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CALIFORNIA WATER NEWS

THE FRIANT–EASTERN TULE GROUNDWATER SETTLEMENT: SUBSIDENCE, SGMA, AND THE FRIANT-KERN CANAL

Following a sprawling legal battle over land subsidence and infrastructure damage involving the Friant-Kern Canal, a settlement agreement has been reached that effectively hollows out a local Groundwater Sustainability Agency (GSA). In March 2026, the Friant Water Authority (Friant or FWA), Arvin-Edison Water Storage District, and the Eastern Tule Groundwater Sustainability Agency (ETGSA) executed a settlement agreement resolving years of litigation.

The settlement resolves a dispute over who should pay hundreds of millions of dollars in damages to the Friant-Kern Canal caused by groundwater overdraft. The settlement replaces a fractured 2021 mitigation agreement with a new framework. It transfers ETGSA's penalty collection authority directly to Friant, permanently freezes landowner groundwater allocations within ETGSA's jurisdiction, and positions Friant to recover subsidence costs over time directly from groundwater pumpers via assigned penalties, liens, and invoices.

Background: The Friant-Kern Canal and Subsidence Impacts

The dispute arose at the intersection of aging federal infrastructure, decades of groundwater overdraft in portions of the eastern San Joaquin Valley, and implementation of the Sustainable Groundwater Management Act (SGMA).

The Friant-Kern Canal is a federally owned component of the Central Valley Project. Operated and maintained by Friant, it conveys surface water from Millerton Lake south through Fresno, Tulare, and Kern counties, supplying irrigation and municipal water to Friant contractors, including Arvin-Edison.

Long before SGMA's enactment, groundwater pumping adjacent to the canal caused widespread land subsidence. The ground surface sank unevenly over time, reducing canal conveyance capacity by as much as 60 percent along a roughly 33-mile reach between Pixley and the Kern County line. Friant has already spent more than $300 million repairing just one ten-mile segment of this reach, with total restoration costs expected to climb much higher.

SGMA, the 2021 Agreement, and the 2024 Lawsuit

Under SGMA, ETGSA was created to manage groundwater in portions of eastern Tulare County and was responsible for avoiding "significant and unreasonable" impacts, including subsidence that damages infrastructure.

In January 2021, Friant, Arvin-Edison, and ETGSA entered a settlement to address these damages without lengthy litigation. ETGSA committed to assess groundwater pumping penalties on landowners within its boundaries and remit those funds to Friant to offset canal repair costs. At the time, projections suggested the penalties could reach $200 million if fully collected.

By 2023–2024, the relationship had completely fractured. Friant concluded the 2021 agreement was failing, alleging ETGSA failed to collect and remit penalties at the required levels while continuing to allow pumping practices that exacerbated subsidence. Friant also objected to ETGSA issuing groundwater credits and allocations, which diluted penalty obligations.

In February 2024, Friant and Arvin-Edison sued ETGSA in Tulare County Superior Court (Case No. VCU306343). As litigation progressed, all parties faced risks. Notably, the court questioned whether Friant could realistically extract massive monetary damages from a GSA possessing few tangible assets, raising the specter that individual landowners might ultimately bear the direct financial burden.

The March 2026 Settlement Agreement: Key Terms

The March 2026 Settlement Agreement represents a capitulation of ETGSA and its groundwater management framework. The primary terms include the following.

ETGSA agreed to remit to Friant 100 percent of all Tier 1 and Tier 2 penalties paid by landowners on or after the Effective Date. Crucially, ETGSA has assigned its rights to collect any remaining or future delinquent penalties directly to Friant. All associated liens, invoices, and outstanding penalty amounts now rest with Friant, granting the surface water authority the power to pursue recovery directly from individual pumpers over time using ETGSA's enforcement tools.

In an operational shift, ETGSA is prohibited from issuing any new water allocations for any future water year, memorializing the cancellation of its Water Year 2026 allocations. Furthermore, all landowner activity on "BasinSafe" accounts has been frozen, and ETGSA cannot allow the carryover or transfer of any surface water or groundwater credits.

The agreement contemplates the dissolution of ETGSA. Acknowledging that ETGSA has no budget for the 2026–2027 fiscal year, the settlement agreement anticipates ETGSA winding down its affairs and operations within one year and ETGSA paying any remaining funds directly to Friant.

The prior 2021 agreement was terminated in its entirety. In exchange, the parties will dismiss the Tulare County litigation and associated appeals. The Superior Court will retain jurisdiction to enforce the new settlement.

Post-Settlement Governance

Following the settlement, ETGSA becomes largely defunct. Groundwater management duties in the Tule Subbasin will shift to newly formed GSAs. Crucially for Friant, its assigned rights to collect penalties and enforce liens survive.

Conclusion and Implications

The Friant–ETGSA settlement highlights the challenges of SGMA implementation in connection with impacts to infrastructure, and how those costs should be allocated. As SGMA implementation continues in the area, it remains to be seen how newly formed Groundwater Sustainability Agencies that replace ETGSA will manage groundwater in the area, and how remaining ETGSA obligations will be collected.

(David Camerson, David Boyer)

CALIFORNIA'S VANISHING SNOWPACK AND THE LEGAL STAKES FOR WATER MANAGEMENT

On April 1, 2026, the California Department of Water Resources (DWR) announced that its critical spring snow survey at Phillips Station found no measurable snow. The agency attributed the result to an exceptionally hot and dry March, combined with warm storms and high elevation rain that rapidly melted what remained of the Sierra Nevada snowpack. DWR reported that the statewide snowpack had fallen to 18 percent of average for that date and indicated that the April 1 snowpack was likely the second lowest on record. The agency also stated that statewide snowpack likely peaked on or near February 24, well ahead of the historical norm.

Snowpack is one of the most important indicators in the state's annual water management cycle. It informs runoff forecasts, reservoir operations, State Water Project allocation updates, groundwater planning, and drought response.

The April 1 Survey and What It Signals

The April 1 survey has long served as a critical benchmark because it typically coincides with or approximates the seasonal peak snowpack. In 2026, however, DWR reported that the seasonal peak arrived more than a month earlier. The agency emphasized that the problem was not only limited precipitation, but also the growing disconnect between precipitation and snow accumulation. In many regions, precipitation totals were closer to normal than snowpack figures would suggest, but a significant portion of that water fell as rain instead of snow.

California's snowpack functions as a form of natural storage. Snow that accumulates in winter and melts gradually in spring helps regulate runoff and supports downstream reservoir refill. When storms arrive warmer and snow melts earlier, the timing of available water changes. That complicates the job of state and local water managers, who must operate in-

frastructure and administer water supplies under legal and practical constraints that were developed around more traditional runoff patterns. DWR's description of a rapid shift from winter conditions to heat driven melt underscores a broader challenge for a system that still relies heavily on assumptions built around historical seasonality.

Operational Consequences for Reservoirs and Forecasting

DWR made clear that April snowpack data feeds directly into the state's water supply forecasts, including Bulletin 120 runoff forecasting. Those forecasts are central to reservoir management because operators must balance two obligations that can pull in opposite directions. On one side is flood control, which requires maintaining space in reservoirs during wet periods. On the other is water supply storage, which depends on retaining enough water to meet municipal, agricultural, and environmental needs through the dry season.

