



COMMUNITY QUESTIONS

November 2024

Small Farmer Clinic
UC Davis School of Law
400 Mrak Hall Dr, Davis, CA 95616
Davis, CA 95616

ACKNOWLEDGEMENTS¹

The UC Davis School of Law Small Farmer Clinic welcomes you to take the first steps towards understanding the regulatory landscape around groundwater use in California. This guide is meant to provide you with answers to frequently asked questions from the small farmer and small pumper community regarding the impact groundwater adjudications and the Sustainable Groundwater Management Act.

Our Clinic publishes this evolving guide with the hope that the information within can be used by individuals, like you, for the benefit of yourself and the people around you. Thank you for your commitment to your community.

The following students contributed to this guide:

Madi Richards '25
Thalia Taylor '25²
Christopher Mouawad '25

Sincerely,

David Sandino
Director
Small Farmer Clinic
UC Davis School of Law

¹ The UC Davis School of Law Small Farmer Water Justice Clinic was created in Fall 2024 to assist small farmers with protecting their water rights, including in disputes relating to the Sustainable Groundwater Management Act. This document has been created only for the benefit of the small farmer community in the Cuyama Basin **for informational purposes only and it is not intended to provide specific legal advice or be a substitute for legal representation**. If someone has a specific legal question or desires legal representation, he or she should contact an attorney or reach out to the clinic at smallfarmerclinic@law.ucdavis.edu.

² Cover Page image courtesy of Thalia Taylor, 2024

GLOSSARY OF TERMS

Adjudication In the context of groundwater rights, a lawsuit which seeks to determine the rights of every groundwater user in a basin. An adjudication results in a judgment, which is a court decision that has legal consequences for every user's groundwater rights. Section A contains more information on adjudications.

Appropriative Groundwater Rights Rights to pump and use groundwater beneficially on a property that is not overlying the aquifer. Appropriative rights must be registered with the State Water Resources Control Board (SWRCB) and are subject to restrictions in the permit granted by the SWRCB. Appropriative groundwater rights holders are also subject to restrictions and allocations made by a GSA if they are in a medium- or high- priority basin under the Department of Water Resources (DWR) Bulletin 118.

Appropriative Surface Water Rights Right to divert surface water for beneficial use on a property not adjacent to or containing the body of water. If the date the user began diverting water is after 1914, the appropriative right must be registered with the State Water Resources Control Board (SWRCB) and is subject to restrictions in the permit granted by the SWRCB.

Beneficial Use Any use that is not wasteful and that does not infringe on other users' ability to meet their reasonable needs. This doctrine basically prevents water rights holders from diverting or pumping more water than they reasonably need to sell it for money or other financial purposes.³

Brown Act California's open meetings law. This Act generally requires public agencies to give notice of their meetings and provide public access to those meetings. The Act applies to GSAs and their committees, such as the Standing Advisory Committee.

De Minimis User A water user who uses small amounts of water. The upper limit on how much use is "de minimis" varies by context. SGMA defines the upper limit for a *de minimis* user as 2 acre feet per year. Refer to questions A2 and C1 for more information.

Groundwater Water found underground in the cracks and spaces in soil and rock. It moves and is stored in geologic formations of soil, sand, and rock, called aquifers.

Groundwater Sustainability Agency (GSA) Local agencies formed under SGMA to create Groundwater Sustainability Plans to avoid the undesirable effects of overdrafted groundwater basins.

Groundwater Sustainability Plan (GSP) The groundwater management plan that GSAs are required to develop to bring a basin into sustainability by 2040, as required by SGMA.

Overlying Rights Right to use groundwater beneficially on your property if your property is located directly above the aquifer. Overlying groundwater rights holders are subject to restrictions and allocations made by a GSA if they are in a medium- or high- priority basin under SGMA.

³ 62 Cal. Jur. 3d Water § 328.

Priority Date The date that an appropriative water rights-holder filed their application to divert or pump water with the SWRCB, if they did so after 1914 (surface water). If their water use dates to before 1914, it is the date at which they began diverting or pumping water. An appropriative groundwater right's priority date is shown through pumping records that demonstrate when the pumper began to extract water and how much they were extracting. A variety of records are acceptable to demonstrate priority date.

Public Records Act (PRA) A set of California laws related to sharing government documents with the public, similar to the federal Freedom of Information Act (FOIA). Under this Act, public agencies must make governmental records available to the public for inspection or disclosure on request, unless an exemption applies.

Riparian Rights Right to use surface water adjacent to or on your property. If you have a riparian right, you may use as much surface water you need so long as it is for beneficial uses and your surface water use has not been curtailed because of a shortage.

Surface Water Streams, lakes, and rivers are examples of surface water. Surface water includes rain, runoff, and wetlands. It is water that does not penetrate much below the ground.

