Volume 36, Number 5
February 2026

CALIFORNIA WATER LAW & POLICY Reporter™

CONTENTS

CALIFORNIA WATER NEWS

Settlement Reached in Indian Wells Valley Groundwater Authority Groundwater Sustainability Plan Lawsuits—Groundwater Rights Adjudication Continues. 97

REGULATORY DEVELOPMENTS

U.S. EPA Proposes New Rule to Regulate Perchlorate in Response to the *NRDC v. Regan* Decision 99

U.S. Bureau of Reclamation Releases Draft EIS for Major Colorado River Reservoir Operations 101

U.S. Fish and Wildlife Service and National Maring Fisheries Service Propose New Endangered Species Act Rulemaking 103

LAWSUITS FILED OR PENDING

Water Rights or Regulatory Mandates? The U.S. Supreme Court Confronts the Takings Clause in California 105

RECENT FEDERAL DECISIONS

Circuit Court of Appeals:
When One Species' Lifeline Endangers Another: Ninth Circuit Clarifies Injunction Standards Under the ESA 107
San Luis Obispo Coastkeeper, et al. v. County of San Luis Obispo, ___F.4th___, Case No. 24-7807 (9th Cir. Dec. 3, 2025).

Continued on next page

EDITORIAL BOARD

Robert M. Schuster, Esq.
Executive Editor
Argent Communications Group

David Boyer, Esq.
Atkinson, Andelson, Loya, Ruud & Romo, PC
Cerritos, CA

Derek Hoffman, Esq.
Fennemore Craig

Miles Krieger, Esq.
Best Best & Krieger, LLP

Adam Nir, Esq.
Remy Moose Manley, LLP

Brett Stroud, Esq.
Young Wooldridge LLP
Bakerfield, CA

ADVISORY BOARD

Prof. Brian Gray
U.C. Hasting College of Law

Robert B. Maddow, Esq.
Bold, Polisner, Maddow, Nelson & Judson

Antonio Rossmann, Esq.
Rossmann & Moore

Scott Shapiro, Esq.
Downey Brand, LLP

Michele A. Staples, Esq.
Jackson Tidus

Amy M. Steinfeld, Esq.
Brownstein Hyatt Farber Schreck

ARGENT COMMUNICATIONS GROUP

WWW.ARGENTCO.COM

RECENT CALIFORNIA DECISIONS

Supreme Court:

California Supreme Cour tLets Stand Court of Appeal's Opinion Invalidating City's Supplemental EIR for Ballot Measure to Remove Coastal Height Limits. 109

Save Our Access v. City of San Diego, ___Cal.5th___, Case No. S293971 (Cal. Dec. 30, 2025); ___Cal. App.5th___, Case No. D084132 (4th Dist. Oct. 17, 2025).

District Court of Appeal:

Third District Court Upholds Water Supply Assessment Against Claims It Violated CEQA and the Water Code 111

City of Vallejo v. City of American Canyon, ___ Cal. App.5th ___, Case No. C102070 (3rd Dist. Jan. 14, 2026).

Third District Court Rejects Bond Validation for Delta Program—Finds DWR Lacked Authority to Issue Bonds because the Delta Program Was Too Vaguely Defined 113

Department of Water Resources v. Metropolitan Water District of Southern California, ___Cal.App.5th___, Case No. C100552 (3rd Dist. Dec. 31, 2025, certified for partial publication Jan. 28, 2026).

Second District Court Provides Mixed Signals on Tiered Water Rates 115

Dreher v. City of Los Angeles Department of Water and Power, ___Cal.App.5th___, Case No. B329610 (2nd Dist. Dec. 8, 2025).

Superior Court:

City of Camarillo Files Appeal and Writ of Mandate Challenging Phase 1 Decision in Oxnard-Pleasant Valley Groundwater Adjudication. 117

OPV Coalition, et al. v. Fox Canyon Groundwater Management Agency, et al., Case VENCI00555357 (Santa Barbara County Super. Ct (OPV Adjudication) filed on June 15, 2021.)

Publisher's Note: Accuracy is a fundamental of journalism which we take seriously. It is the policy of Argent Communications Group to promptly acknowledge errors. Inaccuracies should be called to our attention. As always, we welcome your comments and suggestions. Contact: Robert M. Schuster, Editor and Publisher, 530-852-7222; schuster@argentco.com

WWW.ARGENTCO.COM

Copyright © 2026 by Argent Communications Group. All rights reserved. No portion of this publication may be reproduced or distributed, in print or through any electronic means, without the written permission of the publisher. The criminal penalties for copyright infringement are up to $250,000 and up to three years imprisonment, and statutory damages in civil court are up to $150,000 for each act of willful infringement. The No Electronic Theft (NET) Act, § 17 - 18 U.S.C., defines infringement by "reproduction or distribution" to include by tangible (i.e., print) as well as electronic means (i.e., PDF pass-alongs or password sharing). Further, not only sending, but also receiving, passed-along copyrighted electronic content (i.e., PDFs or passwords to allow access to copyrighted material) constitutes infringement under the Act (17 U.S.C. 101 et seq.). We share 10% of the net proceeds of settlements or jury awards with individuals who provide evidence of illegal infringement through photocopying or electronic distribution. To report violations confidentially, contact 530-852-7222. For photocopying or electronic redistribution authorization, contact us at the address below.

The material herein is provided for informational purposes. The contents are not intended and cannot be considered as legal advice. Before taking any action based upon this information, consult with legal counsel. Information has been obtained by Argent Communications Group from sources believed to be reliable. However, because of the possibility of human or mechanical error by our sources, or others, Argent Communications Group does not guarantee the accuracy, adequacy, or completeness of any information and is not responsible for any errors or omissions or for the results obtained from the use of such information.

Subscription Rate: 1 year (11 issues) $1025.00. Price subject to change without notice. Circulation and Subscription Offices: Argent Communications Group; P.O. Box 201, Galena, IL 61036-0201; 530-852-7222 or 1-800-419-2741. Argent Communications Group is a division of Argent & Schuster, Inc., a California corporation: President/CEO, Gala Argent; Vice-President and Secretary, Robert M. Schuster, Esq.

California Water Law & Policy Reporter is a trademark of Argent Communications Group.

CALIFORNIA WATER NEWS

SETTLEMENT REACHED IN INDIAN WELLS VALLEY GROUNDWATER AUTHORITY GROUNDWATER SUSTAINABILITY PLAN LAWSUITS—GROUNDWATER RIGHTS ADJUDICATION CONTINUES

In November 2025, a settlement was reached between Indian Wells Valley Groundwater Authority (IWVGA) and Searles Valley Minerals Inc., (Searles) resolving certain litigation over a Groundwater Sustainability Plan, adopted by IWVGA in 2020. The settlement, which includes an agreement that both parties drop multiple lawsuits against one another, reflects a positive step of creating a cooperative framework between the parties toward advancing responsible groundwater management in the Indian Wells Valley Basin.

Background

The Indian Wells Valley Groundwater Basin is located in the northwestern part of the Mojave Desert and does not have any water importation infrastructure, or significant water features, thus water producers in the region must rely exclusively on groundwater extraction to meet their demands. Because of these specific features, and historic reliance on groundwater extraction in the region, the Department of Water Resources (DWR) estimates the region's groundwater supply has steadily declined since 1945. Over the past decades, several efforts have been undertaken to reach solutions toward sustainable groundwater management including implementation of a Groundwater Sustainability Plan, in accordance with the Sustainable Groundwater Management Act (SGMA), which ultimately became subject of several legal actions, including litigation between IWVGA and Searles.

SGMA

In 2014, the California Legislature implemented SGMA which, among other things, established minimum standards for sustainable groundwater management and granted local groundwater authorities the power to sustainably protect and manage groundwater through several mechanisms including creating Groundwater Sustainability Plans (required for certain basins designated as high or medium priority by SGMA), as well as the authority to carry out several powers related to those plans, including the ability to impose fees on groundwater extraction to fund the costs of groundwater sustainability initiatives. SGMA also directs DWR to identify groundwater basins in critical overdraft, where average annual amounts of groundwater extraction exceeds the long-term average of annual supply of water to the basin. Designation of basins in this state can be critical, as overdraft can create several negative effects, such as seawater intrusion, land subsidence, groundwater depletion and/or chronic lowering of groundwater levels, according to DWR.

Critically Over Drafted Basin Status and the GSP

In 2016, after collecting data in consultation with the State Climatologist, DWR released a list of critically over drafted basins. This list, which was more recently updated in 2020, includes the Indian Wells Valley Groundwater Basin. Under SGMA, when a basin is designated as being in a state of critical overdraft, the local groundwater sustainability agency is required to implement a Groundwater Sustainability Plan. These plans create a roadmap for how the basin will avoid future, adverse effects of groundwater overdraft, and create balanced levels of groundwater to reach sustainability, through measured goals, monitoring, and other mechanisms.

In 2020, IWVGA, in accordance with SGMA, adopted a Groundwater Sustainability Plan which reported total sustainable yield (the maximum amount of water that can be withdrawn annually without potentially negative results) of the Basin as 7,650 acre-feet per year. In context, pumping reported by stakeholders more recently, in 2024, estimated 20,840 acre-feet per year, more than double the sustainable yield estimate given two years prior. Based on the estimated sustainable yield, as well as other details, the 2020 GSP stated the Basin could not achieve groundwater sustainability through extraction reductions alone and therefore required more comprehensive

solutions, including overdraft mitigation projects to ensure long-term groundwater sustainability. Under the GSP, such projects would be financed through fee assessments on the individuals and entities that would benefit from the mitigation projects. Efforts to implement the plan created controversy, and resulted in several lawsuits, including the recently settled litigation between IWVGA and Searles.

