

AMENDED IN SENATE MAY 5, 2015  
AMENDED IN SENATE APRIL 6, 2015

**SENATE BILL**

**No. 226**

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**Introduced by Senator Pavley**

February 13, 2015

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An act to amend Sections 10721 and ~~10735.8~~; *10735.8 of*, and to add Chapter 12 (commencing with Section 10737) to Part 2.74 of Division ~~6~~, *of 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 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, except as provided by the special

procedures established in the 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. 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 (g) “Governing body” means the legislative body of a  
6 groundwater sustainability agency.
- 7 (h) “Groundwater” means water beneath the surface of the earth  
8 within the zone below the water table in which the soil is  
9 completely saturated with water, but does not include water that  
10 flows in known and definite channels.
- 11 (i) “Groundwater extraction facility” means a device or method  
12 for extracting groundwater from within a basin.
- 13 (j) “Groundwater recharge” means the augmentation of  
14 groundwater, by natural or artificial means.
- 15 (k) “Groundwater sustainability agency” means one or more  
16 local agencies that implement the provisions of this part. For  
17 purposes of imposing fees pursuant to Chapter 8 (commencing  
18 with Section 10730) or taking action to enforce a groundwater  
19 sustainability plan, “groundwater sustainability agency” also means  
20 each local agency comprising the groundwater sustainability  
21 agency if the plan authorizes separate agency action.
- 22 (l) “Groundwater sustainability plan” or “plan” means a plan  
23 of a groundwater sustainability agency proposed or adopted  
24 pursuant to this part.
- 25 (m) “Groundwater sustainability program” means a coordinated  
26 and ongoing activity undertaken to benefit a basin, pursuant to a  
27 groundwater sustainability plan.
- 28 (n) “Local agency” means a local public agency that has water  
29 supply, water management, or land use responsibilities within a  
30 groundwater basin.
- 31 (o) “Operator” means a person operating a groundwater  
32 extraction facility. The owner of a groundwater extraction facility  
33 shall be conclusively presumed to be the operator unless a  
34 satisfactory showing is made to the governing body of the  
35 groundwater sustainability agency that the groundwater extraction  
36 facility actually is operated by some other person.
- 37 (p) “Owner” means a person owning a groundwater extraction  
38 facility or an interest in a groundwater extraction facility other  
39 than a lien to secure the payment of a debt or other obligation.

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

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

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

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

11 (u) “Sustainability goal” means the existence and  
12 implementation of one or more groundwater sustainability plans  
13 that achieve sustainable groundwater management by identifying  
14 and causing the implementation of measures targeted to ensure  
15 that the applicable basin is operated within its sustainable yield.

16 (v) “Sustainable groundwater management” means the  
17 management and use of groundwater in a manner that can be  
18 maintained during the planning and implementation horizon  
19 without causing undesirable results.

20 (w) “Sustainable yield” means the maximum quantity of water,  
21 calculated over a base period representative of long-term conditions  
22 in the basin and including any temporary surplus, that can be  
23 withdrawn annually from a groundwater supply without causing  
24 an undesirable result.

25 (x) “Undesirable result” means one or more of the following  
26 effects caused by groundwater conditions occurring throughout  
27 the basin:

28 (1) Chronic lowering of groundwater levels indicating a  
29 significant and unreasonable depletion of supply if continued over  
30 the planning and implementation horizon. Overdraft during a period  
31 of drought is not sufficient to establish a chronic lowering of  
32 groundwater levels if extractions and recharge are managed as  
33 necessary to ensure that reductions in groundwater levels or storage  
34 during a period of drought are offset by increases in groundwater  
35 levels or storage during other periods.

36 (2) Significant and unreasonable reduction of groundwater  
37 storage.

38 (3) Significant and unreasonable seawater intrusion.

1 (4) Significant and unreasonable degraded water quality,  
2 including the migration of contaminant plumes that impair water  
3 supplies.

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

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

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

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

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

16 ~~(bb)~~

17 (ab) “Wellhead protection area” means the surface and  
18 subsurface area surrounding a water well or well field that supplies  
19 a public water system through which contaminants are reasonably  
20 likely to migrate toward the water well or well field.

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

22 10735.8. (a) The board, after notice and a public hearing, may  
23 adopt an interim plan for a probationary basin.

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

25 (1) Identification of the actions that are necessary to correct a  
26 condition of long-term overdraft or a condition where groundwater  
27 extractions result in significant depletions of interconnected surface  
28 waters, including recommendations for appropriate action by any  
29 person.

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

31 (3) A description of the monitoring to be undertaken to  
32 determine effectiveness of the plan.

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

34 (1) Restrictions on groundwater extraction.

35 (2) A physical solution.

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

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

1 (e) The board shall include in its interim plan a groundwater  
2 sustainability plan, or any element of a plan, that the board finds  
3 complies with the sustainability goal for that portion of the basin  
4 or would help meet the sustainability goal for the basin. Where,  
5 in the judgment of the board, an adjudication action can be relied  
6 on as part of the interim plan, either throughout the basin or in an  
7 area within the basin, the board may rely on, or incorporate  
8 elements of, that adjudication into the interim plan adopted by the  
9 board.

