Volume 36, Number 6
March 2026

CALIFORNIA WATER™
LAW & POLICY Reporter

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CALIFORNIA WATER NEWS

SOUTHWEST KINGS GROUNDWATER SUSTAINABILITY AGENCY THREATENS $1000 DAILY FINE AND SHUTOFF IF WELLS ARE NOT REGISTERED

The Southwest Kings Groundwater Sustainability Agency (GSA) recently introduced a policy levying fines of $1,000 per day for landowners who fail to register their wells, while simultaneously indicating it will consider filing litigation against the neighboring South Fork Kings GSA over pumping allocations.

Background

The Southwest Kings GSA operates within a critical area of the Tulare Lake subbasin. Under the mandates of the Sustainable Groundwater Management Act of 2014 (SGMA), local agencies are required to bring over-pumped aquifers into a state of sustainability by the year 2040. For the Southwest Kings GSA, this involves managing a relatively small number of wells—estimated at approximately 20—spread across a landscape largely dominated by commercial agricultural interests. Several neighboring GSAs have enacted well registration policies and Southwest Kings GSA looks to do the same.

The broader geographical context involves neighboring South Fork Kings GSA's groundwater pumping allocations which were set in January to a "safe yield" at .86 acre-foot per acre of land to prevent subsidence. Other neighboring GSAs have even higher yields set—for example, the Mid-Kings GSA's sustainable yield pumping allocations set at 1.43 acre-feet per acre of land. This situation serves as the backdrop for the Southwest Kings GSA's recent policy shifts and proposals for coordination with neighboring GSAs. As the 2040 deadline for aquifer balance approaches, GSAs across the subbasin are under increasing pressure to quantify water usage and mitigate the physical impacts of extraction. The Southwest Kings GSA's recent actions represent a localized attempt to enforce data collection on their farmers and also influence the pumping behaviors of neighboring jurisdictions that share the same underlying water resources.

Stringent Enforcement Mechanisms in the Subbasin

The recent policy updates enacted by the Southwest Kings GSA represent more stringent enforcement mechanisms seen in the subbasin, especially when compared to their neighboring GSAs. The Southwest Kings GSA voted to require for all landowners within the agency's boundaries to register their wells in order to keep track of pumping. While the initial deadline was set for February 6, 2026, the board established a 20-day grace period. Following this window, non-compliant landowners face a penalty of $1,000 per day. Furthermore, the agency has indicated that unregistered wells may be subject to well shut-offs if owners do not report extraction data.

Beyond registration of well owners within its jurisdiction, the GSA has moved to extend its oversight to wells located just outside its official borders. Chair Vidovich proposed a policy that would require owners of wells within 1,000 feet of the Southwest Kings boundary to register and report their pumping data to the agency. The rationale provided for this measure is that extraction occurring in immediate proximity to the border has a direct impact on the groundwater levels within Southwest Kings' jurisdiction. This move has caused friction with neighboring agencies, specifically the South Fork Kings GSA. Representatives from South Fork have characterized this proposal as an overreach of jurisdictional authority, arguing that wells located outside the Southwest Kings boundary should remain under the sole oversight of their respective agencies. Because many well owners in other jurisdictions have already been required to register with their respective jurisdiction, simple data exchanges between GSAs have instead been proposed.

The tension between these two GSAs is further complicated by disagreements over pumping allocations and their relationship to land subsidence. South

Fork Kings GSA has established a "safe yield" allocation of 0.86 acre-foot per acre, supplemented by "transitional pumping" amounts intended to decrease incrementally until 2040. The Mid-Kings GSA's sustainable pumping allocation is set at 1.43 acre-foot per acre. Southwest Kings leadership has expressed concern that these allocations are too high and will lead to irreparable subsidence. This disagreement has escalated to the point of threatened litigation, with Southwest Kings preparing to hire counsel to challenge South Fork's policies before the environmental impacts become irreversible.

Data-Driven Management

The discrepancy between GSAs on what is a sustainable pumping allocation is largely due to varying methodologies used by the GSAs to determine sustainable pumping to prevent subsidence. For example, South Fork divided the total acreage of Tulare Lake subbasins's sustainable yield while Mid-Kings looked at the historical pumping to calculate the sustainable yield. Southwest Kings GSA looks to limit further and consider pumping from neighboring wells within 1,000 feet. Without coordination between Tulare Lake subbasin GSAs, which all pump from aquifers the overdrafting of which can cause subsidence to lands within the jurisdiction of multiple agencies, progress on attaining groundwater sustainability could be piecemeal.

To support the transition toward data-driven management, the Southwest Kings GSA has also launched a well-metering program. The board allocated an initial budget of $10,000 to purchase and install meters for landowners, appointing an employee of Sandridge Partners to oversee the project. While the agency is covering the initial equipment costs, landowners are responsible for the ongoing maintenance and calibration of these devices. By September 1, landowners must provide comprehensive data to the GSA, including parcel numbers, meter specifications, photographic evidence of flow rates, and maps of all water sources on the property. This level of granular reporting is intended to feed into monthly extraction reports, which will eventually be reconciled with state-level data required by the State Water Resources Control Board.

Conclusion and Implications

The Southwest Kings GSA's recent policy represents a direct effort to enforce groundwater extraction rules. By implementing high-value daily fines and preparing for legal action against neighboring agencies, the board has signaled a preference for strict local accountability and a proactive approach to regional subsidence issues. These actions highlight the growing complexities of groundwater management in the Tulare Lake subbasin, where the interests of major landholders, neighboring jurisdictions, and state-mandated sustainability goals frequently intersect. The potential implications of these fines and threatened lawsuits are significant; they may set a precedent for how GSAs handle cross-boundary impacts and could lead to a more litigious environment as the 2040 SGMA deadline nears. Ultimately, the success of these measures will depend on the cooperation of local landowners and the resolution of jurisdictional disputes between GSAs.

The Southwest Kings GSA January and February Board Meeting Minutes can be found here: https://swkgsa.org/wp-content/uploads/2026/01/1-30-26-SWKGSA-Minutes-approved-1.pdf and https://swkgsa.org/wp-content/uploads/2026/01/2-6-26-SWKGSA-Minutes-approved.pdf
(Steven Moctezuma, Miles Krieger)

LEGISLATIVE DEVELOPMENTS

U.S. SENATOR ALEX PADILLA INTRODUCES TWO BILLS TO PROVIDE FUNDING AND ENCOURAGE INNOVATIVE SOLUTIONS TO ENSURE SUSTAINABLE FUTURE WATER SUPPLY

On January 29, U.S. Senator Alex Padilla (San Francisco) introduced the two pieces of legislation, the Making Our Communities Resilient through Enhancing Water for Agriculture, Technology, the Environment and Residence Act (More Water) Act (S.3738) and Growing Resilient Operations from Water Savings and Municipal-Agricultural Reciprocally beneficial Transactions (Grow Smart) Act (S.3737), collectively aimed at addressing continued concerns over the effects of rising temperatures, and increased drought periods, on California's water supply through increased federal grant funding for certain projects, and encouragement of innovative projects water saving projects as well as inter-industry partnerships.

Background

The More Water and Grow Smart Acts work together to address water supply challenges in the state, which continually increase in light of rising temperatures, increased droughts, severe weather events, and other impacts to the state's future water supply, and existing infrastructure. Senator Padilla, who has introduced and advocated for similar legislation aimed at providing funding to water supply infrastructure projects, has described the goal of the two Acts as bolstering water security for both cities, and agricultural communities, while creating other environmental, and ecological benefits.

The More Water and Grow Smart Acts align with a larger pattern of recent legislation aimed at addressing concerns over potential, future water scarcity in the state. In August of 2022, Governor Newsom released *California's Water Supply Strategy, Adapting to a Hotter, Drier Future* which provided research and statistics as to the current state of California's water supply, as well as potential future scarcity scenarios. The report additionally addressed strategies and priority actions necessary to protect the future of the state's water supply and included a Department of Water Resources estimate that the drinking water deficit in the state could reach 6 million acre-feet of water by 2040. The report, and specifically this estimate, generated much attention on the future of California's water supply, and led to several efforts to address these concerns, including other legislative efforts such as last year's passage of SB 72 which mandated modernization of the California Water Plan through setting measurable supply targets, and a statewide water supply target of 9 million acre-feet by 2040. Similar to SB 72, these Acts intend to provide proactive measures to help offset the predicted deficit and ensure a long-term sustainable water supply for the state.