Litigation and Settlement

On September 20, 2020, Searles filed litigation in Orange County Superior Court challenging the validity of the IWVGA's Groundwater Sustainability Plan, and various actions related to the Authority's implementation of that plan. Subsequently, on January 5, 2022, IWVGA also filed litigation in Orange County Superior Court seeking to enjoin Searles from operating groundwater wells without payment of requisite fees, delinquent groundwater extraction charges and civil penalties. An initial phase of trial for both actions was set to take place in 2025.

Before trial could proceed, the parties reached a settlement as to certain of their claims. On November 20, 2025, IWVGA issued a public press release stating IWVGA and Searles Valley Minerals, Inc. entered a "comprehensive Settlement and Mutual Release Agreement that fully resolves legal challenges concerning the Groundwater Sustainability Plan." The press release stated the settlement stipulated both parties permanently drop certain lawsuits files against each other in an effort to promote a cooperative relationship, allowing both parties to work toward effective planning, management, and implementation of projects to enhance long-term groundwater sustainability in the basin.

Additionally, the settlement allows Searles access to reclaimed water, which would allow for Searles to replace pumping of approximately 2,000 acre-feet per year of groundwater with reclaimed water. The release further states that Searles has agreed to prioritize, where possible, use of this reclaimed water before exporting additional groundwater from the region for its industrial use, and IWVGA agrees to relinquish its option on approximately 2,000 acre-feet per year of reclaimed water from the City of Ridgecrest, making that water available for use by Searles.

Comprehensive Groundwater Rights Adjudication Remains Active

Relatedly, in 2021 several parties, including Searles, initiated a comprehensive groundwater rights adjudication, pursuant to the Streamlined Adjudication Act, in an effort to determine water rights within the Basin, so as to more effectively move toward a solution addressing ongoing, critical overdraft. A groundwater rights adjudication action provides an opportunity for a court to adjudicate the rights of each party involved, and may also declare priority, amount, purpose of use, extraction location, and other specifics related to such right. Importantly, the settlement reached between Searles and IWVGA does not affect the ongoing adjudication action. Searles and IWVGA both remain involved parties in the comprehensive adjudication. Thus, the comprehensive groundwater rights adjudication remains, and Searles has stated that the company intends to actively participate in the action.

Conclusion and Implications

The lawsuits challenging the 2020 Groundwater Sustainability Plan, and associated adjudication actions, have raised several, broader questions within the state, particularly relating to long-term groundwater sustainability in basins where overdraft has been designated, and the interconnected roles of, both, SGMA and the groundwater rights adjudication process. Last year, concerns over these issues resulted in introduction of legislation in the California Legislation. Assemblymember Diane Papan introduced Assembly Bill 1413, requiring certain updates to the Groundwater Sustainability Plan process and, while the bill did not advance during the 2024-2025 legislative session, it generated legislative discussion around these issues which indicates potential for similar, future legislative efforts.

Nonetheless, the limited settlement reached between Searles and IWVGA brings a resolution to Searles' challenged to the GSP in this action. (Miles Krieger)

Editor's Note: the author's firm represents Searles Valley Mineral, Inc. in the matters discussed in this article

REGULATORY DEVELOPMENTS

U.S. EPA PROPOSES NEW RULE TO REGULATE PERCHLORATE IN RESPONSE TO THE *NRDC V. REGAN* DECISION

The U.S. Environmental Protection Agency (EPA) has proposed a National Primary Drinking Water Regulation (NPDWR) and a health-based Maximum Contaminant Level Goal (MCLG) for perchlorate under the Safe Drinking Water Act (SDWA) section 1412 in response to the D.C. Circuit's 2023 decision in *NRDC v. Regan*. (*See:* https://www.nrdc.org/sites/default/files/2023-11/dc-circuit-perchlorate-opinion-20230509.pdf)

That decision states that the EPA must begin regulating a contaminant after finalizing a determination to do so, even if the Agency later concludes, based on updated science, that the statutory criteria for regulation may no longer be met.

Background

Perchlorate

Perchlorate is an inorganic chemical compound typically used in rocket propellants, munitions, fireworks, and potentially fertilizers. It is also a byproduct of improper handling of hypochlorite solutions used for drinking water treatment. Exposure to the compound can interfere with how the thyroid absorbs iodine, a chemical element essential for producing thyroid hormones. When iodine uptake is reduced, the thyroid produces fewer hormones, which can lead to decreased thyroid function. In pregnant women, disruptions in thyroid hormone levels may negatively affect fetal brain development and result in long-term neurological consequences.

Safe Drinking Water Act Section 1412

SDWA section 1412(b)(1)(A) requires the EPA to regulate a contaminant if the Administrator finalizes a determination that: (1) it may cause adverse health effects, (2) it is known or likely to occur in public water systems (PWSs) at levels and frequencies of concern, and (3) regulating it would meaningfully reduce health risks for people served by PWSs. Further, SDWA section 1412(b)(4) entails that each MCLG be set at a level that maximizes health protection. An MCLG is the maximum level of a contaminant in drinking water at which no known or anticipated adverse health effects would occur, with an adequate margin of safety. Under section 1412(b)(3)(C)(i)(V), the EPA must also consider a contaminant's effects on populations that are more vulnerable than the general public. Upon making a determination to regulate a chemical compound under the SDWA, section 1412(e) requires the Agency to consult with its Science Advisory Board (SAB) before proposing an MCLG.

EPA's 2020 Decision Not to Regulate Perchlorate

The EPA has long reported that perchlorate appears in only a small percentage of U.S. drinking water systems. Based on this limited prevalence, the Agency issued a preliminary determination not to regulate perchlorate in 2008. In 2009, the EPA requested public comment on its preliminary determination, noting the lack of data and uncertainty about the exposure levels at which perchlorate causes adverse health effects. In light of this uncertainty, the EPA considered alternative safety benchmarks that accounted not only for pregnant women, but also for infants and children. These alternative benchmarks suggested that lower levels of perchlorate could pose health concerns. In 2011, the EPA relied upon these low thresholds, despite them not being based on a fully peer-reviewed modeling framework, in making the determination to regulate perchlorate.

The EPA sought guidance from the SAB on the modeling approach and health effects information available to set a proper MCLG for perchlorate. The SAB raised issues with the Agency's approach, recommending that the EPA revise how it determines levels of perchlorate that may pose a public health risk. The EPA previously based its safety threshold on an early biological effect—reduced iodine uptake in the thyroid—that does not itself cause harm but can lead to later health problems. Instead, this approach

only focused on an early warning sign without fully accounting for whether it would lead to actual health impacts.

In response, the EPA developed a science-based model to more accurately estimate how perchlorate exposure and iodine intake affect thyroid hormone levels in women before and during early pregnancy, and to assess potential neurodevelopmental risks to offspring. Based on its new modeling approach, the EPA proposed an NPDWR and MCLG for perchlorate in 2019.

However, in the rule's preamble, the agency also requested comment on whether to withdraw its prior determination to regulate, based on its updated analysis. The EPA concluded that perchlorate did not occur in public water systems at levels or frequencies of public health concern and that a national regulation would not meaningfully reduce health risks as required under the SDWA. Accordingly, in 2020, the EPA revised its prior determination, concluding that nationwide regulation of perchlorate was not warranted under the best available peer-reviewed science.

The *NRDC v. Regan* Decision

The withdrawal of this determination was challenged, culminating in the D.C. Circuit's decision in *NRDC v. Regan*, ___F.4th___, Case No. 20-1335 (D.C. Cir. May 9, 2-23). The Circuit Court of Appeals held that once the EPA issues a final determination to regulate a contaminant under the SDWA, it must proceed with proposing and finalizing an NPDWR and MCLG, even if subsequent scientific evidence suggests that national regulation is unwarranted. As a result of the court's vacatur, the EPA was required to publish a proposed NPDWR and MCLG by January 2, 2026 and finalize a rule by May 21, 2027.

EPA's Proposed Rule

The EPA is proposing a MCLG of 20 micrograms per liter (µg/L) based on the best available science and its current peer-reviewed systematic review methods. This proposed MCLG is intended to protect the population most vulnerable to perchlorate exposure—iodine-deficient women in their first trimester of pregnancy.

The EPA is also proposing a Maximum Contaminant Level (MCL) for perchlorate of 20, 40, or 80 µg/L. An MCL represents the maximum allowable concentration of a contaminant in water delivered by a PWS. Under the SDWA, the EPA must set the MCL as close to the MCLG as feasible, unless the Administrator determines that the costs outweigh the benefits, in which case the MCL is set at the level where benefits most justify costs.

The proposal also includes monitoring and reporting requirements for PWSs to meet the perchlorate MCL along with provisions designed to reduce regulatory burden given the Agency's finding that most systems do not have perchlorate at levels of public health concern. These provisions include a reduction in monitoring frequency for systems based on initial sampling results. PWSs with perchlorate levels that exceed the proposed MCL would be required take corrective actions, such as installing treatment systems or switching to uncontaminated water sources. Treatment options include ion exchange, reverse osmosis, and biological technologies. Affected PWSs would also be required to conduct public notification of MCL exceedance.

