



Judicial Council of California

455 Golden Gate Avenue · San Francisco, California 94102-3688

www.courts.ca.gov

REPORT TO THE JUDICIAL COUNCIL

Item No.: 25-135

For business meeting on October 24, 2025

Title

Rules and Forms: Comprehensive
Adjudications of Groundwater Rights

Report Type

Action Required

Effective Date

January 1, 2026

Rules, Forms, Standards, or Statutes Affected

Adopt Cal. Rules of Court, rule 3.404; amend
rule 3.400

Date of Report

October 10, 2025

Recommended by

Civil and Small Claims Advisory Committee
Hon. Samantha P. Jessner, Chair

Contact

Kristin Burford, 916-263-2989

kristin.burford@jud.ca.gov

Jeremy Varon, 415-865-7424

jeremy.varon@jud.ca.gov

Executive Summary

The Civil and Small Claims Advisory Committee recommends amending the rule of court that designates certain case types as provisionally complex to include comprehensive groundwater adjudications. This change conforms the rule to Code of Civil Procedure section 838. The committee also recommends adopting a rule specifying the procedure by which the presiding judge of the court in a county overlying the groundwater basin at issue requests that the Chair of the Judicial Council assign a judge to adjudicate the dispute.

Recommendation

The Civil and Small Claims Advisory Committee recommends that the Judicial Council, effective January 1, 2026, adopt California Rules of Court, rule 3.404 and amend rule 3.400, related to comprehensive groundwater adjudications.

The text of the proposed new and revised rules is attached at pages 6–7.

Relevant Previous Council Action

The Judicial Council adopted rule 1800, effective January 1, 2000, as part of a broader proposal addressing complex civil litigation.¹ The substance of subdivision (c), which lists actions provisionally designated as complex, has not changed since the rule's original adoption. In 2007, the rule was renumbered as rule 3.400.²

Analysis/Rationale

The Legislature passed the Sustainable Groundwater Management Act (SGMA) in 2014, setting forth a framework to protect groundwater resources, the state's largest form of water storage. SGMA uses the groundwater basin boundaries specified in Bulletin 118 from the Department of Water Resources, which identifies 515 groundwater basins in California and designates each basin as high, medium, low, or very low priority.³ For the high- and medium-priority groundwater basins, SGMA requires local authorities to form groundwater sustainability agencies, which develop and implement groundwater sustainability plans.

Following the passage of SGMA, the Legislature passed Assembly Bill 1390 (Stats. 2015, ch. 672), which set out a framework for the comprehensive adjudication of groundwater rights in a basin. AB 1390 added Code of Civil Procedure section 838. This report recommends changes to the California Rules of Court to improve the administration of cases filed for comprehensive groundwater adjudications under section 838.

Rule 3.400 amendment

This proposal recommends amending rule 3.400 to expressly designate comprehensive adjudications of groundwater rights as provisionally complex. This change would conform to 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.”

Rule 3.400(c) lists the different types of claims that are considered provisionally complex. The proposed amendment to rule 3.400 adds comprehensive adjudications of groundwater rights as one of these types. 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

¹ Judicial Council of Cal., Advisory Com. Rep., *Final Report of the Complex Civil Litigation Task Force* (Sept. 20, 1999); Judicial Council of Cal., mins. (Oct. 22, 1999), item 3, pp. 17–19.

² Judicial Council of Cal., Staff Rep., *Reorganization of the California Rules of Court* (June 15, 2006); Judicial Council of Cal., mins. (June 30, 2006), item 5, p. 10.

³ Wat. Code, § 10722; Department of Water Resources, *California's Groundwater* (Bulletin 118), <https://water.ca.gov/programs/groundwater-management/bulletin-118>.

the “Environmental/Toxic tort” case type in the Provisionally Complex Civil Litigation category in item 1 on the form.⁴

Rule 3.404 adoption

This proposal also recommends a new rule of court to provide an appropriate process for requesting judicial assignment as specified in section 838. Section 838(a)(1) provides that a judge is disqualified from presiding over a comprehensive adjudication of any groundwater basin underlying the county of the judge’s court. In such situations, section 838(a)(1) requires the Chair of the Judicial Council to assign a judge to the adjudication proceeding. Unlike some other statutory schemes,⁵ however, AB 1390 did not specify how the court would notify the Chair of the disqualification and need for assignment of another judge.

New rule 3.404 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 (TAMP), a portal with which superior courts are already familiar, the procedure specified in the proposed rule would direct requests for judicial assignments in comprehensive adjudications through that existing portal. To ensure that TAMP 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 under Code of Civil Procedure section 838(a)(1).’ ”

The proposed new rule would be the first rule of court for comprehensive adjudications of groundwater rights. For this reason, the committee proposes including a comment to clarify the rules for the administration of this type of adjudication. The comment would, among other things, indicate 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.