Integrated and Innovative Approaches to Water Conservation

Both Acts work together to create an integrated and innovative approach to water conservation by addressing current infrastructure needs, while promoting creative solutions, encouraging partnerships, and including measures aimed to ensure that drinking water supplies are both safe and accessible for low-income communities.

More Water Act

Specifically, the More Water Act creates a Water Conveyance Improvement Program, intended to repair and upgrade existing infrastructure, which would require large projects that cost a minimum of $800 million, and half of all projects costing less than $800 million, to deliver co-benefits for the environment, as well as safe drinking water for low-income communities. The Act would, additionally, reauthorize certain Bureau of Reclamation programs, through creation of a new federal grant program, to the development of water recycling projects by providing federal grants for up to 25 percent the cost of the project. According to a press release issued by Senator Padilla, such water recycling projects purportedly have the potential to create over a half of million acre-feet of water

per year, providing water for 3 million people, while simultaneously diverting water from the Colorado River, the Delta, and other water sources. The bill would also increase the cap for funding on these projects to $50 million. In addition to funding components, the bill includes measures which would allow for expedited Congressional approval for certain projects which could provide quicker, and more cost-efficient, project completion.

Grow Smart Act

Alongside the More Water Act, the Grow Smart Act similarly provides funding mechanisms, and encourages water saving projects, but with a specific lens on the agricultural sector in an effort to encourage and facilitate greater outcomes through partnerships. More specifically, the bill would authorize $5 million per year, for seven years, for the Bureau of Reclamation to fund the design of innovative and voluntary agricultural water efficiency demonstration projects. The funding aims to provide inducement to farmers interested in testing innovative approaches to water saving technologies, some which have not been previously tried in a particular area, through utilizing a small portion of acreage, while maintaining farmland production broadly, to test a water saving project and assess potential benefits before implementing the project on a large scale. Because agricultural measures stand to create the potential for impactful water savings, and, potentially, cost less to implement than the cost of construction of new water supply infrastructure, the bill focuses on funding mechanisms to specifically encourage these projects. While funding would be provided to water saving projects broadly undertaken by agricultural, state, or tribal entities, without any requirement that a partnership between entities exist, the bill prioritizes those projects where such partnership is present.

Conclusion and Implications

If the More Water and Grow Smart Acts successfully pass through the California legislature this year, and are subsequently signed by the Governor, they could provide important funding, encourage inter-industry partnership while supporting the agricultural sector, and promote innovative water saving projects, all of which would provide an additional mechanism to offset current predictions of future water supply scarcity. For more information, *see:* the Full text of the More Water Act: https://www.padilla.senate.gov/wp-content/uploads/MORE-WATER-Act-text-as-introduced-12926.pdf; and for the full text of the Grow Smart: https://www.padilla.senate.gov/wp-content/uploads/GROW-SMART-Act-text-as-introduced-12926.pdf
(Stephanie Cook, Miles Krieger)

REGULATORY DEVELOPMENTS

SITES RESERVOIR PROJECT MOVES FORWARD WITH DEPARTMENT OF THE INTERIOR'S RECORD OF DECISION—THE ROAD AHEAD

The U.S. Department of the Interior's recent approval of a federal Record of Decision (ROD) for the proposed Sites Reservoir Project is a major milestone for one of California's most debated new water-supply proposals. This approval advances federal environmental review and signals a clearer federal role, but debate over the project's permitting, financing, and operations continues. The Department of the Interior, Bureau of Reclamation's January 23, 2026, ROD essentially approves the project environmentally and allows it to move forward in a meaningful way.

Background

The Sites Reservoir is a proposed 1.5 million acre-foot off-stream reservoir planned in the Sacramento Valley near the community of Maxwell, on the border of Colusa and Glenn counties.

An off-stream reservoir means the reservoir basin would be located away from the mainstem of the Sacramento River, as opposed to being created by damming the river itself. The current project footprint is west of Maxwell, in an area where the reservoir would be impounded by a dam and conveyance infrastructure designed to move water into and out of storage.

How Off-Stream Storage Works

A helpful way to conceptualize Sites is as a large side-basin that can be filled during certain periods and used later. In terms of how it functions, water is captured during wet periods/high-flow windows when regulatory and operational constraints allow diversion without unacceptable impacts. Next is the actual conveyance of the water to the storage basin, with Sites' planning describing a combination of existing and new conveyance components, including use of regional canal systems and new project-specific facilities. Water is then stored for later use, with the reservoir designed to hold water when it is relatively more available, to be deployed during shortages. Deliveries are shaped by contractual arrangements among participating agencies as well as environmental criteria.

This framework helps to explain a central point of controversy, being that storage does not "create" more water but rather changes timing and availability. Whether that timing change is beneficial or harmful in a given year can depend on a number of hydrological, regulatory, and environmental factors that are not necessarily easy to predict.

Impact of Federal Record of Decision

A federal Record of Decision is the Bureau of Reclamation's formal decision document under the National Environmental Policy Act (NEPA), issued after completion of the project's federal Environmental Impact Statement process. It documents the agency's selected alternative and its rationale, including mitigation and monitoring commitments.

The ROD is significant both for reducing a major layer of uncertainty by completing a key federal environmental decision step and for signaling a go-ahead for continued project development, given that the federal environmental review process has reached a defined endpoint. At the same time, an ROD is not a universal permit. For a project such as Sites, additional approvals and agreements still govern when and how the reservoir would be filled and operated.

Federal Cost Share Framework

The Department of the Interior's announcement accompanying the ROD stated that the decision authorizes Reclamation to provide up to 25 percent of the total project cost. That figure is significant not only because it can reduce the amount that participating agencies must finance, but also because federal participation can influence the project's overall feasibility and political durability. Relative cost share can affect local and regional agency confidence, financial structure in terms of how public funds, bonds, and participant contributions are blended, and accountability expectations, with greater commitment of public money tending to increase outside scrutiny.

Key Outstanding Approvals and Constraints

Now that a federal NEPA decision is in place, there are still several hurdles for a project of this magnitude. Water rights and diversion authority must be addressed, as the reservoir can only be filled if diversions are legally and operationally allowed. Additionally, the project must address what triggers diversion, what limits apply during sensitive periods, and how releases/deliveries interact with environmental and downstream needs. Finally, while the ROD reflects completion of federal NEPA review, other statutory pathways, such as species protections, may shape project commitments as agencies finalize permits and operating plans.

Conclusion and Implications

The Department of the Interior's ROD moves the Sites Reservoir into a more advanced phase, but it is best understood as a milestone rather than any sort of final decision as to the project's ultimate footprint or effects. The project will still be shaped by state water-right outcomes, enforceable diversion and operating criteria, final financing commitments, and the project's ability to address ecological and Tribal concerns with sufficient specificity to withstand scrutiny. The Record of Decision by the Department of the Interior, Bureau of Reclamation, is available on Reclamation's website at: https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=57349
(Carson Trigueiro, Darien Key, Derek Hoffman)

DEPARTMENT OF WATER RESOURCES OFFICIALLY LAUNCHES PROJECT TO UPDATE THE CALIFORNIA WATER PLAN

On February 25, 2026, Governor Newsom and the California Department of Water Resources (DWR) announced the official launch of the California Water Plan 2028. This will be the latest update of the California Water Plan, a detailed planning document for California's water resources. Due to new legislation enacted in 2025, the 2028 update will make major revisions to the structure and purpose of the plan.

Background of the California Water Plan

In 1947, the Legislature instructed the State Water Resources Control Board (State Water Board) to undertake a State-wide Water Resources Investigation. (Stats. 1947, ch. 1541.) This investigation was to be the most systematic and comprehensive attempt to date at creating a statewide water plan for California—a goal that had been pursued in fits and starts since 1874 by the state and federal governments.

The State Water Board's investigation led to the publication of Bulletin No. 1, "Water Resources of California" in 1951 and Bulletin No. 2, "Water Utilization and Requirements of California" in 1955. In 1956, DWR was created and assigned to complete the investigation. The third and final phase of the investigation was published in 1957 as Bulletin No. 3, "The California Water Plan."

