

# Attachment C



## Assemblymember Lori D. Wilson, 11<sup>th</sup> Assembly District

### AB 779 – Sustainable Ground Water Management Act – Adjudication

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#### RATIONALE

Despite the year beginning with record-breaking rain throughout California, a historic drought has retained its grip on the State. According to the National Integrated Drought Information System, over 33 million Californians are impacted by drought,<sup>1</sup> and the West remains in its driest period since the year 800.<sup>2</sup> Climate change threatens to further imperil California's groundwater supply and make droughts longer, more frequent, and more extreme.

After years of severe drought and volatile weather exacerbated by the climate crisis, California has increasingly been forced to rely on groundwater—rather than surface water—to meet its demand for water. In particular, groundwater is a lifeline for California farmers, serving as an indispensable tool for managing the natural volatility of surface water availability. In dry years, groundwater can comprise 60 percent of their water supply, almost double the amount used in average years.<sup>3</sup> Together, these factors have placed considerable demands on California groundwater, with the Central Valley being the second most pumped aquifer in the country.<sup>4</sup> Such overuse can have disastrous results for farmers, local communities, and the environment, causing dry wells, land subsidence, and other long-term consequences.<sup>5</sup>

In response to persistent conditions of extreme drought and concerns over groundwater depletion, the California legislature enacted the Sustainable Groundwater Management Act (“SGMA”) in 2014. SGMA requires local and regional agencies to formulate plans to ensure sustainable groundwater use on a basin-wide basis. The program is built around local control of groundwater supply, allowing regions to design groundwater control systems that work best for their own communities. However, as implementation of SGMA has continued to unfold, many have raised concerns that small and disadvantaged farmers have not been adequately represented throughout the process.

Some of the key burdens SGMA places on small and disadvantaged farmers are related to the process of water rights adjudication in groundwater basins where rights are disputed.<sup>6</sup> Stakeholders like the Community Alliance with Family Farmers, among others, are concerned that the adjudication process takes place in non-specialized courts and can be lengthy, expensive, and opaque—all factors which exacerbate the existing resource disparities and underrepresentation of disadvantaged communities.

In 2015, AB 1390 was passed to “streamline” the adjudication process and align the process with the goals of SGMA.<sup>7</sup> However, stakeholders have raised several concerns around abuses of the process and areas for improvement. For instance, some community members worry that bad faith actors resort to the adjudication process to extend the time in which they can pump groundwater without restriction, a phenomenon known as a “rush to the pumphouse.” Others have pointed out that the current adjudication process makes it extremely cumbersome for expert agencies like DWR or the State Water Board to provide technical input and ensure maximum compliance with SGMA. Finally, the adjudication process remains opaque and inaccessible to small farmers and historically excluded community members, who lack the time and resources to sit in on proceedings or track down court documents to stay updated on the process. Together, these concerns outline a promising path forward to improve the adjudication process for historically marginalized farmers and communities.

#### SOLUTION

Groundwater adjudications must have regularly reported monitoring plans that ensure groundwater supplies are not being depleted by users at unsustainable rates during the proceedings. Further, the adjudication must become more transparent and accessible for all parties to have equal opportunity to participate and understand the process. AB 779 would require the court to appoint one party to forward all case management orders, judgements, and interlocutory orders to the

<sup>1</sup> <https://www.drought.gov/states/california>

<sup>2</sup> <https://www.nature.com/articles/s41558-022-01290-z>

<sup>3</sup> <https://www.nature.com/articles/s41467-022-35582-x>

<sup>4</sup> <https://www.nature.com/articles/s41467-022-35582-x>, citing Faunt, C. C., Sneed, M., Traum, J. & Brandt, J. T. Water availability and land subsidence in the Central Valley, California, USA. *Hydrogeol. J.* 24, 675–684 (2016).

<sup>5</sup> *Id.*

<sup>6</sup> <https://water.ca.gov/Programs/Groundwater-Management/SGMA-Groundwater-Management/Adjudicated-Areas>

<sup>7</sup> [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201520160AB1390](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160AB1390)

department and the department shall post the documents within 20 business days of receipt. The bill would also require the department to hold public meetings to explain the adjudication process to users in the basin. The bill would also encourage the court to invite a representative from the Department of Water Resources or the State Water Resources Control Board to provide technical assistance or expert testimony. Lastly, the bill would require GSA's to report monitoring data to the court.

### **Publication of Court Documents & Expert Witness**

The California Code of Civil Procedure states that a court may enter a judgment in a comprehensive adjudication.<sup>8</sup> There is currently no forum for court documents to be available for view by members of the public.

**AB 779 would require a party in the adjudication to forward all case management orders, judgements, and interlocutory orders to the department within 10 days of issuance. It would also require the documents to be posted on its internet website in the interest of transparency and accessibility within 20 days of receipt from a party.**

**Further, AB 779 would encourage the court to invite an expert witness from the Department of Water Resources or the State Water Resources Control Board to provide expert testimony or technical assistance regarding equitable and sustainable pumping allocations for the basin, sustainable groundwater management best practices and recommendations, and the water use of small farmers and disadvantaged communities and potential impacts on their needs.**

### **Monitoring Plans**

The California Water Code requires watermasters or local agencies of basins in an adjudication to submit groundwater monitoring data on extraction, levels, and usage to the department on April 1st of each year.<sup>9</sup>

**The bill would require all monitoring and reporting required under all groundwater sustainability plans approved by the department or submitted to and awaiting approval by the department to continue throughout the duration of the adjudication proceeding.**

**Additionally all groundwater sustainable agencies required to submit reports to the department pursuant to Section 10728 regarding a**

**basin subject to adjudication shall submit copies of the reports to the court during the duration of the adjudication proceeding.**

**The board shall also submit to the court during the duration of the adjudication proceeding the information it receives from a person required to submit monitoring program reports to the board pursuant to Section 10736.6.**

**Lastly, throughout the duration of the adjudication proceeding, a party to the adjudication or other person extracting water, shall comply with the groundwater sustainability plan or plans for the subject basin or the interim plan for the subject basin adopted by the board.**

### **Public Forums**

The proposal also would require the department to hold public meetings to explain the adjudication process to water users within the basin and the public upon receiving notice that the adjudication has commenced.

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<sup>8</sup> *Id.*

<sup>9</sup> [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=WAT&sectionNum=10720.8](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=WAT&sectionNum=10720.8)