Nonetheless, as perchlorate rarely occurs at levels of health concern, the vast majority of the water systems subject to the rule (about 66,000) would still incur substantial administrative and monitoring costs with limited or no corresponding public health benefit.

Conclusion and Implications

The EPA's proposal of a NPDWR and MCLG for perchlorate—despite its conclusion that, based on the best available data and science, the benefits of the regulation do not outweigh its costs and burdens on PWSs—underscores the importance of the D.C. Circuit's decision in *NRDC v. Regan*. Once the EPA determines that a contaminant should be regulated under the SDWA, it is legally bound to follow through with that decision. The Agency's prior choice to rely on a non-final reference dose recommended by the National Research Council contributed to years of revised analyses and litigation. Moving forward, the Agency must base its determination on finalized, peer-reviewed models that accurately reflect a contaminant's health effects.
(Adam Nir)

U.S. BUREAU OF RECLAMATION RELEASES DRAFT EIS FOR MAJOR COLORADO RIVER RESERVOIR OPERATIONS

In January 2026, the United States Bureau of the Interior released a draft Environmental Impact Statement (EIS) for the adoption of new guidelines and coordinated management of Lake Powell and Lake Mead on the Colorado River. Current guidelines and agreements for the operation of those reservoirs expire in 2026. The seven states within the Colorado River Basin continue to negotiate potential alternatives to those proposed in the EIS.

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 (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. In response, Reclamation, with the support and agreement of the seven basin states, developed and implemented the 2007 Colorado River Interim Guidelines for Lower Basin Shortages and the Coordinated Operations for Lake Powell and Lake Mead (2007 Interim Guidelines) to, among other things, provide incentives and tools to store water in Lake Mead and to delineate annual allocation reductions to Arizona and Nevada for elevation-dependent shortages in Lake Mead beginning at 1075 feet. The 2007 Interim Guidelines are currently set to expire by January 1, 2027.

The Environmental Impact Statement

In the EIS, the Secretary of the Department of the Interior, acting through the Bureau of Reclamation, proposes the adoption of new guidelines and coordinated management strategies to address Lake Powell and Lake Mead through their full operating range to take effect when the current agreements expire in 2026. Management strategies primarily focus on the operation of Glen Canyon Dam and Hoover Dam but may include actions upstream and downstream of these facilities to protect critical reservoir elevations. The draft EIS was prepared pursuant to the National Environmental Policy Act (NEPA) to address the formulation and evaluation of specific interim criteria and to identify the potential environmental impacts of implementing such criteria.

The goal of the alternatives development phase for the draft EIS was to develop a reasonable and broad range of alternatives for managing the Colorado River system and its resources post-2026. The draft EIS proposes five alternatives for consideration, referred to as a No Action Alternative, a Basic Coordination Alternative, an Enhanced Coordination Alternative, a Maximum Operational Flexibility Alternative, and a Supply Driven Alternative. Each of these is described generally as follows.

The No Action Alternative

The No Action Alternative is included as a requirement of NEPA. Operations would revert to annual determinations announced through the Annual Operating Plan. Pursuant to the LROC, the objective is to maintain a minimum release of water from Lake Powell of 8.23 maf, therefore Lake Powell releases are assumed to be 8.23 maf unless a higher release is required for equalization or a lower release occurs due to Glen Canyon Dam infrastructure limitations. Shortages to the lower basin would be based on priority and reach a maximum of 600,000. This would not represent a continuation of current operations but is generally based on the operating guidance that was in place before the adoption of the 2007 Interim Guidelines. No defined actions to respond to exigent and emergency conditions are included in this alternative. Existing Intentionally Created Surplus (ICS) would be delivered in accordance with existing agreements, but there would be no new storage and delivery mechanisms.

The Basic Coordination Alternative

This alternative is designed to be implementable absent new agreements among Basin water users. Lake Powell releases would primarily be 8.23 maf, with some releases above and below 8.23 maf, and minimum releases of 7.0 maf. Lake Powell elevations could be increased by releases from upper basin storage to protect infrastructure at Glen Canyon Dam. Reclamation would identify triggers for when additional upper basin actions are needed to protect critical infrastructure. Lower basin shortages up to 1.48 maf would be triggered based on Lake Mead elevation and distributed consistent with the priority system. Existing ICS would be delivered in accordance with existing agreements, but there would be no new delivery and storage mechanisms.

The Enhanced Coordination Alternative

This alternative is based on concepts from Basin Tribes, federal agencies, and other stakeholders to achieve protection of critical infrastructure while benefitting key resources (*e.g.*, natural, hydropower and recreation) through an approach to distributing storage between Lake Powell and Lake Mead. Lake Powell releases would be determined based on a combination of Lake Powell and Lake Mead elevations, ten-year running-average hydrology, and lower basin deliveries. This alternative would include storage and delivery mechanisms for Lake Powell and Lake Mead and flexibilities for all users. The operations incorporate Basin-wide shared contributions to the system, including upper basin conservation that would be stored in Lake Powell and lower basin shortages starting at 1.3 maf, approximately the average annual evaporative and system losses at and below Lake Mead, and reaching a maximum of 3.0 maf. Shortages would be triggered based on combined storage in Lake Powell and Lake Mead and distributed pro rata.

The Maximum Operational Flexibility Alternative

Under this alternative, Lake Powell releases would range from 11.0 maf to 5.0 maf and would be determined by total upper basin storage and recent hydrology. Releases would switch to "run-of-river" when Lake Powell is at 3,510 feet or lower. The operations incorporate Basin-wide shared contributions, including up to 4.0 maf of shortages in the lower basin triggered by combined reservoir storage and recent hydrology and voluntary water contributions from both basins.

The Supply Driven Alternative

Under this Alternative, annual Lake Powell releases are determined based on a 65 percent of 3-year-average natural flow at Lee's Ferry. Lake Powell elevations could be increased by releases from upper basin storage to protect infrastructure at Glen Canyon Dam. This alternative would include new delivery and storage mechanisms for Lake Powell and Lake Mead. Lower basin shortages up to 2.1 maf would be triggered based on Lake Mead elevation. This alternative analyzes two approaches to shortage distribution: state-based combined with lower basin-wide priority and state-based combined with upper basin-wide pro rata.

Conclusion and Implications

Colorado River negotiations regarding operating guidelines post-2026 are ongoing. At this time, there does not appear to be substantial support for any of the proposed alternatives. While it remains to be seen whether any of the proposed alternatives will be adopted by Reclamation, litigation is likely to follow if

an alternative in the draft EIS is ultimately adopted. However, Reclamation has not expressed a preference for any of the alternatives, and therefore the draft EIS may be a tool Reclamation is using to encourage continued negotiation between the Upper and upper basins. The Draft EIS available at https://www.usbr.gov/ColoradoRiverBasin/post2026/draft-eis/ (Miles Krieger)

U.S. FISH AND WILDLIFE SERVICE AND NATIONAL MARING FISHERIES SERVICE PROPOSE NEW ENDANGERED SPECIES ACT RULEMAKING

In November 2025, the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively: Services) announced proposed revisions to the federal Endangered Species Act (ESA). The proposed rulemaking emphasizing causal proximity, economic transparency, and species-specific tailoring. By rescinding the 2024 Biden-era "blanket rules" and "compensatory mitigation" requirements, the Services aim to reduce the regulatory burden on infrastructure and energy sectors. However, critics argue these changes introduce administrative inefficiencies and may increase extinction risks by narrowing the scope of federal oversight.

Background

Since 2019, the ESA has been subject to regulatory oscillation, where successive administrations have fundamentally redefined core implementing regulations at 50 C.F.R. Parts 17, 402, and 424. In 2019, the first Trump administration introduced major reforms to Section 4 (listing/critical habitat) and Section 7 (consultation). In 2024, the Biden administration rescinded many of the 2019 changes, re-instating "blanket" protections for threatened species and expanding the "environmental baseline."

Before the recent proposed rulemaking, Section 4 of the ESA regarding species listing and delisting (50 C.F.R. § 424) prevented agencies from taking into consideration possible economic impacts from the listing process. Furthermore, there was broad consideration of impacts in the "foreseeable future". Traditionally under Section 4(d), a blanket rule automatically granted threatened species the same protections as endangered species.

Section 7 of the ESA outlines the procedures for interagency cooperation to ensure that federal actions do not jeopardize the continued existence of endangered or threatened species or results in the destruction or adverse modification of a critical habitat. This imposes an independent duty on all federal agencies to consult with the Services before engaging in any discretionary action that may affect a listed species or critical habitat. *Turtle Island Restoration Network v. Nat'l Marine Fisheries Serv.*, 340 F.3d 969, 974 (9th Cir. 2003). Local agencies are required to consult with federal agencies when there is a federal nexus such as a federal permit or federal funding.

The current administration seeks to reverse the 2024 changes, citing the need for "regulatory certainty" and alignment with the *Loper Bright* standard from the Supreme Court decision *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which requires agencies to adhere to the "single, best meaning" of the law rather than a "reasonable" interpretation.

The Proposed Rule

The proposed rule removes the phrase "without reference to possible economic or other impacts" from the listing process. While the ESA still requires listing decisions to be based solely on biological data, this change allows for the concurrent presentation of economic data to provide transparency to the public. The proposal further plans to reinstate a standard where the "foreseeable future" extends only as far as the Services can "reasonably determine that both the future threats and the species' responses to those threats are likely The proposals further aim to simplify the listing/delisting process to three clear paths: (1) extinction, (2) the entity no longer meets the definition of a "species," or (3) the species no longer meets the definition of threatened or endangered.

