



Judicial Council of California

520 Capitol Mall, Suite 600 · Sacramento, California 95814-4717

Telephone 916-323-3121 · Fax 916-323-4347

PATRICIA GUERRERO

*Chief Justice of California
Chair of the Judicial Council*

MILLICENT TIDWELL

Acting Administrative Director

July 6, 2023

Hon. Thomas J. Umberg, Chair
Senate Judiciary Committee
1021 O Street, Ste 6730
Sacramento, California 95814

Subject: Assembly Bill 779 (Wilson), as amended July 3, 2023 – Remove Opposition
Hearing: Senate Judiciary Committee – July 11, 2023

Dear Senator Umberg:

The Judicial Council is pleased to remove our opposition to Assembly Bill 779 as amended on July 3, 2023. The latest amendments address the separation of powers concerns that generated our opposition.

AB 779 makes various changes relating to the process for groundwater adjudication proceedings, including adding requirements that a court make specified findings when entering a judgement in an adjudication for a basin subject to a groundwater sustainability plan, requiring the court to appoint one of the parties involved in a groundwater adjudication to be responsible for forwarding all case management orders, judgments, and interlocutory orders to Department of Water Resources (DWR) for posting, and authorizes the court to refer such a matter to the State Water Resources Control Board for an investigation and report pursuant to Water Code section 2001 on its own motion or upon a request by the parties.

The amended legislation addresses the author's intent to avoid conflicts in groundwater management that may arise when a groundwater basin is simultaneously subject to (1) an adjudication process in the court system and (2) the development of a sustainable groundwater management plan through executive agencies, and the desire to ensure that all water users' interests are considered in the adjudication without impinging on the independence of the judicial branch.

For these reasons, the Judicial Council removes opposition to AB 779.

July 6, 2023

Page 2

Should you have any questions or require additional information, please contact Tracy Kenny at 916-323-3121.

Sincerely,



Cory T. Jaspersen

Director, Governmental Affairs

CTJ/TK/jh

cc: Members, Senate Judiciary Committee
Hon. Lori Wilson, Member of the Assembly
Ms. Margie Estrada, Chief Counsel, Senate Judiciary Committee
Mr. Morgan Branch, Consultant, Senate Republican Office of Policy
Ms. Jessica Devencenzi, Deputy Legislative Secretary, Office of the Governor
Ms. Millicent Tidwell, Acting Administrative Director, Judicial Council of California
Ms. Shelley Curran, Chief Policy & Research Officer, Judicial Council of California



Judicial Council of California

520 Capitol Mall, Suite 600 · Sacramento, California 95814-4717

Telephone 916-323-3121 · Fax 916-323-4347

PATRICIA GUERRERO

*Chief Justice of California
Chair of the Judicial Council*

MILLICENT TIDWELL

Acting Administrative Director

June 22, 2023

Hon. Dave Min, Chair
Senate Natural Resources and Water Committee
1021 O Street, Ste 6710
Sacramento, California 95814

Subject: Assembly Bill 779 (Wilson), as amended June 19, 2023 – Oppose
Hearing: Senate Natural Resources and Water Committee – June 27, 2023

Dear Senator Min:

The Judicial Council regrettably opposes AB 779, which makes various changes relating to the process for groundwater adjudication proceedings, including adding requirements that a court make specified findings when entering a judgement in an adjudication for a basin subject to a groundwater sustainability plan, requiring the court to appoint one of the parties involved in a groundwater adjudication to be responsible for forwarding all case management orders, judgments, and interlocutory orders to Department of Water Resources (DWR) for posting, and encouraging the court to invite a representative from DWR or the State Water Resources Control Board (the board) to provide technical assistance and expert testimony directed towards the new findings at a hearing.

The council appreciates the amendments that have been taken to AB 779 to date that clarify the legal standards that the Legislature is directing the court to apply when resolving conflicting claims. Such clarification will ensure that the parties must present evidence to the court to show the court that the water use of small farmers and disadvantaged communities has been considered. The council's opposition is to the provision that is proposed to be added to Code of Civil Procedure section 850(c) that encourages the court to invite a representative from DWR or the board to provide technical assistance or expert testimony. This language raises separation of powers concerns because it suggests that it is the responsibility of the court to solicit the testimony of the executive branch agency rather than placing that on the parties or requiring the agency to be a mandatory party to the proceedings.

June 22, 2023

Page 2

We understand the author's intent is to avoid conflicts in groundwater management that may arise when a groundwater basin is simultaneously subject to (1) an adjudication process in the court system and (2) the development of a sustainable groundwater management plan through executive agencies, and the desire to ensure that all water users' interests are considered in the adjudication. Current law provides two mechanisms for a court to refer a case to the board. Water Code section 2000 allows the court to refer a matter to the board as a referee and Water Code section 2001 allows the court to refer a case to the board for investigation and a report on the facts. Referencing either or both of these provisions in Code of Civil Procedure section 850 would mitigate our separation of powers concerns and ensure that the court is not being directed to act as a party to the case in soliciting expert witness testimony.

For these reasons, the Judicial Council opposes AB 779.

Should you have any questions or require additional information, please contact Tracy Kenny at 916-323-3121.

Sincerely,



Cory T. Jasperson
Director, Governmental Affairs

CTJ/TK/jh

cc: Members, Senate Natural Resources and Water Committee
Hon. Lori Wilson, Member of the Assembly
Ms. Genevieve Wong, Principal Consultant, Senate Natural Resources and Water Committee
Mr. Todd Moffitt, Consultant, Senate Republican Office of Policy
Ms. Angela Pontes, Deputy Legislative Secretary, Office of the Governor
Ms. Millicent Tidwell, Acting Administrative Director, Judicial Council of California
Ms. Shelley Curran, Chief Policy & Research Officer, Judicial Council of California