for not complying with the interim plan.

35 (g) (1) After the board adopts an interim plan under this section,
36 the board shall determine if a groundwater sustainability plan or
37 an adjudication action is adequate to eliminate the condition of
38 long-term overdraft or condition where groundwater extractions
39 result in significant depletions of interconnected surface waters,
40 upon petition of either of the following:

1 (A) A groundwater sustainability agency that has adopted a
2 groundwater sustainability plan for the probationary basin or a
3 portion thereof.

4 (B) A person authorized to file the petition by a judicial order
5 or decree entered in an adjudication action in the probationary
6 basin.

7 (2) The board shall act on a petition filed pursuant to paragraph
8 (1) within 90 days after the petition is complete. If the board, in
9 consultation with the department, determines that the groundwater
10 sustainability plan or adjudication action is adequate, the board
11 shall rescind the interim plan adopted by the board for the
12 probationary basin, except as provided in paragraphs (3) and (4).

13 (3) Upon request of the petitioner, the board may amend an
14 interim plan adopted under this section to eliminate portions of
15 the interim plan, while allowing other portions of the interim plan
16 to continue in effect.

17 (4) The board may decline to rescind an interim plan adopted
18 pursuant to this section if the board determines that the petitioner
19 has not provided adequate assurances that the groundwater
20 sustainability plan or judicial order or decree will be implemented.

21 (5) This subdivision is not a limitation on the authority of the
22 board to stay its proceedings under this section or to rescind or
23 amend an interim plan adopted pursuant to this section based on
24 the progress made by a groundwater sustainability agency or in
25 an adjudication ~~action~~, *action pursuant to Chapter 12 (commencing*
26 *with Section 10737)*, even if the board cannot make a determination
27 of adequacy in accordance with paragraph (1).

28 (h) Before January 1, 2025, the state board shall not establish
29 an interim plan under this section to remedy a condition where the
30 groundwater extractions result in significant depletions of
31 interconnected surface waters.

32 (i) The board's authority to adopt an interim plan under this
33 section does not alter the law establishing water rights priorities
34 or any other authority of the board.

35 **SECTION 1.**

36 *SEC. 3.* Chapter 12 (commencing with Section 10737) is added
37 to Part 2.74 of Division 6 of the Water Code, to read:

1 CHAPTER 12. DETERMINATION OF RIGHTS TO GROUNDWATER

2
3 Article 1. General Provisions

4
5 10737. (a) ~~This~~ *The Legislature finds and declares that this*
6 *chapter establishes a timely and comprehensive method for*
7 *determining rights to groundwater in furtherance of the objectives*
8 *of this part.*

9 ~~(b) It is the intent of the Legislature to subsequently amend this~~
10 ~~chapter to address all of the following:~~

11 ~~(1) Basin boundaries pursuant to Article 3 (commencing with~~
12 ~~Section 10739).~~

13 ~~(2) Notice and service.~~

14 ~~(3) Provision of expert information and science.~~

15 ~~(4) Fairness and balance under the law.~~

16 ~~(5) Consistency with Winters v. United States (207 U.S. 564~~
17 ~~(1908)), the McCarran Amendment (codified at 43 U.S.C. Sec.~~
18 ~~666), and any other federal laws regarding the determination of~~
19 ~~federal or tribal water rights, as applicable.~~

20 *(b) This chapter establishes special procedures for court use in*
21 *determining rights to groundwater. Unless otherwise provided in*
22 *this chapter, a court shall determine rights to groundwater using*
23 *the procedures codified in the Code of Civil Procedure.*

24 10737.2. *In making its determination of rights to groundwater,*
25 *a court shall avoid an undesirable results as defined in Section*
26 *10721.*

27
28 Article 2. Application

29
30 10738. The process defined in this chapter shall be available
31 to any court of competent jurisdiction.

32 10738.2. (a) *Consistent with subdivision (b) of Section*
33 *10720.3, this chapter applies to an Indian tribe and to the federal*
34 *government, to the extent authorized under federal law.*

35 (b) *Section 389 of the Code of Civil Procedure shall not apply*
36 *to any failure to join an Indian tribe or the United States to an*
37 *action or proceeding brought under this chapter.*

38 10738.4. *An action requesting a court to determine water rights*
39 *under this chapter shall be deemed provisionally complex within*

1 *the meaning provided in Rule 3.400 of Title 3 of the California*
2 *Rules of Court.*

3
4 Article 3. Basin Boundaries

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6 10739. Unless other basin boundaries are established pursuant
7 to Section 10722.2 or subdivision (b) of Section 12924, the
8 boundaries of a basin shall be as identified in Bulletin 118.

