

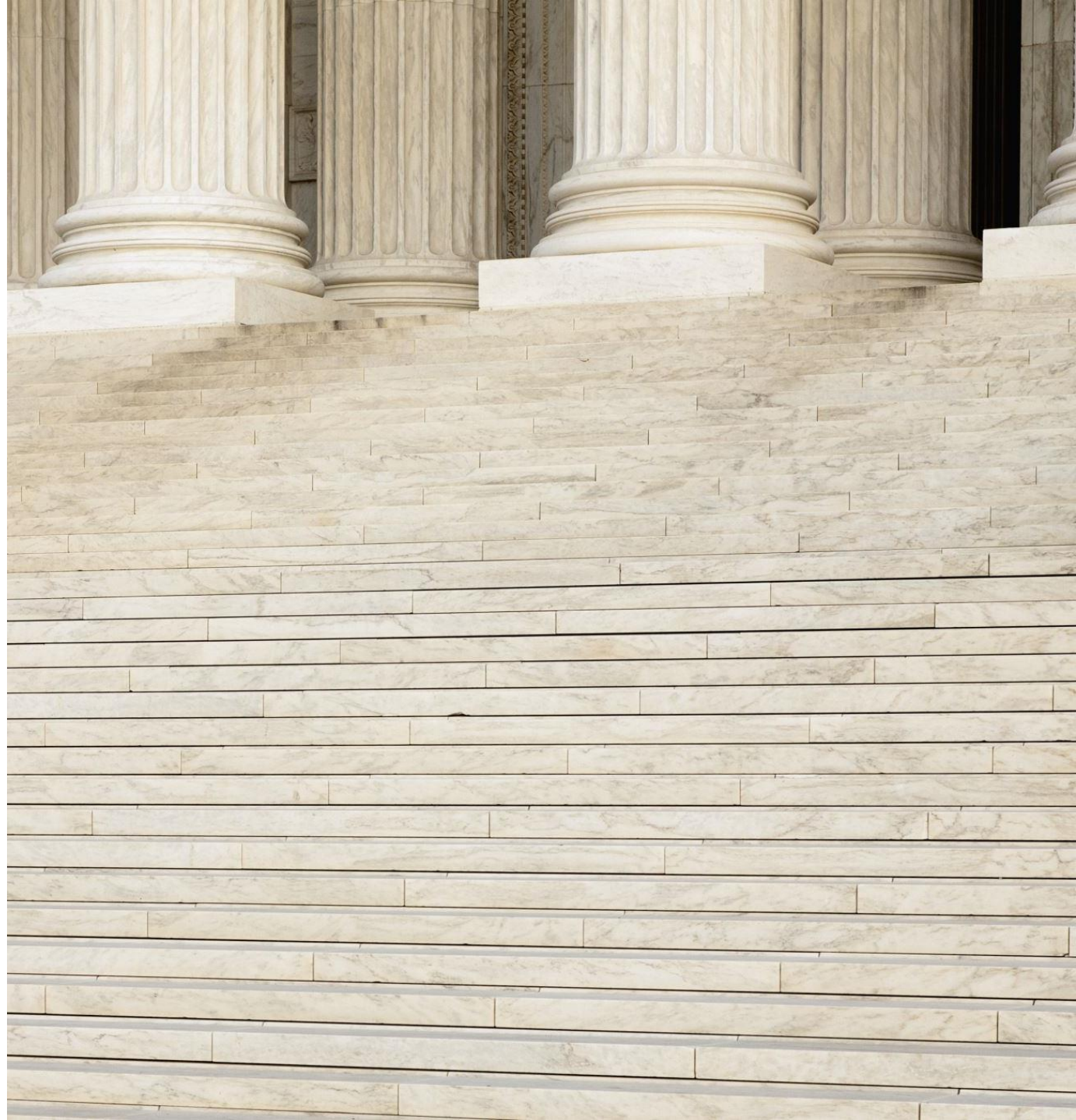
Groundwater Adjudication 101

Joint Oversight Hearing
Assembly Water, Parks & Wildlife Committee
Assembly Budget Committee
February 21, 2024