When snowmelt occurs weeks early, operators lose part of the predictability that snowpack normally provides. Earlier runoff can arrive before anticipated storage windows, and warmer storms can produce hydrologic responses that differ materially from historic norms. DWR has acknowledged that these conditions make runoff forecasting more complex. That complexity matters because regulatory and operational decisions often depend on those forecasts. The state cannot manage reservoirs, coordinate project operations, or communicate delivery expectations in a disciplined way if the underlying hydrology is becoming less stable and less seasonally legible.

Impacts to the State Water Project and on Water Supply Planning

The State Water Project supplies water to 29 public water agencies serving roughly 27 million Californians and 750,000 acres of farmland. DWR uses snowpack, precipitation, runoff, and storage conditions to determine and revise annual allocation forecasts. Because Bulletin 120 forecasts are one of the inputs used in calculating allocation updates, the collapse of the April snowpack has direct implications for project contractors and the communities they serve.

Agencies that depend on imported supplies may need to revisit conservation planning, local storage strategies, water transfer assumptions, and reliance on supplemental groundwater pumping. In some regions, the operational effect of an early disappearing snowpack may be felt not through formal rationing, but through increased uncertainty about runoff timing, reservoir carryover, and the reliability of later season supplies.

Groundwater, Drought Response, and Regulatory Pressure

A weak or rapidly disappearing snowpack also places indirect pressure on groundwater systems. When surface supplies become less reliable or less predictable, many users turn to groundwater to bridge the gap. In California, that response now occurs within the framework of the Sustainable Groundwater Management Act, which requires local agencies to bring basins into long term balance and avoid undesirable results.

In basins already under stress, reduced confidence in surface water availability can intensify pumping pressure and strain local management efforts. The same is true for drought planning more generally. DWR's release reinforces that California's current water management challenges are increasingly driven by hydrologic timing and temperature, not just by absolute precipitation deficits.

In practical terms, agencies may need to rely more heavily on dynamic forecasting, interagency coordination, and near-real-time operational adjustments. Those needs are likely to shape both regulatory expectations and future infrastructure investment priorities.

Conclusion and Implications

The April 1, 2026, DWR survey is best understood as more than an alarming snow measurement. It is a concrete example of how climate driven changes in precipitation form and runoff timing are creating new legal and operational stress across California's water system. The disappearance of measurable snow at the state's signature April survey highlights a central problem for water managers: a year can produce meaningful precipitation and still generate acute water management difficulty if that precipitation falls as rain and melts out early.

For lawyers, agencies, and water users, the lesson is straightforward. Snowpack data remains one of the most important factual inputs in California

water administration, but its meaning is evolving. The state's regulatory structure, project operations, groundwater planning, and infrastructure priorities are all being tested by a hydrologic regime that is becoming warmer, less stable, and harder to manage through historic assumptions. The 2026 survey should therefore be read not as an isolated anomaly, but as another signal that California water governance must continue shifting from planning around average conditions to planning around volatility.

Editor's Note: As of May 5, 2026, as this article was finalized, DWR reports the following "percentage of normal" for this date for California's Regions for snowpack: North 8%; Central 25%; South 33% and Statewide, 22%. https://cdec.water.ca.gov/snowapp/sweq.action (Darien Key, Derek Hoffman)

CALIFORNIA'S LITTLE HOOVER COMMISSION RELEASES POLICY RECOMMENDATIONS RELATING TO DATA CENTER DEVELOPMENT AND REGULATION

As more-and-more of society's tools rely on internet connectivity to function, these devices and applications, along with the explosion in artificial intelligence, require a major expansion in computing power. This consequently requires the rapid development of data centers to accommodate the computing power. These data centers are extremely energy intensive, requiring massive amounts of electricity to power the computer systems, but also require significant resources (usually water) to cool the centers.

In March 2026, California's Little Hoover Commission released its report titled "Data Centers and California Electricity Policy." The report intended to identify areas of concern and ideas for policy development with regard to the rapid growth of, and often controversial, data centers. The Little Hoover Commission is an independent and bipartisan state oversight agency that is charged with "promoting economy and efficiency" in state government. The Little Hoover Commission will often study critical issues facing the state and make recommendations to the Governor and Legislature for policy consideration.

Background

As data center development is sure to grow in California, and as communities begin to oppose their development, the Little Hoover Commission report is intended to provide state legislators with a suite of recommendations for addressing many of the major concerns surrounding data centers, including: electrical grid capacity and reliability, development oversight, land use concerns, and environmental concerns.

The Report and Key Land Use and Environmental Concerns

The report identifies the California Energy Commission's estimate that peak data center electricity load could rise to 7.5 gigawatts (about three times the entire generating capacity of the Diablo Canyon nuclear power plant). Sources cited in the report explain that the average data center land transaction is 224 acres, with AI data centers typically requiring at least 200 acres to accommodate the necessary footprint to support AI workloads. Meanwhile, advantageous locations for data centers remain to be areas with "proximity to major clients, access to fast fiber networks, local governments accustomed to supporting large technology infrastructure, and utilities willing and able to provide the substantial electricity and water needed to support operations" (*i.e.* the state's urban centers). Though many data center developers are shifting their focus to rural areas where land is cheaper.

At least with respect to land use and environmental concerns, the following issues are most salient for communities and practitioners:

- Large facility footprints that can disturb the natural environment;

- Data centers do not generate sales tax revenue or provide a meaningful jobs base, thus data center proposals can compete with other tax-generating and job-creating business for limited land area;

- Noise from cooling systems can disturb neighboring communities;

- Diesel from backup generators can cause air quality impacts for the surrounding community;

- Significant amounts of water are used for cooling systems.

Potential Upsides

The report does explain that new data centers can support upgrades to the electric transmission network, at a time where much of the state's electricity infrastructure (*e.g.* power plants, substations, transmission lines) has aged long past its expected useful life. However, any tech market correction or AI bubble burst could leave stranded many of these data center projects, and their requisite infrastructure improvements.

Consequently, the report recommends requiring data center developers to provide collateral and impose certain fees on developments, to ensure that developers carry the financial burden of the project and infrastructure development, so that ratepayers are not left with the losses. Ensuring that data center developers remain liable for improvements, and transparency around these requirements, could reduce some public opposition to these projects.

Local Planning

While much of the report discusses statewide policy recommendations, the Little Hoover Commission alludes to authority traditionally vested in local government. Namely, this involves "intelligent siting." Local governments should consider adding "data center" uses to their permissible use tables in the zoning code. This could allow for "clustering" data centers that could "control costs, make effective use of existing grid capacity, and limit environmental and community impacts."

Not only does this sequester deleterious impacts from non-industrial uses, but this also supports efficient infrastructure planning. Utilities can expand the necessary electric transmission and fiber optic networks targeting areas where demand is the greatest, limiting the need for such line extensions to disparate areas of a community. Concentrating data centers in (presumably) industrial areas also can reduce community opposition. Impacts from noise and diesel generator emissions would be limited to areas away from sensitive uses.

Conclusion and Implications

Despite the Little Hoover Commission report, the state legislators have already introduced several bills aimed at addressing the growth of data centers. Some of these bills (SB 887 and AB 2170) target the California Environmental Quality Act (CEQA) process for data centers, with SB 887 eliminating the use of categorical exemptions for data centers and AB 2170 lowers the CEQA review threshold for data center projects near "overburdened communities." Other bills do propose to address some of the recommendations from the commission report, including special tariffs (rates) on data centers (SB 886) and comprehensive reporting requirements on data center water usage (AB 2619).

