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CALIFORNIA WATER™ LAW & POLICY Reporter

CONTENTS

CALIFORNIA WATER NEWS

REGULATORY DEVELOPMENTS

LAWSUITS FILED OR PENDING

RECENT FEDERAL DECISIONS

Continued on next page

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RECENT CALIFORNIA DECISIONS

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CALIFORNIA WATER NEWS

HUNDREDS OF THOUSANDS OF ACRE-FEET TO BE SAVED THROUGH AGREEMENT WITH IMPERIAL IRRIGATION DISTRICT

On December 1, 2023, the Biden-Harris administration announced a new agreement with the Imperial Irrigation District (IID) that will conserve roughly 100,000 acre-feet of water in Lake Mead this year. This agreement will fund projects for water conservation, water efficiency, and protection of critical environmental resources to improve and protect the stability and sustainability of the Colorado River system. The projects from this agreement will be funded by approximately $77.6 million in new investments from President Biden's Investing in America agenda and will be administered through the Lower Colorado River Basin System Conservation and Efficiency Program and funded by the Inflation Reduction Act.

Background

Extending approximately 1,450-miles, the Colorado River is one of the principal water sources in the western United States and is overseen by the United States Bureau of Reclamation (Reclamation). The Colorado River watershed drains parts of seven U.S. states and two Mexican states and is legally divided into upper and lower basins, the latter comprised of California, Arizona, and Nevada. The river and its tributaries are controlled by an extensive system of dams, reservoirs, and aqueducts, which in most years divert its entire flow for agriculture, irrigation, and domestic water. In the lower basin, Lake Mead provides drinking water to more than 25 million people and is the largest reservoir by volume in the United States.

The Colorado River is managed and operated under a multitude of compacts, federal laws, court decisions and decrees, contracts, and regulatory guidelines collectively known as the "Law of the River." The Law of the River apportions the water and regulates the use and management of the Colorado River among the seven basin states and Mexico. The Law of the River allocates 7.5 million acre-feet (maf) of water annually to each basin. The Lower Basin States are each apportioned specific amounts of the lower basin's 7.5 maf allocation, as follows: California (4.4 maf), Arizona (2.8 maf), and Nevada (0.3 maf). California receives its Colorado River water entitlement before Nevada or Arizona. For at least the last 20 years, the Colorado River Basin has suffered from appreciably warmer and drier climate conditions, substantially diminishing water inflows into the river system and decreasing water elevation levels in Lake Mead. Lake Powell, which is formed by the Glen Canyon Dam upstream of Lake Mead where the upper and lower Colorado River basin meet, is operated to affect Lake Mead lake levels and to meet electricity and water supply demands in the region.

The Imperial Irrigation District, the nation's largest irrigation district, orders and distributes approximately 3.1 million acre-feet per year from the Colorado River through a complex conveyance and distribution system of nearly 1,700 miles of canals. Under the Law of the River, IID holds some of the most senior water rights yet conserves approximately 500,000 acre-feet of water under the nation's largest ag-to-urban water conservation pact, the Qualification Settlement Agreement, annually.

The Agreement

Roughly $77.6 million in new investments from President Biden's Investing in America agenda is included in the agreement with IID, funded from the Inflation Reduction Act. The projects funded through this agreement will be administered through the Lower Colorado River Basin System Conservation and Efficiency Program. This program was created to promptly address the drought crisis through actions and investments to ensure that the Colorado River Basin can function and support those who rely on it. The Lower Colorado River Basin System Conservation and Efficiency Program is intended to provide new opportunities for system conservation in the lower Colorado River Basin that also lead to additional conservation and bridge immediate need while moving toward improved system efficiency and more durable long-term solutions for the river system.

The agreement with IID joins the 18 recently announced agreements that conserve up to 348,680 acre-feet of water in Lake Mead in 2023 and bring in $63.4 million in new investments dedicated to water conservation, water efficiency, and protection of critical environmental resources in the Colorado River System. Together, these agreements make up part of the 3 million acre-feet of conservation commitments made by Lower Basin states.

These recent actions to sustainably managing the river system have already started making a measurable impact. Interior recently announced that the chance of falling below critical elevations has been reduced to 8 percent at Lake Powel and 4 percent at Lake Mead through 2026. Lake Mead is roughly 40 feet higher than it was projected to be at this time last year. This is particularly notable given that the Colorado River system was facing near-term collapse roughly one year ago. The combination of the multiple investments for Colorado River Basin states will together yield hundreds of thousands of acre-feet of water savings each year upon the projects' completion. In addition to these agreements and projects, Reclamation and IID are continuing to work towards future agreements for the years 2024 through 2026. IID has proposed a target of 800,000 acre-feet cumulatively of additional conservation by 2026.

Conclusion and Implications

The recent IID agreement is a positive and substantial step to more sustainably managing the Colorado River system. It remains to be seen whether additional conservation-based agreements can be reached for the river system, and whether IID's proposed target of 800,000 acre-feet of additional conversation will be realized. For more information, *see:* Department of the Interior, *News Release: Biden-Harris Administration Announces New Agreement with Imperial Irrigation District to Save 100,000 Acre-Feet of Water in Colorado River System*, (Dec. 1, 2023), https://mavensnotebook.com/2023/12/01/news-release-biden-harris-administration-announces-new-agreement-with-imperial-irrigation-district-to-save-100000-acre-feet-of-water-in-colorado-river-system (Miles Krieger, Steve Anderson)

CALIFORNIA ANNOUNCES A SIGNIFICANT MILESTONE—CONSOLIDATION OF MORE THAN 100 WATER SYSTEMS

Consolidation of water systems can expand availability of safe and reliable drinking water to Californians, and with the consolidation of more than 100 water systems, secures stable drinking water supplies for more than 90,000 Californians. This milestone, announced on December 7, 2023, is being celebrated by the California State Water Resources Control Board along with the United States Environmental Protection Agency Region 9, elected officials and many others statewide.

Background

In 2019, California Governor Gavin Newsom prioritized safe and clean drinking water projects including his proposal during his first week in office to establish a permanent funding source to assure access across California to safe and reliable drinking water supplies. Later that year, Governor Newsom signed Senate Bill 200, establishing the Safe and Affordable Drinking Water Fund (SADW Fund or Fund), administered through the Safe and Affordable Funding for Equity and Resilience Program (SAFER) that aims to support local water systems in their efforts to provide safe drinking water.