Professor Jennifer L. Harder
McGeorge School of Law, Sacramento
jharder@pacific.edu

Adjudication

- No permit system for groundwater
 - Overlying (active or dormant)
 - Appropriative/prescriptive
- Special district management insufficient to prevent over-pumping
- SGMA cannot settle water rights
- Pumpers file cases in court to determine water rights and address shortage



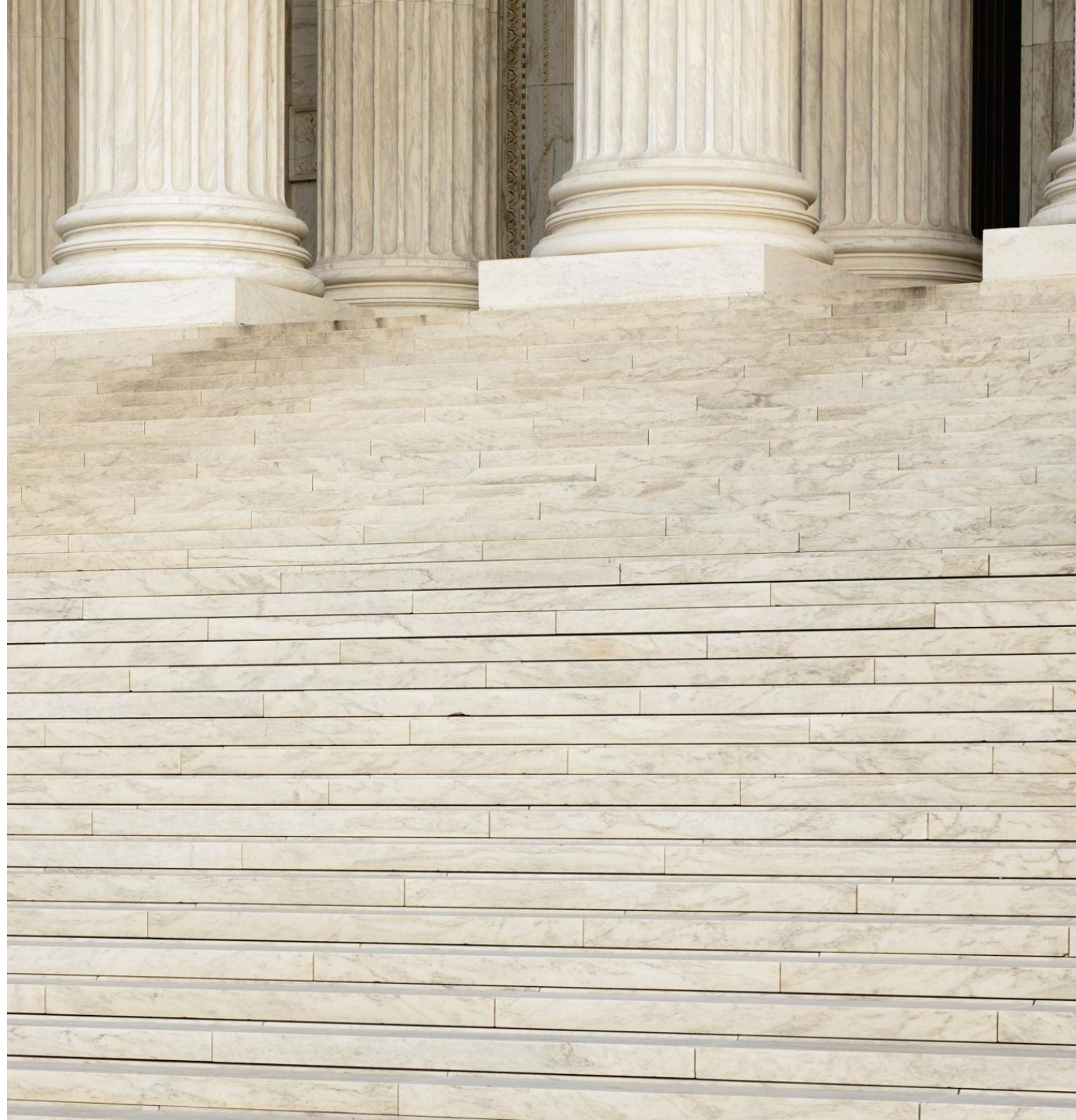
Adjudication

First large-scale adjudication

- Raymond Basin (1940s)
- *Pasadena v. Alhambra* (Cal.1949)