Under Section 4(d), FWS has the authority to issue regulations "necessary and advisable" for the conservation of threatened species. Historically, FWS used a "blanket rule" that automatically granted threatened species the same "take" protections as endangered species. The FWS will now issue species-specific rules for every newly listed threatened species.

This aligns FWS practice with that of NMFS. While this allows for more "tailored" conservation, conservationists argue it creates a massive administrative backlog and leaves species vulnerable during the gap between listing and rule finalization.

Interagency Consultation

Perhaps the most impactful change in the proposed rulemaking is interagency consultation (50 C.F.R. § 402). First, the proposal redefines how federal agencies assess the "effects of the action." The proposed rule clarifies that the environmental baseline refers to the condition of the species without the consequences of the proposed action. Critically, it excludes the impacts of existing infrastructure (*e.g.*, a dam that is already built) from the effects of a new permit for that same infrastructure. To be considered an "effect," a consequence must be "reasonably certain to occur" and meet a "but-for" causation test. The new rule re-inserts factors like temporal and geographic remoteness and causal complexity to limit the scope of federal liability. Moreover, the new rule removes the 2024 provision allowing the Services to require "compensatory mitigation" (offsets) as part of Reasonable and Prudent Measures (RPMs), arguing that the statute only authorizes measures to "minimize" take, not "offset" it.

Surviving *De Novo* Judicial Review

The 2025 proposals appear to rely on a constructionist interpretation of the ESA. By overturning *Chevron*, the Supreme Court signaled that courts should no longer defer to agency "interpretations" of ambiguous statutes. The 2025 rules are designed to survive "de novo" judicial review by arguing that terms like "minimize" (Section 7) and "foreseeable future" (Section 4) have a fixed legal meaning that does not include broader concepts like "mitigation" or "speculative climate modeling.

Conclusion and Implications

The November 2025 ESA proposals represent an effort to date to tether agency action to a narrow, causal, and economically transparent framework. While this provides the "regulatory certainty" long sought by industry, critics may find that it places a heavy burden on the Services to prove that species-specific management can prevent extinction with fewer broad-based federal protections. Final rules are expected in mid-2026. However, given the significant shift in policy, they will almost certainly be met with challenges and opposition. The proposed rulemakings can be found here: https://www.federalregister.gov/documents/2025/11/21/2025-20549/endangered-and-threatened-wildlife-and-plants-listing-endangered-and-threatened-species and https://www.federalregister.gov/documents/2025/11/21/2025-20551/endangered-and-threatened-wildlife-and-plants-interagency-cooperation-regulations
(Miles Krieger)

LAWSUITS FILED OR PENDING

WATER RIGHTS OR REGULATORY MANDATES? THE U.S. SUPREME COURT CONFRONTS THE TAKINGS CLAUSE IN CALIFORNIA

Two recent matters before the United States Supreme Court involving the use of California water illustrate the continued uncertainty surrounding takings claims in the water rights context. In one case, *City of Fresno, California, et al., v. United States* (U.S. Supreme Court Case No. 25-266) (*City of Fresno*), the Supreme Court denied *certiorari*, leaving in place a Federal Circuit decision rejecting a Fifth Amendment takings claim arising from federal reclamation project operations. In the other, *United Water Conservation District v. United States* (U.S. Supreme Court Case No. 25-523) (*United Water*), a petition for *certiorari* remains pending before the Court, and raises questions regarding whether a federal diversion of another's right to use water should be treated as a physical taking or regulatory taking.

Although both cases involve federal water management decisions, they pertain to different types of water rights. Together, they offer a useful look at how courts are currently deciding takings claims involving water rights and offer insight into how water disputes may be decided in the future.

Background

Physical vs. Regulatory Takings

Takings claims involving water often sit at the intersection of state water law establishing property rights, federal regulatory authority, and environmental or reclamation mandates and policies. The Takings Clause of the Fifth Amendment prohibits the government from taking private property for public use without providing just compensation, a protection that applies to both direct appropriations and certain regulatory burdens. *U.S. Constitution, amendment V.* Courts have long distinguished between physical takings, such as permanent physical occupations, and regulatory takings, which arise when government action restricts property use without physically invading it. *See: Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426–435 (1982) (establishing that permanent, government-authorized physical occupations are per se takings); *see also: Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 321–323 (2002) (explaining that regulatory land-use restrictions are not subject to the per se rule used for physical takings and instead require case-specific analysis).

Physical takings are categorically compensable under established Supreme Court doctrine. In contrast, regulatory takings are evaluated under a balancing framework developed in cases like *Penn Central*, which considers factors such as the economic impact of the regulation, the extent to which it interferes with reasonable investment-backed expectations, and the character of the government action. *Penn Central Transportation Co. v. New York City*, 38 U.S. 104 (1978).

How a particular water action is characterized can therefore be determinative for the outcome of a takings claim related to water related property rights. A government decision that reallocates or limits water use may be treated very differently from one that physically diverts water for governmental or third-party uses. The two cases discussed here fall on different sides of that divide.

The Federal Circuit's Decision and Supreme Court's Denial of *Certiorari* in City of Fresno: The Question of Ownership

The *City of Fresno* case arose out of water allocation decisions made by the Bureau of Reclamation during California's severe 2014-2015 drought. Cities, irrigation districts, water districts, and individual landowners alleged that, despite the availability of water stored within the Central Valley Project (CVP), the federal government delivered little or no irrigation water to certain Friant Division users while continuing to supply water to other "exchange contractors." According to the petitioners, those actions resulted in significant economic losses and amounted to compensable taking of water related property rights.

The United States Court of Federal Claims dismissed the takings claim, and the United States Court of Appeals for the Federal Circuit affirmed in a decision issued on December 17, 2024. While the Federal Circuit concluded that the petitioners had adequately alleged injury and standing, it held that, under California law, the petitioners did not possess a cognizable property interest in the water delivered by the U.S. Bureau of Reclamation. Instead, the Court of Appeals determined that the federal government held the appropriative water rights put to use by the CVP, and because no protected property interest existed, the takings claim failed as a matter of law. The petitioners argued that this holding was inconsistent with Section 8 the Reclamation Act, and earlier case law, which establishes that the "right to the use of water acquired [under the Act] shall be appurtenant to [*i.e.*, attached to] the land irrigated" on the basis of beneficial use, rather than to the United States itself. (43 U.S.C., § 372).

On December 15, 2025, the Supreme Court denied the petition for writ of *certiorari*, leaving the Federal Circuit's decision in place and ending any further appellate review in the case.

The Petition for *Cert* in *United Water Conservation*: Physical or Regulatory?

The *United Water* case presents a different set of facts. United Water Conservation District (United) holds an undisputed property right under California law to divert and use water from the Santa Clara River. The takings claim arose when the federal government commandeered tens of thousands of acre feet of water to increase bypass flows for steelhead trout.

United claims that the federal government's order to surrender water, which United possessed an undisputed state-law property interest in, constitutes a physical taking because it is a direct appropriation of United's water rights and requires the payment of just compensation. The lower court disagreed, concluding that because the government did not completely cut off the district's water rights or require the return of water already diverted, the action should be treated as a regulatory-taking rather than a physical-taking. Applying regulatory takings principles, the court of appeals ultimately found that no compensable taking had occurred.

A petition for writ of *certiorari* has been filed seeking Supreme Court review of that decision, and several *amici* have weighed in in support of review. As of the date of this article, the petition remains under consideration.

Conclusion and Implications

The Supreme Court's denial of certiorari in *City of Fresno* leaves in place the Federal Circuit's conclusion that certain users of federal reclamation project water do not hold compensable property interests for purposes of the Fifth Amendment. The pending petition in *United Water*, by contrast, raises a narrower question regarding how federal water diversions should be characterized under takings law when an underlying state law property right is undisputed.

Together, these cases reflect the courts' continuing efforts to define the constitutional boundary between the federal government's regulation of water resources and compensable takings. Entities involved in water management and environmental compliance may wish to monitor the developments of *United Water*, and whether the Supreme Court grants review. The Federal Circuit's opinion in *United Water* is available online at: https://www.cafc.uscourts.gov/opinions-orders/23-1602.OPINION.4-2-2025_2492406.pdf. The petition for cert before the Supreme Court in *United Water* is available online at: https://www.supremecourt.gov/DocketPDF/25/25-523/380720/20251027141903868_UWCD%20-%20Petition%20for%20Writ%20of%20Certiorari.pdf
(David Boyer)

RECENT FEDERAL DECISIONS

WHEN ONE SPECIES' LIFELINE ENDANGERS ANOTHER: NINTH CIRCUIT CLARIFIES INJUNCTION STANDARDS UNDER THE ESA

San Luis Obispo Coastkeeper, et al. v. County of San Luis Obispo, ___F.4th___, Case No. 24-7807 (9th Cir. Dec. 3, 2025).

On December 3, 2025, the U.S. Court of Appeals for the Ninth Circuit issued an opinion in *San Luis Obispo Coastkeeper, et al. v. County of San Luis Obispo* addressing the limits of injunctive relief under the federal Endangered Species Act when court-ordered measures designed to protect one listed species may pose risks to others. The case arose from long-running disputes over the operation of the Lopez Dam and Reservoir in San Luis Obispo County, California, and the downstream effects of those operations on protected aquatic species.