Safe and Affordable Drinking Water Fund

With the adoption of the SADW Fund, California committed $130 million per year to address funding gaps and assist small water systems with drinking water standard violations in developing and implementing solutions to resolve the basis for those violations. Fund monies are prioritized for use to improve operations a maintenance, costs of consolidating small systems with larger systems, providing for replacement water and for the administrative costs to operate small water systems, particularly in disadvantaged communities. The Fund provides tools and funding sources for the purpose of ensuring one million Californians who lack access to safe and reliable drinking water supplies gain access as expeditiously as possible.

Safe and Affordable Funding for Equity and Resilience Program

The SAFER Program is responsible for bringing environmental justice to California by addressing the disproportionate environmental burdens in the State through the provision for a supply of safe drinking water in every California community and for every Californian. The SAFER Program is operated in coordination with California's Human Right to Water law declaring that:

> . . .every human being has the right to safe, clean, affordable, and accessible water adequate for human consumption, cooking, and sanitary purposes.

Short and Long-term objectives of the SAFER Program include the acceleration of capital projects, promoting consolidation and extensions of water services, identifying community and public water systems at risk of failing drinking water standards, assist avoiding those risks, identifying gaps in safe and affordable drinking water supplies and mechanism to close those gaps, and assure a supply of safe and affordable drinking water for every Californian.

Water System Consolidations

Celebrating the benefits of the SADW Fund and the SAFER Program, the State Water Resources Control Board highlighted the consolidation of the Coachella Valley Water District and Westside Elementary School. Approximately 350 students, many from disadvantaged backgrounds, attend Westside Elementary School, which prior to the consolidation the school relied on contaminated well water. As described by the State Water Board, the investment of monies through the SADW Fund and through the SAFER Program for system consolidation, like for the Westside Elementary School, is a demonstration that these investments can produce solutions to contemporary drinking water problems and assure access to safe and affordable drinking water to disadvantaged communities throughout California.

Through the water system consolidations celebrated in the December 7, 2023 announcement and systems currently going through the consolidation process, California is equipped to tackle longstanding infrastructure disparities in rural communities, which brings security to those residents knowing that there is a reliable and safe drinking water supply. The number of water system consolidations would not have been possible without the SADW Fund and the SAFER Program.

Conclusion and Implications

Consolidation of more than 100 water systems is an achievement in not only ensuring that tens of thousands of Californians have reliable access to safe drinking water, but the focus on prioritizing funding for the State's disadvantaged communities is a genuine achievement in addressing social justice disparities. The monies committed by California through the SADW Fund expands access to safe drinking water supplies and are intended to align with California's legal recognition that access to reliable safe and affordable water supplies are an essential human right. (Micheline Nadeau Fairbank, Derek Hoffman)

REGULATORY DEVELOPMENTS

CALIFORNIA DEPARTMENT OF WATER RESOURCES ANNOUNCES INITIAL STATE WATER PROJECT ALLOCATIONS TO THE NEW WATER YEAR

On December 1, 2023, the California Department of Water Resources (DWR) announced that California State Water Project contractors will receive 10 percent of requested supplies from the State Water Project (SWP) for 2024. This decision represents a 5 percent increase since its December 2022 forecast, and is subject to change as conditions evolve through the wet season [*and as this article went to "print" California experienced several moderate storms].

Background

DWR provides its initial annual SWP allocation by December 1 of each year based on available water storage and projected water supply demands. DWR's announcement follows one of the wettest water years in California's history. DWR pointed to several factors, including the current levels of reservoir storage and the expectation of extremely dry conditions as part of its reasoning for its allocation.

The State Water Project

The SWP is a complex system of canals, pipelines, reservoirs, and hydroelectric power facilities that delivers water to 29 public agencies, which serve 27 million Californians and provide irrigation for approximately 750,000 acres of farmland. It delivers snowmelt and runoff from the northern Sierra mountains into Lake Oroville and down though the Sacramento-San Joaquin River Delta into the Los Angeles Basin. In normal years, the SWP will provide drinking water to up to two thirds of California residents.

DWR's Analysis and What it Means for Contractors

DWR weighs several factors when determining its initial water allocation for each year. Here, DWR pointed to the current levels of reservoir storage and the expectation of extremely dry conditions as key drivers for the initial allocation. Additionally, DWR considered dry soil, runoff and storage in Lake Oroville in making its determination. So far, the current water year that began on October 1, 2023, has yielded little rain. *The first few storms that have swept into the state did not deliver significant rain or snow.

However, DWR indicates that the relatively low initial allocation is not presently a cause for concern. It is typical for DWR to issue an initial allocation forecast that is low after wet years. For example, the 2018 water year saw a 15 percent initial allocation, which followed an 85 percent final allocation for the prior year. The 2020 water year began with an initial 10 percent allocation, despite a 75 percent final allocation for the year before. Both 2017 and 2019 were wet years.

Similarly, last year was a wet year, as indicated by several positive signs that indicate the health of California's water systems. For example, out of the state's 17 major reservoirs, only three reservoirs were beneath their historical averages according to recent readings as of the date of this writing. Lake Oroville, the state's largest reservoir, was at 133 percent of average. San Luis Reservoir was at 109 percent of average. The State Water Project last winter captured 3.5 million acre-feet of water in its reservoirs. It delivered 2.7 million acre-feet in allocated water, along with another 400,000 acre-feet to its contractors this year. For the first time in three years, DWR, working with the Metropolitan Water District in Southern California, was able to fill the Diamond Valley Reservoir. These conditions show that California's water levels are no longer in as critical condition as they were at the beginning of the 2022 water year.

Expectations for Increased Rainfall

Allocations are reviewed and updated each month after snowpack, rainfall and runoff are examined. A final allocation announcement occurs in May or June. DWR is also monitoring the current El Niño pattern, with the hopes that the pattern will generate wet weather. El Niño conditions mean higher tem-

peratures from the equator to the pole, which in turn means a greater chance of storms reaching Southern California. El Niño years may be wetter than other years. However, El Niño conditions may not be a direct guarantee of increased rainfall. Seven El Niño events have occurred so far this century. Two of them trended wet and two dry. The other three brought average rainfall. Because of there is no guarantee of high rainfall, DWR must plan with drier conditions in mind.