In 1959, the Legislature enacted a statute that defined Bulletins 1, 2, and 3 collectively as the "California Water Plan," required the State Water Board to consider the California Water Plan in making its public interest determinations, and authorized DWR to update it from time to time as needed. In a series of bills throughout the 1990s, the Legislature required DWR to begin updating the Water Plan every five years. The most recent update was in 2023.

In 2025, the Legislature passed SB 72 (Caballero), which mandated the most sweeping changes to the Water Plan in decades. (Stats. 2025, ch. 210.) This 2028 update will be the first step to implementing those changes.

Long Term Water Supply Targets and Strategy

Foremost among the changes made by SB 72 is the requirement that the plan include "long term water supply targets and strategies to meet those targets." The legislation itself set an interim target, to be included in the 2028 plan: 9,000,000 acre-feet of "additional water, water conservation, or water storage capacity to be achieved by 2040." That interim target is based on a DWR calculation of California's total water use (60-90 million acre-feet per year) and an estimated 10 percent loss of existing water supply due to climate change.

The legislation requires those targets to become more specific and more farsighted with subsequent updates. In the 2033 plan, DWR is directed to update the targets through 2050 by considering current and future needs for *all* beneficial uses of water in California. Finally, in subsequent updates (2038 and beyond), the targets will develop into "a range of water supply targets that consider future scenarios with a 50–year planning horizon at a watershed scale." These future scenarios and targets will be based on projections of hydrology, climate change impacts, land use patterns, demand for various uses, infrastructure concerns, and a wide variety of other factors. DWR will publish the assumptions and other estimates it intends to use for each new plan at least a year in advance for public comment.

Watershed Scale Planning

One of the primary tasks being undertaken for the 2028 update relates to the goal of setting targets "at a watershed scale." Water issues and water planning are necessarily regional, because geography and hydrology differ widely throughout the state. Previous Water Plans have accounted for regional variation by dividing the state into ten hydrologic regions. The new "watershed scale" approach will divide the state into the 138 watersheds in California as identified by the United States Geological Survey (USGS) in it's "HUC 8" dataset. HUC stands for "Hydrologic Unit Codes," a hierarchical system the USGS has created for mapping drainage areas across the country at five nested levels of specificity: HUCs 2, 6, 8, ten, and 12. The HUC 8 dataset is the "subbasin" level, and the units have an average size (nationwide) of about 700 square miles. By contrast, the ten hydrologic reasons have an average size of around 16,000 square miles. This much more refined regional analysis will facilitate more specific and actionable planning. But in order to set targets and propose strategies at the watershed scale, DWR first needs to collect *data* (demand, use, supply, *etc.*) at the watershed scale.

The Plan Development Process

The updated Water Plan will be prepared by a project team within DWR, but they will consult with a wide variety of other agencies and groups. Foremost among those are the other state agencies responsible for various water policy issues, including the State Water Board, the California Natural Resources Agency, the California Department of Fish and Wildlife, and others. They will also continue to work closely with the California Water Commission, to which they will regularly report on their progress.

SB 72 has also expanded the scope of DWR's Advisory Committee, established in consultation with the Water Commission, to include an even wider range of constituencies. That Advisory Committee will hold public meetings to consult with DWR. The legislation also requires a series of public workshops throughout the state to facilitate public comments on the plan. DWR has also indicated, in its presentations to the Water Commission, that it will convene various "caucuses" to supplement these channels of communication. There will be caucuses organized by hydrologic region as well as topical caucuses on technical or policy issues as the need arises.

Conclusion and Implications

The California Water Plan has always been an important planning document, but SB 72 represents a shift in its purpose. The inclusion of specific water supply targets and strategies and the refined scale of the plan indicates what DWR calls a move "from advisory guidance to a clear implementation framework." (Presentation to California Water Commission, January 26, 2026, https://cwc.ca.gov/-/media/CWC-Website/Files/Documents/2026/01_January/January2026_Item_9_Attach_1_WaterPlanUpdate_Final.pdf.) Governor Newsom went even further, calling the 2028 update "a commitment to every Californian that we will capture, store, and conserve the water our state—the 4th largest economy in the world—needs to thrive." Everyone who has an interest in California meeting that commitment should avail themselves of the many opportunities to participate in the development of the plan.
(Brett Stroud)

SINKING GROUND: DEPARTMENT OF WATER RESOURCES ISSUES UPDATED BEST MANAGEMENT PRACTICES ON LAND SUBSIDENCE UNDER THE SUSTAINABLE GROUNDWATER MANAGEMENT ACT

In January 2026, the California Department of Water Resources (DWR) issued updated Best Management Practices (BMP) for the Sustainable Groundwater Management Act (SGMA), addressing land subsidence. The document provides technical guidance to Groundwater Sustainability Agencies (GSAs) and other stakeholders on how to understand, monitor, and manage subsidence within the framework of SGMA. The BMP explains that subsidence is one of the six sustainability indicators that must be addressed under SGMA and is defined as the lowering of the land surface due to compression of fine-grained sediments within an aquifer system.

The guidance does not create new regulatory requirements and does not supersede local, state, or federal law. Instead, it is intended to assist GSAs in complying with SGMA and the Groundwater Sustainability Plan (GSP) regulations. At its core, the BMP connects hydrogeologic science with statutory obligations, emphasizing that subsidence must be avoided or minimized as part of achieving groundwater sustainability.

Background: The Mechanics of Subsidence and the Role of Critical Head

The BMP describes subsidence as a stress response in aquifer systems. When groundwater pumping lowers groundwater levels, pore pressure in fine-grained sediments declines. As a result, effective stress on the sediment skeleton increases, causing compaction. If groundwater levels remain above a site-specific threshold known as the critical head, compaction may be elastic and reversible. When groundwater levels decline below the critical head, compaction becomes inelastic and permanent.

Critical head is defined as the groundwater elevation in fine-grained units below which permanent compaction begins. Because groundwater levels in clay layers are rarely monitored directly, critical head must typically be estimated using correlations between groundwater levels and subsidence measurements. The BMP outlines three approaches for estimating critical head: trend-based, empirical, and modeling. Each method has different data requirements and levels of uncertainty, but the guidance is clear: understanding critical head is essential to preventing additional inelastic compaction.

A central management principle in the BMP is that groundwater levels should be raised above critical head as quickly as possible to minimize ongoing subsidence and residual compaction. Managing to historical low groundwater levels is not necessarily protective if those historical lows were already below the critical head.

Statewide Impacts and Infrastructure Risk

The BMP situates subsidence as a statewide infrastructure issue with substantial economic consequences. Subsidence has caused billions of dollars in damage to canals, levees, roads, bridges, pipelines, wells, and municipal infrastructure. Major conveyance facilities, including the California Aqueduct and the Friant-Kern Canal, have experienced significant reductions in capacity in certain reaches due to differential settlement. Flood control structures and levees have required repeated modifications in subsiding areas.

Under SGMA, GSAs are required to identify infrastructure that may be affected by subsidence and to define undesirable results in part by reference to impacts on surface land uses and property interests. The BMP directs GSAs to consult with infrastructure owners and operators when developing subsidence thresholds. Categories of infrastructure that must be evaluated include water conveyance systems, flood control facilities, transportation corridors, utility corridors, and groundwater pumping facilities.

Monitoring and Data Integration Requirements

Effective subsidence management depends on robust monitoring. The BMP emphasizes that monitoring must integrate land-surface elevation, groundwater level, and groundwater pumping data.

For land surface elevation, the BMP identifies leveling surveys, borehole extensometers, continuous GPS, and InSAR® as key monitoring tools. The guidance encourages GSAs to use multiple monitor-

ing approaches where feasible to capture both spatial extent and temporal trends, particularly near critical infrastructure.

Groundwater level monitoring must be conducted at sufficient spatial and vertical density to understand aquifer system behavior. Monthly or more frequent measurements are recommended to capture seasonal lows, which are often the periods when groundwater levels may first decline below the critical head. In highly managed basins, seasonal patterns may shift with changing surface-water deliveries, further underscoring the need for frequent monitoring.

In areas experiencing subsidence near infrastructure, the BMP recommends metering and reporting of groundwater pumping. Accurate pumping data allow GSAs to link pumping patterns to groundwater level declines and to identify areas where management adjustments are necessary.