Sustainable Groundwater Management Act (SGMA) A collection of California laws passed in 2014 related to the regulation of groundwater. The goal of SGMA is to bring groundwater basins into a state of sustainability over time, through Groundwater Sustainability Plans developed and implemented by Groundwater Sustainability Agencies. The Department of Water Resources and State Water Resources Control Board serve as a backup enforcer. SGMA does not change existing water rights. The Water Education Foundation's "Aquapedia" has more information about SGMA.⁴

Sustainability SGMA defines a "sustainability goal" and a basin's "sustainable yield." Under both definitions, to achieve sustainability is to ensure that the applicable basin is operated within its sustainable yield to avoid any undesirable results.⁵

Undesirable Results (SGMA) SGMA requires GSAs to develop GSPs that avoid "undesirable results." Undesirable results are significant and unreasonable impacts to six defined sustainability indicators:

1. Chronic lowering of groundwater levels (overdraft)
2. Reduction of groundwater storage
3. Seawater intrusion
4. Degraded water quality
5. Land subsidence (sinking)
6. Depletions of interconnected surface water.⁶

Waste Wasting water is using more water than what is reasonably necessary for a beneficial purpose.

⁴ <https://www.watereducation.org/aquapedia-background/sustainable-groundwater-management-act-sgma>

⁵ Cal. Wat. § 10721(u) ("sustainability goal"), Cal. Wat. § 10721(w) ("sustainable yield").

⁶ Wat. Code, § 10721, subd. (x)(1).

SECTION A: RELEVANT TO ADJUDICATION

A1. WHY ARE FARMERS WHO USE LESS WATER THAN A DOMESTIC WELL PART OF THIS SUIT?

The purpose of a groundwater adjudication is to determine the rights of all groundwater users within a basin. Because users may have conflicting claims to groundwater, the adjudication considers all users and makes a final decision that applies to everyone.

Courts can exempt groundwater pumpers who pump less than 5 acre feet per year from participating in adjudications in certain situations. To do this, the court must find the small pumpers' non-participation in the adjudication would not affect other users.⁷ The Legislature has recognized the high legal cost of participating in an adjudication and the negligible impact that domestic well pumpers and small farmers have on groundwater overdraft. However, until the court expressly decides to exempt small pumpers in an adjudication, these small pumpers should consider participating in the adjudication to protect their water rights.

It may also be possible to negotiate a settlement of the adjudication before trial which excludes small pumpers under an agreed-upon threshold not necessarily limited to 5 acre-feet per year. This option would involve a "stipulation," a written agreement related to the adjudication. If the court approved a stipulation, it has the same legal force as a judgement, which is a decision issued by the court at the conclusion of a case. Stipulations are fairly common in groundwater adjudications.

A2. DOES BEING A DE MINIMIS USER MEAN THAT YOU DON'T NEED REPRESENTATION IN AN ADJUDICATION?

No, being a *de minimis* user does not mean that you do not need legal representation. A "*de minimis* extractor" is defined as a user who extracts two acre feet of water per year or less for "domestic purposes."⁸ The amount of water a user extracts does not create any requirement to have a lawyer. *De minimis* pumpers may hire lawyers to represent them in the adjudication, or they may choose to represent themselves.

In the Cuyama Basin adjudication, the court stated that *de minimis* pumpers must appear in the case by filing an answer to the complaint and completing

the initial disclosure requirements. However, the court is not requiring *de minimis* users to complete certain other requirements of participating in the adjudication such as filing Case Management Statements (which are forms describing the case's progress) and appearing at Case Management Conferences (which are meetings with the judge and parties to discuss the progress of a case).

The court may change these rules at any time (including by requiring *de minimis* users to participate in all parts of the lawsuit). However, the court has also signaled openness to "adopt[ing] other procedures to streamline the participation of *de minimis* groundwater pumpers in the case in order to reduce legal cost." Under the law, the court can even choose to exempt pumpers of less than 5 acre feet per year from participating in the adjudication if they do not wish to and their absence would not affect other users.⁹

The clinic may be able to help *de minimis* pumpers ask the court for measures that would make it easier for small pumpers to participate in the adjudication, or to exclude *de minimis* pumpers entirely. The clinic may also be able to help with a stipulation to exclude small pumpers as described in question A1.

A3. CAN A JUDGE RULE THAT USERS UNDER A CERTAIN THRESHOLD DO NOT NEED TO BE PART OF THE LAWSUIT? WHAT DO WE NEED TO SHOW TO GET SUCH A RULING?

Yes, the judge can rule that users of under 5 acre feet of water per year do not need to be a part of the adjudication. This is more than the SGMA definition of a "*de minimis*" user, but less than many small farmers use. To do so, the court would need to find that exempting small users "would not have a material effect on the groundwater rights of other parties."¹⁰ Once exempted, small users would still be free to continue participating in the adjudication if they wished.

This statute is fairly new, being enacted in 2016. There are not yet examples of this statute being used to exempt small water users from adjudications. Generally, the process for asking the court to do something involves filing a motion. The California Courts website¹¹ contains general information on motions and how filing one works.

⁷ Code Civ. Proc., § 833, subd. (d).

⁸ Wat. Code, § 10721, subd. (e).

⁹ Code Civ. Proc., § 833, subd. (d).

¹⁰ Code Civ. Proc., § 833, subd. (d).