Conclusion and Implications

DWR's initial annual SWP allocation, although still relatively low, is 5 percent higher than its 2022 initial allocation. The allocation is on trend with what is to be expected after a wet year, such as 2022. Because of this, the initial water allocation is not a cause for concern at this point. DWR continues to monitor snow pack and potential rainfall, and will adjust its allocation accordingly as wet season conditions evolve.
(Christina Suarez, Derek Hoffman)

LAWSUITS FILED OR PENDING

SACRAMENTO COUNTY SUES CITY OF SACRAMENTO FOR PUBLIC NUISANCE AND WATER POLLUTION ASSOCIATED WITH UNHOUSED ENCAMPMENTS

On December 5, 2023, Sacramento County District Attorney Thien Ho filed an amended civil complaint against the City of Sacramento (City), accusing the City of allowing its unhoused crisis to become a public nuisance and pollute "waters of the State," in violation of the Porter-Cologne Water Quality Control Act (Porter-Cologne) and the California Fish and Game Code. The water pollution claims in the amended complaint replace now-abandoned causes of action from the original complaint that was filed approximately three months prior. [*Sac. County v. City of Sacramento*, Case No. 23CV008658 (Sac. County Super. Ct.).]

Background

In November of 2022, just over half of Sacramento voters approved Measure O to enforce restrictions against urban camping on public property and direct the City and County to develop and provide additional beds and shelters for the City's growing unhoused communities. By June of 2023, however, neighbors to the major encampment zones across the City reported in a community survey that conditions had worsened, despite the measure's implementation. The District Attorney issued a letter to the City on August 7, raising public health and safety concerns over the City's' failure to prosecute unlawful encampments and sidewalk obstructions. The City Attorney responded that police were not referring misdemeanor citations to her office to allow for prosecution, but offered to improve coordination between City and County.

Unconvinced, the District Attorney sued the City on September 19, 2023, seeking a court order to compel the City to enforce its own ordinances under theories of public nuisance, private nuisance, and inverse condemnation. In a general demurrer to dismiss the complaint, the City argued that the District Attorney lacked the statutory authority to bring claims for private nuisance and inverse condemnation on behalf of the public. While it recognized the District Attorney may pursue a public nuisance claim under Government Code section 26528, the City argued that it cannot be liable for public nuisance because it did not create the socio-economic factors responsible for the unhoused crisis.

On October 27, the Disability Rights Education and Defense Fund (Intervenors) intervened in the case on the grounds that neither the District Attorney nor the City represent the interests of unhoused people. The Intervenors argue in their complaint that the City has actually gone too far to enforce Measure O and other ordinances, in violation of the Americans with Disabilities Act and unhoused persons' constitutional rights.

The Lawsuit

As it did in its original complaint, the District Attorney devotes much of the first 40 pages of the amended complaint to give voice and detail to the accounts of residents who have been victimized, harassed, or suffered property damage from denizens of neighboring unhoused zones. The District Attorney alleges the City's failure to abate those injurious incidents, on its own, amounts to a public nuisance.

With supplemental background on the nearby American and Sacramento rivers and tributary creeks, the amended complaint adds that unhoused zones on City property near those waterways contribute to soil erosion and result in food scraps, detergents, human waste, garbage, and other refuse entering waterways and storm drains:

> By allowing these zones to exist on City property without any effort at minimizing or eliminating the camps or the waste generated by them, the City is allowing and permitting. . .substances deleterious to aquatic life to be deposited into. . .waters of the State.

Section 13050 of Porter-Cologne states water pollution that is injurious to health, offensive to the

senses, or interferes with the comfortable enjoyment of property on a community-scale is a public nuisance *per se*. (Wat. Code, § 13050(m).) By not preventing the deposit of waste substances associated with human habitation at unhoused zones into waters of the State, the District Attorney argues the City is in violation of Section 13050. Nuisance per se does not require a showing of proof of harm, but the amended complaint alleges harm has been suffered by citizens who have been deprived from enjoying and using nearby rivers, streams, lakes, and other bodies of water.

Finally, the amended complaint seeks injunctive relief to prevent further water pollution and future violations of the Fish and Game Code. Section 5650 of the Fish and Game Code declares it is unlawful to deposit any substance that is harmful to fish, plant life, mammals, or bird life into any waters of the State. (Fish & G. Code, § 5650.) Additionally, it is unlawful to deposit or allow the deposit of cans, bottles, garbage, waste, or debris into waters of the State. (*Id.* at § 5652.) The consequence for any "person" who violates Section 5650 is liability for a civil penalty for up to $25,000 per violation. (*Id.* at § 5650.1(a).) While the City is not a "person," as defined in Fish and Game Code, to be liable for monetary penalties (*id.* at § 67), Section 5650.1 provides for preliminary or permanent injunction without specifying "person." (*Id.* at § 5650.1(e).) The amended complaint makes clear that it only seeks injunctive relief to compel the City to take necessary actions to abate the nuisance. (Amd. Complaint, at p. 48.) However, the court would first need to find the City is responsible for the actions of its unhoused citizens.

Conclusion and Implications

It is unclear how this case will unfold, especially with the District Attorney and Intervenors' complaints pulling the City of Sacramento in opposite directions with regard to enforcement of its encampment ordinances. If successful, the District Attorney's invocation of water pollution under Porter-Cologne and the Fish and Game Code as a means to force municipal action could serve as a template in other cities with unhoused crises. A copy of the amended complaint is available at: https://www.courthousenews.com/wp-content/uploads/2023/12/amended-complaint-homelessness.pdf.
(Austin C. Cho & Sam Bivins)

JANUARY 2023 MERCED FLOODS BLAMED ON PERMITTING DELAYS BY THE CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE—LAWSUITS FILED

Rainstorms in early January 2023 resulted in significant flooding from creeks and streams within Merced County, including Miles Creek, Bear Creek, and Black Rascal Creek. On October 18, 2023, the City of Merced (City), a local school district, and 12 agricultural groups filed a lawsuit against the CDFW for damages caused by the flooding. [*City of Merced et al., v. State of California, et al.*, Case No. 23CV-03845 Merced Super. Ct.)] According to those plaintiffs, CDFW's failure to grant streambed alterations permits prevented local agencies from performing necessary streambed maintenance. On December 6, 2023, a group of residents, business owners, and farmers filed a lawsuit for damages caused by the same flood event but also cast blame on the City, the County of Merced (County), and Merced Irrigation District (MID), who are charged with maintaining the Merced waterways that were the source of the flooding. [Borba, et al. v. County of Merced, et al., Case No. 23CV-04368 (Merced Super. Ct.)]

