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CALIFORNIA WATER™
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CALIFORNIA WATER NEWS

DELTA-MENDOTA MOVES BACK FROM THE BRINK: CALIFORNIA STAFF FINDS REVISED GROUNDWATER PLAN SUFFICIENT TO AVOID PROBATION

California's March 2026 staff assessment for the Delta-Mendota Subbasin marks an important development in the state's Sustainable Groundwater Management Act (SGMA), enforcement process. The State Water Resources Control Board staff concluded that the subbasin's local agencies have made enough progress in revising their groundwater sustainability framework that a probationary designation is not warranted at this time. Instead, staff recommends returning the subbasin to the Department of Water Resources (DWR) for continued oversight.

Background

Delta-Mendota is a high-priority, critically overdrafted basin in the western San Joaquin Valley. It spans portions of six counties and includes extensive agricultural lands, drinking water users, wildlife habitat, and major water conveyance infrastructure. The subbasin has long faced structural overdraft, with average annual pumping exceeding recharge by roughly 140,000 acre-feet. Such overdraft raises the risk of continued groundwater declines, land subsidence, water quality degradation, and harm to domestic well users.

SGMA assigns primary responsibility for groundwater management to local groundwater sustainability agencies, while reserving a backstop role for the state when local plans are inadequate.

Why the Basin Reached the Edge of Probation

The state intervention process began after DWR determined in March 2023 that the subbasin's 2022 groundwater sustainability plans were inadequate. That determination identified serious problems with both substance and coordination. At the time, Delta-Mendota was managed through six separate plans prepared by 23 Groundwater Sustainability Agencies (GSAs) organized into seven GSA groups. DWR found that the plans did not function as a coherent basin-wide strategy.

The deficiencies were broad. They included inconsistent methodologies across the plans, inadequate treatment of chronic groundwater level declines, insufficient land subsidence criteria, limited groundwater quality thresholds, and a failure to properly identify and manage depletions of interconnected surface water. Board staff also identified additional concerns, including the lack of a monitoring network that adequately captured impacts to domestic wells and the failure to fully account for critical infrastructure threatened by subsidence.

Those shortcomings were not technicalities. Under SGMA, a plan must include sustainable management criteria that effectively prevent undesirable outcomes. A fragmented approach that permits continued declines or leaves drinking water users inadequately protected is vulnerable to state intervention. If unresolved, the process could have led to a probationary designation, pumping reporting obligations, fees, and ultimately an interim state-managed plan.

What the 2024 Plan Changed

The 2024 revision materially altered the basin's posture. Most notably, the GSAs replaced the prior patchwork of plans with a single groundwater sustainability plan. That structural change addressed one of the most significant legal defects in the prior framework, namely the absence of basin-wide coordination and consistent methods.

Substantively, the revised plan also made several important improvements. The agencies updated their definitions of undesirable results and more clearly linked them to impacts on actual beneficial users, especially drinking water users and environmental resources. They revised the minimum thresholds for groundwater levels using a more uniform methodology largely tied to 2015 groundwater conditions, while adding mitigation measures for domestic wells.

The new plan also more clearly quantifies overdraft and pairs that analysis with pumping-reduction plans and overdraft-mitigation measures. In addition, the

agencies established pumping limits and allocation backstops designed to reduce extractions through 2030. On groundwater quality, the revised plan expanded the list of constituents for which minimum thresholds were set and strengthened monitoring by increasing the number of representative wells and increasing sampling frequency.

The plan now defines subsidence thresholds as rates rather than total amounts, expands the identification of critical infrastructure, and incorporates management actions intended to reduce subsidence at sensitive facilities. The domestic well mitigation policy provides emergency and interim supplies for eligible users and appears designed to respond quickly to impacts of declining groundwater levels or degraded water quality.

Remaining Technical Weaknesses

Despite the positive staff recommendation, the assessment notes that several issues remain only partially resolved, and those gaps are legally significant because they frame the next phase of DWR oversight and future plan amendments.

One unresolved issue is sustainable yield. The revised plan identifies a range rather than a discrete value. Staff accepted that revision for present purposes but expressed concern that a range may make it harder to determine whether the basin is on track to achieve sustainability. In a regulatory regime built around measurable progress, that ambiguity could become consequential.

A second issue concerns reductions in pumping and allocations. Staff found that the overdraft mitigation program substantially addressed prior deficiencies but also concluded that the pumping reduction plans still lack sufficient detail in some respects, particularly regarding how individual GSAs will implement allocations and meet reduction targets. In other words, the framework is stronger, but implementation mechanics remain a point of risk.

The revised plan makes substantial progress by identifying a connected reach of the San Joaquin River and estimating depletion rates through model-based analysis. Even so, staff concluded that the definitions of undesirable results and minimum thresholds for interconnected surface water are only partially resolved. That is important because SGMA requires basin management to account for adverse impacts on beneficial uses of surface water, not merely groundwater conditions in isolation.

Why Staff Recommends Return to DWR

The central conclusion of the assessment is that the legal and technical deficiencies identified in the 2022 plans have been sufficiently addressed to render probation unnecessary. That recommendation reflects a practical judgment about the purpose of SGMA's enforcement mechanism. State intervention is intended to be temporary and to push local agencies toward an adequate plan, not to displace local control where meaningful corrective action has occurred.

Here, staff appears persuaded that the revised plan, the 2025 pumping reduction plans, and the 2025 domestic well mitigation policy collectively create a sufficiently protective management structure. The agencies have shown more credible commitment to groundwater reductions, better monitoring, clearer criteria, and direct mitigation for impacted drinking water users. Just as important, the single-plan format and memorandum of agreement reduce the coordination failures that undermined the earlier plans.

The recommendation also preserves continued accountability. Returning the basin to DWR does not end oversight. It simply restores the ordinary SGMA review process, including periodic plan evaluation and the expectation that local agencies will continue refining their approach as new data become available.

Conclusion and Implications

The Delta-Mendota staff assessment is best understood as a conditional reprieve, not a final resolution. It signals that substantial mid-course corrections can avert probation under SGMA, even in a critically overdrafted basin with a history of serious deficiencies. At the same time, the assessment makes clear that regulatory tolerance has limits. Local agencies must continue to close data gaps, sharpen sustainable yield analysis, refine allocation programs, and better address interconnected surface water and infrastructure risks.

For practitioners and regulated entities, the update reinforces several points. First, coordination across multiple GSAs is not optional where basin-wide impacts are at stake. Second, drinking water protections and domestic well mitigation are increasingly central to SGMA adequacy review. Third, a basin may avoid

probation without perfect answers, but only where the revised plan is concrete enough to support real implementation and credible state confidence.

In that sense, Delta-Mendota offers a current example of how SGMA enforcement is evolving. The state remains willing to intervene, but it is equally willing to step back when local agencies produce a plan that is materially improved, operationally serious, and capable of further refinement under continued oversight.

(Darien Key, Derek Hoffman)

REGULATORY DEVELOPMENTS

DEPARTMENT OF WATER RESOURCES RELEASES FINAL LAND SUBSIDENCE BEST MANAGEMENT PRACTICES: KEY REGULATORY SHIFTS AND LIABILITY EXPANSIONS FOR GROUNDWATER SUSTAINABILITY AGENCIES

The California Department of Water Resources (DWR) has officially finalized its updated guidance on land subsidence, transitioning from the Draft Subsidence Best Management Practices (BMP) of July 2025 to the Final Land Subsidence BMP issued in January 2026. The final document introduces substantial operational and legal changes. The Final BMP reflects a strategic tightening of regulatory standards, an expansion of liability triggers, and a refined approach to how subsidence metrics like "Critical Head" are defined and applied by

The Final Land Subsidence BMP: Groundwater Sustainability Agencies

Refining "Critical Head" and Zonal Management

The most significant technical and legal shifts in the Final BMP revolve around the definition, application, and certainty of "Critical Head," which is the threshold below which permanent, inelastic subsidence begins. A major shift occurs in how this metric is applied geographically and geologically. While the Draft BMP suggested that critical head could be estimated broadly for entire "aquifer units," the Final BMP refines this approach. Specifically, Section 4.3.2 allows critical head to be estimated for "aquifer units, or vertical intervals of aquifer units, at specific locations." This change is significant for Groundwater Sustainability Agencies (GSAs) managing multi-zoned aquifers, as empowering them to set thresholds for specific "vertical intervals" encourages management by zones. Consequently, pumping in deep aquifers can be subjected to different critical head thresholds than shallow aquifers, limiting broad-brush liability and allowing for more targeted regulatory action.