Obviously, local land use planning changes occur on a jurisdiction-by-jurisdiction basis, but such changes will be shaped by state policy (*e.g.* CEQA applicability) and the residents of those communities. (Braeden Mansouri)

REGULATORY DEVELOPMENTS

ENDANGERED SPECIES ACT "GOD SQUAD" EXEMPTS GULF OIL AND GAS EXPLORATION—FIRST "NATIONAL SECURITY" EXEMPTION IN GOD SQUAD'S HISTORY

On March 31, 2026, the "God Squad," a group high-ranking government officials including the administrators of the United States Environmental Protection Agency (EPA) and National Oceanic and Atmospheric Administration (NOAA), the secretaries of the Army and the Department of the Interior, and the chairman of the Council of Economic Advisers, voted unanimously to exempt all oil and gas drilling activities in the Gulf from the federal Endangered Species Act (ESA).

Background

The federal Congress passed the Endangered Species Act in 1973 which generally allows the secretaires of interior and commerce to list species as endangered or threatened, requires federal agencies to consult with the National Marine Fisheries Service (NMFS) or the Fish and Wildlife Service (FWS) before acting in a manner that may threaten such species, and forbids the "taking" of listed endangered species. After a series of high-profile energy projects were stunted by the ESA in the years following its passage, senators from Iowa and Tennessee introduced a bill in 1978 to create a committee of high-ranking government officials that could exempt certain projects from the ESA. That group became known as the "God Squad" on account of their powers of extirpation. Within a few months of that bill receiving President Carter's signature, the God Squad issued its first project-specific ESA exemption to the Grayrocks Dam in Wyoming. Since then, the God Squad has only convened once to exempt a timber harvesting program in Oregon in 1992. Notably, the God Squad has never invoked "national security" to expedite their process.

Procedurally, if NMFS or FWS concludes ESA consultation with a lead federal agency by issuing a biological opinion concluding a particular project would violate the ESA, the agency, applicant, or associated governor may seek an exemption. Within 20 days of receipt of the exemption application, the relevant Secretary must determine whether the applicant and agency: (1) acted in good faith during consultation, (2) fairly considered project modifications and reasonable project alternatives that would avoid violating the ESA, (3) completed the requisite biological assessment, and (4) avoided making irreversible commitments of resources during the process.

If the relevant secretary determines the exemption applicant and associated agencies pass this threshold test, that secretary must hold a hearing on the exemption application and prepare a report within 140 days detailing: (1) the availability of reasonable and prudent alternatives, (2) a summary of the evidence pertinent to determining whether project approval is in the public interest and whether the project is of national or regional significance, (3) a list of reasonable mitigation and enhancement measures which should be considered by the God Squad, and (4) a finding regarding whether the lead agency and exemption applicant refrained from making any irreversible commitment of resources.

Within 30 days of the completion of the Secretary's report, the God Squad must issue the exemption if at least five of the Committee's seven members determine, based on the Secretary's hearing and subsequent report, that: (1) there are no reasonable and prudent alternatives to the project, (2) the project is in the public's interest and its benefits "clearly outweigh" the benefits of alternatives which may conserve the species or its critical habitat, (3) the project is of regional or national significance, and (4) neither the lead federal agency nor the exemption applicant have made any irreversible commitment of resources. The God Squad also has a duty to implement "reasonable mitigation and enhancement measures … as are necessary and appropriate to minimize the adverse effects of the [project] upon the endangered species, threatened species, or critical habitat." The God Squad must also specify mitigation and enhancement measures tied to the ESA exemption.

Biological Opinion and National Security Concerns

Here, the Bureaus of Ocean Energy Management (BOEM) and Safety and Environmental Enforcement (BSEE) are the federal agencies responsible for the Outer Continental Shelf Oil and Gas Program, which governs oil and gas leases in the Gulf. On May 15, 2025, as part of the ESA consultation process for the portion of that program within the Gulf, NMFS issued a Biological Opinion (BiOp) which analyzed impacts to several species of whales, fish, turtles, corals, conch, and more. The BiOp concluded that after all avoidance and minimization measures were applied, the only ESA violation caused by the project would be potential vessel strikes to Rice's whales.

Secretary Hegseth asked Secretary of Interior Burgum to convene a meeting of the God Squad to exempt the Gulf portion of the Outer Continental Shelf Oil and Gas Program from the ESA despite NMFS's BiOp due to national security concerns. According to Hegseth and Burgum, the invocation of national security concerns means that none of the procedural and substantive requirements associated with a God Squad exemption discussed above apply, including the requirement to make certain findings and to impose avoidance and mitigation measures as a condition of the exemption.

Notably, Hegseth's "national security" rationale is that domestic energy supply disruption is a national security concern and active ESA litigation against oil and gas exploration in the Gulf could result in a pause on some of that work. Notably, the same administration has recently initiated a war which halted approximately 20 percent of the world's oil supply and 25 percent of the world's natural gas supply. Equally notable is Hegseth's rationale that if we don't exempt Gulf oil and gas exploration from the ESA, "Russia and Iran will generate more revenue from their own oil exports," which would in turn "blunt U.S. sanctions efforts and bolster these countries' economies and geopolitical standing." The day before Hegseth made these arguments, Secretary Bessent paused sanctions on Russian oil through April 11. Secretary Bessent continued that pause on April 17, effective through May 16.

Conclusion and Implications

The President, through the Secretary of "War," has unilaterally exempted all oil and gas exploration in the Gulf of "America" from the Endangered Species Act on the ground that disruption in domestic supply resulting from hypothetically successful ESA litigation could increase fossil fuel prices. The same administration started a war that throttled 20 percent of the world's oil supply and 25 percent of the world's natural gas supply, then responded by revoking sanctions on Russian oil. This use of "emergency" authority to consolidate power in the office of the executive is consistent with the broader mandates of the Unitary Executive Theory. Several environmental organizations have pledged to sue the federal government to stop this overreach.

The God Squad's Committee Order can be found here: https://www.doi.gov/sites/default/files/documents/2026-03/endangered-species-committee-order.pdf

Secretary Hegseth's Letter of March 13 to Secretary Burgum, including the supporting rationale for his national security findings, can be found here: https://www.doi.gov/sites/default/files/documents/2026-03/act-exemption-osd070136-26-res-final.pdf

NMFS's Biological Opinion date May 20, 2025, can be found here: https://repository.library.noaa.gov/view/noaa/71211

(Blaine R. Dyas)

STATE WATER RESOURCES CONTROL BOARD DENIES ALL "GOOD ACTOR" FEE EXCLUSION REQUESTS IN TULE SUBBASIN, PREPARING INTERIM PLAN

On April 21, 2026, the State Water Resources Control Board (State Water Board) denied requests from eight different Groundwater Sustainability Agencies (GSAs) in the Tule Subbasin (Bulletin 118 Basin No. 5-022.13), each of which requested that its landowners be exempted from reporting extractions and paying fees to the State Water Board, arguing that their local management was sufficient. The initial reporting and fees were due May 1, 2026.

Background: Tule Subbasin Probation, Reporting, and Fees

The Tule Subbasin was designated as probationary by the State Water Board on September 17, 2024. One effect of a basin being designated as probationary is that groundwater pumpers in the basin must report all extractions to the State Water Board under Water Code section 5202 and pay fees set by the State Water Board under section 1529.5. After the Tule Subbasin, as well as the neighboring Tulare Lake Subbasin, were designated as probationary in 2024, the State Water Board worked to create a new system to manage such reporting and fee collection, known as GEARS (Groundwater Extraction Annual Reporting System). That system is now live, and initial reports and fee payments were due on May 1, 2026.