Background

In response to concerns that industrial and other activities were causing adverse effects on anadromous fish and other wildlife dependent on instream resources, the California Legislature first enacted Fish and Game Code section 1600 *et seq.* in 1961. Under Section 1602, any person or agency contemplating activity that substantially diverts or obstructs the natural flow of—or substantially changes or uses material from the bed, channel, or bank of—a watercourse is required to give prior notice to CDFW. CDFW must then decide whether the planned activity could adversely affect the fish and wildlife that depend on that

water course. If so, CDFW and the agency or property owner enter into a streambed alteration agreement that includes terms to mitigate the planned activity's potentially adverse consequences on fish and wildlife.

MID, the County, and the City work cooperatively to oversee the maintenance of waterways in Merced County, including Miles Creek, Bear Creek, and Black Rascal Creek. After their prior permit for removing debris from the waterways expired, the County filed a new application on behalf of this group to CDFW to approve a ten-year maintenance permit agreement on behalf of this group. After years of back and forth with CDFW staff, no agreement had been reached with CDFW. A severe rainstorm hit the Central Valley in January 2023 that resulted in extensive flooding of waterways throughout Merced County. California Office of Emergency Services (OES) staff contacted CDFW on behalf of the City of Merced to get permission to start debris removal and levee repair on an emergency basis. Still, no permit agreement has been issued to perform streambed maintenance outside of emergency exemptions.

Litigation Against CDFW

On October 18, 2023, the City of Merced, McSwain Union Elementary School District, and a number of farmers in the Merced area filed a lawsuit against CDFW for damages caused by the January 2023 flooding. The plaintiffs allege that CDFW has exclusive authority to say when and how streambed maintenance occurs; thus, CDFW is liable based on claims for inverse condemnation, dangerous conditions, and nuisance.

The complaint does not state the legal authority for holding CDFW responsible for flood damage as a result of its failure to process permits. However, the question of public agency flood liability as a result of a failure to act is not a novel one. Public entities may be liable in inverse condemnation where the design, construction, or maintenance of a flood control project poses an unreasonable risk of harm to the plaintiff's property, and the unreasonable aspect of the improvement is a substantial cause of damage. (*Arreola v. County of Monterey,* 99 Cal.App.4th 722, 740 (2002).) The test is whether the public agency had the power to control or direct the aspect of a public project that caused the injury and whether the agency either did not appreciate the risk or took a "calculated risk" that the threatened harm would occur. (*Id.* at 762-763.)

CDFW has filed a demurrer to the complaint. According to CDFW, the inverse condemnation claims fail because the plaintiffs have not properly identified a CDFW public project that would show that CDFW had sufficient control to prove liability. CDFW also argues that the plaintiffs have not properly identified where flooding occurred and how flooding caused each plaintiff's damages. CDFW has further argued that the tort claims are not properly pleaded. A hearing on the demurrer is scheduled for February 6, 2024.

Separate Lawsuit

Meanwhile, on December 6, 2023, a group of residents, business owners, and farmers filed a separate lawsuit against the County, the City, MID, CDFW, the State of California, and the California Fish and Game Commission for damages related to the January 2023 flooding. The plaintiffs allege that the defendants had prior knowledge that the Merced waterways were susceptible to flooding. These plaintiffs point to the local agencies' roles in maintaining the waterways and also point to the state agencies' failures to grant permission to the local agencies to perform maintenance. The plaintiffs allege causes of action against all the defendants for inverse condemnation, private nuisance, public nuisance, negligence, dangerous conditions on public property, and trespass. The plaintiffs also allege that the County, the City, and MID violated their mandatory duty to maintain the Merced waterways. The defendants have not filed any responsive pleadings as of the time this article was written.

Conclusion and Implications

The fallout from the destructive floods of January 2023 continues, with two lawsuits filed in Merced County. Each lawsuit alleges that CDFW failed to timely issue necessary streambed alteration permits. Local agencies responsible for streambed maintenance point to this failure alone as the cause of the flooding, but others are not so ready to let the local agencies off the hook. These lawsuits are still in the early stages, and it remains to be seen if and where

RECENT FEDERAL DECISIONS

NINTH CIRCUIT REJECTS CLEAN WATER ACT'S DIRECT-DISCHARGE THEORY AS APPLIED TO HOLDING PONDS

Cottonwood Environmental Law Center v. Edwards, ___F.4th___, Case No. 22-36015 (9th Cir. Nov. 21, 2023).

The United States Court of Appeals for the Ninth Circuit recently affirmed a District Court's rejection of an environmental group's claim against the Big Sky County Water & Sewer District No. 363, which alleged a direct-discharge theory under the federal Clean Water Act. The decision addresses the "meaningfully distinct water bodies" test used to advance a direct-discharge theory under the Clean Water Act.

Factual and Procedural Background

Big Sky Water and Sewer District No. 363 (District) provides water and wastewater services for a Big Sky, Montana resort community. The District operates a Water Resource Recovery Facility to manage Big Sky's wastewater. The facility treats and stores wastewater, then reuses the water for irrigation in Big Sky properties, including a golf course owned by Boyne USA, Inc (Boyne). The water used for irrigation contained pollutants, including nitrogen, despite undergoing significant treatment. Although the District maintains high-density polyethylene lined storage ponds to store treated wastewater, and a separate, unconnected, underdrain system to prevent groundwater from pushing against the liners, wastewater still reached the West Fork of the Gallatin River (West Fork). The District does not have a permit under the Clean Water Act's National Pollutant Discharge Elimination System (NPDES) to discharge pollutants into the West Fork.

Plaintiff Cottonwood Environmental Law Center sued the District for allegedly discharging treated wastewater into the West Fork of the Gallatin River without an NPDES permit. Plaintiff first moved for summary judgement under a direct-discharge theory, claiming that the District directly discharged nitrogen into the West Fork via the underdrain without a permit. The District cross-moved for summary judgement, claiming that because the underdrain was not connected to the storage ponds, it did not add any pollutants to the West Fork, instead it provided a preferential path for groundwater flow. The District Court denied both motions for summary judgement, finding a genuine dispute to material facts. The District Court also granted plaintiff leave to amend its complaint to add Boyne as a party to the suit, stating that Boyne was the proper party for allegations of a violation under the Act since the discharge was a result of Boyne's golf course's irrigation and drainage system. Plaintiff mailed Boyne a letter alleging such violation.