Approximately—

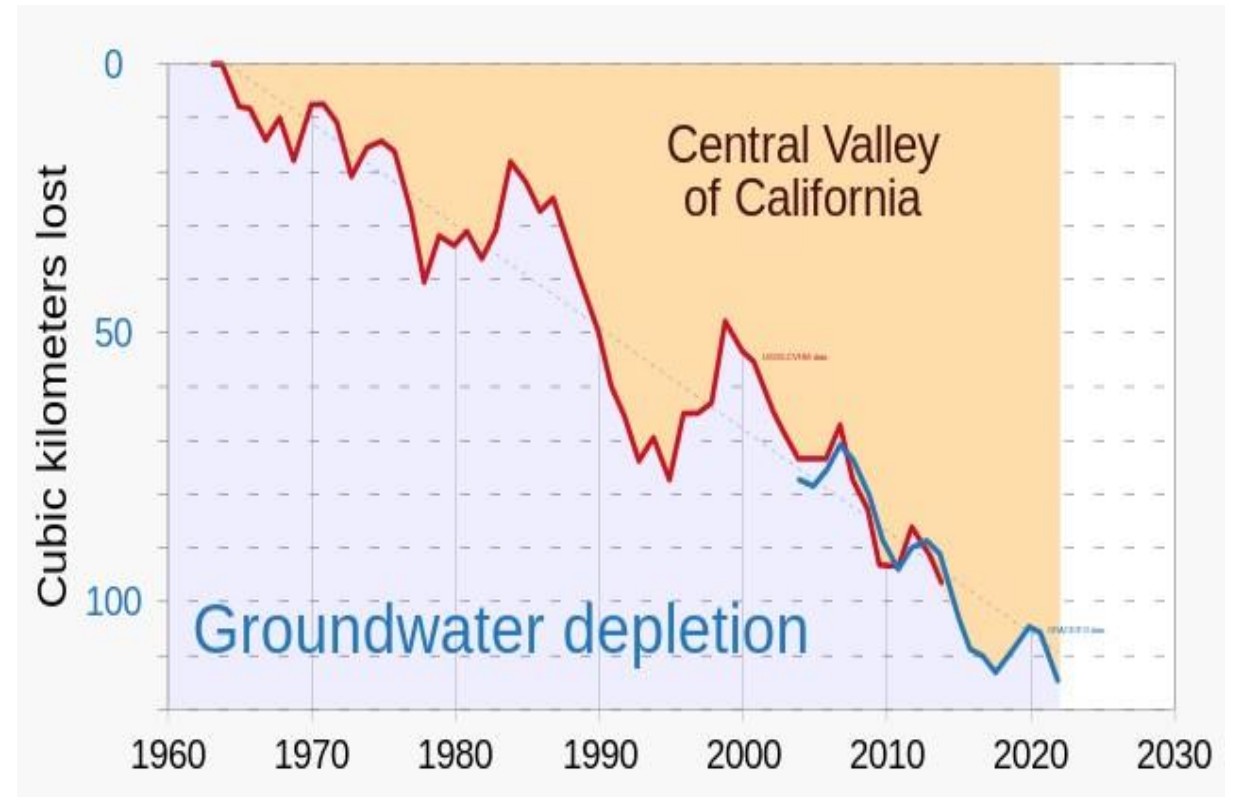
- 29 adjudicated areas tracked by DWR
- 5 adjudications pending



Overdraft

Average annual amount of water pumped for a long-term period, generally 10 years or more, exceeds the long-term average annual supply of water to the basin, plus any temporary surplus.

Short-term drops, such as during drought, are not overdraft unless the trend continues downward



Safe yield/sustainable yield

Maximum quantity of water, calculated over a base period representative of long-term conditions in the basin and including any temporary surplus, that can be withdrawn annually from a groundwater supply without causing an **undesirable result**.