Furthermore, the Final BMP softens the standard of certainty surrounding critical head, moving away from the Draft BMP's presentation of the metric as a strict "quantitative target." The finalized guidance, found in Section 5.3, explicitly requires that critical head "should be communicated as a relative indicator with associated uncertainty conveyed to stakeholders." This shift officially recognizes the inherent uncertainty associated with using critical head as a metric for subsidence. To ground these estimates, the Final BMP anchors the critical head definition to a state-specified dataset, noting in Section 4.3.2 that representative critical head has been estimated for "a total of 50 sites in Bulletin 118 Appendix I." This establishes a baseline for "best available science," meaning GSAs located near these 50 sites will likely have their localized critical head estimates judged against DWR's published figures.

The End of Proxy Monitoring in Subsiding Basins

Regarding monitoring practices, the Final BMP imposes a strict prohibition on the use of water level proxies in certain contexts. The Draft BMP previously contained permissive language suggesting groundwater levels could be used as a proxy for subsidence. However, Section 6.8 of the Final BMP explicitly bans this practice in basins actively experiencing land subsidence. The document states that the use of groundwater levels as a proxy is not appropriate because subsidence can be measured and monitored directly. As a result, GSAs in subsiding basins may no longer rely solely on groundwater level data to prove Sustainable Groundwater Management Act (SGMA) compliance regarding subsidence and are now mandated to invest in direct subsidence monitoring technologies, such as InSAR, extensometers, or continuous GPS.

Expanded Liability: Inclusion of Well Casings

The scope of infrastructure liability is notably expanded in the new document. While the draft

guidance primarily focused on surface infrastructure such as canals, bridges, and levees, the Final BMP explicitly adds "well casings" to the list of infrastructure heavily impacted by subsidence. Adding well casings dramatically broadens the scope of potential damages. GSAs must now consider the collapse of private agricultural and domestic wells as a direct "undesirable result" of subsidence, opening the door for localized damage claims from individual well owners.

Hardening Cross-Basin Legal Standards

The updated guidance also hardens the legal framework for cross-boundary disputes by adding explicit statutory citations regarding a GSA's duty to its neighboring subbasins. Section 7.2 of the Final BMP notes that DWR is required to evaluate whether a Plan "adversely affects the ability of an adjacent basin to implement their groundwater sustainability plan," explicitly citing Water Code § 10733(c) and 23 CCR § 355.4(b)(7). If pumping in one basin causes a drop in critical head and subsequent subsidence in an adjacent basin, the offending GSA is on clear notice that DWR will evaluate this under specific statutory authority.

Conclusion and Implications

Ultimately, the January 2026 Final Land Subsidence BMP requires GSAs to be more precise in their depth-specific management while simultaneously forcing them to acknowledge the inherent uncertainty in their models by explicitly defining critical head as a "relative indicator" rather than a strict target. Furthermore, the explicit prohibition of water level proxies in subsiding basins and the inclusion of well casings as protected infrastructure significantly raises the compliance requirements for GSAs across the state.

For more information, *see:* https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Sustainable-Groundwater-Management/Best-Management-Practices-and-Guidance-Documents/Files/Land_Subsidence_BMP.pdf
(David Boyer)

STATE WATER RESOURCES CONTROL BOARD TO CONSIDER EXEMPTING PUMPERS OF LESS THAN 20 ACRE-FEET PER YEAR IN PROBATIONARY BASINS FROM REPORTING AND FEES

On April 7, 2026, the State Water Resources Control Board (State Water Board) will consider whether to exempt pumpers in the Tulare Lake and Tule Subbasins—the two basins that have been declared probationary under the Sustainable Groundwater Management Act (SGMA)—from reporting their extractions or paying fees if they pump less than 20 acre-feet per year. Draft Resolutions were published on February 27, 2026. (California Water Boards, Bulletin, https://content.govdelivery.com/accounts/CAWRCB/bulletins/40bf7a4.)

Background

The SGMA Probation Process

Under SGMA, all groundwater basins in the state, as identified in Bulletin 118 published by the Department of Water Resources (DWR), must be managed under a Groundwater Sustainability Plan (GSP) that provides a plan for the basin to be "sustainable" by 2040. Those plans are produced by Groundwater Sustainability Agencies (GSAs), which are usually local water agencies or groups of local water agencies that elect to undertake management of all or part of the basin in which they operate. GSPs must be submitted to DWR, which determines whether or not a plan is "adequate." If a basin either fails to create a GSA, fails to adopt a GSP, or adopts an inadequate GSP as determined by DWR, it is referred to the State Water Board for a determination of whether it should be deemed "probationary." A probationary basin is subject to reporting requirements and fees imposed by the State Water Board, and after one year of probation may be subject to an "interim" GSP prepared and adopt by the State Water Board.

The Tulare Lake Subbasin (Bulletin 118 Basin No. 5-022.12) and the Tule Subbasin (Bulletin 118 Basin No. 5-022.13) comprise the southern portions of Kings and Tulare counties, respectively. Both were designated as high-priority and critically overdrafted in DWR's initial assessment for SGMA prioritiza-

tion. After the initial GSPs were submitted in 2020, the plans covering six critically overdrafted basins in the San Joaquin Valley, including the Tulare Lake and the Tule, were found inadequate by DWR and referred to the State Water Board for probationary proceedings. Tulare Lake and Tule were the first and second, respectively, to be set for probationary status hearings.

The Tulare Lake and Tule Subbasin Probationary Hearings

On April 16, 2024, the State Water Board held its probationary status hearing regarding the Tulare Lake Subbasin, which concluded with a unanimous vote to place the subbasin in probation. Among the actions taken by the board in its probation resolution was a requirement that certain groundwater wells be metered and that nearly all extractions be reported.

At the time of the hearing, only three of the five GSAs in the subbasin had policies requiring meters. (State Water Resources Control Board, Tulare Lake Subbasin Probationary Hearing Final Staff Report, https://www.waterboards.ca.gov/sgma/docs/tulare-lake/202403-tulare-lake-pbh-final-staff-report.pdf, pp. 129–130.) Due to the lack of meters on many wells, the staff report relied on satellite imagery and evapotranspiration analysis to estimate groundwater use. (*Id.*, pp. 130–131.) But the staff report concluded that metering was necessary for future management, citing problems with relying on the evapotranspiration method. Specifically, it does not capture non-irrigation uses of groundwater ("e.g., dairy operations, groundwater exports, commercial uses, and oil and gas injection") and it relies on assumptions about crop water demand, which can fluctuate both due to climate conditions and agricultural practices. (*Id.*, p. 129.) Accordingly, the State Water Board required all extractions over 500 acre-feet per year to be metered.

It also required all extractions other than "de minimis" domestic extractions (i.e. less than 2 acre-feet per year and only for domestic use) to be reported and subject to fees. The staff report also rejected the notion of exempting drinking water systems, including "state small water systems," from these reporting obligations, arguing that the reporting "would provide critical information that is not already available through existing reporting systems, such as well specific monthly pumping volumes, which can affect more localized groundwater trends. (*Id.*, p. 131.)

On September 17, 2024, the State Water Board likewise held its probationary hearing regarding the Tule Subbasin. And again, it unanimously voted to place the subbasin in probation. And once again the issue of metering and reporting featured prominently. The staff report stated that none of the GSAs in the subbasin had metering policies at the time of the report. (State Water Resources Control Board, Tule Subbasin Probationary Hearing Final Staff Report, https://www.waterboards.ca.gov/sgma/docs/tule/202409-tule-pbh-final-staff-report.pdf, p. 148.) Therefore, the State Water Board established the same metering and reporting requirements as in Tulare Lake, and for the same reasons, with one significant difference. (*Id.* at pp. 147–148.) The Tule Subbasin has for years been the center of attention in controversies regarding the Central Valley Project's Friant-Kern Canal, which runs through the basin and carries water from Millerton Lake on the San Joaquin River to contractors throughout the eastern part of the San Joaquin Valley. Groundwater pumping in the area has, over the course of decades, caused significant land subsidence that has impaired the capacity of the canal and required costly repairs. (Friant Water Authority, Friant-Kern Canal Middle Reach Capacity Correction Project, https://friantwater.org/fkc-mrccp.) Citing the significance of those issues, the State Water Board required all groundwater extractions near the canal, excepting only de minimis domestics, to be metered. Again, all groundwater extractions other than de minimis domestics were to be *reported*, even where they were not metered. And a fee for each acre-foot of water pumped would be assessed based on the reported or metered extractions. (State Water Resources Control Board, SGMA, Reporting and Fees, https://www.waterboards.ca.gov/sgma/reporting_and_fees.html.)