Exclusion Requests

In advance of that initial reporting and payment date, the State Water Board considered these requests for exclusion from those requirements. Under Water Code section 10735.2, subdivision (c)(1), the board can exclude from the requirements any class or category of extractions "are subject to a local plan or program that adequately manages groundwater within the portion of the basin to which that plan or program applies" or they "are likely to have a minimal impact on basin withdrawals."

Several such exclusions are already in place within the Tule Subbasin. In the original resolution designating the Tule Subbasin as probationary, it excluded Delano-Earlimart Irrigation District GSA and Kern-Tulare Water District GSA, finding that their Groundwater Sustainability Plans (GSPs) adequately managed their portions of the basin. The State Water Board also decided, on April 7, 2026, to exclude nearly all pumpers of less than 20-acre feet per year, finding that they would have a minimal impact on basin withdrawals.

At the April 21 hearing, the State Water Board considered requests for similar exclusions by Lower Tule River Irrigation District GSA (Lower Tule), Pixley Irrigation District GSA (Pixley), Tri-County Water Authority GSA (Tri-County), Tea Pot Dome Water District GSA (Tea Pot Dome), Terra Bella Irrigation District GSA (Terra Bella), Porterville Irrigation District GSA (Porterville), Saucelito Irrigation District GSA (Saucelito), and Vandalia Water District GSA (Vandalia).

Hearing and Decision

Prior to the hearing, the State Water Board staff released a staff report recommending that all of the requests be denied. (SWRCB, Review of Requests for Exclusion from Probationary Reporting and Fees, Tule Subbasin (March 2026), https://www.waterboards.ca.gov/sgma/docs/tule/202603-exclusion-staff-review.pdf.) At the hearing, the staff presented that recommendation to the board, and a panel of managers and experts from the GSAs presented counter-arguments. Many of the disagreements were quite technical, involving the method of accounting for water budgets in the revised GSPs. Others were questions of fairness. Several GSAs objected to the staff report's reliance on the Department of Water Resources (DWR) report on Best Management Practices for Land Subsidence (DWR, Best Management Practices of the Sustainable Management of Groundwater: Land Subsidence (January 2026), which was finalized after their latest GSPs were adopted and were only released in draft form in August of 2025, immediately before the plans were adopted. They argued that they should not be held to standards they could not have been aware of. Some GSAs, including Vandalia and Teapot Dome, argued that their conditions were similar to those of the two districts already granted exclusion in the probationary resolution and that they should not be treated differently.

After some back-and-forth between GSA and board staff, the board took public comments. Most of the comments offered were from family farms in the affected GSAs, who described the rapid implementation of the GSPs and its impact on their ability to continue farming. They urged the board not to add yet another fee to worsen that situation. The board's chairman, Joaquin Esquivel, commented that the purpose of the fees was not to be punitive but to fund the State Water Board's work in regulating probationary basins. He also noted the fees are required by statute.

The State Water Board members applauded the GSAs for the work they have done to improve their GSPs, but ultimately, they accepted the staff recommendation to deny all of the requests.

Conclusion and Implications

During the hearing, Chairman Esquivel made a comment that the pursuit of these statutory exclusions has often been a "distraction" from the work of remedying the deficiencies in GSPs so that a basin can get beyond probation. That comment, and the board's action on these requests, may be an indication of the board's general attitude toward exclusion requests.

The staff also indicated, during their presentation, that they were in the process of preparing an interim plan for the basin. Water Code section 10735.8 authorizes the State Water Board to prepare and adopt such a plan for a probationary basin that has been in probation for at least one year, a provision that has yet to be implemented in any basin. The staff indicated that such a plan might be prepared for the Tule Subbasin by late 2027.
(Brett Stroud)

Editor's Note: The author represents clients in both of the current probationary basins, including a GSA in the Tulare Lake Subbasin and a water district in the Tule Subbasin.

STATE WATER RESOURCES CONTROL BOARD EXCLUDES SMALL PUMPERS FROM PROBATIONARY FEES IN TULE AND TULARE LAKE SUBBASINS

At its April 7, 2026, meeting, the State Water Resources Control Board (State Water Board or Board) adopted targeted regulatory relief for hundreds of rural landowners operating within two of California's critically overdrafted groundwater basins. Through two separate resolutions, the Board officially excluded "small pumpers"—defined generally as those extracting 20 acre-feet per year (AFY) or less—from the rigorous groundwater extraction reporting and fee requirements imposed on probationary basins under the Sustainable Groundwater Management Act (SGMA).

While the exclusions offer a financial and administrative reprieve for qualifying groundwater extractors in the Tule and Tulare Lake subbasins, the State Water Board tailored the relief to the subsidence-prone Friant-Kern Canal and for operations allegedly involving inter-basin groundwater exports.

Background: Probation and the "Minimal Impact" Exception

The State Water Board designated both the Tule and Tulare Lake subbasins as "probationary" following public hearings in 2024. Once a basin enters probationary status, SGMA's default enforcement mechanism triggers: most groundwater extractors must install meters, annually report their extractions to the State Water Board, and pay $300 per well and $20 per acre-foot extracted.

However, SGMA authorizes the State Water Board to exclude a class or category of extractions from these requirements if the Board determines those extractions are likely to have a "minimal impact" on basin-wide groundwater withdrawals. Utilizing this authority, Board staff analyzed 2022 evapotranspiration data to assess the footprint of small-scale pumpers in the San Joaquin Valley.

Tule Subbasin: The 20 AFY Threshold and the Canal Buffer

For the Tule Subbasin (Resolution No. 2026-0011), the State Water Board concluded that extractors pumping 20 AFY or less represent a large demographic of individual users but account for a negligible fraction of the basin's overdraft. Staff de-

termined that approximately 49 percent of extractors in the subbasin fall below this 20 AFY threshold, yet they collectively represent roughly one percent of the total subbasin water use.

There is, however, a critical geographic carve-out. The exclusion does not apply to groundwater pumping from wells located within a two-mile radius of the Friant-Kern Canal. Citing the severe, ongoing land subsidence that has crippled the canal's conveyance capacity, the Board ruled that all pumpers within this corridor—regardless of their extraction volume—remain fully subject to probationary reporting and fee requirements. Outside of this two-mile buffer, qualifying small pumpers are excluded unless future empirical data demonstrates their pumping is contributing more than minimally to the basin's impairment.

Tulare Lake Subbasin: Export Restrictions

In the Tulare Lake Subbasin (Resolution No. 2026-0012), the Board reached a similar minimal-impact finding. Staff estimated that roughly 44 percent of extractors pump 20 AFY or less, accounting for less than one percent of total groundwater pumping.

Unlike the Tule Subbasin, the primary limitation on the Tulare Lake exclusion targets water transfers rather than infrastructure protection. The exclusion applies strictly to pumpers who do not export groundwater outside the subbasin. Any volume of exported groundwater disqualifies an otherwise small-volume pumper from the exclusion.

Conclusion and Implications

The State Water Resources Control Board's recent resolutions represent its attempt to provide targeted relief to rural residential pumpers and small farms. Simultaneously, the strict limitations—particularly the two-mile enforcement corridor along the Friant-Kern Canal—demonstrate the state's continued willingness to use probationary authority to protect critical infrastructure.
(David Cameron, David Boyer)

RECENT FEDERAL DECISIONS

NINTH CIRCUIT LARGELY SIDES WITH NMFS AND THE CENTER FOR BIOLOGICAL DIVERSITY IN THE AGENCY'S ASSESSMENT OF CRITICAL HABITAT UNDER THE ESA FOR THREATENED SEAL SPECIES

State of Alaska v. National Marine Fisheries Service; Center for Biological Diversity v. State of Alaska, ___F.4th___, Case Nos. 24-7276, 24-7377 (9th Cir. Mar. 25, 2026).