Sustainable Management Criteria under SGMA

SGMA requires GSAs to establish undesirable results, minimum thresholds, measurable objectives, and interim milestones for each sustainability indicator, including subsidence. The BMP explains that subsidence differs from other indicators because inelastic compaction is irreversible. Once permanent compaction has occurred, lost storage capacity and lowered land elevations cannot be restored.

Minimum thresholds for subsidence must reflect the rate and extent of subsidence that substantially interferes with surface land uses. In areas without recent subsidence, the BMP recommends setting thresholds to prevent the onset of subsidence. In areas with ongoing subsidence, thresholds should be based on the tolerance of affected infrastructure and established in consultation with responsible agencies.

The BMP also addresses the use of groundwater levels as a proxy for subsidence. In basins without historical subsidence and where groundwater levels are managed above historical lows, groundwater levels may serve as a reasonable proxy. However, in basins that have experienced subsidence, the BMP advises that subsidence should be measured directly rather than inferred solely from groundwater levels.

Modeling and Management Actions

Numerical modeling is presented as a critical decision support tool. Integrated groundwater and subsidence models can simulate aquifer-system compaction, estimate critical head, and project future subsidence under different groundwater management scenarios. Modeling results discussed in the BMP demonstrate that higher groundwater level thresholds produce substantially less projected subsidence, often differing by several feet over planning horizons.

The BMP identifies a range of management actions available to GSAs. These include reducing groundwater pumping, implementing managed aquifer recharge, shifting pumping away from susceptible aquifers, enhancing monitoring networks, establishing buffer zones near critical infrastructure, and coordinating regionally with adjacent basins. SGMA grants GSAs authority to adopt rules and regulations, require metering, and implement other measures necessary to achieve sustainability.

Conclusion and Implications

The updated Subsidence BMP reflects a technically grounded approach to subsidence management under SGMA. It clarifies that avoiding or minimizing subsidence requires more than stabilizing groundwater at historical lows. Instead, GSAs must understand and manage groundwater levels relative to critical head to prevent inelastic compaction.

The guidance reinforces that subsidence management is inseparable from groundwater allocation, infrastructure protection, and long-term basin sustainability. It highlights the importance of integrated monitoring, defensible modeling, and coordination with infrastructure operators. It also signals that DWR expects GSAs to continually reevaluate sustainable management criteria during five-year SGMA reviews to ensure that groundwater level thresholds do not result in undesirable subsidence. For more information, *see:* https://water.ca.gov/News/News-Releases/2026/Jan-2026/Best-Management-Practices-to-Help-Address-Subsidence
(Darien Key, Derek Hoffman)

DEPARTMENT OF WATER RESOURCES INCREASES 2026 STATE WATER PROJECT ALLOCATION FROM 10 TO 30 PERCENT

On January 29, 2026, the California Department of Water Resources (DWR) increased the initial allocation to contractors of the State Water Project (SWP) from 10 percent of requested supplies to 30 percent. The initial allocation of 10 percent had been announced on December 1, 2025, but as is almost always the case the initial allocation was revised upward. The 2026 allocation provides a case study in the complexities of the allocation process and the factors that drive these changes.

Background of the SWP and Allocations

The SWP is one of the largest public water and power projects in the world. It provides water supply to 27 million people—nearly 70 percent of the state's population of just under 39.4 million (United States Census Bureau, *QuickFacts California*, https://www.census.gov/quickfacts/fact/table/CA/PST045224)—and about 750,000 acres of farmland—nearly 9 percent of the estimated 8.5 million acres of irrigated farmland in the state (Public Policy Institute of California, *Agricultural Land Use in California* (June 2024), https://www.ppic.org/wp-content/uploads/agricultural-land-use-in-california.pdf). It transports water from California's wetter, northern regions through more than 700 miles of canals, pipelines, and tunnels to provide water to the drier regions of the state (including the Central Valley and Central Coast as well as Southern California).

The SWP is paid for by 29 local and regional public water agencies, known as the State Water Contractors, who share the costs of the project in proportion to their share of the available water. Those shares are described in Table A to the water supply contracts, which allocate a total of around 4.2 million acre-feet to the contractors. However, the full Table A amount is delivered only when that much water is available from the project, which is historically rare since the advent of pumping restrictions under the Endangered Species Act in the early 1990s.

Every year, DWR determines the percentage of total Table A that it thinks it could deliver, which is known as the SWP "allocation" for the year, and it adjusts that amount as conditions change. Several factors drive this allocation process, and the 2026 allocation changes reflect how conditions can change substantially in only a short time.

Hydrology and Snowpack

DWR's press release identifies the central factors in determining the SWP allocation as "hydrological conditions, existing reservoir storage, and an assumption of dry conditions through the rest of the year." As of the announcement of the 30 percent allocation, DWR reported the total reservoir storage at 125 percent of average and the storage in Lake Oroville (the largest SWP reservoir) at 138 percent of average. But the more significant factor is snowpack. The conservative assumption of dry conditions through the rest of the year is a major driver of changes in the allocation, because annual snowpack typically does not peak until around April 1 and the first allocation announcement is in December of the preceding year. Therefore, allocations tend to increase throughout the early months of the year. (State Water Project, *Historical Table A Allocations Water Years 1996-2026*, https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Management/SWP-Water-Contractors/Files/Historical-SWP-allocations-1996---2026-w-NOD-tables-012826.pdf.)

The California Cooperative Snow Surveys (CCSS) program, created by the Legislature in 1929 and administered by DWR, is a collaborative effort between numerous state, federal, and local public agencies, utilities, universities, consultants, and others to analyze California's snowpack and to forecast the short-term and long-term runoff into river systems that drives the availability of water. While the CCSS deploys various snow-sensor technology (over 130 sensors) and other methods, the core of the program is still manual snow surveys. Researchers trek to areas of large-scale snow accumulation and measure over 250 "snow courses" (permanently marked lines through forest clearings or meadows that are considered representative of the snowpack in the area). Measurements are taken using federal snow samplers, long hollow tubes that are used to take core samples of the snow, at about ten locations on each course. Those samples as measured for depth and weighed to determine their moisture content and calculate

averages for the course. That data is all transmitted to the California Data Exchange Center (CDEC) where it is made publicly available and used by the CCSS in its forecasting activities. The forecasting process involves statistical analysis and computer modeling to turn the snowpack data into an estimate of the volume and timing of liquid water runoff from the melting snowpack.

Those estimates are the largest driver of water supply forecasting in California and thus of the SWP allocation process. And 2026 began with California, along with most of the American west, in a condition of "snow drought." (National Integrated Drought Information System, Drought Status Update: Snow Drought Current Conditions and Impacts in the West (Feb. 5, 2026), https://www.drought.gov/drought-status-updates/snow-drought-current-conditions-and-impacts-west-2026-02-05.) The total precipitation in the last quarter of 2025 was normal or even above normal throughout the west, but due to high temperatures most of it fell as rain rather than snow. Due to recent storms, California is less badly affected than other western states by this snow drought, but 37 percent of snow stations in the state remain in a condition of snow drought (defined by NIDIS as snow water equivalent at our below the 20th percentile) as of the February 5 report.

Changes to Operational Restrictions in the Delta

DWR attributes its ability to raise the initial allocation in spite of the snow drought to a major regulatory change at the end of 2025. In December, the California Department of Fish and Wildlife (CDFW) approved changes to the Incidental Take Permit (ITP) governing SWP operations. The ITP is a set of regulations on pumping water from the Sacramento-San Joaquin Delta, a key component of SWP operations, to protect endangered fish species in the Delta. The new ITP provides greater flexibility to DWR in managing its operations to maximize exports while still protecting those fish species, particular during what is known as "first flush." (DWR, Cloudy Water, Clear Decision: Using Science to Protect Fish and Water Supply (Dec. 31, 2025), https://water.ca.gov/News/Blog/2025/Dec-25/Cloudy-Water-Clear-Decision-Using-Science-to-Protect-Fish-and-Water-Supply.) First flush is the initial influx of water into the Delta at the beginning of the wet season, which is ecologically important both as a check on predation and as a natural cue to migration patterns in certain Delta fish. The ITP restricts certain SWP pumping operations during first flush, but the changes made in December allow DWR to relax those restrictions in certain conditions that have been shown not to negatively impact the fish. According to its press release announcing the revised allocation, DWR was able to increase exports by 15,000 acre-feet in December and January due to this new regulatory flexibility.

Conclusion and Implications

The SWP allocation for 2026 may well change again, perhaps multiple times, for the same reasons.