Environmental organizations alleged that the County's management of the dam unlawfully harmed threatened South-Central California Coast steelhead trout by altering the natural flow regime of Arroyo Grande Creek. The U.S. District Court agreed and issued a mandatory preliminary injunction requiring the County to take affirmative steps to modify dam operations and pursue regulatory compliance. On appeal, the Ninth Circuit vacated that injunction, concluding that the District Court had not applied the correct legal framework when multiple protected species were potentially affected.

Background

Arroyo Grande Creek supports several species listed under the Endangered Species Act, each with distinct habitat requirements. The steelhead trout is an anadromous fish that depends on seasonal high flows to trigger migration, maintain spawning habitat, and allow juveniles to reach the ocean. Federal agencies have designated the creek as critical habitat, recognizing its importance to regional steelhead recovery.

The creek and its associated lagoon are also home to the endangered tidewater goby and the threatened California red-legged frog. These species occupy different ecological niches and life stages that can be sensitive to rapid changes in flow. The County argued that flow releases intended to benefit steelhead could scour goby habitat or dislodge frog egg masses, potentially resulting in prohibited takes of those species.

This ecological overlap framed the central legal issue in the case: how courts should approach injunctive relief under the ESA when protecting one listed species may risk harm to another equally protected species.

At the U.S. District Court

The plaintiff organizations sought a mandatory preliminary injunction compelling the County to alter dam operations, implement specific flow release schedules, clear debris from culverts, study fish passage alternatives, and expedite preparation of a habitat conservation plan and incidental take permit application. They emphasized the urgency of the steelhead's winter migration season and argued that immediate relief was necessary to prevent irreparable harm.

The District Court granted much of the requested relief, finding a likelihood of success on the ESA claims and concluding that irreparable harm to steelhead was imminent. While the court summarized expert testimony regarding potential impacts on the tidewater goby and red-legged frog, it did not explicitly weigh those impacts in its equitable analysis. Instead, it directed the County to consult with federal wildlife agencies during implementation of the injunction.

The Ninth Circuit's Decision

On appeal, the Ninth Circuit focused on the nature of mandatory preliminary injunctions under the ESA. Traditionally, courts applying the Supreme Court's decision in *Tennessee Valley Authority v. Hill*

have held that Congress displaced judicial balancing of equities and the public interest in ESA cases, prioritizing species protection regardless of cost. Under that framework, courts typically consider only likelihood of success and irreparable harm.

The panel held that this approach does not apply cleanly where injunctive relief for one listed species may jeopardize another. In such circumstances, the rationale of *TVA v. Hill*, which addressed a conflict between economic development and species preservation, does not resolve the competing interests at stake. Rigid application of that rule, the court explained, risks favoring one species while ignoring concrete risks to others that Congress also sought to protect.

Accordingly, the Ninth Circuit clarified that when a court considers a mandatory preliminary injunction under the ESA that may affect other listed species, it must weigh the competing equities and the public interest as they relate to those species. This holding does not reopen consideration of economic or developmental interests, but it does require courts to confront interspecies tradeoffs directly.

Application to the Lopez Dam Injunction

Applying this framework, the Ninth Circuit concluded that the District Court's analysis was incomplete. Although the lower court acknowledged evidence concerning the tidewater goby and red-legged frog, it did not resolve conflicting expert opinions or explain how potential harms to those species factored into the decision to grant mandatory relief. Reliance on future consultation with federal agencies was not an adequate substitute for judicial weighing of the equities at the preliminary injunction stage.

The panel also emphasized the heightened scrutiny applicable to mandatory preliminary injunctions, which compel affirmative action and alter the status quo before the merits are resolved. In complex ecological settings involving multiple protected species, that standard is particularly demanding. The court therefore vacated the injunction and remanded the case for further proceedings, instructing the District Court to weigh the evidence regarding all affected species and determine whether some or all of the requested relief is warranted.

State Law Claims and Broader Context

The plaintiffs also brought claims under California Fish and Game Code section 5937, which requires dam owners to release sufficient water to maintain downstream fish in good condition. The Ninth Circuit agreed that, unlike the ESA, section 5937 does not displace the traditional four-factor test for preliminary injunctions. However, because the District Court's equitable analysis under state law mirrored its incomplete ESA analysis, the panel vacated the injunction on the state law claim as well.

Conclusion and Implications

The Ninth Circuit's decision provides important guidance for courts and litigants confronting ESA disputes in ecosystems that support multiple protected species. While reaffirming the statute's commitment to species protection, the court recognized that ecological reality often involves tradeoffs that require careful, explicit judicial analysis.

For courts, it emphasizes the obligation to weigh those competing risks when considering mandatory preliminary injunctions, rather than deferring difficult questions to future agency processes.

For public agencies operating dams and other infrastructure, the opinion highlights the importance of comprehensive planning tools such as habitat conservation plans and incidental take permits.
The Ninth Circuit's opinion is available online here: https://cdn.ca9.uscourts.gov/datastore/opinions/2025/12/03/24-7807.pdf
(Darien Key, Derek Hoffman)

RECENT CALIFORNIA DECISIONS

CALIFORNIA SUPREME COURT LETS STAND COURT OF APPEAL'S OPINION INVALIDATING CITY'S SUPPLEMENTAL EIR FOR BALLOT MEASURE TO REMOVE COASTAL HEIGHT LIMITS

Save Our Access v. City of San Diego, ___Cal.5th___, Case No. S293971 (Cal. Dec. 30, 2025); ___Cal.App.5th___, Case No. D084132 (4th Dist. Oct. 17, 2025).

On December 30, 2025, the California Supreme Court denied the City of San Diego's petition for review and request to depublish the opinion invalidating the City's Supplemental Environmental Impact Report (SEIR) for its second ballot measure to remove a 30-foot coastal height limit, leaving the published appellate decision intact.

In a published opinion clarifying the application of the California Environmental Quality Act (CEQA) to plan-level environmental review and ballot measures affecting community planning and land use policy, the Fourth District Court of Appeal held that the City's SEIR for its second City-sponsored ballot measure to remove the Midway-Pacific Highway area coastal height limit failed to comply with CEQA. The appellate court reversed the trial court and directed issuance of a writ of mandate requiring further environmental review. The decision underscores the necessity for public agencies to analyze all reasonably foreseeable significant environmental effects of proposed actions, including plan-level changes affecting large geographic areas and multiple projects.

Factual and Regulatory Background

The City of San Diego's Coastal Height Limit Overlay Zone established a maximum building height of 30 feet in the Midway-Pacific Highway Community Planning area—a long-standing restriction intended to protect coastal views and neighborhood character. The City sought to remove this limit through voter-approved ballot measures to facilitate higher-density development, including housing and mixed-use projects supportive of community planning objectives.

In 2020, the City placed a ballot measure on the ballot to remove the 30-foot height limit. The appellate court previously upheld a trial court's invalidation of that measure, concluding its environmental review failed to consider the impact of building heights above 30 feet and was therefore inadequate under CEQA. During that appeal, the City prepared a Supplemental Environmental Impact Report and proposed a second ballot measure, which the City certified and approved for the 2022 ballot. The SEIR acknowledged that the removal of the height limit represented a changed circumstance but analyzed only view and neighborhood character impacts, asserting that the 2018 Program EIR (PEIR) for the broader Midway-Pacific Highway Community Plan Update sufficiently addressed all other potential impacts. Save Our Access, a community group opposing the City's actions, filed a new petition for writ of mandate challenging the adequacy of the SEIR and compliance with CEQA.

Procedural History

The San Diego County Superior Court denied the writ petition, finding that the City's SEIR complied with CEQA procedural and substantive requirements. Save Our Access appealed. Upon review, the Fourth District Court of Appeal reversed the superior court's judgment, concluding that the SEIR was legally inadequate because it failed to examine significant environmental effects beyond views and neighborhood character and improperly relied on the 2018 PEIR without conducting analysis required for a subsequent EIR under CEQA. The appellate court directed the superior court to grant the writ of mandate and order the City to comply with CEQA. The appellate decision was certified for publication. Following the appellate ruling, the City petitioned the California Supreme Court for review and requested depublication of the opinion, both of which the Supreme Court denied on December 30, 2025.

The Court of Appeal's Decision

CEQA Scope and Subsequent EIR Requirements

At the core of the appellate court's opinion is CEQA's requirement that environmental impact reports must discuss all significant direct and reasonably foreseeable indirect environmental effects of a project, identify feasible mitigation measures, and disclose the rationale for project approval despite significant environmental impacts. The court reaffirmed that a ballot measure adopted by a public agency is a "project" subject to CEQA's requirements.

The court emphasized that the City's SEIR for the second ballot measure was deficient because it primarily addressed only two categories of impacts (views and neighborhood character) while relying on the 2018 PEIR to cover all other potential effects without independently evaluating or explaining them in the context of a changed circumstance (i.e., the plan to lift the coastal height limit). Under CEQA case law, when a lead agency tiers from a program EIR, any subsequent environmental review must still include analysis of significant effects that were not examined, or fully considered, in the program EIR. An SEIR that simply adopts conclusions from an older PEIR without fresh analysis does not satisfy CEQA's informational requirements.

The appellate court conducted substantial evidence review of factual findings. The court found that the SEIR's reliance on the 2018 PEIR lacked substantial evidence for its conclusion that all significant environmental impacts except views and neighborhood character had been adequately analyzed. This procedural inadequacy prejudicially impaired informed public participation and rational decision-making by both the public and City decision-makers.