¹¹ <https://www.courts.ca.gov/partners/documents/insformat.pdf>

A4. HOW DOES A PUMPING ALLOCATION AFFECT MY ABILITY TO DRILL NEW WELLS OR USE MY LAND BEFORE THE END OF THE ADJUDICATION PROCESS?

Both SGMA and adjudications can set limits on the amount of water that may be pumped before incurring fees or other penalties. However, no limits on pumping have been established by the court in the Cuyama Basin adjudication. Individuals should comply with their allocations under the GSP.

If you live in the Central Management Area, then your water use is limited by the GSP.

Pursuant to Executive Order N-7-22 (March 22, 2022), the GSA has created a permitting process for drilling new wells and pumping in excess of allocated water.¹²

GSA permits are not required for wells that will produce less than 2 AFY for individual domestic users or for wells that will exclusively provide water to public water systems or state small water systems. Permits are also not required for wells in adjudicated basins, for maintenance, or for replacement of an existing well or its parts.

The GSA charges a \$1200 fee for new permit applications, and a \$12 per acre-foot fee for groundwater extraction. Commercial users who use less than 1.5 AFY are exempt from this fee, as are domestic users who use less than 2 AFY.

If you plan on drilling a new well, you are subject to county permitting requirements and fees as well as GSA requirements. Santa Barbara, Ventura, and San Luis Obispo Counties' permit applications are available online.¹³

A5. WHO IS RESPONSIBLE FOR ENFORCING THE RESULTS OF THE ADJUDICATION?

Adjudication determinations are normally enforced by a "watermaster" or other designated agency, water company, or committee. Regardless, the enforcement entity must be familiar with the results of the adjudication and be reasonable for tracking

¹² <https://cuyamabasin.org/assets/pdf/CBGSA-New-Well-Form.pdf>, See also <https://cuyamabasin.org/assets/pdf/CBGSA-Well-Permit-Policy.pdf>

¹³ Santa Barbara County: <https://content.civicplus.com/api/assets/662a92eb-e47b-4166-8aba-c4145392c4c9?cache=1800>.

and policing water use. A watermaster may be an entity created by a court or appointed by the California Department of Water Resources. The cost of the watermaster is distributed among water rights holders in the adjudicated area.

For example, the West Coast Basin Watermaster, appointed following the adjudication of the groundwater basin underlying Los Angeles, has a total operating budget of a little over \$100,000 per year, and 50-60 water rights holders. Each water right holder is charged a \$20 flat fee, and then the rest of the cost is allocated based on use. Annual costs ranged from \$20 for smaller water rights holders to \$17,000 for a water utility.

Watermasters in recent adjudications have tended to be committees composed of representatives of various interest groups in the basin. The Antelope Valley adjudication concluded in 2020. The resulting watermaster in that adjudication is a committee composed of representatives of a variety of public agencies and two landowner parties, chosen by a vote of listed landowning parties, excluding de *minimis* users.

A6. WHAT ARE MY RIGHTS IF I REPRESENT MYSELF? WHY ARE THERE FEES?

As a self-represented litigant, you have all the same rights as a represented party. Practically, this means that you have the same rights to participate in the case as represented parties, but you do not get special treatment because you are unrepresented.

Courts and judges are aware that unrepresented parties face additional challenges with respect to filing and understanding legal documents and procedures, especially in complex litigation like an adjudication. Courts provide additional guidance through Self-Help centers. You can find the closest Self-Help center at <https://selfhelp.courts.ca.gov/self-help/find-self-help>.

Though unrepresented parties have the same rights as represented parties, it is harder for them to achieve the same outcomes because they do not

Ventura County:
<https://www.onestoppermits.vcrma.org/departments/groundwater>

San Luis Obispo County:
<https://www.slocounty.ca.gov/departments/health-agency/public-health/environmental-health-services/all-environmental-health-services/well-program/water-well-construction-permitting>

have attorneys. It is advisable to retain representation if it is within your means. If it is not, free resources are available.

The UC Davis Small Farmer Clinic is also happy to answer questions in a limited capacity. Please feel free to reach out to us at:

smallfarmerclinic@law.ucdavis.edu

Self-represented litigants are generally exempt from electronic ("e-filing") requirements.¹⁴ However, the Cuyama Basin adjudication is a complex case so the court has decided to use case management software for all service and filing. **The Court is not providing defendants with notice by personal service or publication.** All filing and service in this case is being done by Case Anywhere, Inc. Access to the Case Anywhere system is limited to parties to the adjudication and their representatives.

If you do not have a Case Anywhere account:

1. Email support@caseanywhere.com with information demonstrating that you are a party to the case and the case number. The case number for the Cuyama Basin Adjudication is BCV-21-101927.
2. Case Anywhere will provide you with login information to log onto the case management portal, e-file documents, and receive announcements sent to the service list.
3. Make sure your email is not screening out service announcements from service@caseanywhere.com.
4. If you are still unable to access Case Anywhere, support is available at (800) 884-3163 or by email at support@caseanywhere.com.

Please note that Case Anywhere has an associated fee that users are required to pay.

Courts have fees to cover their costs and discourage frivolous litigation. Court fees may be waived for persons who are low income (monthly income of less than \$3,406.67 for a household of 2), receive public benefits, or do not have enough income to pay for their household's basic needs and their court fees.