Large storm systems, sometimes called "atmospheric rivers," continue to bring large amounts of precipitation. Historically, February and March are typically the last of the wet months, so precipitation and snowfall in those months will be a major factor. Recent storms provided a boost to the snowpack. The Central Sierra Snow Lab (CSSL) in Soda Springs, a research facility originally built by the United States Army Corps of Engineers in 1946 (today operated by the University of California, Berkeley), reported 111 inches of snow in the five days from February 16-20, 2026. (Central Sierra Snow Lab, *Lab Data*, https://cssl.berkeley.edu/data.) However, that dry, powdery snow is low in water content, so even though the total snowfall at the CSSL was 104 percent of average as of February 20, the water content was only 69 percent of average. (KCRA, *Tahoe resorts report more than 100" of powder. Here's how that's helped California's snowpack* (Feb. 18, 2026) https://www.kcra.com/article/california-rain-totals-snow-totals-map-february-18-1771461749/70411519.)

The impact of this increased snowpack on allocations remains to be seen. And the continued implementation of adaptive management under the new ITP could also drive further changes to the allocation. The system is relatively new, and its full impact on SWP operations remains to be seen. For more information, *see:* (DWR, *December Storms Improved Flexibility Allow DWR to Increase State Water Project Allocation*, https://water.ca.gov/News/News-Releases/2026/Jan-2026/December-Storms-Improved-Flexibility-Allow-DWR-to-Increase-State-Water-Project-Allocation.)

(Brett Stroud)

STATE WATER RESOURCES CONTROL BOARD HOLDS FIRM ON BAY-DELTA PLAN UPDATES: KEY TAKEAWAYS FROM THE JANUARY 2026 HEARINGS AND NEW ACCOUNTING FRAMEWORKS

The State Water Resources Control Board (SWRCB) is moving aggressively to finalize the Sacramento/Delta Updates to the Bay-Delta Water Quality Control Plan (Bay-Delta Plan). In a January 7, 2026, letter from Executive Director Eric Oppenheimer, the SWRCB denied requests from environmental non-governmental organizations (NGOs) and tribal groups to extend the public comment period, seeming to signal SWRCB's intent to complete a process that has spanned over a decade.

From January 28 through January 30, 2026, the SWRCB held a marathon three-day public hearing on the December 12, 2025, revised draft Bay-Delta Plan (Revised Plan) and the newly released Chapter 13 of the Draft Staff Report. The Revised Plan includes appendices outlining the monitoring, evaluation, and accounting mechanisms that would govern water users moving forward, if adopted. With the written comment period now closed, the SWRCB is positioned to adopt the Revised Plan later this year. Below is an overview of the Revised Plan and insights from the January hearings.

The Dual-Pathway Approach and Interest in a "Toggle" Mechanism

The Revised Plan formalizes two parallel implementation pathways. First, the Voluntary Agreement (VA) pathway. This pathway incorporates the Healthy Rivers and Landscapes (HRL) program, a framework of flow and habitat commitments negotiated by the state, federal agencies, and participating water users (listed in Appendix B.1 of the Revised Plan). VAs establish an initial eight-year term for participants to voluntary implement habitat restoration and dedicated environmental flows.

Second, the Revised Plan contemplates a regulatory pathway. Acting as the baseline framework, the regulatory pathway applies to all water right holders not participating in the VA pathway. It sets new tributary inflow requirements based on 55 percent of unimpaired flow (UIF), bounded by an adaptive range of 45 percent to 65 percent. In an effort to mitigate severe supply shocks, the Board included Water Supply Adjustments (WSAs), which can reduce flow requirements to 45 percent in intermediate years and 35 percent in critically dry years.

A central theme from Board members and those making public comments during the January 2026, hearings was the need for a "toggle" mechanism. While the Board appears poised to give the VA pathway an opportunity to succeed, multiple Board members emphasized the need for explicit, interim performance milestones (rather than waiting until the end of the initial 8-year term). If HRL participants fail to deliver on flow or habitat commitments, or if federal partners withdraw support, the SWRCB seems to want a streamlined mechanism to immediately "toggle" waters users over to the stricter Regulatory Pathway. To protect their interests, VA participants must proactively negotiate robust dispute resolution terms and clear evidentiary standards that must be met before any "toggle" to the stricter 55 percent UIF baseline can be triggered.

The Mechanics of Compliance: Appendices A, B.1, and B.2

The appendices in the Revised Plan detail how the SWRCB intends to enforce and measure compliance, transforming conceptual flow targets into rigorous operational constraints.

Appendix A (Bay-Delta Monitoring and Evaluation Program - BDMEP) establishes a comprehensive network of continuous and discrete monitoring stations to track water quality, harmful algal blooms, and food web metrics, and binds water users to strict data management, calibration, and real-time reporting standards.

Appendix B.1 (Flow Accounting) dictates how HRL participants must account for additive flows. Critically, it outlines strict rules for Groundwater Substitution and Land Fallowing, requiring agencies utilizing groundwater substitution to meet HRL commitments to coordinate with local Groundwater Sustainability Agencies (GSAs), demonstrate consistency with Groundwater Sustainability Plans (GSPs), and subtract streamflow depletion volumes from their substitution credits. Appendix B.1 also requires complex tracking of Delta reference conditions to

ensure VA additive flow is not improperly recaptured or exported by the State Water Project (SWP) or the federal Central Valley Project (CVP).

Appendix B.2 (Non-flow Habitat Accounting) outlines that to receive credit for habitat restoration, agencies cannot simply claim acreage. The protocol requires spatially explicit quantification using digital elevation models and two-dimensional hydraulic models to calculate water depths and velocities at specific design flows. If the habitat does not meet strict depth, velocity, and cover criteria when inundated, it will not count toward VA commitments.

Formal Designation of Tribal Beneficial Uses

For the first time in a basin plan update, the Revised Plan formally designates Tribal Tradition and Culture as a "beneficial use" in the Bay-Delta watershed. The SWRCB has included provisions to form a Bay-Delta Tribal Advisory Group and integrated Traditional Ecological Knowledge into the BDMEP using the CARE principles (Collective benefit, Authority to control, Responsibility, and Ethics) for indigenous data governance.

During the hearings, tribal nations delivered testimony strongly opposing the VA pathway, citing historical exclusion from water rights systems and arguing that the VAs fail to guarantee the flows necessary to protect the newly designated "beneficial uses".

Federal Uncertainty and the "Action 5" Flashpoint

A significant point of contention during the January hearings was the shifting posture of the federal government. Late last year, the U.S. Bureau of Reclamation adopted the 2024 Record of Decision for Long-Term Operation of the CVP and SWP (2024 LTO), which includes "Action 5"—a provision that effectively increases CVP exports and reduces Delta outflows. NGOs and fishing advocates argued that "Action 5" severely undercuts the baseline flows that the VA commitments rely upon, reducing promised environmental water. In response, SWRCB staff noted that Appendix B.1 is designed to adjust reference conditions to account for the 2024 LTO, but Board members seemed to grapple with how to legally hold the Bureau of Reclamation accountable if federal funding for habitat projects disappears or if the Bureau refuses to comply with SWRCB flow mandates.

Conclusion and Implications

The SWRCB appears to be entering the final stretch to finalize a revised Bay Delta Plan. Staff will now synthesize oral testimony received during the January hearings and the written comments submitted by February 2, 2026, to produce the final draft Bay-Delta Plan and the final Staff Report.
(Gina Herrera and Dave Cameron, David Boyer)

COLORADO INCREASES REGULATIONS, MEASUREMENT RULES IN THE FACE OF CONTINUING DROUGHT

The State of Colorado recently enacted water measurement rules for two of the four western slope river basins, while rules for the other two basins are in the draft phase. These rules require water users to specifically measure and track diversions, something that may become necessary in the event of a compact call or other basin-wide administration. The rules were promulgated by the Colorado Department of Natural Resources, Division of Water Resources.

Background

Colorado water law operates on a pure prior appropriation system. Junior water rights users are therefore generally curtailed in the face of a downstream call. In Colorado's Front Range, water has been strictly administered for decades. This is because those water divisions (1 – South Platte; 2 – Arkansas; 3 - Rio Grande) are all subject to various interstate compacts. For example, Colorado must deliver a certain amount of South Platte River water to Nebraska. These amounts are often disputed, leading Colorado to require water users to specifically measure and track all diversions. Thus, Water Divisions 1, 2, and 3 all have some version of measurement rules in place.