Significant and unreasonable:

- Lowering of groundwater levels
- Reduction in groundwater storage
- Seawater intrusion
- Water quality degradation
- Land subsidence
- Interference with beneficial uses of interconnected surface water (e.g., fish & wildlife)

Adjudication

Pumpers invoke judicial power to determine rights to pump groundwater & establish a method for achieving and maintaining sustainable yield

- **Comprehensive:** all pumpers must participate unless exempt
- Judgment binds all pumpers in future
- Streamlined adjudication bills: AB 1390 and SB 226 (2015-16)
- Standards for injunctive relief

Adjudication

Statutory goals—

- Protect water rights consistent with California Constitution; provide due process
- Promote efficiency: avoid unnecessary delays, redundancy, unnecessary costs in developing technical information and solution
- Encourage compromise and settlement
- Verify consistency with sustainable groundwater management in SGMA timeframe, minimize interference with GSP implementation
- Ensure equity for exempt & non-stipulating parties, small farmers, and disadvantaged communities

Adjudication—Trial Phases

- Identify geography for hydrologic model (basin boundaries)
- Determine long-term sustainable yield and compare to pumping
- Evaluate undesirable results (overdraft)
- Review and confirm water rights
- Assess consistency with SGMA/GSP
- Approve **physical solution** to achieve sustainable yield and prevent undesirable results

Parties may propose **stipulated judgment** (settlement) to shorten trial phases or resolve litigation



Physical Solution

California Constitution, Article X Section 2 (1928)

- Practical resolution of water conflicts to avoid waste and unreasonable use
- Court **authority and obligation** to consider—whether or not parties agree
- Essence: water users cannot rigidly insist on unyielding enforcement of their rights, but may have to accept some impact, bear some cost, accept substitute supply
- Law imposes some limits on costs that can be imposed on senior water rights
- Ultimately, whether burden is reasonable under the circumstances

Physical Solution

Achieve sustainable yield; prevent undesirable results

- Water rights—overlying (active, dormant), appropriative, prescriptive
- Who can pump how much—allocation method and management
- Storage space in basin
- Supplemental water supplies and who pays
- Establish management framework (watermaster)
- Reserved court jurisdiction

Final Judgment (stipulated judgment)

Adjudication finally resolved through court decree (order)

Court may adopt **stipulated judgment** (court-approved settlement) if:

- Meets **mandatory statutory criteria**
- Supported by more than 50% of parties (pumpers or storage) and
- Supported by parties responsible for at least 75% of GW pumped 5 calendar years before complaint filed

Objector must demonstrate does not satisfy at least one mandatory statutory criterion, or substantially violates their water rights.

Mandatory Statutory Criteria

Court must find that judgment:

- Is consistent with Article X Section 2 of California Constitution and water right priorities of all non-stipulating parties and exempt claims
- Treats non-stipulating parties & exempt claims equitably vis-a-vis stipulating parties
- Considers water use of & accessibility for small farmers & disadvantaged communities (779 - adjudications after January 1, 2024)
- Does not substantially impair ability of GSA, Board, or DWR to comply with SGMA & achieve sustainable groundwater management

Groundwater Adjudication—Benefits

- Provide certainty on water rights
- Establish clear management framework for future allocations
- Improve efficiency of water use and allocation
- Develop pathway for supplemental water
- Create clear governance structure
- Institutionalize long-term sustainability

Groundwater Adjudication—Challenges

- Time and cost
- Significant influence of parties with resources and negotiating power
- Lack of access to process for others
- Public interest—reasonableness, surface water connection, groundwater quality
- Equity, e.g., disadvantaged communities & small farmers
- Integration with SGMA