Court fees may be waived by filing form **FW-001**¹⁵ and/or **FW-002**.¹⁶ If your application for a fee waiver is based on your inability to pay your household's basic needs and your court fees, you will likely need to provide additional information about your household income. Courts may choose to waive only some fees if they feel you have the ability to cover some, but not all of the fees. Court fees do not include attorney fees.

A7. WHAT HAPPENS TO MY ABILITY TO ACCESS WATER IN THE FUTURE IF I DROP OUT OF THE ADJUDICATION?

A groundwater adjudication is comprehensive, which means:

- It addresses the groundwater rights of all groundwater users in a basin.
- It determines conclusively who has rights to how much groundwater in that basin.

A groundwater user risks losing their groundwater rights when they drop out of the adjudication process.

At the end of an adjudication, the court issues a judgment which describes how the water rights will be divided up among groundwater users in the basin. If a groundwater user receives notice and opportunity to participate in an adjudication but does not do so, the court might rank that user's right lower than another user who participated in the adjudication.¹⁷ In an overdrafted basin like Cuyama, this could result in the user who dropped out not being allowed to pump any water.

¹⁴ California Rules of Court, rule 2.253(b)(2).

¹⁵ <https://www.courts.ca.gov/documents/fw001.pdf>

¹⁶ <https://www.courts.ca.gov/documents/fw002.pdf>

¹⁷ *Antelope Valley Groundwater Cases* (2021) 62 Cal.App.5th 992, 1036.

B1. WHAT ARE THE STANDARDS FOR SHOWING A CONFLICT OF INTEREST FOR A GSA BOARD MEMBER?

Thanks to SB 1156 (Hurtado), on and after January 1, 2025, the Political Reform Act of 1974 explicitly applies to members of the board of directors and the executive of a GSA.

The administration of the Political Reform Act of 1974 is the responsibility of the Fair Political Practices Commission. The Commission is a five-member independent, non-partisan state agency.

The Political Reform Act of 1974 regulates campaign financing, conflicts of interest, lobbying, and governmental ethics. Specifically, the Act prohibits a public official from making, participating in making, or attempting to use their official position to influence a governmental decision in which they know or have reason to know that they have a *financial interest*.

A *financial interest* in a decision is defined as “a material financial effect, distinguishable from its effect on the public generally” on any of the people or entities listed within Gov. Code Sec. 87103.

A *statement of economic interests* (known as a Form 700) is a statement that discloses financial interests. A Form 700 must be submitted to the Fair Political Practices Commission. This bill would require that a Form 700 be submitted by each board member of a GSA and the executive of a GSA. Failure to submit a Form 700 is a misdemeanor.

The submission of a Form 700 provides transparency and ensures accountability by providing necessary information to the public about an official's personal financial interests to ensure that officials are making decisions in the best interest of the public and not enhancing their personal finances.

Most or all GSA board members and the executive will likely be obligated to submit forms. If they have any kind of farming operation that involves pumping groundwater, they will likely have to file forms disclosing this as an interest. This is also something to be aware of if you plan on serving on a GSA.

For more detail, see *Appendix B: Assembly Bill 1156 (Hurtado)*.

¹⁸ Gov. Code, § 54956.9.

¹⁹ Gov. Code, § 7930.125.

B2. CAN WE MAKE PUBLIC RECORDS ACT REQUESTS FOR INFORMATION ABOUT THE CLOSED SESSION GSA MEETINGS?

Under the Brown Act (California's open meetings law), public agencies must generally give notice of their meetings and provide public access to those meetings.

Under the Public Records Act, public agencies must make governmental records available to the public for inspection or disclosure on request, unless an exemption applies.

A “closed session” is a portion of a meeting by a public agency that occurs behind closed doors, i.e., is not accessible to the public. Agencies can call a closed session for a number of reasons, including to discuss pending litigation.¹⁸ Records from closed sessions of governmental meetings to discuss litigation are not required to be disclosed under the Public Records Act.¹⁹ However, agencies must report to the public whether they took any action in a closed session and must include a brief description of any closed session items in their meeting agendas.

There is nothing preventing a member of the public from submitting a Public Records Act request related to records of closed session GSA meetings. However, the GSA may not respond to such a request by all requested producing documents. If a public agency declines to produce a record under the Public Records Act, it must justify doing so by citing one or more sections of the Act, or by demonstrating that the public interest is better served by not disclosing the record.²⁰

²⁰ Gov. Code, § 7922.000.

SECTION C: RELEVANT TO BOTH ADJUDICATION AND SGMA

C1. CAN WE INFLUENCE THE DEFINITION OF DE MINIMIS USERS TO INCLUDE EVERYONE WHO IS NOT PUMPING MUCH?