The Proposed Exclusion

Both resolutions propose to exclude "small pumpers" (i.e., less than 20 acre-feet per year for any purpose) from reporting and fee requirements based on Water Code section 10735.2, subdivision (c), which allows the State Water Board to exclude extractions that are "likely to have a minimal impact on basin withdrawals." The resolutions rely on staff analyses of evapotranspiration data, which found that these "small pumpers" constitute 44 percent of Tulare Lake pumpers and 49 percent of Tule pumpers while only

constituting about 1 percent of extraction volume in Tulare Lake and about 2 percent in Tule. The Tule resolution includes a caveat that this exclusion would not apply within two miles of the Friant-Kern Canal.

Conclusion and Implications

These two basins are the first "test cases" of the State Water Board's probation process under SGMA. The enforcement of groundwater extraction regulations, including reporting requirements and fees, has always presented challenges, particularly in geographically large basins like the Tulare Lake and the Tule. The policy rationale for excluding the small pumpers is not expressly stated, but it is a reasonable conjecture that it is designed to reduce the number of individuals subject to the requirements and reduce enforcement costs. But questions remain regarding the data used to conduct the analysis. The evapotranspiration method has limitations, as discussed in the probation hearing staff reports. And the draft resolutions also do not identify how the crop water requirements of individual fields are attributed to different users. Further individualized data collection may be necessary to understand and manage the water uses in these two basins, and these exclusions, if adopted, will leave the collection of some of that data to the GSAs.
(Brett Stroud)

***Editor's Note**:* The author represents clients in both probationary basins, including a GSA in the Tulare Lake Subbasin.

LAWSUITS FILED OR PENDING

ENVIRONMENTAL GROUPS FILE LAWSUIT CHALLENGING TRUMP ADMINISTRATION'S IMPLEMENTATION OF 'ACTION 5' PLAN FOR THE CENTRAL VALLEY PROJECT

On March 2, 2026, three environmental non-government associations (NGOs)— San Francisco Baykeeper, Center for Biological Diversity, and Friends of the River—filed a lawsuit in the United States District Court for the Eastern District of California against the United States Bureau of Reclamation (USBR), the federal government agency responsible for California's Central Valley Project (CVP). The complaint claims that the USBR has violated the federal Endangered Species Act (ESA) and the terms of the 2024 Biological Opinion (BiOp) issued by the National Marine Fisheries Service (NMFS) in consultation with USBR, which sets operational requirements on the CVP to protected endangered and threatened species in the Sacramento-San Joaquin Delta (Delta). [*San Francisco Baykeeper, et al. v. U.S. Bureau of Reclamation, et al.*, Case No. 2:26-cv-00671 (E.D. Cal.)]

Background

The CVP is one of the largest water projects in the world, built during the Great Depression as a collaborative public works project between the state and federal governments. It provides an annual average of more than 5.6 million acre-feet of water to more than 250 contractor agencies throughout a large portion of the state—for municipal and industrial use, irrigation use, and environmental uses such as wildlife refuges. (USBR, Central Valley Project, https://www.usbr.gov/mp/cvp/.)

The operation of the CVP is intertwined with the operation of the State Water Project (SWP), and both projects are constrained in their ability to deliver water by the strictures of the ESA. In particular, operations in the Delta are restricted due to the effects of diversions on endangered and threatened fish species. Under the ESA, a project operated by a federal agency that might impact a protected species must be supported by a BiOp evaluating the impact, which may include an Incidental Take Statement (ITS) allowing the project to impact the species at certain levels or subject to certain measures that mitigate the harm. The BiOps and ITS governing the operations of the CVP have been the subject of extensive controversy and litigation for decades.

The Trump Administration's Policy and Action 5 Plan

On the day of his inauguration for his second term, President Trump issued a memorandum declaring his policy goal "to route more water from the Sacramento-San Joaquin Delta to other parts of the state for use by the people there who desperately need a reliable water supply." (Pres. Memo., Putting People over Fish: Stopping Radical Environmentalism to Provide Water to Southern California (Jan. 20, 2025), https://www.whitehouse.gov/presidential-actions/2025/01/putting-people-over-fish-stopping-radical-environmentalism-to-provide-water-to-southern-california/.) Later that month, he issued an executive order that directed several cabinet departments to "take all measures, consistent with all applicable authorities, to ensure adequate water resources in Southern California." (Exec. Order No. 14181, 90 Fed.Reg. 8747 (Jan. 31, 2025), https://www.federalregister.gov/documents/2025/01/31/2025-02174/emergency-measures-to-provide-water-resources-in-california-and-improve-disaster-response-in-certain.) It also included a directive "to operate the CVP to deliver more water and produce additional hydropower … notwithstanding any contrary State or local laws." (*Id.*, § 2(c).)

The order also directed USBR to reconsider the plan for long-term operations of the CVP, which it proceeded to do in 2025. (USBR, Long-Term Operations of the Central Valley Project and State Water Project, https://www.usbr.gov/mp/nepa/nepa_project_details.php?Project_ID=54661.) USBR formulated a new set of operational criteria, referred to as "Action 5," which it approved and adopted on December 4, 2025. (USBR, Record of Decision: Long-Term Operations of the Central Valley Project and State Water Project (Dec. 2025), https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=57167.)

The Complaint

The NGOs allege that CVP operations in 2026 have exceeded the take limits set in the 2024 BiOp. They also allege that USBR has failed to take mitigation actions required by the 2024 BiOp—specifically, adjusting Delta exports to achieve certain flow targets in the San Joaquin River when certain take thresholds are met. In addition to these claimed ESA violations, the NGOs claim that the Action 5 operations violate D-1641, the water rights decision issued by the State Water Resources Control Board (SWRCB) that places conditions on the operations of the CVP. The SWRCB submitted extensive, negative comments on the Action 5 proposal. (Assistant Deputy Director Diane Riddle, SWRCB, to Acting Regional Director Adam Nickels, USBR, Nov. 10, 2025, https://www.documentcloud.org/documents/26331183-2025-11-10-swrcb-letter-to-us-bureau-of-reclamation-regarding-action-5/.)

Finally, they claim that implementation of Action 5 will result in further violations and that it should not be implemented without further consultation and a revised BiOp.

Conclusion and Implications

This lawsuit by the NGOs has the potential to significantly impact operations of the CVP. In addition to seeking an injunction against further violations of the 2024 BiOp, the NGOs are also seeking a court order requiring a new consultation that would result in a new—perhaps more restrictive—BiOp.

But this case also represents a broader clash between state and federal authorities over Delta policy and may be only one front in that conflict. The complaint is available online at: (Complaint for Declaratory and Injunctive Relief, https://storage.courtlistener.com/recap/gov.uscourts.caed.483097/gov.uscourts.caed.483097.1.0.pdf
(Brett Stroud)

CONSERVATIONISTS AND TIRE MANUFACTURES ARGUE SUFFICIENCY OF EVIDENCE THAT 6PPD FROM TIRES RESULTS IN TOXIC RUNOFF INTO SURFACE WATERS

Recently, the United States District Court for the Northern District of California heard oral argument during a three-day bench trial related to claims that tire manufacturers violated the federal Endangered Species Act (ESA) through their inclusion of 6PPD in tires, a chemical that creates a byproduct lethal to protected fish populations. While plaintiffs link this toxin to "urban runoff mortality syndrome," the manufacturers argue that laboratory studies fail to account for real-world environmental variables and that no safe alternative exists. Ultimately, the court's decision will determine if these indirect chemical impacts constitute a legal "take" under the ESA, potentially redefining the reach of liability under the Act. A decision is expected soon. [*Institute for Fisheries Resources, et al. v. Bridgestone Americas, Inc., et al.* Case No. 3:23-cv-5748 (N.D. Cal.).]

Background

In 2023, Earthjustice filed a complaint on behalf of the Institute For Fisheries Resources and Pacific Coast Federation of Fishermen's Associations alleging that several major tire manufacturers are violating the ESA through the use of the chemical 6PPD, an additive used since the 1950s to prevent tire degradation. The complaint states that when 6PPD reacts with ground level ozone, it forms a toxic byproduct known as 6PPD-quinone (6PPD-q) and is highly lethal to aquatic life, causing "urban runoff mortality syndrome." Concentrations of 6PPD-q can kill coho salmon within hours of exposure.