After bifurcating the trials against the District and Boyne, plaintiff brought an indirect-discharge theory against the District. The jury returned a verdict for the District, finding that the District did not violate the Act. Separately, Boyne filed a motion to dismiss for lack of proper notice, to which the District Court granted, finding that plaintiff's letter to Boyne failed to identify any "alleged indirect discharges of pollution." The plaintiff timely appealed the denial of summary judgement on a direct-discharge theory, as well as the dismissal of the complaint against Boyne.

The Ninth Circuit's Decision

Direct-Discharge Claim Against District

To succeed on a direct-discharge theory, a plaintiff must show that: (1) a point source exists that is transporting pollutants and (2) between meaningfully distinct water bodies. If a point source does not exist, then the presence of pollutants is not in "meaningfully distinct water bodies," but instead in one connected water body which does not establish a violation under the CWA. The District Court had found that the District's underdrain was not a point source, which therefore precluded plaintiff from succeeding on a direct-discharge theory.

The Ninth Circuit agreed with the District Court, noting that early in the litigation, plaintiff conceded the underdrain was not connected to the District's holding ponds, and that plaintiff did not contest that the groundwater beneath the holding ponds and West Fork was one connected water body. Plaintiff also conceded that the water from the aquifer underneath the District's facility would reach the West Fork regardless of the existence of the underdrain pipe. Thus, the court found that these undisputed facts necessarily lead to the conclusion that the underdrain pipe did not transport pollutants between meaningfully distinct water bodies, and could not constitute the discharge of a pollutant under the CWA.

Plaintiff argued that the "meaningfully distinct water bodies" test was inapplicable because the test requires the transfer of pollutants between navigable waters. However, looking at the plain language of the test, the court determined that the source water need not be navigable. Instead, the court found that the test simply looks at the relationship between the source and receiving water to determine whether they are "meaningfully distinct." If the two waters are not meaningfully distinct, then "the transfer between the two cannot count as a discharge of pollutants" under the CWA.

The court determined, however, that plaintiff could raise an indirect-discharge theory of liability against the District, under the functional equivalent standard.

Notice to Boyne

The Ninth Circuit reversed the District Court's dismissal of plaintiff's complaint against Boyne. The court found that plaintiff's letter to Boyne provided more than sufficient notice of plaintiff's indirect-discharge theory against the company. The letter stated that Boyne was in violation of the Clean Water CWA, and that its irrigation practices amounted to a "functional equivalent" of a direct discharge. Finding this to be the very definition of an indirect-discharge claim, the court determined the notice was sufficient, allowing the complaint to move forward.

Conclusion and Implications

This case applies the "meaningfully distinct water bodies" test to a non-navigable source water to reach the conclusion that a pipeline assisting in the conveyance of groundwater and pollutants from the non-navigable source to the navigable water did not constitute a direct discharge. The court's opinion is available online at: https://cdn.ca9.uscourts.gov/datastore/opinions/2023/11/21/22-36015.pdf. (Claire Copher; Rebecca Andrews)

NINTH CIRCUIT AFFIRMS REQUIREMENT FOR DREDGE MINER TO OBTAIN A CLEAN WATER ACT NPDES PERMIT

Idaho Conservation League v. Shannon Poe, ___F.4th___, Case No. 22-35978 (9th Cir. Nov, 20, 2023).

The United States Court of Appeals for the Ninth Circuit recently upheld the District Court's grant of summary judgment in favor of the Idaho Conservation League in a claim against an Idaho dredge miner who mined without a Clean Water Act National Pollutant Discharge Elimination System (NPDES) permit. The ruling affirms the U.S. Environmental Protection Agency's (EPA) interpretation of what constitutes an "addition of a pollutant."

Factual and Procedural Background

Shannon Poe (Poe) is a resident of Idaho and an occasional dredge miner. Dredge mining is a type of placer mining used to extract gold and other precious metals from riverbeds. The process involves using a floating watercraft device with a pump to suction water and other materials from the bottom of riverbeds. These riverbed materials get processed through a sluice box, where gold and other precious metals are sifted out and the excess materials are discharged back into the river. Poe conducted dredge mining for 42 days between 2014-2018. During that period, Poe never obtained a permit under the Clean Water Act's NPDES to dredge mine.

In August 2018, the Idaho Conservation League (ICL), an Idaho nonprofit with the goal of protecting and restoring public lands, sued Poe alleging that Poe violated the Clean Water Act by not obtaining a NPDES permit while dredge mining. Poe countered by filing a motion to dismiss, claiming: (1) the District Court lacked subject matter jurisdiction because ICL's notice letters did not come by certified mail, and (2) ICL lacked standing to bring the suit. The U.S. District Court denied Poe's motion. ICL then moved for summary judgment. The District Court granted summary judgment for ICL reasoning that: (1) Poe's dredge mining added pollutants to the river, thus requiring a NPDES permit, and (2) the excess materials that Poe put back into the water while dredge mining constituted "pollutants" under the meaning of the CWA, which also required a NPDES permit. The District Court imposed a $150,000 fine and restricted Poe from dredge mining without a valid NPDES permit. Poe appealed.

The Ninth Circuit's Decision

To establish a violation of the Clean Water Act's NPDES permit requirements, a plaintiff must prove that a defendant: (1) discharged or added (2) a pollutant (3) to navigable waters (4) from (5) a point source. An "addition of a pollutant" is not defined under the Clean Water Act, so the court looked to the U.S. Environmental Protection Agency's interpretation and case law. In 1988, the EPA promulgated regulations requiring NPDES permits and establishing limitations for gold placer mining. In 1990, in the case of *Rybachek v. EPA*, gold placer miners challenged the new permitting regulations arguing that gold placer mining did not "add pollutants" to the river. The court in *Rybachek* sided with the EPA's interpretation of the CWA in holding that "resuspension" of riverbed materials "may be interpreted to be an addition of pollutants."

Analysis under the *Rybachek* Decision

Poe responded by arguing, first, that *Rybachek* was no longer good law because the U.S. Supreme Court determined that pumping or flowing water from one portion of a waterway into another portion of the same waterway is not a discharge of pollutants. The Ninth Circuit rejected this argument, reasoning that dredge mining is not merely a transfer of polluted water, but involves excavating rock, gravel, and sand from the settled riverbed and then adding those materials back into the river. Due to this distinction, the court upheld *Rybachek* as good law.

