

Outline - Explanation of Groundwater Adjudication Process
Senate Committee on Natural Resources

November 20, 2014

Justice Ronald B. Robie

I. Surface Water- Many years ago the Legislature created a *Statutory Stream Adjudication Procedure* to determine all the rights to a stream system (Water Code § 2500) which uses an administrative agency - now the State Water Resources Control Board - to investigate technical factors such as: availability of water in the stream, extent of existing rights, and recommend determination of the rights. This report is submitted to a court for approval and entry of a decree, so there is still a judicial role. However, this administrative procedure has not been extended to groundwater.

II. Ground water.

My Perspective- I am commenting from a judicial perspective how adjudications work and some of the problems with the current system

III. An Adjudication- This begins by a lawsuit filed by a person claiming a groundwater right in the basin. This person may be an **overlying** pumper or one pumping from the basin for use on **non overlying land**. The **purpose** of an adjudication is to limit pumping or provide a physical solution to prevent long term overdraft of the basin.

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Notice must be given to all persons with potential rights. This is complex since there may be *many thousands of claimed right holders*. This includes active pumpers and persons owning land and not currently pumping from the basin. These persons include individuals, corporations, public districts, and mutual water companies, for example. There may be many hundreds of small pumpers using water for a single home or a home and a few fruit trees, for example.

The **Trial Court** must make many often highly contested factual determinations as the adjudication progresses:

a) the **boundaries of the basin**. Again this can be highly technical and often the U.S. Geological Survey, California Department of Water Resources and other entities may have data useful for this determination. Some basins can be very, very large.

b) the **annual safe yield** of the basin. This is usually based upon engineering studies - many of which will have to be undertaken just for the adjudication. There may be a dearth of information available.

c) the **five year period** which will be used to examine claimed rights.

d) a determination of **individual water rights**. This is often highly contested and since California doesn't generally require pumpers to document their use these will often be estimates based on acres farmed, etc. This is the single fact which makes these proceedings lengthy. Public

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agencies will generally have good records of their pumping. These amounts will be highly contested with users often challenging other users as to their use. This all has to be done in the context of a judicial proceeding. The applicable law is complex and extensive legal briefing and argument is required. It is not unusual in a major adjudication to have 30 or more lawyers participating. Thus, the judge has a major responsibility to manage the litigation, which can be extremely expensive to the parties.

The bottom line in any over drafted basin is that pumpers will be cut back from unlimited pumping prior to the adjudication. That is why matters are so hotly contested and do not always settle.

d) a plan for management of the adjudicated basin. This usually includes a watermaster- and individual or entity to manage the basin in compliance with the final decree in the litigation. There also has to be a procedure for funding the watermaster. The court often retains jurisdiction to some degree over the long haul.

A Trial Court judgment can be appealed to the Court of Appeal, and then to the California Supreme Court. This is not that unusual. This adds to the length and cost of any adjudication.

IV Settlement: A groundwater basin may be adjudicated by way of a settlement. This was the case in the early 1960's in several Southern California Coastal basins. In some cases, some issues in a case may be stipulated to by the parties but not all issues.