This appeal to the Ninth Circuit marks, what the court referred to as a "culmination of the National Marine Service's (NMFS) decade-long efforts to conserve two species of Arctic seal." The agency's efforts began in 2012 with its listing a subpopulation of the Pacific bearded seal and the Arctic subspecies of the ringed seal as threatened under the federal Endangered Species Act (ESA). This listing triggered NMFS's statutory obligation to designate "critical habitat" for those seal species, completed in 2022. Alaska opposed those efforts and filed suit in the U.S. District Court, which mostly agreed that the habitat designations were unlawful which resulted in vacating the rules and remanding the matter back to NMFS. The Center for Biological Diversity intervened and appealed. In the end the Ninth Circuit found that it had jurisdiction over CBD's appeal and entered judgment in favor of CBD and NMFS.

Background

The Endangered Species Act, in its role to "conserve endangered species and threatened species and their habitats placed the responsibility to accomplish this role jointly with the Secretaries of Commerce and of the Interior through NMFS and Fish and Wildlife Service (FWS) (jointly referred to as the Services. The seal species at issue fall within NMFS's jurisdiction. The Services "core responsibility is to determine whether species within their respective jurisdictions are endangered or threatened." Once listed as endangered or threatened NMFS must concurrently designate critical habitat.

Before designating critical habitat NMFS must consider the "economic. . .national security and. . .other relevant impacts of the proposed designation" The agency "may exclude any area from critical habitat if the agency concludes that the benefits of such exclusion outweigh the benefits. . ."

In 2012 NMFS listed two species of Arctic seal as threatened: the ringed seal and the bearded seal. Litigation over the threatened-species listings concluded in 2017 after the Ninth Circuit upheld the listings. By 2019 NMFS had not yet designated critical habitat for either seal. That prompted the CBD to file another lawsuit "which spurred NMFS to issue critical habitat designations in two final rules in 2022. . ."

As part of designation of critical habitat NMFS prepared Regulatory Impact Reviews assessing the economic, national security and other relevant impacts as well as their benefits. NMFS exercised its discretion to exclude from critical habitat designation a portion of the Beaufort Sea with the U.S. Navy conducts training exercises:

> But NMFS declined to exclude other areas—including a twenty-mile buffer zone proposed by Alaska—because its analysis did not indicate that "significant economic impacts" would result from those areas' inclusion.

Alaska challenged the rules under the ESA and Administrative Procedure Act (APA) and the CBD intervened as a defendant.

At the District Court

The U.S. District Court granted summary judgment to Alaska agreeing with its contention that the critical habitat designations violated the ESA's termas as well as the statute's "reasoned decision-making requirement." The District Court found that the ESA required NMFS to find that the entire designated area of occupied critical habitat "itself is essential to

the conservation of the species," not just that the are contains "essential features." The District court "faulted NMFS for failing to explain "why the entirety of each designated area is necessary to the seals' survival" and "why a similar area" would not suffice.

Ultimately, the District Court found NMFS actions as arbitrary and capricious for failure to account for foreign nation conservation efforts and the existence of foreign habitat. It concluded that NMFS abused its discretion in declining to consider exclusion of the coastal buffer zones for oil and gas activities.

NMFS and the CBD appealed to the Ninth Circuit and Alaska filed a cross-appeal with respect to the prudency issue. During briefing before the Ninth Circuit NMFS moved to voluntarily dismiss its appeal and concurrently to dismiss the CBD's appeal arguing the Ninth Circuit lacked jurisdiction over "non-agency litigant's appeal of a District Court remand order."

The Ninth Circuit's Decision

Jurisdiction and Considerations of Finality

The Ninth Circuit granted NMFS's motion to voluntarily dismiss but denied its motion to dismiss the CBD's appeal without prejudice and the Ninth Circuit permitted the parties to move forward and brief on the issue of the Ninth Circuit's jurisdiction.

The Ninth Circuit concluded that the remand order by the U.S. District Court is "final" providing the Court of Appeals with jurisdiction over the CBD's appeal. The Court of Appeals' found that the District Court's order "contains several distinct legal rulings, the application of which would be entirely unnecessary if the court was incorrect." Further, the Ninth Circuit found that ". . .It is highly unlikely that the Center would be able to obtain a favorable outcome in the remand proceedings ordered by the district court."

The Ninth Circuit referenced that in the past the court has held that finality considerations favor exercising jurisdiction over appeals by agencies form remand orders. For example, the court found that allowing appeals of such orders permits resolution of discrete "questions of law" that will guide the proceedings on remand and that application of the incorrect standard would "result in a totally wasted proceeding below" and that the lack of an "immediate appeal may foreclose review because an agency cannot challenge its own post-remand rule." The court also pointed out that an agency cannot obtain a "favorable outcome on remand—as the party on the losing end of the district court's decision, the agency will be forced to adhere to a legal standard with which it disagrees."

The court went on to discuss that finality considerations may "shake out differently where the party seeking review is not an agency litigant."

The Ninth Circuit's concluded that in determining whether it had jurisdiction over the CBD's appeal:

> . . .we focused on the third finality consideration and found it dispositive. We observed that future judicial review was not foreclosed because the organization could bring suit to challenge any unlawful post-remand rule. . .critically however, we also emphasized that the organization could obtain "all the relief if it seeks" in the remand proceedings. NMFS could revise its regulations and list the species as threatened again, thereby reaching the same result as before.

Finally, the court held that in past rulings and under similar circumstances it has emphasized that "meaningless remands are "anathema to judicial economy and support[s] appellate jurisdiction."

The Merits of the Designations—Occupied Critical Habitat

The CBD contended that NMFS's designations were consistent with the ESA's definition of occupied critical habitat. On the CBD's view, to designate occupied critical habitat, the agency is only required to find that the occupied areas "include 'physical or biological features' that are 'essential to the conservation of the species.'" The CBD maintained that the ESA does not separately require the agency to find that the entire designated area is itself "essential" to the species, nor does the statute require an explanation of why a smaller area would not suffice. The Ninth Circuit agreed. The court found that the statute defines "critical habitat" to include the "specific areas," occupied by a species, "on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations." That language, the court found, is straightforward: "all that [the ESA] requires" is for NMFS to identify "physical

or biological features" that meet those two criteria. Once NMFS identifies such features within a threatened species' occupied range, the agency generally must designate the areas containing those features "as critical habitat."

The court rejected Alaska's interpretation to the contrary, finding that the "critical habitat" definition refutes Alaska's argument that the word "essential" requires a separate determination about a "specific area[']s" conservation value. The adjective "essential" modifies "physical or biological features" that the "specific areas" *contain*; it does not modify the "specific areas" themselves. The court found it would "stretch the modifier too far" by applying "essential" to the latter, "disconnected phrase." Accordingly, the court found that NMFS complied with the ESA by identifying essential physical and biological features and designating a "single specific area" that contains all of those features. 87 Fed. Reg. at 19189; *id.* at 19241.