Plaintiffs allege that the ubiquitous release of 6PPD-q into waterways via storm water runoff constitutes a "take" of dozens of populations of listed salmon and steelhead, prohibited under Section 9 of the ESA. Plaintiffs seek to prohibit the further manufacture and distribution of tires containing 6PPD unless the companies obtain federal permits or implement mitigation measures. They argue that the industry has known about these devastating environmental impacts for years yet failed to adopt available, less toxic alternatives.

At the U.S. District Court

The District Court denied a defendant tire manufacturer's motion for summary judgment late last year, finding that tire manufacturers who are no longer manufacturing or distributing tires may still be subject to injunctive relief for ongoing discharges of 6PPD-q from ongoing use of its tires on roadways. The court considered as part of its ruling that, if granted, relief might require the manufacturer to obtain a permit for the ongoing 6PPD-1 discharges from the tires it already manufactured and fund mitigation measures for the continuing harm of the toxic runoff.

In January of this year, the court heard arguments during a three-day bench trial. Plaintiffs presented evidence to show that 6PPD-q is the primary driver of urban runoff mortality syndrome. Plaintiff's expert witnesses testified on the chemical reaction creating 6PPD-q and its runoff into waterways from road surfaces and presented evidence on the lethal consequences it has on protected salmon and steelhead trout populations, even at low concentrations.

In response to the plaintiffs' arguments, the defense's experts argued that the plaintiffs rely on an over-simplification of complex environmental conditions, asserting that laboratory toxicity results do not necessarily translate to real-world river systems. Defense experts maintained that 6-PPQ is highly reactive and subject to degradation and dilution, making it difficult to prove that lethal concentrations exist where fish are present. Tire manufacturers further contended that 6-PPD is an essential ingredient for tires, ensuring passenger safety and tire longevity, for which no suitable alternative currently exists.

Presiding U.S. District Judge James Donato expressed skepticism for the defense's theories on foreseeability and proximate cause and appeared unpersuaded by both parties' focus on 6PPD-q toxicity and the presence of the byproduct in waterways. Instead, Judge Donat suggested the parties present evidence related to specific concentrations of 6PPD-q in runoff and demonstrated harms resulting from such runoff. This in turn could indicate that the court will base a ruling, at least in part, on the ability of plaintiffs to prove that specific concentrations of 6PPD-q caused harm to protected species; absent such proof, the court may find that the presence of 6PPD-q in waterways is not itself sufficient to hold the defendant tire manufacturers liable, even if there is scientific consensus that 6PPD-q is toxic to protected fish species that may also be present in waterways where 6PPD-q occurs. A ruling is expected soon.

Conclusion and Implications

A ruling for the plaintiff would represent an expansion of the "take" prohibition under Section 9. Typically, ESA liability is often tied to direct physical actions, such as land development or water diversion. Holding manufacturers liable for the downstream chemical byproducts of a product sold into the stream of commerce would potentially capture even those manufacturers who no longer produce the product, but which is still in use. It may signal further to industry manufacturers and producers that they might be held liable under the ESA for the indirect but foreseeable environmental consequences of their chemical formulations, potentially opening the door for similar litigation regarding other types of contaminants in water sources that result in harm to protected species.

The outcome of this case could also instruct future similar cases on what type of evidence is relevant to help courts decide liability for manufacturers under Section 9 of the ESA. A ruling in favor of the defense could result in a higher evidentiary bar for proving proximate cause for harm under the ESA. For example, if the court agrees lab data is not field data, it could signal to future plaintiffs that general scientific consensus on a toxin's lethality is insufficient for an ESA claim. More granular data showing documented harm and specific concentrations at specific times would be required and would be much more costly and potentially challenging to prove.

The original complaint can be found here: https://earthjustice.org/wp-content/uploads/2023/11/6ppd-complaint.pdf
(Miles Krieger, Darien Key)

RECENT FEDERAL DECISIONS

NINTH CIRCUIT COURT INVALIDATES 2016 EPA CADMIUM RECOMMENDATION FOR VIOLATION OF FEDERAL ENDANGERED SPECIES ACT

Center for Biological Diversity v. U.S. Environmental Protection Agency, ___F.4th___, Case No. 23-2946 (9th Cir. Mar. 3, 2026).

In 2016, the U.S. Environmental Protection Agency (EPA) issued recommendations, in accordance with the federal Clean Water Act, which relaxed criteria for toxic cadmium levels in fresh water. In 2022, the Center for Biological Diversity challenged the recommendation and, last month, the Ninth Circuit, through a three-judge panel, affirmed the District Court decision thereby vacating the 2016 recommendation for violation of the Endangered Species Act (ESA).

Background

The EPA's 2016 recommendations on cadmium, an acutely toxic mineral largely introduced into the environment through mining, agricultural, and manufacturing activities, significantly weakened criteria for concentrations of cadmium in fresh water, creating guidance that allowed for increased permissible concentrations.

In accordance with the Clean Water Act, states must promulgate water quality standards for all waters within their jurisdictions and the EPA influences those standards in issuing recommendations that provide nationwide guidance which informs state criteria. The recommendations must reflect the latest scientific knowledge, as well as identifiable effects of pollutants on humans and animals.

Relatedly, under the Endangered Species Act, federal agencies, including the EPA, must carry out consultations with the Fish and Wildlife Service and/or the National Marine Fisheries Service before taking any agency action that may affect any endangered species or their critical habitat. Following consultation, the agency must prepare an analysis of the potential effects on listed species, and prepare a opinion detailing, at minimum, whether the actions will result in jeopardy of the species. Agencies may engage in informal consultation if all parties agree that they action will not likely to adversely affect species or habitat. Otherwise, formal consultation is required. Here, however, the EPA undertook neither formal, nor informal, consultation before issuance of the 2016 recommendation.

Cadmium's documented toxicity shows several, adverse health effects on aquatic life. The EPA first promulgated recommendations for cadmium in 1980, with updates in 1995 and 2001. Since the 2001 recommendation, approximately 100 new studies have been published detailing the effect of cadmium on aquatic life and habitats, including data on 75 new species. Nine of those species are listed as endangered or threatened under the ESA.

Prior to issuance of the 2016 recommendation, which relaxed criteria for permissible concentrations of cadmium in fresh water, the EPA declined to undertake any consultation, citing that such consultation is only required for agency action, to which the EPA contends the recommendation is not. In 2022, the Center for Biological Diversity (CBD) filed an action to invalidate the 2016 cadmium recommendations, and compel the EPA to engage in the consultation process, as mandated by the ESA.

The Ninth Circuit's Decision

In addressing the central issue and affirming the trial court, the Ninth Circuit found that EPA's promulgation of the 2016 recommendation constitutes agency action, thereby requiring consultation under the ESA. The court emphasized the term agency action has been interpreted broadly and consistently to ensure the ESA's substantive protections. The court further noted the threshold which triggers the consultation requirement is relatively low. The recommendations promulgated by the EPA satisfied both standards.

Discussing the EPA's issuance of recommendations broadly, the court noted that the action constitutes more than merely non-binding guidance as the recommendations serve as the default on which states rely in adopting their own standards. As such, the recommendations are likely to produce nationwide consequences, including impacts on listed species and their habitats, while also acting as action-forcing mechanisms for every state. Such effects meet the threshold for consultation requirement and necessitates reliance on best available science to ensure the compliance with species and habitat protections prioritized under the ESA.

The Ninth Circuit stipulated an exception to the consultation requirement where the agency determines that no negative effect on listed species or habitat will result from the recommendation. However, because of documentation demonstrating cadmium's effects on listed species and their habitats, and ample evidence to demonstrate foreseeability, in 2016, that a state may adopt the recommendation in at least one body of water inhabited by at least one member of the listed species, the exception does not apply to the present case. As the court further stated, evidence of such foreseeability is clear in states' history of adopting recommendations promulgated by the EPA, the EPA's implementation of its recommendations in states with non-compliant water quality standards, and through example of states' promulgation of regulations requiring or incentivizing state officials to adopt EPA's recommendations.