Within the Sustainable Groundwater Management Act, a “*de minimis* extractor” is someone who extracts, for domestic purposes, two acre-feet or less per year.²¹

De minimis extractors have certain privileges such as:

- A GSA cannot require a water-measuring device on a groundwater extraction facility operated by a *de minimis* extractor.²²
- A GSA cannot require that the owner or operator of a groundwater well file an annual statement with information on the total extraction of groundwater from the facility during the previous year.²³
- A GSA generally cannot require *de minimis* extractors to pay a fee to fund the costs of a groundwater sustainability program.²⁴

While the definition of *de minimis* is set by statute, the GSA can voluntarily decide to adopt different rules for different pumpers. The final judgment of the adjudication may also adopt different rules for different pumpers.

C2. HOW DOES HISTORICAL USE FACTOR INTO WATER ALLOTMENT?

Some GSAs, including Cuyama, use historical use records when making water allocations. There is no legal requirement that they allocate water this way.

Historical use is important in adjudications. Adjudications determine who has what water right (not allocation), and then often establish a procedure for managing water so no one’s rights are violated. In a year with normal water flow, theoretically everyone gets as much water as they need.

However, when there is a shortage, the type and priority date of a user’s water right determine whose water use is curtailed first:

- Users with junior appropriative groundwater rights are curtailed first;
- Users with senior appropriative rights are curtailed next;
- Users with overlying rights are curtailed last.

Additionally, appropriative users may lose their priority date if they significantly reduce or stop pumping. Proof of historical use is necessary to secure your appropriative right and priority date in the adjudication.

C3. WHAT IS THE DIFFERENCE BETWEEN A WATER RIGHT AND A WATER ALLOCATION?

In California, water rights are known as “usufructuary.” This means that individuals have the right to use water but cannot own water. The California Constitution provides that use of water is always a “public use” and “subject to regulation and control.”²⁵

A water right is a property right that may have a volume attached to it or not. Most groundwater rights do not have a volume attached to it. An adjudication will attach a volume to a groundwater right.

The extent of regulation and control is determined by the type of water right, the public trust doctrine, and the waste and unreasonable use doctrine. The State Water Resources Control Board is responsible for enforcement of regulations and controls established by the State.

A “water allocation” by a GSA is a limitation on how much water you can use before you contribute to “undesirable results” in a water basin. The right to use is conditional on that use being beneficial for all water users in the basin. The water allocation does not change your water right but does limit the extent you can exercise your right. Limits are determined by a GSA and made public in a GSP. Limits must be consistent with existing groundwater law. The

²¹ Wat. Code, § 10721, subd. (e).

²² Wat. Code, § 10725.8, subd. (e).

²³ Wat. Code, § 10725.8, subd. (e).

²⁴ Wat. Code, § 10730, subd. (a).

²⁵ Cal. Const. Art. X Sec. 5.

purpose of the limitation is to make pumping in the basin sustainable and avoid “undesirable results.”

A “water allocation” in a groundwater adjudication is a determination of your water rights. The rules of groundwater adjudications are established in statute.²⁶ Specifically, the Court is allowed to “determine all groundwater rights of a basin.”²⁷ After the Court determines your water right, the rights in the basin are enforced by a water master. Any changes to a water right after the conclusion of an adjudication must be approved by the water master.

As a note, you may also hear the term “allocation” describing a decision by the Department of Water Resources for surface water deliveries through the State Water Project. This refers only to the various contracts certain water agencies have with the department to obtain water from the State Water Project. The amount of water changes each year and that amount is referred to as an allocation.

A “water curtailment” is a different tool by the State Water Resources Control Board to limit the diversion of surface water if the amount of water in a basin is anticipated to be less than the amount of water being diverted. Curtailments change between each watershed but are largely based on priority.

C4. WHAT IS THE ROLE OF THE PUBLIC TRUST DOCTRINE?

The public trust doctrine requires that the state hold certain resources in trust for the benefit of the people. The state must take the public trust into account when allocating water resources and must also protect public trust uses whenever feasible.²⁸

What counts as a public trust resource has evolved over time, but generally, it includes navigable waterways (like lakes or rivers) and the lands beneath them. The public trust doctrine does not apply directly to groundwater, but if extraction of groundwater impacts a navigable waterway to which the public trust doctrine applies, it must be considered.²⁹ A California appellate court determined in 2018 that the enactment of SGMA did

²⁶ Civ. Code, § 830 *et seq.*

²⁷ Civ. Code, § 834.

²⁸ *Nat'l Audubon Soc'y v. Superior Ct.* (1983) 33 Cal. 3d 419, 422.

²⁹ *Env't L. Found. v. State Water Res. Control Bd.* (2018) 26 Cal. App. 5th 844, 860.

³⁰ *Env't L. Found. v. State Water Res. Control Bd.* (2018) 26 Cal. App. 5th 844.

not get rid of the state's public trust duty to consider the impact of groundwater extraction on navigable waterways.³⁰

For the public trust doctrine to apply to the adjudication and SGMA implementation in the Cuyama Basin, the Cuyama River would need to be considered a “navigable water” under California law. Generally, the state's definition of navigable water is more expansive than the federal definition; it includes waters which can be navigated by rowboat or a small motorboat.³¹

Determining navigability requires a court to consider facts specific to each situation, so it is difficult to say whether the Cuyama River is a navigable waterway, which would cause the public trust doctrine to apply to groundwater extraction that depletes it.³² However, if the Cuyama River is considered navigable, the GSA would need to ensure groundwater extractions do not impact public trust uses of the river consistent with the doctrine (e.g., by adequately addressing the interconnected surface waters undesirable result).