9
10 Article 4. Parties

11
12 10740. Upon timely motion, the court shall permit the
13 department or the Department of Fish and Wildlife, or both, to
14 intervene in an action or proceeding brought under this chapter
15 if the movant claims an interest relating to the action or proceeding
16 and is so situated that disposing of the action or proceeding may,
17 as a practical matter, impair or impede the movant's ability to
18 protect its interest.

19
20 Article 5. Service and Notice

21
22 10741. (a) All known defendants shall be served in the manner
23 provided in Chapter 4 (commencing with Section 413.10) of Title
24 5 of Part 2 of the Code of Civil Procedure.

25 (b) (1) All unknown defendants shall be served by publication
26 as provided in Section 415.50 of the Code of Civil Procedure.

27 (2) In addition to other requirements of Section 415.50 of the
28 Code of Civil Procedure, the publication shall describe the
29 groundwater basin that is the subject of the action. The publication
30 shall describe the groundwater basin as identified pursuant to
31 Section 10739, the Internet address for a map depicting the basin,
32 and any other identifying information that the court deems
33 appropriate.

34
35 Article 6. Discovery

36
37 10742. (a) Except as otherwise stipulated or ordered by the
38 court, a party shall, without awaiting a discovery request, provide
39 to the other parties all of the following:

1 (1) *The name and, if known, the address and telephone number*
2 *of each individual likely to have discoverable information, along*
3 *with the subjects of that information, who the disclosing party may*
4 *use to support its claims or defenses, unless the use would be solely*
5 *for impeachment.*

6 (2) *A copy or a description by category and location, of all*
7 *documents, electronically stored information, and tangible things*
8 *that the disclosing party has in its possession, custody, or control*
9 *that it may use to support its claims or defenses, unless the use*
10 *would be solely for impeachment.*

11 (3) *A quantification of claims to water in the basin by the*
12 *disclosing party. The disclosing party shall also make available*
13 *for inspection and copying any documents or other evidentiary*
14 *material, unless privileged or protected from disclosure, on which*
15 *each claim is based, including materials bearing on the nature*
16 *and extent of those claims.*

17 (b) *A party shall make all disclosures required by this article*
18 *at or within 14 days after the parties' initial case management*
19 *conference unless a different time is set by stipulation or court*
20 *order, or unless a party objects during the conference that initial*
21 *disclosures are not appropriate in this action and states the*
22 *objection in a proposed discovery plan. In ruling on the objection,*
23 *the court shall determine what disclosures, if any, are to be made*
24 *and shall set the time for disclosure.*

25 (c) *A party that is first served or otherwise joined after the initial*
26 *case management conference shall make its initial disclosures*
27 *within 30 days after being served or joined, unless a different time*
28 *is set by stipulation or court order.*

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

34

35 *Article 7. Expert Witnesses*

36

37 10743. (a) *In addition to the other disclosures required by*
38 *this chapter, a party shall disclose to the other parties the identity*
39 *of any expert witness it may use at trial to present evidence.*

1 (b) Unless otherwise stipulated or ordered by the court, this
2 disclosure shall be accompanied by a written report, prepared
3 and signed by the expert witness, if the expert witness is retained
4 or specially employed to provide expert testimony in the case or
5 whose duties as the party's employee regularly involve giving
6 expert testimony. The report shall contain all of the following:

7 (1) A complete statement of all opinions the expert witness will
8 express and the basis and reasons for them.

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

11 (3) Any exhibits that will be used to summarize or support the
12 opinions of the expert witness.

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

15 (5) A list of all other cases in which, during the previous four
16 years, the expert witness testified as an expert at trial or by
17 deposition.

18 (6) A statement of the compensation to be paid to the expert
19 witness for the study and testimony in the case.

20 (c) Unless otherwise stipulated or ordered by the court, if the
21 expert witness is not required to provide a written report, the
22 disclosure shall state both of the following:

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

25 (2) A summary of the facts and opinions to which the expert
26 witness is expected to testify.

27 (d) A party shall make the required disclosures at the times and
28 in the sequence that the court orders. Absent a stipulation or a
29 court order, the disclosures shall be made at either of the following
30 times:

31 (1) At least 90 days before the date set for trial or for the case
32 to be ready for trial.

33 (2) If the evidence is intended solely to contradict or rebut
34 evidence on the same subject matter identified by another party,
35 within 30 days after the other party's disclosure.

- 1 _____
- 2 **CORRECTIONS:**
- 3 **Text—Pages 5, 8, and 11.**
- 4 _____

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