Standing

Beyond the merits of the case, the court additionally rejected the EPA's arguments that CBD lacked standing, and that alleged injuries were too attenuated to rise to the level of redressability by the court. The court held that CBD's members sufficiently established actual and imminent injury as a result of the EPA's failure to engage in consultation, and subsequent recommendations, because of the action's potential to create both cumulative, and interstate, effects of creation of less stringent state standards which, in turn, directly effects the members of CBD's use of the protected species through listing of several activities, including recreational and educational activities. Importantly, the court stated, when a plaintiff challenges a procedural right, the requirements of causation and redressability are relaxed, in that the plaintiff need only demonstrate he holds a procedural right that, if exercised, could protect his concrete interests, and those interests fall within he zone of interested protected by the statute at issue, and CBD sufficiently provided such support.

Conclusion and Implications

In affirming the deciding of the U.S. District Court, the Ninth Circuit found the EPA violated the ESA in failing to engage in consultation before promulgation, and publication, of the 2016 recommendation. The Ninth Circuit recognized application of the consultation requirement to action taken in compliance with the Clean Water act constituted an issue of first impression for the court. However, the court disagreed with arguments made by the EPA which claimed the decision would open a floodgate for future claims, thereby forcing agencies to consult on every piece of non-binding guidance issued. Instead, the Court cited specific details to the present case which set it apart including, the potential for substantial effect and nationwide influence the EPA recommendations have the potential to generate.

In accordance with the court's decision, the 2016 recommendation is invalidated and the EPA is required to engage in consultation, in accordance with ESA requirements, and promulgate new guidance. The Ninth Circuit's opinion is available here: Accessible here: https://cdn.ca9.uscourts.gov/datastore/opinions/2026/03/03/23-2946.pdf
(Derek Hoffman, Darien Key)

U.S. DISTRICT COURT AFFIRMS CWA NOTICE OF VIOLATION LETTERS NEED ONLY BE 'REASONABLY SPECIFIC' TO SUFFICIENTLY ALLERT VIOLATOR OF UNLAWFUL DISCHARGE

Californians for Alternatives to Toxics v. Travis Moreda Dairy, ___F.Supp.4th___, Case No. 24-CV-06632-SI (N.D. Cal. Jan. 27, 2026).

In *Californians for Alternatives to Toxics v. Travis Moreda* the United States District Court for the Northern District of California denied a dairy farm Defendants' motion for judgment on the pleadings. In doing so, the court provided instruction on what constitutes an appropriate notice of violations letter under the federal Clean Water Act (CWA)—holding that while they must include some level of particularity, the CWA does not require over-exhaustive detail. If a letter contains enough information to allow an alleged violator to identify the unlawful discharge and rectify the problem, it is likely sufficient.

Factual and Procedural Background

Defendants operate a dairy farm that would be classified as a medium concentrated animal feeding operation (CAFO) under the National Pollutant Discharge Elimination System (NPDES) program. Over the past several years, the dairy has allegedly polluted water into waters of the United States without a permit in violation of Section 301(a) of the Clean Water Act. Supposedly, rain carried liquified manure from the dairy into a creek on the premises and, subsequently, nearby river systems. Plaintiffs, Californians for Alternatives to Toxics, initially sent a Notice of Violations letter to the Defendants, but filed its complaint after the dairy failed to act. The Defendants initially moved for dismissal, or alternatively, summary judgment, but both were denied. Upon the conclusion of the initial case management conference between the parties, Defendants filed a motion for judgment on the pleadings.

The District Court's Holding

As an initial matter, the court rejected Plaintiff's procedural argument that Defendants attempted to relitigate the legal theories it previously raised in its motion to dismiss, which the court concluded had failed on the merits, and thus could not be raised again. Plaintiffs argued the court was bound by its previous decision and language under the "law of the case" doctrine. However, while a prior decision will typically direct the court's discretion, Defendants' arguments challenged the adequacy of Plaintiff's notice letter, disputing the court's subject matter jurisdiction to hear a CWA claim. Section 505(a)(1) of the CWA permits citizens to file enforcement actions against alleged violators after the citizen plaintiff provides the violator with a 60-day notice of its intent to file suit. Under the CWA regulations, section 135.5(a), the letter must make the violator aware of the relevant standards or limitations it has violated, the location of the violation, the dates of the violation, and the contact information of the party giving notice. A failure to do so precludes a court from exercising jurisdiction over the case, and thus, the law of the case doctrine could not supersede this issue. Further, the court noted that Plaintiffs themselves consented to the Defendants' motion during their case management conference. Therefore, Defendants were not barred from again raising its argument regarding the letter. However, though the court could hear the argument, it still found it unpersuasive.

Regarding its substantive analysis, the court determined that the letter ultimately met the requirements outlined under the CWA regulations and was accordingly sufficient. It properly described the dairy as a medium CAFO, alleging that stacks of manure within it were exposed to rain—leading to discharge into a creek on the premises and subsequently the waters of the United States it was connected to. The letter also highlighted that the dairy applied a high amount of liquid manure to its fields, leading to even greater runoff. The dairy was informed that, through its actions, it was discharging pollutants without an NPDES permit. This relatively detailed description allowed the Defendants to adequately understand the nature of the supposed violations and correct the problem.

The Defendants argued that the letter merely listed 200 "significant" rain events over a five-year period from 2019-2025, attributing discharges to every date where hard rain occurred. This supposedly made it

unclear as to when actual discharges occurred, making the letter insufficient. The court disagreed, concluding it adequately put the Defendants on notice. "Significance" did not need to be addressed in the context of the motion. Importantly, the court emphasized that a notice letter does not need to allege specific dates when violations are ongoing, which the letter explained was occurring.

In similar fashion, the court rejected the arguments that the letter omitted facts showing a connection between the discharge and impacted waters via a continuous surface connection as required by the *Sackett v. EPA* decision. This dispute would be addressed at a later stage of the proceedings when substantive CWA claims would be argued. It was irrelevant in the court's determination to grant the motion.

Conclusion and Implications

Ultimately, the court determined that the notice letter contained enough information for defendants to identify and rectify the problem and denied the Defendants' motion for judgment on the pleadings. Though merely a District Court ruling on a motion, *Californians for Alternatives to Toxics v. Travis Moreda Dairy* serves as a useful application of the law surrounding the sufficiency of a notice of violation. It underscores that the purpose of a notice letter is to identify the problem to the alleged violator and allow them to rectify it. As long as the letter meets the criteria outlined in 40 C.F.R. § 135.3(a) and is "reasonably specific" regarding the nature and time of the supposed violations, it is likely sufficient. The court's opinion is available online at: https://cases.justia.com/federal/district-courts/california/candce/3:2024cv06632/436905/60/0.pdf
(Adam Nir)

RECENT CALIFORNIA DECISIONS

CALIFORNIA SUPREME COURT DECLINES REVIEW OF CHALLENGE TO SWRCB'S PROBATIONARY DETERMINATION FOR THE TULARE LAKE SUBBASIN

State Water Resources Control Board v. Superior Court Kings County, ___Cal.App.5th___, Case No. F088909 (5th Dist. Oct. 29, 2025).

On February 12, 2026, the California Supreme Court declined to review the Kings County Farm Bureau's challenge to the State Water Resources Control Board's (State Water Board) designation of the Tulare Lake Subbasin as "probationary" under the Sustainable Groundwater Management Act (SGMA). The decision leaves in place the Fifth District Court of Appeal's rulings that reversed the trial court's preliminary injunction and narrowed the claims available to proceed. The matter returns to the Kings County Superior Court for further proceedings on the pending writ of mandate, including the good-actor exclusion claim pursuant to Water Code section 10735.2(e) and the unresolved foundational challenge to the probationary determination itself.

Background

SGMA requires locally developed Groundwater Sustainability Plans (GSPs) for high and medium-priority basins and authorizes State intervention when plans are inadequate or are not being implemented in a manner likely to achieve sustainability. After the Department of Water Resources (DWR) issued two determinations, first in 2022 and again in 2023, that the Tulare Lake Subbasin's Groundwater Sustainability Plan was inadequate, the State Water Board initiated probationary review. The State Water Board published a staff report, conducted workshops, issued notice, and held a public hearing in April 2024, ultimately designating the basin as probationary in Resolution No. 2024-0012. Probation triggered mandatory groundwater extraction reporting requirements and associated fees for extractors pumping more than two acre-feet.

