



Judicial Council of California

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INVITATION TO COMMENT

SPR25-03

Title	Action Requested
Rules and Forms: Comprehensive Adjudications of Groundwater Rights	Review and submit comments by May 23, 2025
Proposed Rules, Forms, Standards, or Statutes	Proposed Effective Date
Amend Cal. Rules of Court, rule 3.400; adopt rule 10.640	January 1, 2026
Proposed by	Contact
Civil and Small Claims Advisory Committee Hon. Donald J. Proietti, Chair	Jeremy T. Varon, 415-865-7424 jeremy.varon@jud.ca.gov

Executive Summary and Origin

The Civil and Small Claims Advisory Committee proposes amending the rule that designates certain case types as provisionally complex to include comprehensive groundwater adjudications, along with adopting a rule setting out the procedure by which the presiding judge of the court of a county overlying the groundwater basin at issue can request that the Chair of the Judicial Council assign a judge to adjudicate the dispute. These changes are to conform the rules to Code of Civil Procedure section 838 (section 838).

Background

The Legislature passed the Sustainable Groundwater Management Act (SGMA) in 2014, setting forth a framework to protect the state's groundwater resources, the state's largest form of water storage. SGMA adopted the Department of Water Resources' Bulletin 118, which identifies 515 alluvial groundwater basins in California and designates each basin as high, medium, low, or very low priority.¹ For the high and medium priority groundwater basins, SGMA requires local authorities to form groundwater sustainability agencies, which develop and implement groundwater sustainability plans.

¹ *California's Groundwater* (Bulletin 118), <https://water.ca.gov/programs/groundwater-management/bulletin-118>.

This proposal has not been approved by the Judicial Council and is not intended to represent the views of the council, its Rules Committee, or its Legislation Committee. It is circulated for comment purposes only.

Following the passage of SGMA, the Legislature passed Assembly Bill 1390 (Stats. 2015, ch. 672), which set out a framework for the adjudication of disputes related to rights under SGMA. AB 1390 added Code of Civil Procedure section 838, which provides that a judge is disqualified from adjudicating disputes that involve any basin underlying the county of the judge's court. In such situations, section 838 requires the Chairperson of the Judicial Council to assign a judge to preside over the proceeding. Unlike some other statutory schemes,² however, AB 1390 did not specify how the court would notify the Chairperson of the disqualification requiring assignment of another judge. This proposal is intended to provide an appropriate process.

The Proposal

This proposal seeks amendments to the California Rules of Court to address procedures for the administration of complaints filed to comprehensively adjudicate groundwater rights under section 838. The proposed amendment to rule 3.400 is intended to address section 838(b), which provides that: "A comprehensive adjudication is presumed to be a complex action under Rule 3.400 of the California Rules of Court." New rule 10.640 is intended to address section 838(a)(1) by providing a process for requesting judicial assignments in comprehensive groundwater adjudications where the court in which the action was filed is disqualified because it overlies at least a portion of the groundwater basin at issue. Amending rule 3.400 and adopting a new rule (10.640) will improve the administration of complaints filed for comprehensive groundwater adjudications under section 838.³

Rule 3.400 amendment

Rule 3.400(c) lists types of claims that are considered provisionally complex. The proposed amendment to rule 3.400 adds comprehensive adjudications of groundwater rights as one of the types of claims provisionally designated as complex. The committee decided that the best location in the rule to add this claim type is immediately following "Environmental or toxic tort claims involving many parties" (subdivision (c)(3)) because comprehensive adjudications of groundwater rights are similar to environmental claims involving many parties. In the separate joint proposal to amend *Civil Case Cover Sheet* (form CM-010), a checkbox labeled "Comprehensive groundwater adjudication" is similarly added immediately following the "Environmental/Toxic tort" case type in the Provisionally Complex Civil Litigation category in item 1 on the form.

² For example, Code of Civil Procedure section 404.3 relating to coordination of complex actions, provides that the judge who determines that coordination is appropriate is the individual responsible for reporting that fact to the Chairperson of the Judicial Council.

³ The Civil and Small Claims Advisory Committee is separately proposing amendments to *Civil Case Cover Sheet* (form CM-010) to reflect the proposed change to rule 3.400 in a joint proposal with the Court Executives Advisory Committee (see SPR25-04, *Rules and Forms: New Case Categories for Civil Case Cover Sheet*, <https://courts.ca.gov/policy-administration/invitations-comment>).

Rule 10.640 adoption

The proposed rule will establish a process by which the Chair of the Judicial Council is notified of a disqualification in a comprehensive adjudication of groundwater rights. It will provide clear direction to a presiding judge who is made aware that section 838(a)(1) applies to a specific comprehensive groundwater adjudication while allowing each superior court the flexibility to create its own internal process for how the presiding judge is made aware that the court is subject to disqualification.

Because the Chair of the Judicial Council already has an existing process for receiving requests for judicial assignments through the Temporary Assigned Judges Program (TAJP), a portal with which superior courts are already familiar, the proposed rule would require using the same staff and portal for receiving requests for judicial assignments for comprehensive adjudications of groundwater rights. To ensure that TAJF staff receiving the request know how to handle comprehensive adjudications of groundwater rights, the proposed rule requires that the request from the presiding judge “[i]ndicate that the request is for ‘Comprehensive groundwater adjudication assignment pursuant to Code of Civil Procedure section 838(a)(1).’”