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

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

21 (A) A groundwater sustainability agency that has adopted a  
22 groundwater sustainability plan for the probationary basin or a  
23 portion thereof.

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

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

33 (3) Upon request of the petitioner, the board may amend an  
34 interim plan adopted under this section to eliminate portions of  
35 the interim plan, while allowing other portions of the interim plan  
36 to continue in effect.

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

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

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

12 (i) The board’s authority to adopt an interim plan under this  
 13 section does not alter the law establishing water rights priorities  
 14 or any other authority of the board.

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

17  
 18 CHAPTER 12. DETERMINATION OF RIGHTS TO GROUNDWATER

19  
 20 Article 1. General Provisions

21  
 22 10737. (a) The Legislature finds and declares that this chapter  
 23 establishes a timely and comprehensive method for determining  
 24 rights to groundwater in furtherance of the objectives of this part.

25 (b) This chapter establishes special procedures for court use in  
 26 determining rights to groundwater. Unless otherwise provided in  
 27 this chapter, a court shall determine rights to groundwater using  
 28 the procedures codified in the Code of Civil Procedure.

29 (c) *Nothing contained in this chapter shall be deemed to repeal*  
 30 *or preclude an action to determine rights to groundwater in*  
 31 *accordance with the common law.*

32 10737.2. In making its determination of rights to groundwater,  
 33 a court shall avoid an undesirable ~~results~~ *result* as defined in  
 34 Section 10721.

35  
 36 Article 2. Application

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 38 10738. The process defined in this chapter shall be available  
 39 to any court of competent jurisdiction.

1 10738.2. (a) Consistent with subdivision (b) of Section  
2 10720.3, this chapter applies to an Indian tribe and to the federal  
3 government, to the extent authorized under federal law.

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

7 10738.4. An action requesting a court to determine water rights  
8 under this chapter shall be deemed provisionally complex within  
9 the meaning provided in Rule 3.400 of Title 3 of the California  
10 Rules of Court.

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### 12 Article 3. Basin Boundaries

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14 10739. Unless other basin boundaries are established pursuant  
15 to Section 10722.2 or subdivision (b) of Section 12924, the  
16 boundaries of a basin shall be as identified in Bulletin 118.

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### 18 Article 4. Parties

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20 10740. Upon timely motion, the court shall permit the  
21 department or the Department of Fish and Wildlife, or both, to  
22 intervene in an action or proceeding brought under this chapter if  
23 the movant claims an interest relating to the action or proceeding  
24 and is so situated that disposing of the action or proceeding may,  
25 as a practical matter, impair or impede the movant's ability to  
26 protect its interest.

27

### 28 Article 5. Service and Notice

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30 10741. (a) All known defendants shall be served in the manner  
31 provided in Chapter 4 (commencing with Section 413.10) of Title  
32 5 of Part 2 of the Code of Civil Procedure.

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

35 (2) In addition to other requirements of Section 415.50 of the  
36 Code of Civil Procedure, the publication shall describe the  
37 groundwater basin that is the subject of the action. The publication  
38 shall describe the groundwater basin as identified pursuant to  
39 Section 10739, the Internet address for a map depicting the basin,



1 and any other identifying information that the court deems  
2 appropriate.

3  
4 Article 6. Discovery

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6 10742. (a) Except as otherwise stipulated or ordered by the  
7 court, a party shall, without awaiting a discovery request, provide  
8 to the other parties all of the following:

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

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

19 (3) A quantification of claims to water in the basin by the  
20 disclosing party. The disclosing party shall also make available  
21 for inspection and copying any documents or other evidentiary  
22 material, unless privileged or protected from disclosure, on which  
23 each claim is based, including materials bearing on the nature and  
24 extent of those claims.

25 (b) A party shall make all disclosures required by this article at  
26 or within 14 days after the parties' initial case management  
27 conference unless a different time is set by stipulation or court  
28 order, or unless a party objects during the conference that initial  
29 disclosures are not appropriate in this action and states the objection  
30 in a proposed discovery plan. In ruling on the objection, the court  
31 shall determine what disclosures, if any, are to be made and shall  
32 set the time for disclosure.

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

37 (d) A party shall make its initial disclosures based on the  
38 information then reasonably available to it. A party is not excused  
39 from making its disclosures because it has not fully investigated

1 the case or because it challenges the sufficiency of another party’s  
2 disclosures or because another party has not made its disclosures.

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Article 7. Expert Witnesses

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6 10743. (a) In addition to the other disclosures required by this  
7 chapter, a party shall disclose to the other parties the identity of  
8 any expert witness it may use at trial to present evidence.

9 (b) Unless otherwise stipulated or ordered by the court, this  
10 disclosure shall be accompanied by a written report, prepared and  
11 signed by the expert witness, if the expert witness is retained or  
12 specially employed to provide expert testimony in the case or  
13 whose duties as the party’s employee regularly involve giving  
14 expert testimony. The report shall contain all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

O