Shortly thereafter, the Kings County Farm Bureau and several landowners filed a petition for writ of mandate and complaint in Kings County Superior Court alleging multiple statutory and constitutional deficiencies, including lack of notice, improper fees, improper "underground regulations," unlawful expansion of authority, and failure to apply SGMA's good-actor exclusion. In September 2024, the trial court issued a broad preliminary injunction restricting the Board from enforcing most of the probationary-related requirements.

The State Water Board appealed, and the Fifth District issued two companion opinions on October 29, 2025: one addressing the preliminary injunction and one addressing the trial court's demurrer rulings. Those decisions reversed the injunction, narrowed the action substantially, and held that only one claim, the good-actor exclusion issue, could proceed.

The Farm Bureau sought California Supreme Court review, which has now been denied.

The Court of Appeal's Decision

The appellate court's decisions produced several key holdings that now remain final:

"Underground Regulation" Claims Dismissed

The Court of Appeal held that SGMA expressly exempts the State Water Board's probationarydesignation actions from the Administrative Procedure Act. As a result, the Farm Bureau's "underground regulation" theory cannot proceed.

Constitutional "Tax" Claims Dismissed

Because the California Constitution's "pay first" rule requires payment of disputed fees prior to judicial challenge, the court concluded the Farm Bureau could not litigate its claims that the extraction fees constituted an unlawful tax without first paying those fees.

Notice Violation Claims Rejected

The trial court had found the Farm Bureau likely to succeed on its notice claim. The Court of Appeal disagreed, holding that the evidentiary record contained no substantial evidence showing the Board failed to notify "persons known to extract" groundwater at least 60 days before the hearing, as SGMA requires. The Court emphasized that the State Water Board documented sending notice to approximately 2,000 parcel owners, relevant local governments, tribes, public water systems, and its groundwater management.

Authority to Require Revised Plans Confirmed

The appellate court held that the State Water Board has implicit statutory authority to request submission of revised GSPs after a basin is designated probationary. This authority is consistent with SGMA's structure, which shifts review from DWR to the State Water Board during intervention. The court found no conflict with DWR's regulatory authority.

Only the "Good Actor" Exclusion Claim Survives

The remaining claim centers on SGMA's provision requiring the State Water Board to exclude from probation areas where local agencies can demonstrate they are sustainably managed, even if the broader subbasin plan is inadequate.

The appellate court emphasized that the trial court may only proceed on this narrow issue: whether two groundwater sustainability agencies were improperly denied an analysis that could have resulted in their exclusion from the probationary designation.

Impact of the Supreme Court's Denial of Review

By declining review, the Supreme Court has allowed the appellate rulings to stand. This clears the way for the litigation to resume in the Kings County Superior Court, now with the scope limited primarily to the good-actor exclusion issue and the remaining foundational writ challenge to the probationary determination.

The appellate decision also dissolved the injunction that had prevented the Board from implementing its probationaryphase activities. The Board has since extended the groundwater extraction reporting deadline to May 1, 2026, to provide additional time for subbasin pumpers to comply.

What Remains at the Trial Court

While the appellate decision dissolved the broad preliminary injunction, the underlying litigation is far from over. The Kings County Superior Court will now conduct a full trial on the merits of the writ of mandate. Crucially, although the Court of Appeal concluded that only the good-actor claim could support a preliminary injunction, it expressly did not resolve the underlying merits of the Farm Bureau's core writ claim. This foundational challenge—alleging that the State Water Board's probationary designation was arbitrary, capricious, or unsupported—remains pending and will proceed on remand. The appellate opinion specifically noted that the State Board "has yet to respond to the writ of mandate".

Moving forward, the trial court will focus on two primary tracks: the foundational validity of the probationary designation itself, and the surviving "good-actor" exclusion theory. Under SGMA's good-actor framework (Water Code § 10735.2(e)), the court will scrutinize how the Board handled local sustainability data. Furthermore, the appellate court left open the possibility that the trial court could issue a narrower injunction on remand, limited only to those agencies actively asserting this exclusion.

The key remaining questions include whether the State Water Board arbitrarily ignored localized evidence of sustainability when evaluating exclusion requests under SGMA , and whether those specific Groundwater Sustainability Agencies are legally entitled to be carved out of the probationary designation. The appellate court also left open the possibility that the trial court could issue a narrower injunction, limited only to the agencies asserting the goodactor exclusion, if warranted on remand.

Conclusion and Implications

The California Supreme Court's decision to deny review in the Tulare Lake Subbasin litigation affirms the appellate court's significant narrowing of the viable challenges to the State Water Board's probationary designation.

While the writ of mandate proceeding remains alive—specifically regarding the foundational challenge to the probationary designation and the surviving "good-actor" exclusion—the bulk of the

Farm Bureau's initial claims have been conclusively dismissed. This includes the challenges to notice adequacy, regulatory authority, and, critically, the extraction fees.

As this matter returns to the trial court, groundwater sustainability agencies and landowners in the Tulare Lake Subbasin navigate a shifted strategic landscape. Because the constitutional challenge to the extraction fees was dismissed under the state's "pay first" rule, pumpers cannot proactively enjoin the collection of these fees. To preserve their right to litigate the validity of the fees in the future, extractors must be prepared to actually pay the assessed fees to the State Water Board by the extended May 1, 2026, deadline. The Tulare Lake probationary designation itself remains in full effect. All associated groundwater extraction reporting and fee obligations are currently active. The next phase of trial court proceedings will be focused on whether the Board's earlier consideration of exclusion requests complied with statutory requirements, and whether specific, sustainably managed portions of the basin are legally entitled to be carved out of the probationary designation under SGMA's good-actor framework. The Fifth District Court of Appeal's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/F088909M.PDF
(David Boyer)

FOURTH DISTRICT COURT FINDS COMPLAINT IN ENFORCEMENT ACTION ADEQUATELY ALLEGED CLAIMS UNDER CALIFORNIA'S SAFE DRINKING WATER ACT

Environmental Health Advocates, Inc. v. Pancho Villa's, Inc., ___Cal.App.5th___, Case No. D084705 (4th Dist. Feb. 20, 2026).

In a published decision addressing the scope of liability under California's Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), the California Court of Appeal reversed the trial court's judgment in favor of a restaurant defendant in an enforcement action alleging exposure to acrylamide in food products. The court held that the plaintiff adequately stated a claim under Proposition 65 and that the trial court erred in concluding that the alleged exposures were exempt or otherwise nonactionable as a matter of law. The opinion provides important guidance on the application of Proposition 65 to food products and clarifies the burden of proof and pleading standards governing chemical exposure claims.

Factual and Statutory Background

The case arises under Proposition 65 (Health & Saf. Code, § 25249.5 *et seq.*), a voter-enacted statute requiring businesses to provide warnings before exposing individuals to chemicals known to cause cancer or reproductive harm. The statute is enforced through both public and private actions and is intended to protect consumers from harmful chemical exposures.

The plaintiff, Environmental Health Advocates, Inc., alleged that Pancho Villa's, Inc. sold food products, specifically tortilla-based items, that exposed consumers to acrylamide, a chemical listed under Proposition 65 as a carcinogen. The complaint asserted that the defendant failed to provide required warnings and that the exposures exceeded allowable levels under the statute.

Procedural History

The plaintiff filed an enforcement action in San Diego County Superior Court seeking injunctive relief and civil penalties. The defendant challenged the sufficiency of the complaint, arguing that the alleged exposures fell within statutory exemptions or otherwise did not trigger Proposition 65 liability.

The trial court entered judgment in favor of the defendant, concluding that the plaintiff failed to establish a viable claim. The plaintiff appealed, contending that the trial court improperly resolved factual and legal issues at the pleading stage.

The Court of Appeal's Decision

Proposition 65 Liability and Pleading Standards

The Court of Appeal began by outlining the statutory framework of Proposition 65, emphasizing that the law prohibits businesses from knowingly exposing

individuals to listed chemicals without first providing a "clear and reasonable warning," unless the exposure falls below specified regulatory thresholds. The court also noted that the statute is intended to be construed broadly to effectuate its protective purposes.

Sufficiency of Allegations Regarding Chemical Exposure

The defendant argued that the complaint failed to adequately allege exposure levels exceeding Proposition 65 thresholds. The court rejected this argument, holding that at the pleading stage, a plaintiff is not required to prove actual exposure levels but must instead allege facts supporting a reasonable inference of exposure above regulatory limits.

The appellate court emphasized that detailed quantitative evidence is not required at the outset of litigation and that such determinations are more appropriately addressed through discovery and expert analysis.