Contrast that to the four western slope divisions (4 – Gunnison; 5 – Colorado; 6 – Yampa/White; 7 – San Juan/Dolores) where there are some areas that have historically been "free river." Without a call on

these streams, there has never been a need for measurement devices on diversions structures or tracking of diversions of any kind. But this is changing. The Yampa River, the main drainage in Division 6, went on call in July this summer, for only the fourth time in history. Division 6's measurement rules, which went into effect January 16, 2024, noted this history:

> In many areas, Water Division 6 has experienced multiple years where unprecedented administrative calls occurred, highlighting the tightening of supplies and increased competition for the limited water resource.

Measurement and tracking of water rights is therefore critical to ensure compliance and administration from the small scale, a local call on a tributary, to the largest possible scale in the event of a Colorado River Compact call.

Division 5 Measurement Rules

Following Division 6, Water Division 7 enacted measurement rules on June 1, 2025. That leaves only Division 4 and 5, who are both in the rule-making process. The Division 4 rules are in draft form, while the Division 5 rules were filed with the water court in November. The Division 5 Engineers Office will accept comments on the draft rules until December 19. Any party may choose to file a statement of opposition in water court, although the Engineers have a stated preference to work out any issues in the rules through informal negotiations rather than the formal court process.

Each basin's rules differ slightly to account for regional differences, but in general are almost identical on the main measurement requirements. Division 5, where this author lives and frequently practices, therefore provides a helpful overview and example of the state in general.

The measurement rules generally apply to all water rights in the Division, with the exception of exempt wells, surface diversions of less than 15 gallons per minute (g.p.m.) used for domestic and other exempt well purposes, head stabilization ponds, and other similar structures. The rules do not require specific types of devices, such as Parshall flumes, weirs, staff gages, or specific well meters, but instead require standards of accuracy depending on the size of the diversions. Water rights diverting more than 1 cubic foot per second (c.f.s.) must be accurate to within five percent, while water rights diverting between 0.25 and 1 c.f.s. must be accurate to within 0.05 c.f.s. The smallest category of water rights, those diverting less than 0.25 c.f.s. or approximately 112 gallons per minute, do not have a set target but instead must meet "an accuracy standard approved by the Division Engineer's Office." Any measurement device installed under the rules must be permanent.

Division 5 is typically controlled by the "Cameo" call near Grand Junction. Because this calling water right is so far downstream, almost the entire division is subject to this call and therefore should measure and track water diversions. But purchase and installation of accurate measuring devices can be a complex and costly endeavor, particularly depending on the age and existing infrastructure. The rules therefore allow for a "phase-in" period after the effective date, currently scheduled to be November 1, 2026, although that may change depending on the water court process and any revisions to the rules. The phase-in deadlines depend on the size of the water right, with larger water rights required to implement measurement sooner. Water rights diverting 5 or more c.f.s. must install measurement within 12 months of the effective date; water rights diverting 2-5 c.f.s. have 24 months, and the smallest less than 2 c.f.s. water rights have 36 months. Reservoirs, which are typically measured with staff gages or other similar devices have a similar schedule: 24 months for reservoirs larger than 5 acre-feet, and 36 months for smaller reservoirs. The rules allow the Division Engineer to grant extensions for up to one additional year, but the water user must show that they have been "diligent in its efforts to comply with the requirements of these Rules, has made substantial progress in complying with the requirements of these Rules, and despite its diligent and good faith efforts has been unable to fully comply with the requirements of these Rules."

Conclusion and Implications

These rules come at a critical time for Colorado, as the start of this winter is continuing a pattern of drought across the state, and the Colorado river basin as a whole. As of December 22, 2025, most basins in Colorado are between 50 and 60 percent of average snowpack, while the San Juan/Dolores basin is only at 49 percent. This equates to the 5th percentile state-wide in expected snowpack. The recent lack of

snowfall and warm temperatures, resulting in melting of what little snow is on the ground, has set Colorado on track to have one of the worst winters on record.

This tracks with the federal 2026 water forecast, released on December 15, that projects "sobering" numbers for the upcoming water year. Water year 2025 resulted in river flows at half or less of normal. The possibility of a severely dry year immediately after that raises the possibility of the Bureau of Reclamation being forced to limit outflows from Lake Powell, thereby reducing flows to the Lower Basin or lowering Lake Powell to "deadpool," a critical water level below which releases cannot be made at all. Reduced flows from Lake Powell could then drop the 10-year rolling average in the Colorado River such that a "Compact call" could be triggered. This is a worst-case scenario but one that becomes more realistic with every dry winter and hot summer.

A Compact call is sure to be a contentious affair, but one that Colorado officials are already preparing for. Accurate measurement of all water rights within the state will allow Colorado to accurately determine exactly how much water it uses, and therefore how much it is required to bypass or curtail, in the event of basin-wide or state-wide water cuts.
(John Sittler)

RECENT CALIFORNIA DECISIONS

THIRD DISTRICT COURT AFFIRMS DENIAL OF WRIT CHALLENGING CITY'S CERTIFICATION OF EIR FOR WAREHOUSE PROJECT, FINDS WATER SUPPLY ASSESSMENT COMPLIED WITH CEQA

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

In a published decision addressing environmental review requirements under the California Environmental Quality Act (CEQA), the California Court of Appeal affirmed the trial court's denial of a writ of mandate challenging the City of American Canyon's certification of an Environmental Impact Report (EIR) and approval of the Giovannioni Logistics Center Project, a 2.4-million-square-foot warehouse development. The court held that the EIR and its associated Water Supply Assessment complied with CEQA and related Water Code provisions, and that the lead agency did not prejudicially abuse its discretion in evaluating water supply information. The opinion provides important guidance on the sufficiency of water supply analyses in EIRs and the standards governing judicial review of CEQA challenges.

Factual and Statutory Background

The Project consists of a large industrial warehouse complex proposed on undeveloped land within the City of American Canyon. Because American Canyon lacks its own groundwater sources, it relies on imported water, primarily from the California State Water Project and additional supplies purchased from the neighboring City of Vallejo under a long-standing 1996 water supply agreement. The Project was subject to environmental review under CEQA (Pub. Resources Code, § 21000 *et seq.*) and related Water Code provisions (Water Code, §§ 10910–10912), which require agencies to include a Water Supply Assessment in EIRs for projects requiring water service. An EIR and Water Supply Assessment were prepared and circulated, and after public review and comment, the City certified the final EIR and approved the Project in March 2023.

Procedural History

The City of Vallejo filed a verified petition for writ of mandate in Napa County Superior Court challenging the adequacy of the EIR's water supply disclosures and compliance with CEQA and the Water Code. Specifically, Vallejo contended that American Canyon's EIR failed to disclose: (1) the actual volume of water purchased from Vallejo; (2) place-of-use restrictions associated with Vallejo's water rights; (3) the potential effects of emergency curtailments on water supply reliability; and (4) the implications of ongoing contract litigation between the cities. The trial court denied the petition, finding no prejudicial abuse of discretion, and entered judgment in favor of American Canyon and the real party in interest, Buzz Oates LLC. Vallejo appealed.

The Court of Appeal's Decision

Water Supply and CEQA Adequacy

The Court of Appeal reviewed the administrative record *de novo* to determine whether the EIR complied with CEQA's informational and analytical requirements, including whether the Water Supply Assessment provided sufficient support for the City's findings and conclusions. Citing long-established CEQA standards, the court reiterated that an EIR must include enough detail to enable informed agency and public decision-making, but is not required to provide exhaustive data or certainty about project impacts. Under CEQA, an agency may only be found to have prejudicially abused its discretion if the EIR fails to provide essential information needed for meaningful consideration.

Disclosure of Vallejo Water Purchases

Vallejo argued that the EIR failed to disclose the actual volumes of water American Canyon purchased from Vallejo and thus obscured the most relevant component of the city's water supply. The appellate court disagreed, finding that the EIR and attached Water Supply Assessment adequately described the

sources and quantities of water available, including treated water and raw water under the 1996 Agreement, and provided the necessary context for evaluating the Project's water demands. The court emphasized that CEQA does not demand scientific precision beyond what is reasonably feasible, particularly where the overall supply clearly exceeds the project's projected needs.