It has also been successfully argued that the public trust must be “considered” in decisions regarding tributaries of a navigable waterway, even if those tributaries are not navigable themselves.³³

C5. CAN WATER RIGHTS BE TRANSFERRED WITH THE LAND WHEN THE LAND IS SOLD?

Yes. Overlying and riparian water rights are transferred with the land when it is sold absent an agreement stating otherwise. Appropriative rights from after 1914 are granted by the State Water Resources Control Board (SWRCB) and must be transferred through the SWRCB.³⁴ If the appropriative water right is from before 1914, then you can transfer it freely without going through the SWRCB.

In a basin or watershed that has been adjudicated, the terms of the adjudication and the relevant watermaster's procedures will govern how water rights are transferred. If an overlying water right is transferred as part of a land sale, then you will need to notify the watermaster of the change of

³¹ *People ex rel. Baker v. Mack* (1971) 19 Cal.App.3d 1040, 1050.

³² *See Hitchings v. Del Rio Woods Recreation & Park Dist.* (1976) 55 Cal. App. 3d 560, 565.

³³ *Nat'l Audubon Soc'y v. Superior Ct.* (1983) 33 Cal. 3d.

³⁴ Wat. Code, § 1225 *et seq.*

ownership. In the case of an appropriative right, you will need to follow the SWRCB's procedure for transferring the right and follow the relevant procedures set by the watermaster.

Please note that selling a water right is not the same thing as selling surplus water as part of a water market. A water right is the right to use a certain percentage of flow in a body of surface water or the right to pump up to a certain amount of water from an aquifer. If you use less water than you are allocated, you may be able to sell your surplus water in a water market. This sale does not affect how much water you are allowed to pump or your ability to pump water. However, if you sell your water right, you no longer have the legal right to pump or use water on your property.

C6. ARE WATER RIGHTS LIKE MINERAL RIGHTS?

With respect to transfers, water and mineral rights have some features in common. Both mineral and overlying and riparian water rights are presumed to transfer with the land when it is sold unless stated otherwise. That being said, water and mineral rights are different in character. Mineral rights holders own the minerals that they extract from the land. Water rights holders do not own the water they pump or divert, they merely have a right to use it beneficially.³⁵ The water itself is a public trust resource owned by the State. While mineral rights may be lost by non-use, not all types of water rights can be lost by non-use.

C7. CAN THE FEDERAL GOVERNMENT HELP?

This adjudication is proceeding under California law, so the federal government does not have a role. Federal agencies, including the Environmental Protection Agency (EPA) and the Department of Agriculture (USDA), enforce federal law and regulations promulgated under federal law. Water rights are a matter of state law and are outside the jurisdiction of the federal government. Consult with your attorney if you are concerned about specific issues that you believe may be a violation of federal law.

EPA has special programs designed to help environmental justice communities. In 1994, President Clinton defined environmental justice communities as communities experiencing "disproportionately high and adverse human health or environmental effects of [an Agency's] programs, policies, and activities on minority populations and

low-income populations in the United States and its territories and possessions..."³⁶

Today, EPA defines environmental justice as "the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." Political changes since the Clinton administration have broadened the definition of environmental justice, but the spirit of the concept has not changed. EPA's environmental justice initiatives target disproportionately low income communities, communities of color, and communities that have experienced some form of adverse environmental event because of their racial or ethnic identity or because of their income level. For example, in 2022, EPA's Environmental Justice Small Grants Program was limited to Tribal applicants.

That being said, federal programs are apply to certain activities that entities regulated by a GSA or a water adjudication might undertake. For example, any water treatment plant likely requires a Clean Water Act permit. Though these are written and granted by state agencies, violations of permits are violations of federal law that may be actionable in federal court or through a federal agency.

³⁵ Cal. Const. Art. X, Sec. 2

³⁶ Exec. Order 12898, 59 FR 7629 (February 16, 1994).

APPENDIX A: WRITTEN PUBLIC COMMENT TEMPLATE

In general, you should include your contact information, the item you wish to comment on, and your comments on the proposed plan. Effective comments are ones that are written in plain and concise language and are based on the relevant laws or regulations. However, it is more important to produce any comment than a perfect comment. Make your voice heard!