Application to Plan-Level and Programmatic CEQA Review

Save Our Access is significant for clarifying how CEQA applies to plan-level decisions and broad policy shifts, such as ballot measures affecting zoning or overlay restrictions across a planning area. The court's analysis rejects truncated environmental review that fails to account for environmental consequences reasonably foreseeable from substantial changes in land use patterns, such as increased building heights and associated density. The decision highlights that reliance on prior environmental documents alone, without fresh analysis tailored to the specific project at issue, is insufficient where new circumstances trigger a changed environmental baseline.

The case also underscores the importance of meaningful environmental disclosure to the electorate before the adoption of ballot measures. CEQA's purposes include informing public officials and the public about environmental risks and alternatives; a supplemental review that omits significant categories of impact undermines this core objective. The appellate court's ruling reinforces that lead agencies cannot delegate away or shortcut this fundamental requirement.

Conclusion and Implications

Save Our Access v. City of San Diego provides a clear reaffirmation of CEQA's robust informational and procedural requirements for environmental review associated with major land use policy changes and ballot measures. By reversing the trial court and invalidating the SEIR for failing to thoroughly analyze all potentially significant environmental impacts, the appellate decision sets a precedent that agencies must undertake comprehensive and tailored environmental review even when relying on programmatic documents.

For municipal governments and practitioners, the case signals that subsequent EIRs must contain independent analysis of all environmental effects triggered by a changed project. Simply deferring to prior program EIRs without adequate updated analysis will not satisfy CEQA. Agencies should also ensure environmental documents are prepared early and revised iteratively to integrate foreseeable impacts as policy decisions evolve. The California Supreme Court's denial of review leaves this guidance intact and reinforces the judiciary's willingness to scrutinize environmental review for compliance with CEQA's statutory framework. The Court of Appeal's October 17, 2025, published opinion is available online at: https://www4.courts.ca.gov/opinions/documents/D084132A.PDF

(Miguel Mauricio)

THIRD DISTRICT COURT UPHOLDS WATER SUPPLY ASSESSMENT AGAINST CLAIMS IT VIOLATED CEQA AND THE WATER CODE

City of Vallejo v. City of American Canyon, ___ Cal.App.5th ___, Case No. C102070 (3rd Dist. Jan. 14, 2026).

In *City of Vallejo v. City of American Canyon*, the Third District Court of Appeal considered the adequacy of a Water Supply Assessment prepared as part of environmental review of a development project and found that the assessment was adequate.

Background

The California Environmental Quality Act (CEQA) requires that when a public agency approves a "project" (broadly defined) that may have a significant effect on the environment, it must prepare an Environmental Impact Report (EIR). Water Code sections 10910 through 10912 provide that the EIR (or other CEQA document) for certain projects must also include a Water Supply Assessment (WSA). In 2007, the California Supreme Court issued a major decision interpreting these provisions and describing the analysis required in a WSA. (*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova*, 40 Cal.4th 412 (2007) (*Vineyard*).) Shortly thereafter, the Office of Planning and Research revised its official CEQA Guidelines—a set of regulations governing compliance with CEQA—to include a section on preparing an adequate WSA, which was heavily based on the *Vineyard* decision. (Cal. Code Regs., tit. 14 (Guidelines), § 15155.) In 2018, that regulation was revised to include a new section, which features prominently in this case. (*Id.*, subd. (f).)

In this case, the City of Vallejo challenged an EIR certified by the City of American Canyon for a 2.4 million square foot warehouse that is expected to use about 23.9 acre-feet per year, which the court noted "could reasonably be characterized as modest compared to other uses." (Slip Opinion, p. 2.) The challenge largely concerns a 1996 agreement between the two cities, under which Vallejo provides certain water supplies to American Canyon—in a normal year approximately 23 percent of its water supply. The parties are engaged in a separate litigation regarding that contract (Sacramento County Case No. 34-2022-00327471), which was not clearly described in the record of this CEQA case.

Vallejo challenged the adequacy of the EIR and the WSA under several different theories, each of which the Court of Appeal rejected.

The Court of Appeal's Decision

Reliance on "Paper Water"

Vallejo argued that American Canyon should not have assumed it could purchase the full 3,206 acre-feet authorized by its contract but instead should have assumed an amount based on its actual history of purchasing water under the contract: 2,074 acre-feet. Vallejo argued this violated the third principle in *Vineyard*, which forbids reliance on "speculative" and "unrealistic sources." That principle derived from *Santa Clarita Organization for Planning the Environment v. County of Los Angeles*, 106 Cal.App.4th 715, 718–19 (2003) (*SCOPE*), which reversed an EIR for reliance on "paper water." In *SCOPE*, the lead agency relied on the *full* amount of a State Water Project contractor's entitlement from the project in a 100 percent year, which was inappropriately speculative for use in a water supply analysis because the State Water Project *rarely* delivers 100 percent of entitlements. Instead, the *SCOPE* court held, the lead agency should "undertake an adequate analysis of how much water the SWP can actually deliver in wet, average and dry years." (106 Cal.4th at p. 724.)

The Court of Appeal rejected this theory, holding that American Canyon's contract with Vallejo had not be shown to be "paper water." The record indicated that it had in the past voluntarily purchased less than it was permitted to purchase due to the high cost of the water, but the court held Vallejo had not shown that American Canyon could not opt to purchase the full amount in the future.

Relevance of Place of Use Restrictions and Curtailments

Vallejo also argued that American Canyon's WSA failed to disclose and analyze the effect of a place of use restriction on Vallejo's License 7848, an appropriative right it holds in addition to its State Water Proj-

ect contract. The parties' separate contractual dispute apparently includes the issue of whether Vallejo can only meet its obligation under the agreement using that license or whether it applies to water from any source. The project site is outside that place of use, which Vallejo argued "affect[s] the likelihood of the water's availability" and thus must be discussed under the guidelines. (Guidelines, *supra*, § 15155, subd. (f)(3).) The Court of Appeal expressed doubt that a place of use restriction affected the "availability" of supply, suggesting it only affected "where [the] water may be properly used." (Slip Opinion, p. 10.) But the court held it did not need to reach that issue, because even if failure to discuss the place of use restriction was error under CEQA, Vallejo had not shown any prejudice as a result. The WSA had relied on American Canyon's 2015 Urban Water Management Plan, which had already anticipated development of the project site for a more water-intensive use. Therefore, the court concluded, the WSA was adequate to inform decision-makers and the public, which is the purpose of an EIR, and any omission was "insubstantial or technical."

Separately, Vallejo took issue with the EIR's discussion of curtailment orders that had affected its license in prior years and likely would in the future. "Drought" and "regulatory or contractual curtailments" are specifically called out in the Guidelines as affecting the likelihood of water availability. (Guidelines, *supra*, § 15155, subd. (f)(3).) The EIR discussed the earlier curtailments and stated that the full supply under the contract would likely not be available in dry years, but Vallejo argued that the effect of curtailments should have been analyzed on a monthly rather than an annual timestep. The court disagreed and held that it was within American Canyon's discretion to use an annual timestep for that analysis, citing *Tiburon Open Space Committee v. County of Marin* (2022) Cal.App.5th 700, 726 ["Much of what goes into an EIR is left to the discretion of the agency preparing it"].)

Because it reached the conclusion that the WSA adequately showed an available water supply for the project, the court likewise rejected the argument that American Canyon should have analyzed "alternative sources" under the Guidelines. (Guidelines, *supra*, § 15155, subd. (f)(4).) That requirement only applies where an agency "cannot determine that a particular water supply will be available."

Disclosure of Contract Litigation

Vallejo also argued that the WSA violated CEQA by failing to discuss the separate, contractual dispute being litigated between the parties with regard to the water supply contract. The court found that there was insufficient evidence in the record to ascertain whether that dispute might have an impact on American Canyon's water supply. Therefore, there was no evidence to show that the trial court erred on this point.

Water Code Causes of Action

Vallejo also brought causes of action directly under Water Code sections 10910 and 10911, in addition to its CEQA claims. First, the court held that it could consider the merits of these claims, distinguishing *California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464 (*CWIN*). In *CWIN*, the court had held it could not consider a challenge to a WSA that was not yet incorporated into an EIR and thus was not a "final" decisional document. That was not the case here, so the court proceeded to the merits.

Water Code section 10910, subdivision (d)(1) requires:

> . . .an identification of any existing water supply entitlements, water rights, or water service contracts relevant to the identified water supply for the proposed project, and a description of the quantities of water received in prior years by the public water system.

Vallejo argued that proper "identification" of the agreement would entail discussing the license, the history of curtailments, and the place of use restrictions. The court disagreed, citing the language in the statute that the "identification" of a water supply "shall be demonstrated by providing information related to … Written contracts or other proof of entitlement to an identified water supply." (Wat. Code, § 10910, subd. (d)(2).) The court held that the WSA's general references to the agreement and the amount of water historically available under it were sufficient for this purpose.