Alaska also urged the court to consider that the designations—which cover nearly 160 million acres—were simply too vast to constitute a "specific area" within the meaning of the ESA. The court found Alaska "misreads the statute" as [despite the vast acreage involved in the designations] the term "specific area" does not provide any inherent limitation on the size of a designation.

Foreign Nation Conservation Efforts and Habitat

The court was faced with the issue of whether NMFS was required to account for foreign nation conservation efforts or the existence of foreign habitat in making its designations. The court found it did not for purposes of critical habitat designations and that by virtue of the fact that the ESA *does* expressly require such an analysis for decisions to *list* a species, such language's absence in critical habitat decision-making was conspicuous by its omission.

Exclusions from Final Designations

The issue of whether NMFS acted appropriately when it decided to consider excluding certain coastal areas which Alaska sought express exclusion, the court sided with NMFS finding it acted well within its discretion. The court found that CBD's argument that the ESA requires the agency to "consider" relevant impacts, "the ultimate decision whether to exclude areas from critical habitat is discretionary." The court found that because exclusion decisions are discretionary its review was "narrow." In the end, in court found that NMFS review of all relevant factors with "reasonable explanation for declining to consider [certain geographic areas] meant NMFS "cleared that low hurdle."

Prudency

On cross-appeal Alaska argued that the designations erred because they failed to comply with the ESA's prudency requirement. The court found that in response to public comments it adequately explained why the "not prudent" exception was inapplicable. The court found that NMFS emphasized in its analyses that habitat destruction from climate change, oil and gas activity marine shipping, etc., is one of the primary threats to the seals' survival and that designation would not "increase the degree of threat. . . . under any circumstances." The court declined to read into this "rare exception" factors that "Congress clearly did not intend to require the agency to consider." The court supported NMFS again, here on this point

Conclusion and Implications

After a multi-issue analysis and extensive discussion of the various issues on appeal the Ninth Circuit held as follows:

> Because the district court's remand order resolved discrete legal issues; the court's conclusions, if erroneous, could result in a "wasted proceeding"; and the Center may not obtain a favorable result on remand, the order constitutes a final, appealable judgment as to the Center. On the merits, we reverse the district court's rulings that the designations are unlawful and affirm the district court's ruling as to the ESA's "prudent" requirement. We reinstate the critical habitat designation for each seal species and we remand with instructions to enter judgment in favor of the Center and NMFS.

The court's opinion is available online at: https://cdn.ca9.uscourts.gov/datastore/opinions/2026/03/25/24-7276.pdf
(Robert Schuster)

U.S. DISTRICT COURT UPHOLDS FEDERAL COMPLIANCE AT YUBA RIVER DAMS, FLAGS BROPHY DIVERSION FOR REASSESSMENT

Friends of the River v. National Marine Fisheries Service, et al., ___F.Supp.4th___,
Case No. 2:16-cv-00818 (E.D. Cal. Mar. 31, 2026).

In March 2026, the U.S. District Court for the Eastern District of California brought a measure of finality to a decade-long legal battle regarding federal activities on California's Yuba River. The court determined that the federal government had largely complied with the federal Endangered Species Act (ESA) in its management of the Daguerre Point and Englebright dams, though it identified one critical oversight involving a local water diversion. While the decision favors the federal defendants, it mandates a "carveout" reassessment for the Brophy Diversion, sending the specific issue back to the National Marine Fisheries Service (NMFS) for further analysis.

Background

The Daguerre Point Dam and the Englebright Dam are historical structures on the Yuba River that were authorized and funded by the United States Congress. The Daguerre Point Dam was constructed in 1906, and the Englebright Dam was completed in 1941. Because these dams were established by direct legislative mandate, their continued existence and maintenance has been the subject of legal scrutiny regarding whether they constitute a discretionary agency action.

Litigation began in 2016 when Friends of the River filed a lawsuit against the U.S. Army Corps of Engineers (Corps) and the National Marine Fisheries Service. The primary concern was the impact of the Daguerre Point and Englebright dams have on three species protected under the federal ESA: (1) Central Valley spring chinook salmon, (2) Central Valley steelhead, and (3) North American green sturgeon. The plaintiffs argued that the continued maintenance and existence of these dams constituted a discretionary "agency action" that required the government to do more to protect these fish. Under the ESA, if a federal agency undertakes a discretionary action that may affect listed species, it must consult with the appropriate wildlife agency to ensure that action does not jeopardize the continued existence of those species.

After a 2018 ruling was overturned by the Ninth Circuit Court of Appeals, the case returned to the strict level to determine if the government's 2024 Biological Opinion finally met legal standards.

The District Court's Decision

The court addressed the distinction between the physical presence of the dams and the administrative management of water diversions associated with them. The Court ultimately upheld the federal government's position that the Daguerre Point and Englebright dams do not qualify as a discretionary agency action. The court reasoned that because the dams were authorized and funded by Congress, the Corps does not possess the legal discretion to decommission the structures or fundamentally alter their basic nature to benefit protected fish species. The ruling specified that these dams are concrete barriers featuring unregulated spillways, which do not involve the type of ongoing operational activity that would typically trigger a new consultation under the ESA. As a result, the court concluded that the dams are properly classified as part of the environmental baseline.

This determination effectively means that the federal government is not required to treat the existence of these dams as a current or ongoing action that must be mitigated under the ESA. The court held that the Corps lacks the statutory authority to take the actions requested by the plaintiffs, such as a dam removal or major structural modifications, without a new mandate from Congress.

However, the court reached a different regarding the Brophy Diversion, which is one of the water intake systems located on the Yuba River. The court found that the government's exclusion of the Brophy Diversion from the 2024 Biological Opinion to be "arbitrary and capricious." The court emphasized the critical difference between the Brophy Diversion and the nearby Cordua Diversion. While the Cordua Diversion operates under a perpetual license granted in 1911, the Brophy Diversion's five-year license officially expired in 2000. Despite this expiration, the

Corps has permitted the Yuba County Water Agency to continue operating the diversion on a "holdover status" for more than two decades.

The court ultimately determined that the decision to allow the continued operation of the Brophy Diversion under an expired license constituted an ongoing administrative choice by the federal government. Unlike the permanent physical presence of the dams, the management of this diversion is a discretionary activity that could impact the survival of the listed species.

Conclusion and Implications

The District Court for the Eastern District of California's decision initiates a new phase of administrative review for the Yuba River. The court officially remanded the 2024 Biological Opinion of the National Marine Fisheries Service with instructions to specifically analyze the impacts of the Brophy Diversion on the listed species. The remand requires the federal government to provide a detailed assessment of how the continued operation of this diversion, particularly under its holdover status, affects the recovery of salmon, steelhead, and sturgeon.

The implications of this decision are two-fold. For federal agencies managing large-scale infrastructure, the ruling reinforces the concept that congressionally authorized projects with limited operational discretion may be shielded from certain challenges under the ESA. This provides a level of legal certainty for the maintenance of older dams that do not have active flow-control mechanisms. However, the ruling also establishes that administrative "holdover" practices, such as long-term extensions of expired permits or licenses, will be subject to judicial scrutiny. Federal agencies cannot classify discretionary permitting decisions as part of an immutable "environmental baseline" if those decisions involve ongoing actions that could harm protected species. The decision also treats long-standing, Congressionally mandated infrastructure as a static part of the environment rather than a subject for continuous administrative re-evaluation.