Application of Statutory Exemptions

The defendant further contended that the alleged exposures were exempt from Proposition 65 requirements, including potential arguments related to naturally occurring chemicals or regulatory safe harbor provisions. The court concluded that the applicability of such exemptions involves fact-intensive inquiries that cannot be resolved on the face of the complaint.

Because the complaint did not conclusively establish that an exemption applied, dismissal at the pleading stage was improper.

Burden of Proof and Regulatory Framework

The court clarified that, under Proposition 65, once a plaintiff establishes exposure to a listed chemical, the burden shifts to the defendant to demonstrate that the exposure falls within an exemption or below regulatory thresholds. This burden-shifting framework reflects the statute's remedial purpose and places responsibility on businesses to justify the absence of warnings.

The appellate court found that the trial court improperly inverted this framework by requiring the plaintiff to negate potential exemptions at the pleading stage.

Conclusion and Implications

The Court of Appeal reversed the judgment and remanded the case for further proceedings, concluding that the plaintiff's allegations were sufficient to state a claim under Proposition 65. The decision underscores that courts must apply a liberal pleading standard in Proposition 65 cases and avoid resolving factual disputes prematurely.

For practitioners and regulated entities, the opinion clarifies that food-based exposure claims remain subject to Proposition 65's warning requirements and that defenses based on exemptions or exposure thresholds generally cannot be resolved at the demurrer stage. The decision reinforces the statute's broad remedial scope and signals continued judicial willingness to allow such claims to proceed beyond initial pleadings where plausible exposure is alleged. The court's published opinion is available online at: https://www4.courts.ca.gov/opinions/documents/D084705.PDF

(Miguel Mauricio)

LAS POSAS GROUNDWATER ADJUDICATION AFFIRMED: SECOND DISTRICT COURT ENDORSES COMPREHENSIVE BASIN MANAGEMENT FRAMEWORK

Las Posas Valley Water Rights Coalition v. Ventura County Waterworks District No. 1 et al., ___Cal.App.5th___, Case No. B330837(2nd Dist. Mar. 5, 2026).

In *Las Posas Valley Water Rights Coalition v. Ventura County Waterworks District No. 1* the California Court of Appeal, Second District, affirmed a comprehensive groundwater adjudication governing the Las Posas Valley Groundwater Basin in Ventura County. The case arose from longstanding overdraft conditions in a basin designated as high priority under the Sustainable Groundwater Management Act (SGMA), where groundwater demand has historically exceeded supply.

Background

The Las Posas Valley Water Rights Coalition initiated the adjudication in 2018, seeking a judicial determination of groundwater rights and priorities after challenging regulatory pumping restrictions imposed by the Fox Canyon Groundwater Management Agency. The basin supports agricultural, commercial, and domestic uses, with agriculture accounting for the majority of groundwater demand. Over time, Fox Canyon implemented regulatory measures, including limits on new wells and pumping reductions, but disputes over water rights persisted.

The adjudication proceeded in three phases. Phase 1 established the basin's Total Safe Yield at approximately 36,000 acre-feet per year and allocated a portion to public water suppliers. Phase 2 allocated the remaining groundwater among users through a settlement supported by a substantial majority of parties. Phase 3 implemented a physical solution and appointed Fox Canyon as watermaster to oversee basin management. Certain landowners and mutual water companies appealed the resulting judgment.

Procedural Framework and Settlement Structure

The adjudication followed California's statutory framework for comprehensive groundwater adjudications, which authorizes courts to determine all groundwater rights in a basin and implement a physical solution. The trial court structured the case to promote settlement and efficiency, resulting in broad participation by basin stakeholders.

Phase 2 produced an allocation schedule based on historical use, irrigated acreage, and reasonable beneficial need. Approximately 87 percent of groundwater extractors supported the settlement. The trial court found the agreement equitable and consistent with water rights priorities, particularly the superiority of overlying rights.

Phase 3 resulted in a stipulated judgment supported by more than 80 percent of extractors. The judgment integrated prior rulings and established a governance system that includes annual allocation adjustments based on operating yield and administration by Fox Canyon as watermaster.

The Court of Appeal's Decision

Water Rights Priorities and Allocation Methodology

The Court of Appeal affirmed the trial court's application of core California water law principles. Overlying landowners possess paramount rights to groundwater, subject to the constitutional requirement that use be reasonable and beneficial. These rights are correlative and must be allocated equitably among landowners.

The appellate court rejected arguments that mutual water companies should receive allocations directly. Substantial evidence supported the finding that landowners retained their overlying rights and that mutual water companies functioned primarily as delivery agents rather than owners of groundwater rights. Allocating water to companies instead of landowners would have produced inequitable results inconsistent with actual land use.

The court also upheld the determination that no surplus groundwater existed in the basin. Because appropriative rights depend on surplus availability, the absence of surplus precluded allocations to appropriators, including mutual water companies asserting such claims.

Treatment of Dormant and Disputed Claims

The court addressed the treatment of dormant overlying rights, affirming the trial court's authority to subordinate such rights where they are unexercised. Solano Verde's rights were subordinated based on evidence that it had not used groundwater since 2005 and had no plans to resume use.

The court emphasized that subordination does not extinguish rights but prevents speculative future claims from interfering with current reasonable uses. Dormant rights may be exercised in the future upon a showing that new use will not harm the basin.

Claims to allocations based on imported return flows were also rejected. The court found that the claimant did not import the water and failed to demonstrate actual recharge or intent to recapture the flows. Additionally, the claim was procedurally barred because it was not raised during the appropriate phase of the adjudication.

Validity of the Physical Solution

The appellate court affirmed the physical solution as a proper exercise of the trial court's equitable authority. Physical solutions are designed to address overdraft and allocate water among competing users in a manner consistent with constitutional mandates.

The court found the solution necessary to resolve conflicts among basin users and to establish a long-term governance framework. The physical solution incorporates the basin's groundwater sustainability plan and aligns with SGMA objectives.

Arguments that the physical solution was unnecessary or duplicative of existing regulatory efforts were rejected. The court concluded that adjudication provides a comprehensive and enforceable structure that complements, rather than duplicates, administrative regulation.

Challenges to Governance, Fees, and Environmental Review

The court rejected challenges to basin assessments imposed under the judgment. It held that such assessments are not subject to Proposition 218 because they are imposed by judicial authority through the watermaster, rather than by a local government entity. The assessments were found to be proportional and tied to basin management benefits.

The court also held that the California Environmental Quality Act (CEQA) does not apply to the judgment or its implementation. CEQA applies to public agencies, not courts or court-appointed agents acting under judicial authority.

Further, the court upheld the use of an operating yield, which adjusts annually based on hydrologic conditions, finding it consistent with maximizing beneficial use and preventing waste. It also rejected arguments that the judgment conflicted with earlier phase determinations.

Conclusion and Implications

The Court of Appeal's decision affirms a comprehensive, settlement-driven approach to groundwater adjudication that prioritizes overlying rights, equitable allocation, and sustainable basin management. The ruling reinforces the principle that groundwater rights are limited by reasonable and beneficial use and that appropriative rights are subordinate in overdrafted basins.

The decision underscores the judiciary's role in integrating adjudication with SGMA implementation and validates the use of negotiated settlements supported by a majority of stakeholders. It also clarifies that courts have broad discretion to impose physical solutions and associated governance mechanisms, including assessments and adaptive allocation frameworks.

As groundwater adjudications continue across California, this decision provides a significant precedent for resolving competing claims in critically overdrafted basins through comprehensive, enforceable, and adaptive management frameworks. The court's published opinion is available online at: https://www4.courts.ca.gov/opinions/documents/B330837.PDF

(Darien Key, Derek Hoffman)

'WATER, NO INVITE'? FIFTH DISTRICT COURT FINDS CITY OF FRESNO MAY BE LIABLE FOR PROPERTY DAMAGE CAUSED BY SWITCH TO ALTERNATE WATER SOURCE

Micheli v. City of Fresno, Unpub., Case No. F085599 (5th Dist. Feb. 13, 2026).

In the *unpublished* decision *Micheli v. City of Fresno* the Fifth Appellate District reversed the trial court's grant of summary judgment in favor of the City of Fresno and its order sustaining the Plaintiffs' inverse condemnation claim without leave to amend. The court also affirmed certification of a class of Fresno residents. In doing so, the court held that merely utilizing tap water does not "invite" water into a home, thereby precluding inverse condemnation claims. It further clarified that liability arising from a water supplier's alleged noncompliance with the California Safe Drinking Water Act (SDWA) is not solely dependent on whether numerical drinking water standards were exceeded.