Conclusion and Implications

WSAs have become an increasingly important issue in CEQA practice, particularly in light of statewide concerns about adequate water supplies to support development. This decision thus provides welcome guidance to agencies that must prepare WSAs and benefit from additional clarity. However, two significant issues remain unresolved. The Court of Appeal did not reach the issue of whether a place of use restriction must be considered in a WSA, and its suggestion that place of use restrictions do not affect the "availability" of a supply for a particular project seems dubious. It also did not reach the issue of when ongoing disputes about water rights and water agreements might need to be discussed in a WSA, because it instead held that it did not have adequate information to show that the dispute would affect the analysis. Agencies will have to await another case for further answers to those important questions. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/C102070.PDF (Brett Stroud)

THIRD DISTRICT COURT REJECTS BOND VALIDATION FOR DELTA PROGRAM—FINDS DWR LACKED AUTHORITY TO ISSUE BONDS BECAUSE THE DELTA PROGRAM WAS TOO VAGUELY DEFINED

Department of Water Resources v. Metropolitan Water District of Southern California, ___Cal.App.5th___, Case No. C100552 (3rd Dist. Dec. 31, 2025, *certified for partial publication* Jan. 28, 2026).

In *Department of Water Resources v. Metropolitan Water District of Southern California*, the Third District Court of Appeal affirmed a judgment denying validation of revenue bonds proposed by the California Department of Water Resources (DWR) for the "Delta Program." The court concluded that DWR lacked statutory authority to issue the bonds because the Delta Program was too vaguely defined to qualify as a permissible modification of the Feather River Project under Water Code section 11260.

Background

DWR sought judicial validation of revenue bonds to fund the planning, acquisition, and construction of the Delta Program, which it defined as facilities to convey water through the Sacramento–San Joaquin Delta. Various environmental organizations, public agencies, taxpayer groups, and water contractors opposed validation, asserting statutory and environmental law challenges. The trial court denied validation, and the Court of Appeal affirmed.

Statutory Authority for the Feather River Project

DWR's request for bond validation relied on Water Code section 11260, which authorizes the department to construct and operate the Feather River Project as the initial feature of the State Water Project. Rather than describing the project's physical components, section 11260 identifies the Feather River Project by reference to three planning reports prepared in the 1950s. The statute also authorizes DWR to implement "further modifications" to the project.

The dispute centered on whether the Delta Program fell within this modification authority or instead constituted a separate project requiring independent legislative authorization. Because the statute does not define the outer bounds of permissible modifications, the court was required to evaluate whether the Delta Program could reasonably be understood as part of the Feather River Project framework.

The Court of Appeal's Decision

In the bond resolutions submitted for validation, DWR defined the Delta Program broadly as "facilities for the conveyance of water in, about and through the Sacramento–San Joaquin Delta." The resolutions did not identify specific facilities, configurations, or operational parameters, nor did they describe how the Delta Program related to the Feather River Project as originally authorized. The Court of Appeal concluded that this definition lacked sufficient specificity to support validation.

The court emphasized that validation proceedings require an affirmative showing of statutory authority. Where a proposed project is described only in general terms, courts may be unable to determine whether the project falls within the scope of existing legislative authorization. Here, the absence of defined facilities, operational parameters, or a clear relationship to the Feather River Project prevented such a determination.

The decision underscores that bond validation is not a purely ministerial exercise. Agencies seeking validation may be required to demonstrate, with meaningful detail, how proposed projects align with statutory authority. Generalized descriptions may be insufficient, particularly where statutes rely on historical planning documents rather than contemporary project definitions.

As a practical matter, agencies may need to provide more detailed project descriptions earlier in the financing process or delay validation until project parameters are more clearly developed.

The court's analysis highlights the challenges of relying on decades-old statutory authorizations to support modern infrastructure initiatives. While section 11260 permits modifications to the Feather River Project, the court declined to infer expansive authority from a statute grounded in mid-twentieth-century planning materials. This suggests a judicial reluctance to extend historic authorizations to projects that may differ substantially in scope or function from those originally contemplated, absent clear legislative direction.

Although the decision did not reject Delta conveyance as a policy objective, it indicates that future Delta conveyance efforts may require clearer statutory grounding. Agencies pursuing similar projects may need to more explicitly tie proposed facilities to existing authorizations or seek new legislative approval to avoid challenges at the validation stage.

Relationship Between Statutory Authority and Environmental Review

Respondents also challenged the bonds on environmental and public trust grounds, including alleged violations of the California Environmental Quality Act (CEQA) and the Sacramento–San Joaquin Delta Reform Act. The Court of Appeal affirmed the trial court's rejection of those claims, though the portion of the opinion addressing them was not certified for publication.

Importantly, the court resolved the validation issue independently of environmental compliance, reinforcing that statutory authority and environmental review serve distinct legal functions.

Conclusion and Implications

The decision illustrates that compliance with environmental review requirements does not substitute for clear statutory authority. Even where environmental challenges are unsuccessful, agencies must independently establish that proposed financing mechanisms are authorized by law. This distinction may shape litigation strategy and project sequencing in future infrastructure disputes.

Department of Water Resources v. Metropolitan Water District underscores the limits of relying on historic statutory authorizations to support modern water infrastructure financing. While section 11260 allows for modifications to the Feather River Project, the decision makes clear that agencies must define proposed projects with sufficient specificity to demonstrate that they fall within legislative authority. The case also illustrates the judiciary's role in scrutinizing bond validation requests where the scope of agency authority is uncertain. Going forward, the decision may encourage greater legislative clarity or more detailed project definitions when agencies seek to finance large-scale Delta conveyance efforts through revenue bonds. The court's *partially* published opinion is available online at: https://www4.courts.ca.gov/opinions/documents/C100552M.PDF

(Christina Suarez, Derek Hoffman)

SECOND DISTRICT COURT PROVIDES MIXED SIGNALS ON TIERED WATER RATES

Dreher v. City of Los Angeles Department of Water and Power, ___Cal.App.5th___, Case No. B329610 (2nd Dist. Dec. 8, 2025).

On December 8, 2025, the Court of Appeal for the Second District of California released its decision in *Dreher v. City of Los Angeles Department of Water and Power*, affirming the trial court's ruling that Los Angeles Department of Water and Power's tiered water rates comply with the constitutional requirements of Proposition 218. The *Dreher* court deepened a legal rift with an earlier case released by the Fourth District Court of Appeal where the court questioned the constitutionality of tiered water rates. [*See: Patz v. City of San Diego*, ___Cal.App.5th___, Case No. E083543 (4th Dist. Aug. 27, 2025); https://www4.courts.ca.gov/opinions/documents/B329610.PDF]

The significant contrast between the two rulings creates an urgent question for California public water agencies: will the California Supreme Court will step in to resolve the ambiguity.

Background

Article XIII D was enacted into law through Proposition 218 in 1996. Article XIII D imposes procedural and substantive limitations on the property-related fees that may be charged by a public agency. Section 6(b)(3), specifically, denotes that:

> . . .[t]he amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel." This is often described as the "proportionality requirement.

The *Patz* Decision—Peaking Problems

The Fourth District's decision in *Patz* struck down the City of San Diego's tiered water rates. In *Patz*, the plaintiffs brought a class-action lawsuit against the City of San Diego (City) claiming that the City's tiered water rates for single-family residential, or "SFR," customers violated article XIII D, section 6(b)(3), of the California Constitution because the City relied on a "peaking" justification without sufficient data.

In *Patz*, the City established a 4-tiered water rate structure where SFR customers were charged higher rates for higher levels of water usage. The City's rationale behind such a tiered structure was that there is an increased operational and infrastructural cost that comes with high-demand water users, such as higher demand placed on pipeline capacity.

The City used survey data on average water usage provided by the American Water Works Association (AWWA) to determine the specific tier breakpoints. For example, Tier 2 was set around the average amount a typical SFR unit uses in a month. On top of the base charges on water used in each tier, the City further utilized "peaking factors" to allocate additional peak demand costs to customers who are in higher tiers. These "peaking factors" were calculated with projected level of water consumption determined from historical billing data to estimate the additional costs a water system incurs to meet higher levels of demand during peak usage periods.

The City also relied on the cost difference in local and non-local water supply to justify its tiered rate structure. For instance, the City received water supply from local reservoirs and the San Diego County Water Authority. The City argued that its Tier 1 was priced at a lower rate because it represents lower costs from local supplies while higher tiers were priced at higher rate as they require the City to acquire more water from expensive supply sources to meet the high demand.

The court in *Patz* found that the City's reliance on projected data and estimations to develop the tiered water rates was insufficient to satisfy section 6(b)(3)'s proportionality requirements, as the data was not specific to the City's system and customers. The court concluded that the City failed to collect necessary time-of-use data and did not show how and which customers contributed to peak system demands, thereby undermining its justification for imposing higher rates on some users other than others.

The court also rejected the City's argument that the tiered rates reflect cost differences arising from different water sources. The court found that the City

commingled the water supply from local and non-local sources before distributing and could not demonstrate that the lower-tiered customers received only water from the cheaper source, or that the higher-tiered customers did not receive water from the same cheaper source.

The Court of Appeal stated that:

> . . .we suggest that water agencies not impose tiered rates where substantial evidence shows the tiered rates are not cost proportional, despite the agency's purportedly 'reasonable' cost projections, allocation methods, and data.... Further, tiered rates are not necessarily constitutional.

The *Patz* decision aligned with existing precedents on tiered water rates and demonstrated a stringent evidentiary standard courts imposed as required under Section 6(b)(3) for public water agencies to adopt valid tiered water rates.

The Court of Appeal's Decision (In *Dreher*)

The Court of Appeal in *Dreher v. City of Los Angeles Department of Water and Power*, on the other hand, took a significantly different position on tiered water rates. Published only a few months after *Patz*, the court in *Dreher* affirmed the constitutionality of City of Los Angeles Department of Water and Power (LADWP)'s tiered water structure.