Place-of-Use Restrictions and Emergency Curtailments

Vallejo further contended that the EIR should have included a more detailed analysis of place-of-use restrictions tied to Vallejo's appropriative water rights and the potential effects of emergency curtailment orders on the availability of water for the Project. The court applied CEQA's flexible "reasonable likelihood" standard, under which an EIR must show that water is "reasonably expected to be available" from identified sources, rather than guarantee absolute certainty. The appellate court held that the absence of additional place-of-use detail and specific curtailment projections did not render the EIR inadequate, as such information would not have materially changed the overall assessment of water sufficiency nor assisted informed public participation.

Contract Litigation and Supplemental Disclosures

Finally, the court addressed Vallejo's argument that the EIR should have discussed ongoing contract litigation between Vallejo and American Canyon regarding water rights. The court concluded that the litigation's mere existence, without evidence it would affect the physical availability of water to serve the Project, did not trigger a requirement for more detailed analysis. The appellate court noted that CEQA focuses on physical environmental effects, and speculation about legal disputes that do not change water supply reliability is insufficient to invalidate an EIR.

Conclusion and Implications

The Court of Appeal affirmed the Superior Court's judgment, concluding that American Canyon did not prejudicially abuse its discretion in certifying the EIR or in its water supply analysis. The decision underscores that CEQA's informational requirements must be understood in light of practical constraints and that an EIR's water supply discussion need not resolve all contractual or legal uncertainties so long as it reasonably supports conclusions about availability. For practitioners and local governments, the opinion clarifies the scope of acceptable CEQA water supply disclosures and reinforces the deference afforded to lead agencies where the administrative record shows adequate informational support for environmental decisions. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/C102070.PDF
(Miguel Mauricio)

CEQA, DEFERENCE AND THE "SUBSEQUENT REVIEW" STANDARD—SECOND DISTRICT COURT AFFIRMS STANDARD OF REVIEW POST MND/EIR

Ventura County Citizens Against Mega Gas v. City of Camarillo, *Unpub.*, Case No. B344843 (2nd Dist. Feb. 2, 2026).

The Second District Court of Appeal, in *Ventura County Citizens Against Mega Gas v. City of Camarillo*, an *unpublished* case, reaffirmed a critical principle in California Environmental Quality Act (CEQA) jurisprudence: once a project has a Mitigated Negative Declaration (MND) or Environmental Impact Report (EIR) approved, subsequent modifications are evaluated under a markedly deferential standard.

The court's opinion is less about the environmental merits of a Costco warehouse and gas station and more about the demanding standard petitioners must satisfy when challenging an agency's reliance on CEQA's "subsequent review" provisions.

Background

2007 Approval to 2022 Modification

The City of Camarillo (City) originally approved a 499,000-square-foot commercial center in 2007, supported by a MND. Subsequent approvals in 2011 and 2016 modified site layout and elevations but did not increase the project's maximum square footage. The project was never built.

In 2022, Costco applied to modify the approved project to construct a 163,177-square-foot warehouse and a 16-dispenser (32-position) fuel facility. The City adopted a second subsequent Mitigated Negative Declaration (SSMND), rather than preparing an EIR.

Petitioner Ventura County Citizens Against Mega Gas (VCCAMG) argued that the addition of a gas station and other changed circumstances required preparation of an EIR. The Court of Appeal disagreed.

CEQA's Subsequent Review Provisions

The opinion turns on CEQA Guidelines section 15162 and Public Resources Code section 21166—the statutory and regulatory provisions governing modifications to previously approved projects.

Under section 15162, once an MND or EIR has been adopted, a subsequent EIR or MND is required only if substantial evidence shows either substantial changes in the project, or substantial changes in circumstances, require major revisions to the prior EIR/MND due to new significant environmental effects or a substantial increase in the severity of previously identified significant effects. The court emphasized that the focus is narrow and that a project modification "is not an occasion to revisit environmental concerns laid to rest in the original analysis."

Under a 15162 analysis, the central issue is not whether Costco's proposal could have environmental impacts, but whether it introduced new or more severe impacts beyond what had already been analyzed in the prior MND and Subsequent MND.

The Court of Appeal's Decision

The court followed the analytical approach described in *Friends of College of San Mateo Gardens* (*Friends I* and *Friends II*).

First, the court reviewed whether substantial evidence supported Camarillo's determination to proceed under CEQA's subsequent review provisions to prepare the Second Subsequent MND rather than preparing a new EIR. The court found that the City had properly relied on substantial evidence in its decision to proceed as it did. Once that first determination was made in accordance with 15162, the court reviewed whether substantial evidence supported the conclusion that no new significant impacts—or substantially more severe impacts—would occur as a result of the change to Costco.

The court reviewed the City's decision—not the trial court's—under a *de novo* standard as to legal questions, but applied the substantial evidence test to the City's factual determinations. Under that standard, the petitioner bears the burden of showing substantial evidence that changed circumstances required preparation of an EIR. VCCAMG failed to do so.

The "Fair Argument" Standard—With a Twist

VCCAMG argued that they had established a "fair argument" that the project would cause new significant environmental effects, thus triggering an EIR.

The court acknowledged that an EIR is required if a project modification introduces previously unstudied and potentially significant environmental effects that cannot be mitigated. But in the subsequent review context, the "fair argument" standard operates within the constraints of section 15162. The question is not whether there is a fair argument of environmental impact in the first instance; it is whether there is substantial evidence of new significant effects or a substantial increase in severity compared to the previously approved project.

Incremental Effects Only

The court repeatedly emphasized that its review was limited to incremental effects of the Costco proposal compared to the earlier approved project. The total maximum development (499,000 square feet) remained unchanged. The anchor tenant square footage increased by less than four percent. The City concluded these were not substantial changes requiring major revisions to the previous approved MND and subsequent MND.

As to the fuel facility, the court held that petitioners did not provide substantial evidence showing that the addition created new significant effects or increased severity beyond what mitigation could address.

The opinion underscores a recurring theme: generalized concerns, assumptions, and speculative impacts are insufficient. The court quoted the principle that opinions stating nothing more than "it is reasonable to assume" something "may occur" do not constitute substantial evidence.

Mitigation as the Safety Valve

A key reason the City prevailed was its reliance on mitigation measures.

For air quality, the SSMND updated data, calculated toxic air contaminant levels, applied Ventura County Air Pollution Control District (VCAPCD) thresholds, and continued prior mitigation measures. It also required a monetary contribution to offset emissions.

The court repeatedly returned to the statutory language: an EIR is required only if new significant environmental effects cannot be avoided or mitigated through further revisions to project plans. Because the City found that mitigation reduced impacts to less-than-significant levels—and that finding was supported by substantial evidence—the petitioner could not satisfy section 15162.

No "Disagreement among Experts"

Another important aspect of the standard of review involved CEQA Guidelines section 15064, subdivision (g), which addresses "disagreement among expert opinion."

Petitioners argued that comments from the public required an EIR. The court rejected that contention, concluding there was no meaningful disagreement among experts that would compel further environmental review. Non-expert comments, business-owner concerns about competition, and speculative predictions about urban decay did not amount to substantial evidence of environmental impact.

Conclusion and Implications

The decision concludes that the City properly determined that an SSMND—circulated for public review—was the appropriate vehicle to address changed circumstances because mitigation measures reduced new impacts to less than significant levels.

The court held that VCCAMG failed to establish a fair argument that new significant environmental effects were not effectively remediated by mitigation.

Although unpublished and not citable, *Ventura County Citizens Against Mega Gas* provides a clear illustration of how the standard of review, more than the underlying environmental issues, can determine the outcome. The court's *unpublished* opinion is available online at: https://www4.courts.ca.gov/opinions/nonpub/B344843.PDF

(Brent McManigal, Darien Key)

FEDERAL RESERVED GROUNDWATER RIGHTS IN CALIFORNIA: SUPERIOR COURT ISSUES PHASE 1 DECISION IN THE INDIAN WELLS VALLEY ADJUDICATION

Mojave Pistachios, LLC v. Indian Wells Valley Water District, Case No. 30-2021-01187275-CU-OR-CJC (Orange County Super. Ct. Sept. 15, 2025).