Poe next argued that the court should not defer to the EPA's regulations and should, instead overturn *Rybachek*. The court rejected this argument, reasoning that a three-judge panel may depart from controlling precedent only if prior authority is clearly irreconcilable with the interpretation of the higher authority. The court determined that the U.S. Supreme Court's decisions were not "clearly irreconcilable" with *Rybachek's* placer mining decision.

Section 404 or Section 402 of the Clean Water Act?

Finally, Poe argued that even if dredge mining added pollutants to the water, the pollutants were merely "dredged" or "fill material" that falls under the U.S. Army Corps of Engineers' dredge and fill requirements in Section 404 of the Act and not the EPA's NPDES requirements of Section 402. Because "dredged material" is not defined under the CWA or in federal regulations, the court looked to the EPA and USACE's interpretation of what "dredged material" means. In 1986, the U.S. Army Corps of Engineers (Corps) and EPA drafted a memorandum of agreement that "placer mining wastes" fell under the purview of the NPDES, not Section 404. In 1990, the Corps drafted a Regulatory Guidance Letter stating that once "dredged materials" are "processed to remove desired elements, its nature has been changed" and "is no longer dredged material" under Section 404. The Ninth Circuit agreed with District Court's deference to the regulatory agencies and found that Poe's dredge mining required an NPDES permit.

Conclusion and Implications

This case confirms that dredge mining activities require a discharge permit under Section 402 of the Clean Water Act and not a dredge and fill permit under Section 404 of the act. This case also provides a good example of how courts defer to federal agencies in interpreting the Act. The Ninth Circuit's opinion is available online at: https://cdn.ca9.uscourts.gov/datastore/opinions/2023/11/20/22-35978.pdf.
(Trent Fornasier, Rebecca Andrews)

FIFTH CIRCUIT TOSSES ARMY CORPS' ENVIRONMENTAL ASSESSMENT UNDER SECTION 404 OF THE CLEAN WATER ACT

O'Reilly v. All State Fin. Co., ___F.4th___, Case No. 22-30608 (5th Cir. Oct. 12, 2023).

The Fifth Circuit Court of Appeals recently enjoined the U.S. Army Coprs of Engineers (Corps) from issuing a federal Clean Water Act Section 404 "dredge and fill" permit for a development project and ordered the Corps to prepare a new Environmental Assessment (EA).

Factual and Procedural Background

Covington, Louisiana, is located north of New Orleans, across Lake Pontchartrain. Just west of the city, All State Financial Corporation (All State) owns seventy acres of undeveloped forest. Twenty-four of All State's seventy acres are wetlands adjacent to the Tchefuncte River and the Timber Branch River. During unusual heavy rains, such as hurricanes, the rivers swell, saturating the wetlands. All State wants to fill this area with concrete and build the Timber Branch II project (TB II or Project), a multi-use commercial and residential development.

In 2018, All State applied to the Corps for a Clean Water Act Section 404 permit to dredge and fill the wetlands. Two years later, after notice and comment, the Corps approved All State's permit application for TB II and issued an Environmental Assessment that articulated a Finding of No Significant Impact (FONSI). The Corps concluded, among other things, that: (1) the Project's environmental impacts were not significant, and (2) the Project's incremental contribution to cumulative impacts in the area was also not significant. An EA is a "rough-cut, low-budget" evaluation of the proposed action's environmental impacts. When an EA finds that the action will cause significant impacts on the environment, the agency must prepare an Environmental Impact Statement (EIS). If the EA establishes that the action will not significantly impact the environment, the agency may issue a FONSI and thus complete its obligations under NEPA.

When conducting an EA, NEPA's implementing regulations instruct agencies to consider the "context" and the "intensity" of direct, indirect, and cumulative impacts. As one may imagine, context considers the action's significance to "society as a whole (human, national), the affected region, the affected interests, and the locality." Meanwhile, intensity measures the "severity of the impact" using ten enumerated factors, including the action's relation to other agency actions and their cumulative impacts. A cumulative impact is defined as one that:

> . . .results from the incremental impact of the action when added to other past, present, and reasonably foreseeable actions.

When an agency finds that a project will lead to no incremental impacts on the environment, the "rule of reason" spares the Corps from an "uninformative discussion of cumulative [impacts] pursuant to [NEPA]."

Under the Administrative Procedure Act (APA), a court may set aside a challenged FONSI if it determines its issuance was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." Among other reasons, a court may deem an agency action arbitrary and capricious if it finds the agency "entirely failed to consider an important aspect of the problem."

Plaintiffs, a coalition of environmental advocates, sued the Corps, challenging the EA under the CWA, National Environmental Policy Act (NEPA), and the Administrative Procedure Act. All State and St. Tammany Parish Government (St. Tammany) intervened. After discovery, Plaintiffs, All State, and the Corps filed cross-motions for summary judgment. The District Court granted summary judgment in favor of the Corps and All State. Plaintiffs appealed, asserting that the District Court erred in its findings.

The Fifth Circuit's Decision

TB II's Direct and Indirect Impacts

The court first considered the EA's analysis of the Project's direct and indirect environmental impacts. Relevant to this analysis, the EA contained tables listing various NEPA and CWA factors the Corps considered when assessing the Project's impacts.

Next to each factor, the Corps indicated whether the Project would have "no effect," a "negligible effect," a "minor effect (short term)," a "minor effect (long term)," or a "major effect." The Corps found that TB II would have only a minor short-term effect on aquatic organisms and a minor long-term impact on other wildlife. The discussion section consisted of one sentence stating that "compensatory mitigation should minimize negative impacts to wetland resources." The court found the Corps':

> . . .failure to make a 'rational connection between the facts found and the choice made' [was] a dereliction of the duty imposed by NEPA.

It ultimately held that the Corps analysis of TB II's environmental impacts "entirely failed to consider an important aspect of the problem."

TB II's Cumulative Impacts

Next, the court reviewed the EA's cumulative impact analysis—or rather lack thereof. All State, the Corps, and St. Tammany (Defendants) argued that, given the finding of no significant impacts, the "rule of reason" negated any duty the Corps had to conduct cumulative impact analysis. The Defendants quipped, "Seven plus zero is still seven."

The math did not add up. The court reasoned that *incremental* and *significant* impacts differ, and a lack of the latter does not preclude the former. Instead, the court remarked:

> TB II is the very type of project that cumulative impact analysis is intended to address.