Similar to the City of San Diego in *Patz*, LADWP designed a tiered water rate structure to factor in a number of different costs, including the water supply cost adjustment that changes rate depending on the price and nature of the water supply and a peak pumping and storage allocation that applies only to high-tiered users.

On water supply cost adjustments, LADWP mathematically assigned the source of supply to the tiers, with the lowest cost source to Tier 1 until the volume is insufficient to cover the forecasted demand in that tier.

On peak pumping and storage allocation, the application was similar to the "peaking factors" in *Patz* where the LADWP determines the portion of its pumping and storage costs it incurred to meet the peak demand caused by higher level of consumptions. These costs were not allocated to customers in lower tiers.

The court evaluated *Patz* and expressly stated that:

> . . .[w]e disagree with the Patz majority's conclusion that to comply with section 6(b)(3), a water agency must have a cost-based justification for where it sets tier breakpoints (e.g., that it costs the agency more to supply the next HCF [hundred cubic feet] of water that places the customer in higher tier).

The court continued "[a]s long as rates do not exceed proportional costs, section 6(b)(3) is satisfied. In fact, the tier breakpoints can be completely arbitrary without violating section 6(b)(3)."

Regarding LADWP's water supply-based cost adjustments, the court held that the allocation of differing source supply cost to the tiers based on forecasted demand demonstrates proportionality to the ascertainable cost of services attributable to each parcel. "…the Constitution does not require the City [LADWP] to trace the flow of water from each source of supply to each parcel, molecule by molecule. Rather, the City must determine the actual, ascertainable costs of supplying water within each tier and charge customers proportionally."

On the peak pumping and storage costs, the court similarly concluded that the LADWP presented sufficient evidence to support the finding that these costs were caused by water usage of higher-tiered customers.

For these reasons the court held that the LADWP satisfied its burden in showing that its challenged tiered water rates complied with the constitutional requirement of proportionality under section 6(b)(3).

Conclusion and Implications

The Court of Appeal in *Dreher* required a different evidentiary standard on the constitutional requirement of proportionality under section 6(b)(3) than did the court in *Patz*. The split between *Patz* and *Dreher* decisions is not just about strictness or level of judicial scrutiny but also about methodology of construction of the rate structure. Agencies relying on "Peaking" factors in existing or proposed tiered water rate structures (like the City of San Diego) face a higher evidentiary hurdle requiring granular usage data. However, agencies may have a judicially valid path to defend their tiers without needing molecule-level data. Under *Dreher*, a water agency does not

need actual cost-based data to justify its use of the tiered water charges, as long as the total charges do not exceed the proportional cost charged to the customers. On the other hand, the *Patz* court seems to hold the stance that a tiered water rate structure might be entirely unconstitutional given the impracticality to derive actual cost-based justifications.

The appellate courts' apparent divergence in the interpretation of the legal standard imposed by Proposition 218 may eventually pave the way for the California Supreme Court to take up the case and address the issue. The court's opinion in *Dreher v. City of Los Angeles Department of Water and Power* is available online at: https://www4.courts.ca.gov/opinions/documents/B329610.PDF
(David Boyer)

CITY OF CAMARILLO FILES APPEAL AND WRIT OF MANDATE CHALLENGING PHASE 1 DECISION IN OXNARD-PLEASANT VALLEY GROUNDWATER ADJUDICATION

OPV Coalition, et al. v. Fox Canyon Groundwater Management Agency, et al., Case VENCI00555357 (Santa Barbara County Super. Ct (OPV Adjudication) *filed* on June 15, 2021.)

On October 23, 2025, the Superior Court issued its statement of decision on Phase 1, which determined the total and native safe yields of the Oxnard Subbasin and the Pleasant Valley Basin. On December 16, 2025, the City of Camarillo filed an appeal of that decision with the Court of Appeal, Second Appellate District (Case No. B351410). On December 22, 2025, it also filed a petition for a writ of mandate, seeking immediate review (Case No. B351231).

Background

The OPV Adjudication is a groundwater adjudication filed under the "streamlined" adjudication provisions of the Sustainable Groundwater Management Act. (Code Civ. Proc., § 830, *et seq.*) Under the statute, the court's task is to "determine all groundwater rights of a basin, whether based on appropriation, overlying right, or other basis of right, and use of storage space in the basin," and it has broad authority to:

> . . .declare the priority, amount, purposes of use, extraction location, place of use of the water, and use of storage space in the basin, together with appropriate injunctive relief, subject to terms adopted by the court to implement a physical solution in the comprehensive adjudication. (Code Civ. Proc., § 834.)

The term "physical solution" is a term of art for a "resolution of conflicting claims in a manner that advances the constitutional rule of reasonable and beneficial use of the state's water supply." (*City of Santa Maria v. Adam*, 211 Cal.App.4th 266, 287 (2012); see Cal. Const., art X, § 2 ["because of the conditions prevailing in this state the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented"].)

The statute also approves and codifies the practice developed in earlier groundwater adjudications of allowing a subset of the parties to agree to a settlement and then holding a trial only on the objections to that settlement by non-settling parties. (Code Civ. Proc., § 850, subd. (d).) The phase 1 decision was based on such a settlement. The writ petition filed by the City of Camarillo raises three important questions about the application of the SGMA adjudication statute.

The Writ Petition

Appealability of Interlocutory Judgments

The first issue raised by the writ petition is the reason the City of Camarillo also filed an appeal. Normally, only the "final" judgment in a case is appealable, not an "interlocutory" judgment, which can be reviewed only by writ. (Code Civ. Proc., § 904.1, subd. (a)(1).) A statement of decision on only one phase of a multi-phase trial is ordinarily a classic interlocutory judgment. However, the adjudication statute authorizes a court to issue "orders to ensure

that issues resolved in one phase are not relitigated in another phase." (Code Civ. Proc., § 840, subd. (b)(6).) Under that authority, the trial court ruled that the phase 1 statement of decision's conclusions could only be revised if parties meet the standard under Code of Civil Procedure section 852, which describes the standard for changing a final judgment. That ruling raises a legitimate question of whether the phase 1 decision is in fact a "final" judgment that not only *can* be immediately appealed but *must* be. In addition, Camarillo filed a motion for reconsideration of aspects of the phase 1 decision based on evidence that emerged after the phase 1 trial, which the trial court denied based on section 852. Thus, Camarillo filed both the appeal and the writ petition.

Characterization and Allocation of Non-Native Supplies

Among the sources of water that recharge Pleasant Valley Basin are Arroyo Las Posas and Conejo Creek. Another issue Camarillo raises in its writ petition is that both of those streams also carry non-native water, specifically waste water discharges and return flows, that the phase 1 decision treated as part of the native supply. The significance of water being characterized as native or non-native is that overliers (parties with a right to groundwater based on owning land in the basin) are entitled only to a share of the native groundwater. Non-native groundwater is governed by a different set of priority rules. In this case, Camarillo claims that this non-native water is highly saline and that it has salvaged that non-native water using its North Pleasant Valley Desalter plant. The party that salvages otherwise unusable water has a first priority right to that water, and overliers are not entitled to any of it. (*Santa Maria*, *supra*, 211 Cal.App.4th at pp. 304–05.) By treating these saline flows as native water, Camarillo argues, the phase 1 decision ignores its priority rights, which the adjudication statute prohibits. (Code Civ. Proc., § 850, subd. (a)(2).)

Relationship between Adjacent Groundwater Basins

The third issue raised by the writ petition arises because the OPV Adjudication seeks to adjudicate *two* separate basins: the Oxnard Subbasin (DWR Basin 4-004.02) and the Pleasant Valley Basin (DWR Basin 4-006). The adjudication statute defines the basin to be adjudicated in terms of these DWR basin definitions. (Code Civ. Proc., § 832, subd. (a); Wat. Code, § 10721.) Camarillo previously opposed the adjudication of two basins in one action, but the trial court determined it could proceed in that manner. Camarillo sought a writ of mandate from the Court of Appeal at the time, which was denied (Case No. B328995).

Now, Camarillo argues that the phase 1 decision improperly conflates the two basins into one. The petition claims that undisputed evidence showed a native yield for the Pleasant Valley Basin of 15,400 to 15,700 acre-feet, but the experts for the settling parties adjusted that number down to maintain a level of "natural" groundwater inflow from the Pleasant Valley Basin into the Oxnard Subbasin. They argued this was necessary to address potential seawater intrusion issues in the Oxnard Subbasin. Camarillo argues that the court cannot reduce the pumping allocations of users in one basin to prevent an undesirable result in another basin.

Conclusion and Implications

The resolution of these issues will be of interest as the implementation of SGMA continues to motivate the filing of groundwater adjudications. The streamlined statute is relatively new, and its interpretation is being hotly debated not only in this case but in other adjudications also pending under the adjudication statute for other basins, including the neighboring Las Posas Valley Groundwater Basin. That adjudication resulted in a final judgment presently before the same division of the Court of Appeal (Case No. 330837).

In particular the issue of whether the decisions or individual phrases are immediately appealable is very significant—these cases often take years to litigate. (Brett Stroud)

CALIFORNIA WATER™
LAW & POLICY Reporter

California Water Law & Policy Reporter
Argent Communications Group
P.O. Box 201
Galena, IL 61036-0201

CHANGE SERVICE REQUESTED

FIRST CLASS MAIL
U.S. POSTAGE
PAID
AUBURN, CA
PERMIT # 108