

AMENDED IN ASSEMBLY SEPTEMBER 3, 2015

AMENDED IN ASSEMBLY SEPTEMBER 1, 2015

AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN SENATE MAY 5, 2015

AMENDED IN SENATE APRIL 6, 2015

**SENATE BILL**

**No. 226**

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**Introduced by Senator Pavley**

*(Principal coauthor: Assembly Member Alejo)*

February 13, 2015

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An act to *add Section 837.5 to the Code of Civil Procedure, and to amend Sections 10720.1, 10720.5, and 10722.2 of, to add Section 105.5 to, and to add Chapter 12 (commencing with Section 10737) to Part 2.74 of Division 6 of, the Water Code, relating to ~~water.~~ groundwater.*

LEGISLATIVE COUNSEL'S DIGEST

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

The California Constitution requires that the water resources of the state be put to beneficial use to the fullest extent of which they are capable. 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. Existing law authorizes a court to order a reference to the State Water Resources Control Board, as referee, of any and all issues involved in ~~the suit.~~ *a suit brought in any court of competent jurisdiction in this state for determination of rights to water.*

This bill would authorize the state to intervene ~~as a matter of right in any suit brought in any court for determination of rights to water.~~ *in a comprehensive adjudication conducted as specified in AB 1390 of the 2015–16 Regular Session.*

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. The act authorizes a local agency to request that the department revise the boundaries of a basin.

This bill, in an adjudication action to determine rights to groundwater in a basin that is required to have a groundwater sustainability plan under the act, would require the court to manage the proceedings in a manner that minimizes interference with the timely completion and implementation of a groundwater sustainability plan, avoids redundancy and unnecessary costs in the development of technical information and a physical solution, and is consistent with the attainment of sustainable groundwater management within the timeframes established by the act. The bill would authorize an entity that is directed by the court in an adjudication action to file the request to request that the department revise the boundaries of a basin.

The act authorizes the state board to designate certain high- and medium-priority basins as a probationary basin if prescribed criteria are met. The act authorizes the state board to develop an interim plan for a probationary basin if the state board, in consultation with the department, determines that a local agency has not remedied a deficiency that resulted in designating the basin as a probationary basin within a certain timeframe. The act also requires the department, at least every 5 years after initial submission, to review any available groundwater sustainability plan or alternative and the implementation of the corresponding groundwater sustainability program for consistency with the act, including achieving the sustainability goal. The act requires the department to issue an assessment for each basin for which a plan or alternative has been submitted that may include recommended corrective actions to address any deficiencies identified by the department.

The bill would prohibit the provisions relating to probationary basins and interim plans from applying to a stipulated judgment approved by the court if the judgment is submitted to the department for evaluation and assessment and the department determines that the judgment satisfies the objectives of the act for the basin. The bill would require the department to submit to the court assessments and any recommended corrective actions for these judgments and would require the court, after notice and, if necessary, an evidentiary hearing, to determine whether to amend the judgment to adopt the department’s recommended corrective actions. This bill would prohibit a court from approving entry of judgment in an adjudication action for a basin required to have a groundwater sustainability plan under the act unless the court finds that the judgment will not substantially impair the ability of a groundwater sustainability agency, the board, or the department to comply with the act and to achieve sustainable groundwater management.

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 105.5 is added to the Water Code, to~~  
 2 ~~read:~~

3 ~~105.5. (a) Notwithstanding any other law, the state may~~  
 4 ~~intervene as a matter of right in any suit brought in any court for~~  
 5 ~~determination of rights to water.~~

6 ~~(b) This section does not affect substantive law.~~

7 *SECTION 1. Section 837.5 is added to the Code of Civil*  
 8 *Procedure, immediately following Section 837, to read:*

9 *837.5. (a) The state may intervene in a comprehensive*  
 10 *adjudication conducted pursuant to this chapter.*

11 *(b) This section does not affect substantive law.*

12 *SEC. 2. Section 10720.1 of the Water Code is amended to read:*  
 13 *10720.1. In enacting this part, it is the intent of the Legislature*  
 14 *to do all of the following:*

15 *(a) To provide for the sustainable management of groundwater*  
 16 *basins.*

17 *(b) To enhance local management of groundwater consistent*  
 18 *with rights to use or store groundwater and Section 2 of Article X*  
 19 *of the California Constitution. It is the intent of the Legislature to*  
 20 *preserve the security of water rights in the state to the greatest*

1 extent possible consistent with the sustainable management of  
2 groundwater.