⁴ See Judicial Council of Cal., Advisory Com. Rep., *Rules and Forms: New Case Categories for Civil Case Cover Sheet*, item 25-133 (pending).

⁵ 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 Chair of the Judicial Council.

Policy implications

The committee recommends amending rule 3.400 and adopting rule 3.404 to be consistent with Code of Civil Procedure section 838. This change will avoid confusion by conforming the rules to applicable statutory law, facilitate the administration of complaints seeking comprehensive adjudication of groundwater rights, and improve efficiency by establishing a process for judicial assignment consistent with the statute.

Comments

The committee solicited public comments on this proposal from April 14 to May 23, 2025, as part of the council's regular spring invitation-to-comment cycle. The proposal received four comments; two were from courts, one was from a county bar association, and one was from the Joint Rules Subcommittee (JRS) of the Trial Court Presiding Judges Advisory Committee and the Court Executives Advisory Committee. All the commenters expressed general support for the proposal; none of the commenters opposed the proposal. The significant comments are summarized below, and a chart of all comments and the committee's responses is attached at pages 8–10.

The committee sought feedback on whether the new rule, which was originally proposed as rule 10.640, should be located in title 3 (civil rules) instead of title 10 (judicial administration). Two commenters (Superior Court of Los Angeles County and JRS) favored title 3, while one commenter (Superior Court of San Bernardino County) indicated that title 10 would be appropriate. Given that the balance of comments favored locating the new rule in title 3 and title 3 contains the rules governing complex civil cases, the committee recommends the new rule be located in that title.

The two commenters in favor of placing the rule in title 3 also suggested a specific location for the rule, existing rule 3.400(c). Rule 3.400 is a general rule that defines a complex case and provides guidance applicable to complex cases generally. The new rule applies specifically to comprehensive adjudications of groundwater rights, one of several types of provisionally complex cases identified in rule 3.400(c). Given that the new rule applies only to a subset of the cases identified in rule 3.400(c), the committee recommends a separate stand-alone rule (rule 3.404) near rule 3.400.

Alternatives considered

The committee did not consider the alternative of not taking action because amending rule 3.400 is needed to conform to an existing statute.

The committee considered the alternative of not adopting new rule 3.404 but concluded that a rule would provide necessary clarification and establish a process required by statute. As discussed above, the committee considered placing the new rule in different locations. The committee requested and considered comments on the location for this new rule.

Fiscal and Operational Impacts

The proposed amendment will require courts to train court staff and judicial officers on the new and amended rule. The committee anticipates minimal operational impacts because rule 3.400 reflects a statutory designation that has been in place since 2016, and rule 3.404 creates a new process but uses an existing mechanism and does not necessitate any significant modification to that mechanism.

Attachments and Links

1. Cal. Rules of Court, rules 3.400, 3.404, at pages 6–7
2. Chart of comments, at pages 8–10
3. Link A: Code Civ. Proc., § 838,
https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CCP§ionNum=838

Rule 3.404 is adopted and rule 3.400 is amended, 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 ~~(e)(6)(7)~~.

(d) ***

1 **Rule 3.404. Requesting assignment of judge when a comprehensive groundwater**
2 **adjudication is filed in a court overlying the groundwater basin at issue**
3

4 If a comprehensive adjudication of groundwater rights under Code of Civil Procedure
5 section 833 is filed in the superior court of a county that overlies any portion of the groundwater
6 basin at issue, the presiding judge of that court must:
7

- 8 (1) Submit a request for judicial assignment to the Temporary Assigned Judges Program; and
9
10 (2) Indicate that the request is for “Comprehensive groundwater adjudication assignment under
11 Code of Civil Procedure section 838(a)(1).”
12

13 **Advisory Committee Comment**
14

15 Under Code of Civil Procedure section 838(a)(1), a judge of a superior court of a county that overlies all
16 or any portion of the groundwater basin at issue in the comprehensive adjudication is disqualified, and the
17 Chair of the Judicial Council must assign a judge to preside over the proceedings. In such circumstances,
18 only a presiding judge may submit a request to the Chair for assignment of a new judge. If the complaint
19 is filed in the superior court of a county not overlying any portion of the groundwater basin at issue, the
20 judges of that court are not disqualified under section 838(a)(1), and a presiding judge has no basis to
21 request that the Chair of the Judicial Council assign a judge to preside in the action under that section.
22 The definitions in Code of Civil Procedure section 832 apply to this rule.
23

24 A comprehensive adjudication of groundwater rights is presumed to be a “complex case” under rule 3.400
25 of the California Rules of Court, but because the underlying statutes differ concerning assignment of
26 judges, the rules for assignment of judges in Coordination of Complex Actions (title 3, division 4, chapter
27 7) do not apply to such adjudications.