The decision also shifts the focus of advocacy and management away from the removal of the Daguerre Point and Englebright dams and towards the regulation of water diversions. The requirement for a new analysis of the Brophy Diversion may lead to additional protective measures, such as enhanced fish screening or modified diversion schedules, to mitigate impacts on the Yuba River's fisheries. The court's opinion can be found here: https://www.courthousenews.com/wp-content/uploads/2026/03/friends-river-dam-summary-judgment-ruling.pdf
(Miles Krieger)

JUDICIAL CONFIRMATION AND FEDERAL WATER DELIVERY: DISTRICT COURT GRANTS SUMMARY JUDGMENT MOTIONS IN FAVOR OF DEFENDANTS AND WESTLANDS WATER DISTRICT

North Coast Rivers Alliance v. U.S. Department of the Interior,
___F.Supp.4th___, Case No. 1:16-cv-00307 (E.D. Cal. Mar. 26, 2026).

On March 26, 2026, the United States District Court for the Eastern District of California issued a ruling between a coalition of environmental organizations and the federal government regarding water distribution in California's Central Valley. U.S. District Judge Jennifer L. Thurston granted summary judgment in favor of the U.S. Department of the Interior and various local water agencies, effectively dismissing the remaining claim in a case that has spanned several years.

Background

The litigation originated from a challenge by the North Coast Rivers Alliance and other environmental groups (plaintiffs) against the U.S. Bureau of Reclamation's (Reclamation) management of the Central Valley Project (CVP). The CVP is one of the largest water infrastructure systems in the United States, supplying water to more than 20 million agricultural and domestic consumers through central and southern California.

The specific legal controversy focused on the conversion of "water service contracts" into "repayment" contracts under the Water Infrastructure Improvements for the Nation (WIIN) Act of 2016. Under the WIIN Act, water contractors were permitted to request the conversion of their existing contracts to allow for the accelerated repayment of their share of CVP construction costs. Westlands Water District, (Westlands) defendant-intervenor in this case, was among more than 70 contractors that sought such a conversion.

The plaintiffs' primary contention was that Reclamation violated 43 U.S.C. § 423e. The statute stipulates that water shall not be delivered from a "new project or new division of a project" until the relevant water contracts have been confirmed by a decree of a court of competent jurisdiction.

The plaintiffs argued that because Westlands had unsuccessfully attempted to secure a validation judgment in the Fresno County Superior Court, Reclamation was legally barred from delivering water under the converted contracts. The environmental coalition maintained that the CVP qualified as a "new" project because it did not exist when the 1926 law was enacted.

The District Court's Decision

The court's analysis focused narrowly on the language and timing of the statutory triggers found in 43 U.S.C. § 423e. The court's decision rested on several key legal determinations.

First, the court rejected the plaintiffs' argument that the CVP remains a "new" project indefinitely for the purposes of the 1926 Act. The court noted that the statutory language is specifically tied to the completion of a project. The court found that the specific language triggering the statute's restrictions "upon the completion of any new project" refers to a specific, singular point in time: after the construction is finished but before the first delivery of water. The court concluded that the CVP was completed for the purposes of the law decades ago, and nothing in the evidentiary record suggested the project should still be categorized as new.

Second, the court rejected plaintiffs' argument that prior failed validation attempts by Westlands in state court triggered section 423e. The plaintiffs argued that these attempts were "tacit recognition" that federal law required validation. The court found that while Westlands' own contracts included terms requiring validation, these were contractual obligations, not federally mandated under section 423e. The court emphasized that a failure to meet a contractual condition for validation does not automatically invoke a federal statutory bar to water delivery.

The court also addressed the plaintiffs' changing legal strategy. The plaintiffs had previously invoked 43 U.S.C. § 511, which concerns the validity and enforceability of contracts, but later abandoned these section 511 claims during the briefing process. The court observed that section 511 provides that contracts Reclamation enters into shall not be "binding" until validated, whereas section 423e—the only remaining claim—imposes a specific bar on the delivery of water. The court found that arguments made by the plaintiffs could only be premised upon section 511 and did not advance any viable theory of liability under section 423e.

In sum, the court did not find section 423e to preclude the delivery of water under Westlands' WIIN Act Repayment Contracts because of the lack of validation. The court granted Reclamation and defendant-intervenors motions for summary judgment.

Conclusion and Implications

The granting of the summary judgment in favor of the U.S. Bureau of Reclamation represents a substantial victory for California water agencies and federal authorities. The decision provides administrative certainty to Reclamation and more than 250 water contractors. By ruling that a judicial validation is not a federal statutory prerequisite for water delivery in established projects, the court has removed a potential obstacle to the Central Valley Project under the WIIN Act. Moreover, the court's narrow interpretation of "new project" limits the ability of litigants to use nearly century-old statutes to challenge current operations of long-completed infrastructure. The ruling also clarifies that while a water district may be contractually required to seek validation under state law, a failure to achieve that validation does not necessarily empower federal courts to halt water deliveries under federal law, provided that the project is not "new." The District Court's order/ruling is available at: https://www.courthousenews.com/wp-content/uploads/2026/03/reclamation-water-contracts-ruling.pdf
(Miles Krieger)

RECENT CALIFORNIA DECISIONS

CALIFORNIA SUPREME COURT DENIES REVIEW IN DELTA PROGRAM BOND VALIDATION CASE, CLEARS WAY FOR DELTA CONVEYANCE PROGRAM BOND VALIDATION CASE

Department of Water Resources v. Metropolitan Water District of Southern California, 117 Cal.App.5th 751 (3rd Dist. 2025), as modified on denial of reh'g (Jan. 28, 2026), review denied (Apr. 15, 2026)

On April 15, 2026, the California Supreme Court denied review of the Court of Appeal's decision that upheld the denial of validation to its Delta Program Bond resolution.

Background

The Delta Conveyance Project

The Delta Conveyance Project (DCP) is the latest in a series of proposed projects to increase water exports from the Sacramento-San Joaquin Delta into the State Water Project (SWP). In the 1960s, the state proposed to build the Peripheral Canal for that purpose, and ultimately the legislature passed a bill to construct that facility in 1980. However, a statewide referendum on the 1982 ballot repealed that legislation, effectively scuttling the Peripheral Canal project.

Later efforts included the Bay Delta Conservation Plan (BDCP) and eventually Governor Jerry Brown's proposed "California WaterFix," which would have constructed two large underground tunnels to move water underneath the Delta from the north, bypassing the environmentally sensitive estuary entirely. When Governor Newsom took office, he put an end to that project and substituted in its place what is now known as the DCP, a single-tunnel alternative.

DWR is currently involved in a variety of court and regulatory proceedings to implement the DCP, including proceedings before the Delta Stewardship Council, a petition to add points of diversion before the Administrative Hearings Office of the State Water Resources Control Board, eminent domain proceedings to do geotechnical work, and others.

The Delta Program Bond Validation Case

A validation proceeding under Code of Civil Procedure section 860 is a case filed by a government agency to confirm the validity of a contract, bond resolution, or some other matter that the law allows to be validated in this way. Any party that disputes the validity of the matter can answer the complaint and make its case, and the final judgment of the court is binding on everyone, thus giving the agency certainty about its authority to proceed. Validation is particularly important in bond issuance, because bond purchasers need to be assured that the bonds are legally valid.

Prior to the completion of its Environmental Impact Report for the DCP, DWR initiated proceedings to validate its authority to issue bonds. However, the bond resolution it sought to validate was not expressly tied to the DCP. Instead, it approved bonds for a broadly defined "Delta Program," with the specific facilities to be determined later.