On September 15, 2025, the Orange County Superior Court issued its Phase 1 Statement of Decision in the Indian Wells Valley groundwater adjudication, addressing the United States Navy's asserted federally reserved groundwater right for the Naval Air Weapons Station China Lake (China LakeThe court determined that the United States holds a federally reserved right to 2,008 acre-feet per year (AFY) . The court further concluded this right carries a priority date of December 31, 1947, the date of formal withdrawal of China Lake from the public domain, rendering it senior to subsequently established state-law groundwater rights.

General allocation and physical solution issues remain for later phases. Though this decision dates back a few months, it is one of very few recent decisions addressing federal reserved water rights.

Background

The Indian Wells Valley groundwater adjudication was brought pursuant to the Streamlined Adjudication Act, Code of Civil Procedure section 830 et seq. The proceeding seeks to determine the rights of all persons and entities claiming an interest in the withdrawal and use of groundwater from the Indian Wells Valley Groundwater Basin (DWR Bulletin 118 Basin No. 6-54) and to establish a basin-wide physical solution consistent with California law and the Sustainable Groundwater Management Act (SGMA).

The Basin, which is the sole source of potable water for the Indian Wells Valley, has been designated a high priority basin and critically overdrafted. Competing demands among agricultural, municipal, industrial, and military users led to the filing of the adjudication by the Indian Wells Valley Water District to resolve priority disputes and provide a judicial framework for its long-term management. As in other SGMA-era adjudications, the court will need to reconcile traditional groundwater priority principles with statutory sustainability requirements.

The case was divided into phases. Phase 1 addressed distinct federal issues before turning to broader allocation questions. The court considered whether the United States possesses a federally reserved right for China Lake, whether that right applies to the groundwater in this Basin, what quantity of water is reserved, and what priority date governs the right.

Federally Reserved Water Rights

Federally reserved water rights arise under the Property Clause and Supremacy Clause of the United States Constitution, securing the water rights necessary to support the functions of public lands set aside by the federal government, such as Indian Reservations, national parks or military bases. (U.S. Const. art I, § 1; art VI, § 2).

In *Winters v. United States*, 207 U.S. 564 (1908), the Supreme Court held that when the federal government withdraws land from the public domain and reserves it for a federal purpose, it implicitly reserves the water rights needed to fulfill the purpose of that reservation:

> In view of all the circumstances of the transaction, this Court holds that there was an implied reservation in the agreement of May 1, 1888, 25 Stat. 124, with the Gros Ventre and other Indians establishing the Fort Belknap Reservation, of a sufficient amount of water from the Milk River for irrigation purposes, which was not affected by the subsequent Act of February 22, 1889, 25 Stat. 676, admitting Montana to the Union, and that the water of that river cannot be diverted, so as to prejudice this right of the Indians, by settlers on the public lands or those claiming riparian rights on that river.
>
> The government of the United States has the power to reserve waters of a river flowing through a territory and exempt them from ap-

> propriation under the laws of the state which that territory afterwards becomes. . . .

This reservation of water rights applies to both current and future needs in fulfilling its purpose. Importantly, courts have determined the priority date of a federally reserved right is the date the land was reserved, rendering the right senior to later-established state-law rights. *See: Arizona v. California*, 373 U.S. 546, 600 (1963).

Federally reserved rights are not lost through nonuse. The U.S. Supreme Court has clarified however that the reserved right is limited to the amount of water necessary to fulfill the reservation's primary purposes. *See: Cappaert v. United States,* 426 U.S. 128, 141(1976); *United States v. New Mexico,* 438 U.S. 696, 700 (1978). The Supreme Court has emphasized that only the "minimal amount necessary" to accomplish the reservation's primary purpose is reserved, and that secondary purposes do not expand the scope of the right. While many early cases involved surface water, courts have recognized that the doctrine may extend to groundwater. *See: Cappaert*, 426 U.S. at 142–43.

Procedurally, under the McCarran Amendment (43 U.S.C. § 666 (1952)), the United States waives sovereign immunity in comprehensive state water rights adjudications, compelling federal agencies to quantify and defend these reserved rights in state court proceedings.

The Court's Decision

The Superior Court began with the question of whether China Lake constitutes a federal reservation to which the *Winters* doctrine applies. From there, the court addressed the date on which any reserved right vested, defined the reservation's primary purpose for purposes of limiting the scope of the right, and ultimately determined the quantity of groundwater reserved under the governing federal standard:

Applicability of the Doctrine to China Lake

The court first considered whether China Lake qualifies as a federal reservation to which the *Winters* doctrine applies. After examining the historical record, the court determined that the United States formally withdrew China Lake from the public domain in 1947 pursuant to Public Land Order 431 and set it aside for the specific federal purpose of conducting naval weapons research, development, and testing. That withdrawal satisfied the requirements for application of the *Winters* Doctrine.

The court rejected arguments that federally reserved rights categorically exclude groundwater. Relying on *Cappaert v. United States* and related precedent, the court held that the doctrine extends to groundwater where such water is necessary to accomplish the reservation's primary military purpose. At the same time, the court rejected arguments that the federal reserved right extends to off-reservation uses or to secondary purposes beyond the base's primary mission.

Date of Vesting

Having concluded that the doctrine applies, the court next addressed when the reserved right vested. The United States argued that the right arose as early as 1943, when operations began at the site. The court disagreed.

After reviewing the memoranda, interdepartmental correspondence, and Public Land Orders, the court concluded that the reservation was formally established on December 31, 1947, when China Lake was withdrawn from the public domain pursuant to Public Land Order 431. The court determined that earlier departmental actions between 1943 and 1945 were preliminary steps toward withdrawal but did not effectuate a formal reservation. Accordingly, the reserved groundwater right vested in 1947 and carries that priority date.

Primary Purpose of the Reservation

The court then turned to defining the scope of the reserved right by identifying the reservation's primary purpose. The court determined that China Lake's primary purpose is the research, development, and testing of weapons. While housing and support facilities exist at the installation, the court rejected arguments that the base was established as both a military installation and a "company town." Housing was deemed incidental to supporting the military mission rather than an independent purpose expanding the scope of the reserved right. Consistent with *Cappaert* and *New Mexico*, the court emphasized that only the water necessary to fulfill the primary purpose of the reservation may be reserved.

Quantification of the Right

With those principles established, the court proceeded to quantification. Significantly, the court did not defer the issue to a later phase. Instead, it determined that the Navy holds a federally reserved groundwater right in the amount of 2,008 AFY.

In reaching that conclusion, the court evaluated competing approaches advanced by the parties. The Navy asserted entitlement to nearly 7,000 AFY, relying in part on potential future weapons programs and a hypothetical revitalization of large-scale on-base housing. Other parties argued that the reserved right should be based on peak historic demand approaching 8,000 AFY in 1970, the highest year of recorded water use.

The court rejected both approaches. It declined to base quantification on "Vietnam-era" peak demand or on speculative future expansion. Instead, the court grounded its analysis in current operational conditions, historical trends in water use, and a forward-looking assessment of reasonably probable long-term needs consistent with the "minimal needs" doctrine articulated in *Cappaert* and *New Mexico*.

The court found that projected increases tied to revitalized housing were not supported by sufficient evidence and constituted impermissible speculation under the governing federal standard. Temporary or short-term needs were likewise excluded from the calculation. Applying "primary purpose" and "minimal needs" standard, the court determined that 2,008 AFY represents the quantity of groundwater necessary to fulfill China Lake's primary military purpose.

By resolving applicability, vesting date, primary purpose, quantity, and priority, Phase 1 established a defined federal entitlement to be incorporated into any subsequent allocation. The court did not, however, establish a final basin-wide allocation or adopt a physical solution. Those matters remain for later phases of the adjudication.

Conclusion and Implications

The Phase 1 Statement of Decision in the Indian Wells Valley adjudication represents a significant development in California groundwater law. By holding that the federal reserved rights doctrine applies to groundwater, establishing a 1947 priority date, rejecting quantification based on historic peak demand or speculative expansion, and determining that the Navy's reserved right is 2,008 AFY under the "minimal needs" standard, the court has defined both the scope and limits of the federal entitlement in this Basin.

With Phase 1 concluded, the adjudication now moves to Phase 2, currently set for June 1, 2026. That phase is expected to focus on basin safe yield, the relative rights and priorities of non-federal groundwater claimants, and the development of a physical solution integrating all adjudicated rights into a comprehensive management framework consistent with SGMA's sustainability mandates.

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