Advisory Committee Comment

Because the proposed rule would be the first rule for comprehensive adjudications of groundwater rights, the committee proposes including clarifications about the administration of this type of adjudication. These clarifications include that the rules for the assignment of judges in Coordination of Complex Actions (title 3, division 4, chapter 7) do not apply to comprehensive adjudications of groundwater rights because section 838(a)(1) requires that such an assignment be made by the Chair of the Judicial Council.

Alternatives Considered

The committee did not consider the alternative of not amending rule 3.400 because the rule would be incomplete if it did not include comprehensive groundwater adjudications, which are deemed provisionally complex under section 838. The committee did consider the alternative of not adopting rule 10.640 but concluded that the new rule would assist courts by specifying who could make a request for a judicial assignment and to whom that request would be submitted. The committee considered placing the rule in Title 3 (Civil Rules), where other rules on complex cases are located, rather than Title 10 (Judicial Administration), but decided that it was directed primarily to judges and not to litigants. Based on this, the committee concluded that the subject of the rule fits more squarely under the umbrella of judicial administration than civil rules.

Fiscal and Operational Impacts

The proposed amendment to rule 3.400 would require minimal additional resources for the courts or the Judicial Council because the revision reflects a statutory requirement that has been in place since 2016. The proposed adoption of rule 10.640 would also require minimal additional resources because the new process uses an existing mechanism and does not necessitate any significant modification to that mechanism.

Request for Specific Comments

In addition to comments on the proposal as a whole, the advisory committee is interested in comments on the following:

- Does the proposal appropriately address the stated purpose?
- Would Title 10, relating to judicial administration, be the appropriate location for the proposed new rule or would Title 3, where other rules on complex civil case are located, be more appropriate?

The advisory committee also seeks comments from courts on the following cost and implementation matters:

- Would the proposal provide cost savings? If so, please quantify.
- What would the implementation requirements be for courts—for example, training staff (please identify position and expected hours of training), revising processes and procedures (please describe), changing docket codes in case management systems, or modifying case management systems?
- Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation?
- How well would this proposal work in courts of different sizes?

Attachments and Links

1. Cal. Rules of Court, rules 3.400 and 10.640, at pages 5–6
2. Link A: Code Civ. Proc., § 838,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=838

Rule 3.400 would be amended and rule 10.640 would be adopted, effective January 1, 2026, to read:

Title 3. Civil Rules

Division 4. Parties and Actions

Chapter 5. Complex Cases

Rule 3.400. Definition

(a)–(b) ***

(c) Provisional designation

Except as provided in (d), an action is provisionally a complex case if it involves one or more of the following types of claims:

- (1) Antitrust or trade regulation claims;
- (2) Construction defect claims involving many parties or structures;
- (3) Securities claims or investment losses involving many parties;
- (4) Environmental or toxic tort claims involving many parties;
- (5) Comprehensive adjudications of groundwater rights;
- ~~(5)~~(6) Claims involving mass torts;
- ~~(6)~~(7) Claims involving class actions; or
- ~~(7)~~(8) Insurance coverage claims arising out of any of the claims listed in (c)(1) through (c)(6).

(d) ***

1 Title 10. Judicial Administration Rules

2
3 Division 4. Trial Court Administration

4
5 Chapter 1. General Rules on Trial Court Management

6
7 **Rule 10.640. Requesting assignment of judge when a comprehensive groundwater**
8 **adjudication is filed in a court overlying the groundwater basin at issue**

9
10 If a comprehensive adjudication of groundwater rights under Code of Civil Procedure section
11 833 is filed in the superior court of a county that overlies any portion of the groundwater basin at
12 issue, the presiding judge of that court must:

- 13
14 (1) Submit a request for judicial assignment to the Temporary Assigned Judges
15 Program; and
16
17 (2) Indicate that the request is for “Comprehensive groundwater adjudication assignment
18 under Code of Civil Procedure section 838(a)(1).”

19
20 **Advisory Committee Comment**

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22 Under Code of Civil Procedure section 838(a)(1), a judge of a superior court of a county that overlies all
23 or any portion of the groundwater basin at issue in the comprehensive adjudication is disqualified, and the
24 Chair of the Judicial Council must assign a judge to preside over the proceedings. In such circumstances,
25 only a presiding judge may submit a request for assignment of a new judge under section 838(a)(1). If the
26 complaint is filed in the superior court of a county not overlying any portion of the groundwater basin at
27 issue, the judges of that court are not disqualified under section 838(a)(1), and a presiding judge has no
28 basis to request that the Chair of the Judicial Council assign a judge to preside in the action under that
29 section. The definitions in Code of Civil Procedure section 832 apply to this rule. A comprehensive
30 adjudication of groundwater rights is presumed to be a “complex case” under rule 3.400 of the California
31 Rules of Court, but because the underlying statutes differ concerning assignment of judges, the rules for
32 assignment of judges in Coordination of Complex Actions (title 3, division 4, chapter 7) do not apply to
33 such adjudications.