The Trial and Court of Appeal's Decisions

The trial court and Court of Appeal both held that this broadly defined program could not be validated, because they could not determine from its vague description whether it was authorized as part of the SWP. DWR's argument was that the Delta Program was authorized as a "modification" of the Feather River Project, a component of the SWP defined in Water Code section 11260. The trial court and the Court of Appeal concluded that the definition of the Delta Program was too broad and uncertain to determine whether it would be a mere modification of that existing project. According to the Court of Appeal, DWR's authority to "modify" a unit of the SWP "is not so broad as to permit DWR to add entirely new and different 'units'" and that "at minimum, any 'further modifications' must be consistent with the Feather River Project's features and tethered to its purposes, objectives, and effects." (117 Cal.App.5th at p. 780.)

Next Chapter: The Delta Conveyance Program Bond Validation Case

After the trial court ruled against the Delta Program Bond validation, while the appeal was pending, DWR filed a separate action to validate a more specific "Delta Conveyance Program," which includes the specific facilities constituting the DCP. (*DWR v. All Persons Interested*, Sacramento County Case No. 25CV000704.) That action was apparently initiated as a "backup" option in the event DWR did not prevail on appeal. On January 27, 2026, after the Court of Appeal denied rehearing, the trial court stayed this second validation case pending the Supreme Court's potential review. Now that review has been denied, that case will resume.

Conclusion and Implications

The Delta Conveyance Project is an extremely consequential project in California's current water landscape (for good or ill, depending on your perspective). This litigation over the validation of bonds implicates the broader question of whether the project is authorized under existing statutes and existing contracts. It is only one front in a multi-front battle over the potential future of the DCP, but it is one that proponents and opponents of the project both should be watching. The Third District Court of Appeal's opinions are available online at: https://www4.courts.ca.gov/opinions/documents/C100552M.PDF (Brett Stroud)

Editor's Note: The author represents clients that receive water from the State Water Project and participated in the trial and appeal in this case.

TESTING BEFORE TAKING: THIRD DISTRICT COURT CONFIRMS DWR MAY ENTER LAND BEFORE PROJECT FUNDING IS SECURED

Department of Water Resources Cases, ___Cal.App.5th___, Case No. C103207 (3rd Dist. Apr. 13, 2026).

In *Department of Water Resources Cases* the Third District Court of Appeal addressed whether the California Department of Water Resources (DWR) may obtain court-authorized entry onto private property to conduct environmental, cultural, and geotechnical investigations before a water project is fully authorized and funded. The dispute arose from DWR's ongoing effort to evaluate property for the Delta Conveyance Project and related water conveyance planning in the Sacramento-San Joaquin Delta. The court affirmed the trial court's entry order and rejected landowners' argument that Water Code sections 250 and 11580 bar any such pre-condemnation activity until formal project approval and funding are in place.

Background: The Statutory Framework

California's Eminent Domain Law distinguishes between a classic condemnation action and a pre-condemnation entry proceeding. In a classic condemnation case, the condemning agency files a complaint to acquire property for public use, adopts a resolution of necessity, and litigates the right to take and the amount of compensation. By contrast, Code of Civil Procedure section 1245.010 and related provisions allow an entity authorized to acquire property by eminent domain to enter land in advance to conduct studies, surveys, examinations, tests, borings, and similar activities reasonably related to possible acquisition or use of the property.

The entry statutes also contain procedural safeguards. If the proposed entry will interfere with possession or use, or cause damage, the public entity must obtain either the owner's consent or a court order. The court must define the purpose, nature, and scope of the activities and require a deposit of probable compensation. If the entry causes actual damage or substantial interference, the owner may recover from the funds on deposit or obtain a judgment for any shortfall, with a right to jury trial on compensation unless waived.

Procedural History and the Landowners' Argument

Beginning in 2008 and 2009, DWR filed more than 150 petitions seeking access to properties for

environmental studies and geological testing to assess potential water conveyance routes. The petitions were later coordinated in San Joaquin County. Trial court rulings, Court of Appeal decisions, and the California Supreme Court's opinion in *Property Reserve I* shaped the governing framework for these disputes. Following subsequent proceedings and additional entry orders between 2022 and 2023, DWR sought in 2024 to add new petitions concerning the Delta Conveyance Project. The trial court granted those petitions in December 2024, and the landowners appealed.

The Court of Appeal's Decision

On appeal, the landowners did not principally challenge the scope of the testing or the constitutional adequacy of the entry procedure. Instead, they argued that DWR lacks authority to conduct any pre-condemnation testing unless the underlying project has already been authorized and funded under Water Code sections 250 and 11580. In their view, because the Delta Conveyance Project was not fully authorized and funded, DWR could not lawfully perform the requested investigations. They further argued that this limitation should apply with even greater force where the proposed activities rise to the level of a taking or damaging of property.

Why the Court Rejected the Project Approval Argument

Focusing on statutory text, the court explained that Code of Civil Procedure section 1245.010 requires only that the entity be "authorized to acquire property for a particular use by eminent domain." It does not require proof that the specific project has already been approved or fully funded. DWR satisfied that threshold because Water Code sections 250 and 11575 give it general eminent domain authority for state water and dam purposes and for Central Valley Project-related purposes.

The court treated the project approval language in Water Code sections 250 and 11580 differently. In its view, those provisions regulate when DWR may commence a classic eminent domain proceeding to acquire property for a project. They do not eliminate DWR's basic status as an agency authorized to acquire property by eminent domain. The entry statutes concern temporary investigatory access to determine whether property is suitable for acquisition. The Water Code provisions impose timing limits on actual acquisition proceedings. According to the court, conflating those concepts would collapse the statutory scheme.

The court also found the landowners' interpretation impractical. If DWR had to fully authorize and fund a project before conducting the investigations necessary to determine whether a property should be acquired, the pre-condemnation entry process would serve no real purpose. The court described that result as inconsistent with the evident function of the entry statutes, which is to allow agencies to gather the information needed to decide whether condemnation should occur at all.

The Role of Property Reserve I

A central part of the opinion is its reliance on *Property Reserve I*. The California Supreme Court had already held that the pre-condemnation entry statutes provide a constitutionally valid procedure for substantial testing activities, even where those activities may amount to a taking or damage under the California Constitution, so long as the landowner can obtain just compensation and a jury trial on damages. That holding defeated the landowners' fallback position that a classic condemnation action was required whenever the proposed entry exceeded minimal or superficial conduct.

The Third District Court of Appeal treated *Property Reserve I* as effectively dispositive. It emphasized that pre-condemnation entry and classic condemnation are separate procedures serving different purposes. Because a classic condemnation action is not required for pre-condemnation testing, the project authorization and funding prerequisites tied to DWR's exercise of eminent domain to acquire property do not apply at the investigatory stage. The only showing necessary is that DWR is a legally authorized entity to acquire property by eminent domain for the relevant public use.

Conclusion and Implications

The decision confirms that DWR may continue using California's precondemnation entry statutes as a front-end investigative tool in major water infrastructure planning, including the Delta Conveyance Project, without first establishing that the project is

fully authorized and funded. For public agencies, the ruling preserves a workable path to gather geotechnical, environmental, and cultural information before deciding whether to bring a classic condemnation action. For landowners, the case underscores that the principal protection at this stage lies not in blocking entry categorically, but in demanding strict judicial limits on the scope of activities and full compensation for any damage or substantial interference. The court's published opinion is available online at: https://www4.courts.ca.gov/opinions/documents/C103207M.PDF
(Darien Key, Derek Hoffman)

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