

Senate Bill No. 226

Passed the Senate September 11, 2015

Secretary of the Senate

Passed the Assembly September 10, 2015

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2015, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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, 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 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 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 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 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.

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

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

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

(b) This section does not affect substantive law.

SEC. 2. Section 10720.1 of the Water Code is amended to read:

10720.1. In enacting this part, it is the intent of the Legislature to do all of the following:

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

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

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

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

(e) To avoid or minimize subsidence.

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

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

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

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

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

10720.5. (a) Groundwater management pursuant to this part shall be consistent with Section 2 of Article X of the California Constitution. Nothing in this part modifies rights or priorities to use or store groundwater consistent with Section 2 of Article X of

the California Constitution, except that in basins designated medium- or high-priority basins by the department, no extraction of groundwater between January 1, 2015, and the date of adoption of a groundwater sustainability plan pursuant to this part or the approval by the department of an alternative submitted under Section 10733.6, whichever is sooner, may be used as evidence of, or to establish or defend against, any claim of prescription.

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

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

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

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

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

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

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

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

(b) By January 1, 2016, the department shall adopt regulations regarding the information required to comply with subdivision (a), including the methodology and criteria to be used to evaluate the proposed revision. The department shall adopt the regulations, including any amendments thereto, authorized by this section as emergency regulations in accordance with the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations is an emergency and shall be considered by the Office of Administrative Law as necessary for

the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding the Administrative Procedure Act, emergency regulations adopted by the department pursuant to this section shall not be subject to review by the Office of Administrative Law and shall remain in effect until revised by the department.

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

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

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

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

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

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

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

CHAPTER 12. DETERMINATION OF RIGHTS TO GROUNDWATER

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

10737.2. In an adjudication action for a basin required to have a groundwater sustainability plan under this part, the court shall 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 this part.

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

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

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

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

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

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

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

10737.8. In addition to making any findings required by subdivision (a) of Section 850 of the Code of Civil Procedure or any other law, the court shall not approve entry of judgment in an

adjudication action for a basin required to have a groundwater sustainability plan under this part 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 this part and to achieve sustainable groundwater management.

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

Approved _____, 2015

Governor