3 (c) To establish minimum standards for sustainable groundwater  
4 management.

5 (d) To provide local groundwater agencies with the authority  
6 and the technical and financial assistance necessary to sustainably  
7 manage groundwater.

8 (e) To avoid or minimize subsidence.

9 (f) To improve data collection and understanding about  
10 groundwater.

11 (g) To increase groundwater storage and remove impediments  
12 to recharge.

13 (h) To manage groundwater basins through the actions of local  
14 governmental agencies to the greatest extent feasible, while  
15 minimizing state intervention to only when necessary to ensure  
16 that local agencies manage groundwater in a sustainable manner.

17 (i) To provide a more efficient and cost-effective groundwater  
18 adjudication process that protects water rights, ensures due process,  
19 prevents unnecessary delay, and furthers the objectives of this part.

20 SEC. 3. Section 10720.5 of the Water Code is amended to read:

21 10720.5. (a) Groundwater management pursuant to this part  
22 shall be consistent with Section 2 of Article X of the California  
23 Constitution. Nothing in this part modifies rights or priorities to  
24 use or store groundwater consistent with Section 2 of Article X of  
25 the California Constitution, except that in basins designated  
26 medium- or high-priority basins by the department, no extraction  
27 of groundwater between January 1, 2015, and the date of adoption  
28 of a groundwater sustainability plan pursuant to this part or the  
29 approval by the department of an alternative submitted under  
30 Section 10733.6, whichever is sooner, may be used as evidence  
31 of, or to establish or defend against, any claim of prescription.

32 (b) Nothing in this part, or in any groundwater management  
33 plan adopted pursuant to this part, determines or alters surface  
34 water rights or groundwater rights under common law or any  
35 provision of law that determines or grants surface water rights.

36 (c) Water rights may be determined in an adjudication action  
37 pursuant to Chapter 7 (commencing with Section 830) of Title 10  
38 of Part 2 of the Code of Civil Procedure.

39 SEC. 4. Section 10722.2 of the Water Code is amended to read:

1 10722.2. (a) A local agency or an entity directed by the court  
2 in an adjudication action to file the request may request that the  
3 department revise the boundaries of a basin, including the  
4 establishment of new subbasins. A request shall be supported by  
5 the following information:

6 (1) Information demonstrating that the proposed adjusted basin  
7 can be the subject of sustainable groundwater management.

8 (2) Technical information regarding the boundaries of, and  
9 conditions in, the proposed adjusted basin.

10 (3) Information demonstrating that the entity proposing the  
11 basin boundary adjustment consulted with interested local agencies  
12 and public water systems in the affected basins before filing the  
13 proposal with the department.

14 (4) Other information the department deems necessary to justify  
15 revision of the basin's boundary.

16 (b) By January 1, 2016, the department shall adopt regulations  
17 regarding the information required to comply with subdivision (a),  
18 including the methodology and criteria to be used to evaluate the  
19 proposed revision. The department shall adopt the regulations,  
20 including any amendments thereto, authorized by this section as  
21 emergency regulations in accordance with the Administrative  
22 Procedure Act (Chapter 3.5 (commencing with Section 11340) of  
23 Part 1 of Division 3 of Title 2 of the Government Code). The  
24 adoption of these regulations is an emergency and shall be  
25 considered by the Office of Administrative Law as necessary for  
26 the immediate preservation of the public peace, health and safety,  
27 or general welfare. Notwithstanding the Administrative Procedure  
28 Act, emergency regulations adopted by the department pursuant  
29 to this section shall not be subject to review by the Office of  
30 Administrative Law and shall remain in effect until revised by the  
31 department.

32 (c) Methodology and criteria established pursuant to subdivision  
33 (b) shall address all of the following:

34 (1) How to assess the likelihood that the proposed basin can be  
35 sustainably managed.

36 (2) How to assess whether the proposed basin would limit the  
37 sustainable management of adjacent basins.

