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PERSPECTIVE

## Groundwater adjudication cases are best resolved through mediation

By Hon. Patrick Walsh (Ret.)

You don't have to be a water lawyer to know that California is finding it increasingly difficult to find enough water to service the needs of its residents. And it appears that the situation is only going to get worse, at least in the short term, while we figure out ways to use less water and find other sources to add to the water we have.

Due to the confluence of several factors, including recent droughts, increased demand, and the enactment of a groundwater sustainability law in 2014, there is likely going to be an explosion of water cases in the years to come. For the reasons explained below, I think mediation is the best way to resolve these cases.

Groundwater is water found in naturally occurring underground aquifers or pools. These pools can extend for miles. Groundwater starts at the surface, after a rain for example, and seeps down into the aquifer over time. Groundwater is usually accessed by drilling a well from the surface to the aquifer and pumping the water up to the surface. In California, generally speaking, landowners have the right to use groundwater under their land for beneficial use.

It is not unusual to have hundreds or even thousands of users taking water from the same aquifer at any given time. Where more water is being pumped from the aquifer than seeping back in, the water level begins to drop. Initially, this may not be a problem for landowners who have deeper wells and therefore, still have access to water, but for others, it becomes a problem because they can no longer pump water. Over time, the aquifers could be pumped dry.



Fritz Durst, a rice farmer, pumps groundwater in the Central Valley near Woodland, Calif., on June 19, 2021. | Nwe York Times News Service

With the enactment of the 2014 Sustainable Groundwater Management Act (SGMA), California hopes to prevent this from happening. Under the new law, Groundwater Management Agencies were created to oversee the preservation of the aquifers by regulating the use of groundwater. The law provides, however, that ultimately the courts are responsible for adjudicating comprehensive solutions for groundwater basins.

These cases can involve large numbers of stakeholders. In addition to the landowners using groundwater at the time the case is filed, there are others who also have an interest in the adjudication, like landowners who had used groundwater in the past but are not using it now and landowners who have never used groundwater but hope to do so in the future. In addition, cities and towns located in the basin have an interest as do water companies that supply residents with water.

These cases do not readily lend themselves to traditional trials because there are so many stakeholders and so many diver-

gent interests. Not only is the trial cumbersome, but it is time-consuming and costly. Just last year, the Fifth District Court of Appeal issued a decision in *Antelope Valley Groundwater Cases v. Los Angeles County Waterworks District No. 40, et al.* That case is notable for several reasons, including the fact that it was filed in 2001, more than 20 years ago. That seems like a long time, but in the world of water law, it is certainly not an outlier.

A better way to resolve adjudication cases is through mediation. Though it may seem optimistic to believe that so many people with such divergent interests can come together to divide the groundwater in a basin, it can be done. And, even if everyone is not willing to sign on, under the law, the court is empowered to impose a settlement on the entire basin if more than 50 percent of the landowners controlling more than 75 percent of the water agree to a solution.

As California enters a new era of groundwater use regulation, the mechanisms used to resolve these disputes should enter a new era as well. Mediation is one such

mechanism. It allows the parties to formulate a solution to a complex problem in less time and for significantly less cost.

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