Within only a three-mile radius of the Project, the Corps received over eighty Section 404 permits in the past five years. Under the Defendants' argument, if all projects caused no significant impacts, but each created an incremental impact of .1, these cumulative effects would escape the Corp's accounting. Thus, "[w]hile seven plus zero is still seven, seven plus eight (0.1 times 80) is fifteen."

However, the Plaintiffs did not win on all their arguments. The court did not find that the Corps acted arbitrarily when it excluded All State's plan to develop the surrounding two hundred acres from this cumulative impact analysis. To support their contention that the plans were "reasonably foreseeable future actions," the Plaintiffs offered two affidavits from individuals who saw the plans themselves. Mere plans, however, may be omitted from such analysis. In fact, the Corps can exclude planned developments with applications submitted because even the most committed plans can be cancelled.

Conclusion and Implications

The Fifth Circuit hit the kill switch on the concrete mixers, putting All State's Timber Branch II on pause. In a relatively rare decision under NEPA, the court reversed and vacated the District Court's decision and sent the proceeding back to the Corps for a new EA. The Fifth Circuit's opinion is available online at:
https://law.justia.com/cases/federal/appellate-courts/ca5/22-30608/22-30608-2023-10-12.html

DISTRICT COURT HOLDS SUBJECT MATTER JURISDICTION UNDER THE CLEAN WATER ACT IS INDEPENDENT OF THE MERITS OF THE CLAIM

Inland Empire Waterkeeper v. Corona Clay Company, ___F.Supp.4th___, Case No 10-26-2023 (C.D. Cal 2023).

The U.S. District Court for the Central District of California recently affirmed its subject matter jurisdiction to hear federal Clean Water Act citizen suits in situations where the existence of jurisdictional waters is disputed. The case illustrates the distinction between jurisdiction to hear a controversy and the necessary elements of a claim of violation of permit requirements of the Act. In *Inland Empire Waterkeeper v. Corona Clay Co*.the court addressed a defense motion under FRCP 12(b)(1) to dismiss the case on grounds that the receiving Creek was not "waters of the United States" (WOTUS). The situation illus-

(Samuel Johnson, Rebecca Andrews) the perils of prosecuting and defending cases when the underlying law itself is changing.

Background

The citizen groups filed their original complaint in 2018. They asserted that the Corona Clay Company's operations that crushed and re-purposed used clay tile and brick were polluting a creek located offsite and downhill and thence a river it entered, with stormwater runoff. Plaintiffs alleged the Defendant Clay company was violating a National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharge.

At first, Plaintiffs lost at trial. However, on appeal, the Ninth Circuit reversed based on the decision of the Ninth Circuit in 2018 that had held that discharges to groundwater via wells that were shown to flow through the ground to the ocean could be classified as requiring NPDES permits. *See Hawai'i Wildlife Fund v. County of Maui*, 886 F.3d 737, 2018 U.S. App. LEXIS 8131 (9th Cir. Haw., Mar. 30, 2018). The Ninth Circuit vacated that judgment and remanded on November 5, 2021, for proceedings consistent with an intervening Supreme Court ruling, *Cnty. of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462, 206 L. Ed. 2d 640 (2020). *See Inland Empire Waterkeeper v. Corona Clay Co.*, 17 F.4th 826 (9th Cir. 2021). The court denied Plaintiffs' second Motion for Summary Judgment on August 4, 2022. However, Plaintiffs won at retrial.

The trials of the case itself appears to have been significantly affected with the historic changes in the issue of what discharges are covered as National Pollutant Discharge Elimination System violations, complicated by discovery process that included a defense admission that water from its operational runoff would indirectly reach the Santa Ana River. In the Supreme Court's 2020 County of Maui decision it was held that the federal Clean Water Act (CWA) only required an NPDES permit when there was a direct discharge from a point source of pollutants that reached navigable waters after traveling through groundwater if that discharge was the functional equivalent of a direct discharge from the point source into navigable waters. The case was originally filed when a broader set of discharges had been held to warrant a permit.

The District Court's Decision

The District Court describes part of the issue as follows:

> Shortly after final judgment issued in this case, the Supreme Court held that an NPDES permit is required only when discharge from a point source flows directly into navigable waters, or when there is "functional equivalent of a direct discharge." Cnty. of Maui, 140 S. Ct. at 1468. An emission of polluted water is therefore a "discharge" for CWA purposes only "when a point source directly deposits pollutants into navigable waters, [**24] or when the discharge reaches the same result through roughly similar means." Id. at 1476. "Time and distance are obviously important," but there are "too many potentially relevant factors" to allow a bright-line test…

When the case was remanded for a second trial, a dissenting judge on the appeals panel opined:

> The change in law affected not only the jury instructions, but also the partial summary judgment, which were premised on the discharge. The parties deserve the ability to address whether the "indirect" discharge admitted by Corona is the "functional equivalent" of a direct discharge into the waters of the United States, or whether that required discharge can otherwise be established. As we did in [similar circumstances in County of Maui, we therefore vacate the judgment below and remand for further proceedings in light of the Supreme Court's intervening opinion. [*837] See *Cnty. of Maui*, 807 F. App'x 695, 696 (9th Cir. 2020) (order). *Inland Empire Waterkeeper v. Corona Clay Co.*, 17 F.4th 826, 836-837

Subject Mater Jurisdiction

According to the District Court decision reviewed here, after the second trial and a finding of liability, the defense moved for a dismissal of the case and asserted the court lacked subject matter jurisdiction under FRCP 12(b)(1). Their theory, according to the court, was partially dependent on the Supreme

Court's holding earlier this year in the second *Sackett* saga decision. [*Sackett v. Environmental Protection Agency*, 598 U.S. 651 (2023).] Defendant asserted that the creek involved is not WOTUS. However, the second Sackett case dealt almost exclusively with wetlands and when they can be considered WOTUS, not with creeks.

The court's opinion emphasizes that the issue for a dismissal motion under FRCP 12(b)(1) is restricted to whether the court has authority to hear a case. Merits of the dispute are not decided, only whether the statute vests the District Courts with jurisdiction over Clean Water Act violation claims by citizen groups. Here the court had no difficulty citing and pointing to express authority to do just that:

> Citizens can commence a civil action under the CWA against any party who is alleged to have violated an effluent standard or limitation under specified statutes. [citing 33 U.S.C. § 1365(a)(1)] Thus it refuses to delve into the issue of whether the disputed Creek is legally WOTUS.