38 (3) How to assess whether there is a history of sustainable  
39 management of groundwater levels in the proposed basin.

1 (d) Prior to adopting the regulations pursuant to subdivision (b),  
2 the department shall conduct three public meetings to consider  
3 public comments. The department shall publish the draft  
4 regulations on its Internet Web site at least 30 days before the  
5 public meetings. One meeting shall be conducted at a location in  
6 northern California, one meeting shall be conducted at a location  
7 in the central valley of California, and one meeting shall be  
8 conducted at a location in southern California.

9 (e) The department shall provide a copy of its draft revision of  
10 a basin's boundaries to the California Water Commission. The  
11 California Water Commission shall hear and comment on the draft  
12 revision within 60 days after the department provides the draft  
13 revision to the commission.

14 SEC. 5. Chapter 12 (commencing with Section 10737) is added  
15 to Part 2.74 of Division 6 of the Water Code, to read:

16

17 CHAPTER 12. DETERMINATION OF RIGHTS TO GROUNDWATER

18

19 10737. Except as provided in this chapter, an adjudication  
20 action to determine rights to groundwater in a basin shall be  
21 conducted in accordance with the Code of Civil Procedure,  
22 including pursuant to Chapter 7 (commencing with Section 830)  
23 of Title 10 of Part 2 of that code.

24 10737.2. In an adjudication action for a basin required to have  
25 a groundwater sustainability plan under this part, the court shall  
26 manage the proceedings in a manner that minimizes interference  
27 with the timely completion and implementation of a groundwater  
28 sustainability plan, avoids redundancy and unnecessary costs in  
29 the development of technical information and a physical solution,  
30 and is consistent with the attainment of sustainable groundwater  
31 management within the timeframes established by this part.

32 10737.4. (a) Chapter 11 (commencing with Section 10735)  
33 shall not apply to a stipulated judgment approved by the court  
34 pursuant to Section 850 of the Code of Civil Procedure if both of  
35 the following apply:

36 (1) A local agency or a party directed by the court to file the  
37 submission submits the judgment to the department for evaluation  
38 and assessment pursuant to paragraph (2) of subdivision (b) of  
39 Section 10733.6.

1 (2) The department determines that the judgment satisfies the  
2 objectives of this part for the basin.

3 (b) A party or group of parties proposing a stipulated judgment  
4 pursuant to subdivision (b) of Section 850 of the Code of Civil  
5 Procedure may submit the proposed stipulated judgment to the  
6 department for evaluation and assessment pursuant to paragraph  
7 (2) of subdivision (b) of Section 10733.6.

8 (c) Notwithstanding subdivision (c) of Section 10733.6, a  
9 judgment or proposed stipulated judgment pursuant to this section  
10 may be submitted to the department after January 1, 2017.

11 (d) A determination of the department on a submission pursuant  
12 to this section is subject to judicial review pursuant to Section  
13 1085 of the Code of Civil Procedure. Venue shall be in the court  
14 with jurisdiction over the adjudication action and the case shall be  
15 coordinated with the adjudication action.

16 10737.6. If the department determines that a judgment satisfies  
17 the objectives of this part in accordance with paragraph (2) of  
18 subdivision (a) of Section 10737.4, the department shall submit  
19 to the court the assessments and any recommended corrective  
20 actions that the department issues pursuant to Section 10733.8.  
21 The court, after notice and, if necessary, an evidentiary hearing,  
22 shall determine whether to amend the judgment pursuant to Section  
23 852 of the Code of Civil Procedure to adopt the department's  
24 recommended corrective actions.

25 10737.8. In addition to making any findings required by  
26 subdivision (a) of Section 850 of the Code of Civil Procedure or  
27 any other law, the court shall not approve entry of judgment in an  
28 adjudication action for a basin required to have a groundwater  
29 sustainability plan under this part unless the court finds that the  
30 judgment will not substantially impair the ability of a groundwater  
31 sustainability agency, the board, or the department to comply with  
32 this part and to achieve sustainable groundwater management.

33 SEC. 6. This act shall only become operative if Assembly Bill  
34 1390 of the 2015–16 Regular Session is enacted and becomes  
35 effective.