Factual and Procedural Background

The City of Fresno historically relied on groundwater for its potable water supply, but declining reserves led the City to develop the Northeast Surface Water Treatment Facility (treatment facility) to treat and distribute surface water. The State Water Resources Control Board (SWRCB) ultimately amended the City's water supply permit to govern its operation.

A 1998 engineering report commissioned by the City warned that blending treated surface water with groundwater would produce more chemically aggressive water, likely causing corrosion in the City's predominantly galvanized iron piping. The report predicted instances of red water as well as the potential leaching of metals, including lead, which would necessitate pipe replacement. This report proved correct, and the facility's operation led to complaints of discolored water. However, the City denied responsibility and maintained the water was safe. By 2016, the City received hundreds of complaints and was forced to publicly acknowledge the issue and launched an investigation. Testing confirmed that the blended surface water destabilized existing pipe scales, caused corrosion, and in some instances resulted in lead levels exceeding the EPA's action threshold. Despite this, the City failed to adequately report its findings, leading residents to believe their plumbing—rather than the water supply—was the source of the problem.

Plaintiffs, Fresno residents whose galvanized pipes were allegedly damaged by the treatment facility's water, filed suit asserting inverse condemnation, negligence, nuisance, breach of contract, unjust enrichment, and breach of implied warranty causes of action. In 2021, the trial court sustained the City's demurrer to the inverse condemnation claim without leave to amend but certified the case as a class action. After Plaintiffs filed a fifth amended complaint, the court granted summary judgment for the City on the remaining claims. Plaintiffs appealed, and the City filed a protective cross-appeal.

The Court of Appeal's Decision

Inverse Condemnation

The Court of Appeal reversed the trial court's order sustaining the demurrer to Plaintiffs' inverse condemnation claim without leave to amend, concluding that Plaintiffs met their burden in establishing every element for that cause of action. Crucial to this inquiry was whether the Plaintiffs were 'singled out' for special harm and whether they had 'invited' the water into their homes under *Williams v. Moulton Niguel Water Dist.*, 22 Cal.App.5th 1198 (2018). In *Williams*, the plaintiffs' inverse condemnation claim failed because they were not treated differently from other water district customers and had voluntarily received the same treated water. Conversely, here, Plaintiffs possessed a reasonable argument that they were indeed singled out as the treatment facility's water was only distributed to residents of northeast Fresno. The court also noted that the 'invited' water rationale from *Williams* was called into question in *Shehyn v. Ventura County Public Works Agency*, 108 Cal.App.5th 1254 (2025), which rejected a bright-line rule barring inverse condemnation claims simply because homeowners turned on their taps. Customers rely on supplied water for sustenance and have no other alternative to meet those needs. They do not

'invite' water into their homes as they are the customers of a state-sanctioned monopoly. Because Plaintiffs' complaint predated *Shehyn*, it lacked these arguments. The court emphasized they should be granted leave to amend, and as a result, Plaintiffs' allegations would be sufficient to support an inverse condemnation claim.

The court then shifted its focus to the causes of action adjudicated via summary judgment. Plaintiffs abandoned their breach of contract and implied warranty claims, so the court assessed the validity of the negligence and nuisance causes of action.

Summary Judgment: *Hartwell* and *In re Groundwater Cases*

The City relied on *Hartwell Corp. v. Superior Court*, 27 Cal.4th 256 (2002) and *In re Groundwater Cases*, 154 Cal.App.4th 659 (2007) to argue that Plaintiffs could not recover damages absent proof that the City violated numeric drinking water standards and was ordered by the State to correct those violations. The court rejected this reading. *Hartwell* and *Groundwater* involved challenges to drinking water standards themselves. Conversely, the Plaintiffs here alleged that the City fell below state SDWA standards and protocols. Because their claims were based on operational noncompliance rather than an exceedance of numerical limits, those cases were inapposite and did not bar suit.

Government Code Section 815.6

The trial court previously granted summary judgment under Government Code section 815.6, which imposes liability on a public entity for breach of a mandatory duty if: (1) a legislative or constitutional enactment imposes a mandatory duty; (2) the duty was designed to protect against the kind of injury suffered, and (3) the breach was the proximate cause of the injury. The court determined that the City could meet each of these elements.

Mandatory duty: The City potentially breached its mandatory duties to adhere to its water supply permit in operating the treatment facility by failing to control corrosion, engage in sufficient monitoring, or report its noncompliance with the requisite drinking water standards to the state. The City lacked discretion to alter or forego these responsibilities.

Injury suffered: Both state and federal iterations of the SDWA aim to limit lead levels in water primarily by reducing water corrosivity, and the alleged injuries suffered by the Plaintiffs were the severe corrosion of the Plaintiffs' and class members' residential plumbing. It was therefore designed to protect against the type of injury suffered by the Plaintiffs.

Proximate cause: The City could not prove that Plaintiffs lacked sufficient evidence to support its causation claims and thus, the City could not shift the burden onto Plaintiffs to prove a triable issue of material facts existed. Further, evidence showed that the City knew a large portion of Fresno homes used galvanized pipes and that corrosive water could destabilize protective pipe coatings. Investigations confirmed increased acidity and corrosion following surface water introduction. Therefore, sufficient evidence existed to avoid summary adjudication regarding this element.

Civil Code Section 3479

Under Civil Code section 3479, Plaintiffs need only show that the City caused something that interfered with their property interest to prevail on a nuisance claim. The claim was not barred by Civil Code section 3482, which protects conduct expressly authorized by statute, because the City never proved it was authorized to deviate from the corrosion control protocols required by the City's water permit.

Time Bar

The court then addressed whether the Plaintiffs' negligence and nuisance causes of action were time-barred. The City argued that the Plaintiffs' claims did not specifically allege that the nuisance was continuing, and therefore waived this contention, leading the three-year statute of limitations to run. However, the court disagreed. Plaintiffs alleged that the nuisance was of a continuing nature—ongoing corrosion caused by blended surface and groundwater. This tolled the limitations period. The court held the same regarding the negligence cause of action. Though some residents noticed discoloration as early as 2012, the City repeatedly assured customers the water was safe. Without knowledge that their plumbing had been damaged by corrosive water, Plaintiffs were not required to investigate further, which would cause the limitations period to run. Accordingly, summary judgment was improper on timeliness grounds.

Class Certification

Finally, the court addressed whether the trial court erred in certifying the class. The certified subclasses consisted of owners of single-family residences with galvanized plumbing served by the treatment facility. The City contended that the questions of law or facts predominating the case were not common between the Plaintiffs, and that the trial court's conclusion that the use of surface water was the likely cause of harm to Plaintiffs' pipes was not based on substantial evidence. The court rejected these arguments and affirmed the class certification order.

To obtain class certification, plaintiffs must demonstrate: (1) an ascertainable and sufficiently numerous class; (2) a well-defined community of interest—embodied by predominance, typicality, and adequacy of representation factors; and (3) that a class action is superior to alternative methods of adjudication. The court concluded these requirements were met:

- Typicality—The named Plaintiffs' claims were representative of the class. Although two Plaintiffs reported isolated water discoloration events before the treatment facility began operating, those incidents were factually distinct from the later corrosion issues at issue.

- Predominance: Common issues between the members predominated. Each was affected by the treatment facility's supply of water, which allegedly caused corrosion in their galvanized pipes. Though the members may have had different types of piping or plumbing designs, each member was subjected to the same kind of harm from the same source of water. The variations between the members affected their individual amount of damages but did not preclude certification.

- Commonality: The court found no compelling reason why the relevant issues were not sufficiently common to the issues presented by the Plaintiffs' claims or why they precluded certification.

Conclusion and Implications

The Fifth Appellate District's ruling in *Micheli v. City of Fresno* emphasizes that public water suppliers may be potentially liable for property damage arising from their operational decisions. The court rejected the notion that homeowners 'invite' harmful water into their homes by merely turning on the tap and held that compliance with numerical drinking water standards does not shield a public entity from liability when its decisions lead to pipe corrosion. Additionally, this case emphasizes that water suppliers must adhere not only to contaminant thresholds, but also to mandatory operational and reporting duties designed to prevent corrosion. A failure to do so could result in liability for private property damage. The court's *unpublished* opinion is available online at: https://www4.courts.ca.gov/opinions/nonpub/F085599.PDF
(Adam Nir)

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