SPR25-03

Rules and Forms: Comprehensive Adjudications of Groundwater Rights (Amend Cal. Rules of Court, rule 3.400; adopt rule 10.640)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
1.	Orange County Bar Association by Mei Tsang, President	AM	The reference to “(c)(6)” in Proposed Rule 3.400(c)(8), should be changed to “(c)(7)”. The revision is needed to ensure that “insurance coverage claims” involving “class action claims,” continue to be considered Complex Cases. That the reference to “(c)(6)” within Proposed Rule 3.400(c)(8) was not changed to “(c)(7)”, appears to have been a mere oversight.	The committee recommends this change.
2.	Superior Court of California, County of Los Angeles by Stephanie Kuo	A	In response to the Judicial Council of California’s ITC, “SPR25-03 Rules and Forms: Comprehensive Adjudications of Groundwater Rights,” the Superior Court of California, County of Los Angeles (Court), agrees with the proposal and believes it is appropriate to make groundwater adjudications provisionally complex.	The committee appreciates the response.
			In regard to the insertion of the new rule, Title 3, specifically Rule 3.400(C) would be more appropriate than Title 10.	The committee appreciates the response. On balance, the comments weigh in favor of placing the rule in Title 3. Given that, the committee recommends locating the new rule in Title 3. Existing rule 3.400 relates to complex cases generally, while the new rule applies only to comprehensive adjudications. For this reason, the committee recommends the new rule be separate from, but located near, rule 3.400.
			The proposal may provide cost savings because the cases would be the subject of a complex case questionnaire anyway and would find their way to complex courts. Implementation would be minimal since staff are familiar with provisionally complex filings. Two months from Judicial Council should be sufficient time for implementation. For the courts that operate complex courts, the proposal should work well.	The committee appreciates the response.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR25-03**Rules and Forms: Comprehensive Adjudications of Groundwater Rights** (Amend Cal. Rules of Court, rule 3.400; adopt rule 10.640)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
3.	Superior Court of California, County of San Bernardino	NI	Does the proposal appropriately address the stated purpose? Yes, the proposal appropriately addresses the stated purpose.	The committee appreciates the response.
			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 cases are located, be more appropriate? Title 10 relating to judicial administration is appropriate.	The committee appreciates the response. On balance, the comments weigh in favor of placing the rule in Title 3. Given that, the committee recommends locating the new rule in Title 3 (as rule 3.404).
			Would the proposal provide cost savings? If so, please quantify No costs savings.	The committee appreciates the response.
			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? Minimal change will be required. Clerk’s Office, Judicial Assistants, and Judges would need to be informed of the change and any process that the court would be required to do. No changes in the case management system would be needed.	The committee appreciates the response.
			Would two months from Judicial Council approval of this proposal until its effective date provide sufficient time for implementation? Yes.	The committee appreciates the response.
			How well would this proposal work in courts of different sizes? This will work well in any size court.	The committee appreciates the response.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.

SPR25-03

Rules and Forms: Comprehensive Adjudications of Groundwater Rights (Amend Cal. Rules of Court, rule 3.400; adopt rule 10.640)

All comments are verbatim unless indicated by an asterisk (*).

	Commenter	Position	Comment	Committee Response
4.	Trial Court Presiding Judges Advisory Committee (TCPJAC) and the Court Executives Advisory Committee (CEAC) (TCPJAC/CEAC Joint Rules Subcommittee (JRS))	A	The JRS agrees with the proposal and believes it is appropriate to make groundwater adjudications provisionally complex.	The committee appreciates the response.
			In regard to the insertion of the new rule, Title 3, specifically Rule 3.400(C) would be more appropriate than Title 10.	The committee appreciates the response. On balance, the comments weigh in favor of placing the rule in Title 3. Given that, the committee recommends locating the new rule in Title 3. Existing rule 3.400 relates to complex cases generally, while the new rule applies only to comprehensive adjudications. For this reason, the committee recommends the new rule be separate from, but located near, rule 3.400.
			The proposal may provide cost savings because the cases would be the subject of a complex case questionnaire anyway and would find their way to complex courts. Implementation would be minimal since staff are familiar with provisionally complex filings. Two months from Judicial Council should be sufficient time for implementation. For the courts that operate complex courts, the proposal should work well.	The committee appreciates the response.

Positions: A = Agree; AM = Agree if modified; N = Do not agree; NI = Not indicated.