General Guide to Preparing a Comment and Getting Involved:

- Request to be added to the mailing list to stay up to date.
- Monitor your email.
- Be sure to review the deadline for submitting comments. You can contact the agency directly or the SFAR Network for information on deadlines.
- You may draft your comment using the template below. You will need to modify it depending on your needs. The essential elements are:
 - **Name and Contact Information**
 - **Subject of Your Comment**
 - **Reason Action or Lack of Action was Improper.**
 - **Requested Action**
 - ***Optional: Potential legal issues.**

<p>Name and Contact of Information {{Provide your email address, full address, and telephone number}}</p> <p>Subject of Comment {{What action, or lack of action, are you commenting on?}} {{Description or section of GSP you are commenting on?}}</p> <p>Reason Action or Lack of Action was Improper. {{Why should there have been a different action?}} {{What are the “deficiencies” in the GSP?}} {{How have the “deficiencies” in the GSP harmed you?}}</p> <p>Requested Action {{What action would you like to see taken to fix the “deficiencies”?}}</p> <p>*Optional: Potential legal issues {{List any legal issue you believe exist.}}</p>

To Submit Your Comment to DWR:

- Navigate to DWR's "SGMA Portal" at <https://sgma.water.ca.gov/portal/#intro>
- Click on "GSP Submittal" at <https://sgma.water.ca.gov/portal/gsp/status>
- In "keywords filter" type "Cuyama"
- Click on "3-013 Cuyama Valley"
- Click on "Single Plan."
- Scroll down and click on "Public Comments"
- Click on "add comment" button
 - From here, you can directly type your comment or upload a document with your comment.

Note that comments submitted through this application will be visible to the public and provided to the GSA.

SB-1156, Hurtado. Groundwater sustainability agencies: conflicts of interest: financial interest disclosures.

Overview

This bill would require members of the board of directors and the executive, as defined, of a groundwater sustainability agency to file statements of economic interests, as specified, with the Fair Political Practices Commission using the Commission's online system for filing statements of economic interests.

Major Provisions

Gov. Code, § 87200.5

(a) Members of the board of directors and the executive of a groundwater sustainability agency shall file statements of economic interests in accordance with this article with the Commission using the Commission's online system for filing statements of economic interests.

(b) For purposes of this section, executive means the executive director, general manager, or other equivalent position of the groundwater sustainability agency.

Background & Impact

The Fair Political Practices Commission is a five-member independent, non-partisan commission that has primary responsibility for the impartial and effective administration of the Political Reform Act of 1974. The Act regulates campaign financing, conflicts of interest, lobbying, and governmental ethics.

The Political Reform Act of 1974 prohibits a public official from making, participating in making, or attempting to use their official position to influence a governmental decision in which they know or have reason to know that they have a **financial interest**.

A **financial interest** in a decision is defined as "a material financial effect, distinguishable from its effect on the public generally" on any of the people or entities listed within Gov. Code Sec. 87103. This includes the official, a member of the official's immediate family, and the financial effects on any of the following:

- (a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.
- (b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.
- (c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.
- (d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.
- (e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Covered investments and financial interests include any investments or interest held by a spouse, dependent child, or agent of a public official. It also includes interest held in trust for those individuals where their interest is 10% or greater.

A **statement of economic interests** (known as a Form 700) is a statement that discloses financial interests. A Form 700 must be submitted to the Fair Political Practices Commission. This bill would require that a Form 700 be submitted by each board member of a groundwater sustainability agency and the executive of a groundwater sustainability agency. Failure to submit a Form 700 is a misdemeanor.

The submission of a Form 700 provides transparency and ensures accountability by providing necessary information to the public about an official's personal financial interests to ensure that officials are making decisions in the best interest of the public and not enhancing their personal finances.

As it Relates to Small Farmers

Small Farmers can ensure that the board members and executive of their groundwater sustainability agency are adhering to financial disclosure requirements by determining whether a Form 700 has been correctly submitted to the Fair Political Practices Commission.

The bill would require officials serving on GSAs to disclose when their financial interests are affected by decisions that they take part in in their official capacity. Failure to do so would be a misdemeanor.

Navigating these disclosure forms may be difficult for small farmers because the financial interest threshold is so low. Most or all GSA members will likely be obligated to submit forms– if they have any kind of farming operation that involves pumping groundwater, their financial interest will likely exceed \$2,000. If they own a house with a domestic well, they will likely have to file forms disclosing this interest because their interest in their house likely exceeds \$2,000. This is also something to be aware of if you plan on serving on a GSA.

AB-779, Wilson. Groundwater: adjudication.

Overview

This bill, as chaptered, made changes to groundwater adjudication processes including:

1. Requiring the court, in certain adjudications, to appoint one party to forward all case management orders, judgements, and interlocutory orders to the groundwater sustainability agency within 10 business days of issuance.
2. Requiring the court, in certain adjudications, to convene a case management conference where issues of the case may be laid out in a manner that is clear to parties of the adjudication, including the issue of whether or not a class or classes of groundwater rights holders should be formed.
3. Requiring the court to consider the water use of and accessibility of water for small farmers, as defined.
4. Requiring compliance with a groundwater sustainability plan or interim plan for a basin throughout the duration of an adjudication. New or increased groundwater use established during the duration of the adjudication cannot be used to establish on claim of that water for the purposes of a judgment.
5. The bill would require a groundwater sustainability agency to host a public meeting to explain the adjudication process and the status of the adjudication to water users within the basin and the public.

Major Provisions

Code of Civ. Proc., § 831.5

(a) In an adjudication action for a basin required to have a groundwater sustainability plan under the Sustainable Groundwater Management Act (Part 2.74 (commencing with Section 10720) of Division 6 of the Water Code), the court shall appoint one party to forward all case management orders, judgments, and interlocutory orders to the groundwater sustainability agency within 10 business days of issuance. The groundwater sustainability agency shall post the documents on its internet website in the interest of transparency and accessibility within 20 business days of receipt from a party. This section does not apply to any documents that have been sealed by the court.