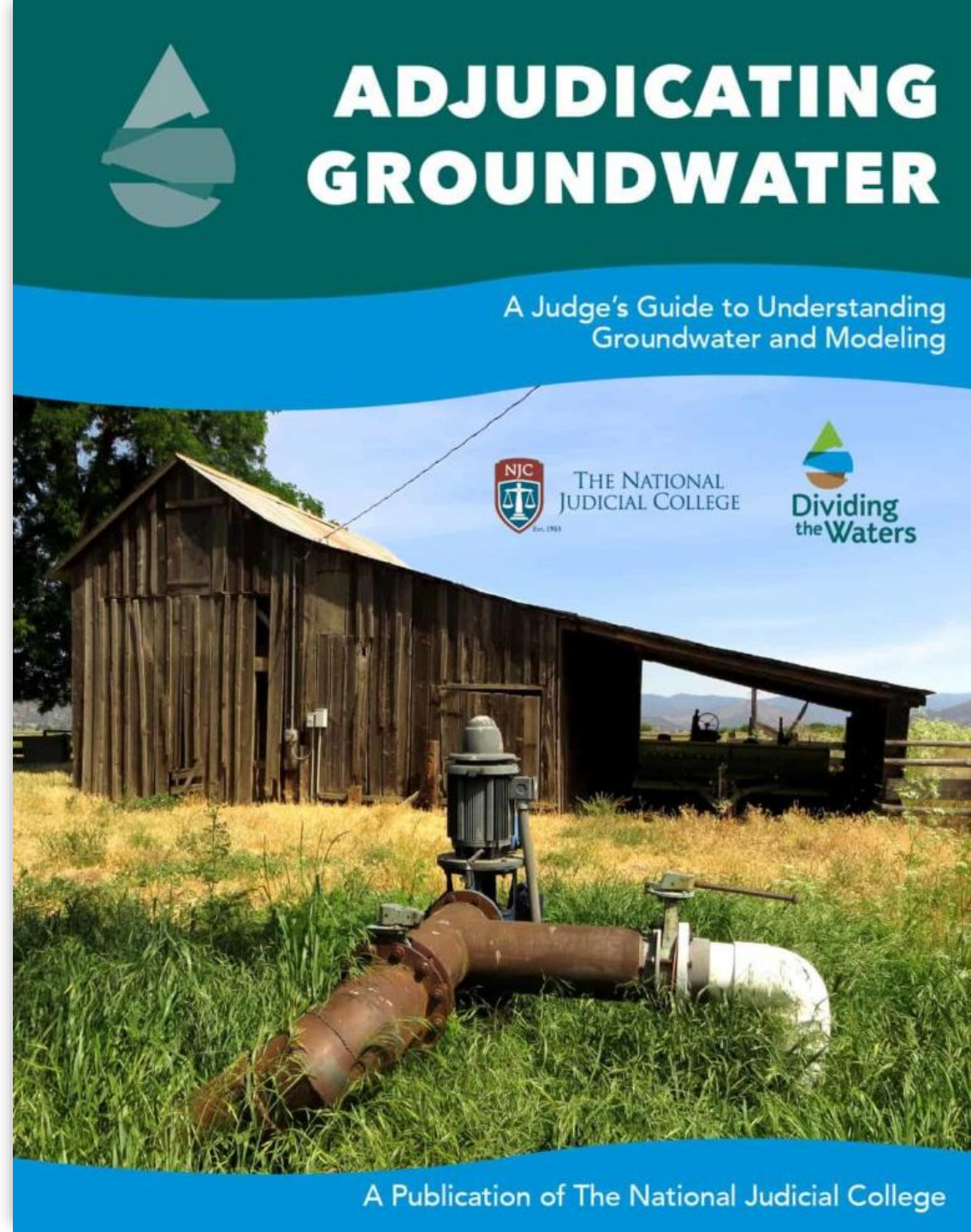
Adjudication Reality— Coalitions, Negotiations, Cost

- Water users form classes and coalitions based on water rights, location, other factors
- Resources: attorneys & experts, provide or challenge models, review data; access to negotiations
- Judicial resources and efficiency



Court Resources

- Appointment of special master
- Appointment of neutral expert
- State Water Board (& DWR) reference
- **Critical role of parties**
- **Critical role of intervention**



Key Opportunities

- Provide Meaningful Direction & Support for Complex Judicial Task
- Ensure Appropriate Integration of GSP
- Develop Realistic Pathway for Protecting Public & Underrepresented Interests
 - Environment – water quality, fish and wildlife
 - Small farmers
 - Disadvantaged communities

Groundwater Adjudication 101

Professor Jennifer L. Harder

McGeorge School of Law, Sacramento

jharder@pacific.edu