Conclusion and Implications

The case opinion fails to answer the question of whether the defendant's admission early on of an indirect connection of its runoff water with the Santa Ana River (which would require downhill over or underground water flow, and then flow of water in the disputed Creek until it reached the river) was ever revisited by either the court or the jury during the second trial.

Hearings on remedy remained to be held at the time the 12(b)(1) motion was decided. It is not clear how or whether the Creek's status as a WOTUS is a continuing possible issue on a potential appeal. (Harvey M. Sheldon)

RECENT CALIFORNIA DECISIONS

CALIFORNIA SUPREME COURT DENIES WESTLANDS'S PETITION, CONTRACT TO SECURE PERMANENT ACCESS TO FEDERAL WATER RESOURCES REMAINS INVALIDATED

Westlands Water District v. All Persons Interested,
95 Cal.App.5tth 98 (2023), as modified (Sept. 1, 2023), review denied (Nov. 29, 2023).

On November 29, the California Supreme Court rejected the Westlands Water District's (Westlands) petition for review after the Fifth District Court of Appeal rejected Westlands' validation action to validate a 2020 contract with the U.S. Bureau of Reclamation (Reclamation) permanently granting Westlands up to 1.15 million acre-feet of water per year from the Central Valley Project. The Fifth District Court of Appeal held that the contract could not be validated because it omitted the amount Westlands would repay Reclamation and that a later submitted final contract was materially different from the draft submitted for validation.

Background

The Central Valley Project (CVP) is a massive network of dams, reservoirs, hydropower plants, levees, and canals that distribute water from the Sacramento and San Joaquin Rivers, commonly known as the Bay-Delta. The U.S. Bureau of Reclamation operates the CVP through contractors, who then provide water to farmers and other end users. Westlands Water District is the largest of all CVP contractors, and is the largest water district in the nation by irrigable acres, occupying approximately 950 square miles in the San Joaquin Valley.

To help fund reclamation projects, the Reclamation Act provides for water service contracts, where contractors pay a certain capital repayment as well as operations and maintenance rate for each acre-foot of water delivered. In 1963, Westlands and Reclamation entered into a 40-year water service contract followed by seven interim contracts between 2007 and 2020.

In 2016, Congress passed the Water Infrastructure Improvements for the Nation Act (WIIN Act). The WIIN Act provided for a five-year window for contractors to convert their water service contracts into repayment contracts. Such conversions were contingent on repayment of all outstanding project construction costs within three years of the converted repayment contract. Westlands sought such conversion because, once the capital costs were repaid, it would not be subject to certain acreage limitations "and related pricing provisions of federal reclamation law."

Negotiations to convert Westlands' water services contract into a repayment contract began in 2019. On February 28, 2020, Westlands and Reclamation executed the repayment agreement (WIIN Act contract). The WIIN Act contract required Westlands to obtain a final decree from state court validating the contract. That provision stems from federal reclamation law, which provides that no contract with an irrigation district shall be binding until validated by state court decree.

On October 25, 2019, Westlands filed a validation complaint in Fresno County Superior Court and submitted a draft version of the contract as an exhibit. In opposition to the complaint were the Center for Biological Diversity, the California Sportfishing Protection Alliance, members of the Hoopa Valley tribe, San Joaquin and Trinity County, and several others. Respondents collectively filed four verified answers, asserting numerous defenses. In particular, the respondents argued that the amount of Westlands' existing capital obligations was an essential contract term not included in the draft agreement Westlands submitted for validation.

On February 26, 2020, the Superior Court denied Westlands' action to validate the contract. In relevant part, the court found that validation actions were authorized only for executed contracts, not "proposed" contracts. Further, the contract lacked essential terms, particularly the amount of repayment to Reclamation, thereby foreclosing a determination of the contract's validity.

In September 2021, Westlands filed a renewed motion for a validation judgment that included the final WIIN Act contract, including a repayment amount of more than $200 million. Respondents again opposed the motion, arguing that the motion for reconsideration greatly exceeded the ten-day deadline for such motions, as well as alleging that the attached contract materially differed from the draft contract that formed the basis of the validation action. The Superior Court agreed, and issued a ruling denying the motion on October 27, 2021.

The ruling included an order to show cause as to why the action should not be dismissed. On March 15, 2022, the Superior Court signed a judgment of dismissal. Westlands then appealed the decision to the Fifth District Court of Appeal.

Issues on Appeal

The first issue on appeal was whether the total absence of a repayment amount precluded validation. The appellate court observed that a contract is enforceable only if the material terms are sufficiently definite. Material terms of a contract may be sufficiently definite where the court can determine the scope of the parties' duties and reasonably determine the existence of a breach and providing a proper remedy. The court noted that all contracts made under the WIIN Act to convert a water service contract into a repayment contract must provide for the repayment of remaining construction costs.

Here, the Fifth District agreed with the lower court that the amount to be repaid by Westlands was both a material term and lacking from its original motion. The court found the contract did not exist when Westlands filed for verification in 2019. The absence of a repayment amount was different, according to the court, from a situation involving cost allocations for discrete subcomponents of a water system. In this instance, the court found the repayment amount to be an essential term that was not included in the originally submitted draft contract. Thus, the Fifth District concurred with the Superior Court's conclusion that the contract lacked essential terms and could not be validated by the Fifth District.

The Fifth District also held that the WIIN Act contract was not sufficiently identical to the contract submitted for validation in 2019. The Fifth District noted that the two contracts contrasted in several important aspects. First, each contract had a different effective date, the former beginning March 1, 2020, and the latter June 1, 2020. According to the Fifth District, the effective date impacted how the repayment amount was to be calculated and thus was a material term that differed between the draft contract and final WIIN Act contract. Second, the WIIN Act contract added new language regarding a "Tiered Pricing Component," which the Fifth District determined was a material, or at least not "trivial," revision.

Third, the inclusion of exhibits in the WIIN Act contract, including Westlands' service area, the schedule of rates and charges per acre-foot of water, and the amount of Westlands' repayment obligation, amounted to a material term that differed from the 2019 contract. Thus, the Fifth District found the Superior Court did not abuse its discretion by declining to validate the final WIIN Act contract.

The California Supreme Court rejected Westlands' petition for review of the Fifth District decision, thereby leaving the ruling as final.

Conclusion and Implications

The contract between Westlands and Reclamation has not been validated. It remains to be seen to what extent contract terms may be renegotiated or finalized and what additional steps Westlands will take to secure a validated contract.
(Miles Krieger, Steve Anderson)

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