Code of Civ. Proc. , § 840

(b) In an initial case management conference, or as soon as practicable, the court may consider the following in addition to other matters: [...] (9) Forming a class or classes of overlying groundwater rights holders pursuant to the criteria specified in Section 382.

Code of Civ. Proc. , § 850

(a) The court may enter judgment in a comprehensive adjudication if the court finds that the judgment meets all of the following criteria [...] (4) it considers the water use of and accessibility of water for small farmers and disadvantaged communities. This consideration shall be consistent with the conditions identified in this subdivision.

(e) For the purposes of this section the following definitions apply: [...] (2) "small farmers" means farmers with between ten thousand dollars (\$10,000) and four hundred thousand dollars (\$400,000) in gross farm sales, as referenced in the Department of Food and Agriculture's California Underserved and Small Producers Program.

Wat. Code, § 10737.3

(a) (1) Unless otherwise ordered by the court, all monitoring and reporting required under all groundwater sustainability plans approved by the department, or submitted to and awaiting approval by the department, for a basin subject to an adjudication, or under any interim plan adopted by the board pursuant to Section 10735.8 for a basin subject to an adjudication, shall continue throughout the duration of the adjudication proceeding.

(b) (1) Throughout the duration of the adjudication proceeding, a party to the adjudication, and any other person extracting water from the basin, 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 pursuant to Section 10735.8, except as may be authorized by the court pursuant to Section 847 of the Code of Civil Procedure or other injunctive relief.

(c) Throughout the duration of the adjudication proceeding, a party to the adjudication, and any other person extracting water from the basin, shall not use new or increased groundwater use to establish a new claim of prescription during the proceeding.

Wat. Code, § 10737.9

(a) (1) Upon receiving notice that an adjudication has commenced in its basin, a groundwater sustainability agency shall host a public meeting to explain the adjudication process and the status of the adjudication to water users within the basin and the public.

Background & Impact

An adjudication of groundwater rights is the determination of groundwater rights in a basin. Every groundwater user in a basin must participate in the adjudication in order to receive a water rights allocation. However, adjudications are complex and can get quickly expensive. As a result, many small farmers or small pumpers may not have the ability to continuously participate. This bill seeks to make life easier for small pumpers.

This bill requires a court to appoint a party to forward court orders or decisions to the GSA within 10 days of those orders or decisions being issued. Within 20 days of receiving the orders or decisions from the appointed party, the GSA is required to post the orders or decisions online for the public to access. This requires orders of the court, which may be binding on small pumpers, to be made available to the public online through the GSA.

This bill allows a court to convene a case management conference to create a “class” or “classes” of overlying groundwater rights holders. A “class” or “classes” pursuant to Section 382 of the Code of Civ. Proc. means that a group with a common interest. That group can be represented collectively instead of individually. Being represented collectively allows for individuals to pool resources, strategize together, and be given a common decision to follow by the court. This is similar, but not the same, as what happens in a “class-action” lawsuit. Small pumpers can benefit from this provision by petitioning a court to consider small water uses as a “class” that should be treated as a collective in an adjudication.

This bill requires a court to consider the water use and accessibility for small farmers when issuing a judgment of the adjudication. The bill allows the court to consult the State Water Resources Control Board to assist the court in their consideration of small farmers. The bill allows a party to request that the court consult the State Water Resources Control Board. For the purpose of consideration, a “small farmer” means farmers with between ten thousand dollars (\$10,000) and four hundred thousand dollars (\$400,000) in gross farm sales, as referenced in the Department of Food and Agriculture’s California Underserved and Small Producers Program.

This bill requires that, unless otherwise ordered by a court, all monitoring and reporting required under a groundwater sustainability plan or interim plan is required during the adjudication. Compliance with other aspects of a groundwater sustainability plan or interim plan is also required during the adjudication unless the court issues an injunction. New or increased groundwater use during the adjudication cannot be used to establish a claim on groundwater rights.

This bill requires that a GSA is required to hold a public meeting to explain the adjudication process to water users in the basin and the public, in groundwater adjudications that begin after January 1, 2024.

As it Relates to Small Farmers

Small farmers should understand that this bill provides tools previously unavailable. The adjudication process remains tough, but having some tools is better than none.

A small farmer can ensure that their GSA is properly making all orders and judgments available to them through the GSA's website. This allows for greater transparency and information sharing. This is especially important in the event that an order or judgment applies to small farmers or small pumpers.

A small farmer can now request the court to consider "small farmers" or "small pumpers" as a "class" for the purposes of the adjudication. Being recognized as a class during the adjudication allows small farmers and small pumpers to pool resources, strategize together, and receive a common judgment.

A small farmer can now request the court to work with the State Water Resources Control Board so the board can determine whether the judgment for the adjudication adequately considers small farmers.

A small farmer can ensure that the groundwater sustainability plan is being followed by all parties in an adjudication. This allows small farmers and small pumpers to continue to work through the GSA process to achieve an agreeable plan for their basin.