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CALIFORNIA WATER NEWS

LOWER BASIN STATES' SHORT-TERM PLAN TO CONSERVE THE COLORADO RIVER

In response to deteriorating hydrological trends and critical risk of reservoirs dropping to unsustainable levels, the Lower Division States of Arizona, California, and Nevada submitted a comprehensive operational proposal to the U.S. Department of the Interior on May 1, 2026. The plan introduces an integrated, non-severable package designed to serve as an interim stabilization bridge through calendar year 2028 while long-term post-2026 operating guidelines are finalized. By combining mandatory state-by-state usage reductions with an expanded system conservation program and dedicated Tribal Pool, the proposal identifies more than 3.2 million acre-feet of total water savings within the Lower Basin.

Background

On May 1, 2026, the Lower Division States of Arizona, California, and Nevada jointly submitted a formal operational proposal to the U.S. Department of the Interior aimed at stabilizing the Colorado River system through 2028. The plan responds to deteriorating hydrologic trends, including record-low inflows to Lake Powell and a heightened near-term probability of water levels breaching critical elevations at both Lake Powell and Lake Mead.

The Colorado River System operates under a complex framework of federal statutes, compacts, and operational criteria collectively known as the "Law of the River." The existing 2007 Interim Guidelines, which have governed modern reservoir operations, are reaching their expiration. This transitional period has been marked by a post-2026 planning process where basin states are tasked with developing long-term operational guidelines. Prior to the May 2026 submission, the Lower Division States had advanced an initial proposal of 1.25 million acre-feet in annual usage reductions, paired with an anticipated 250,000 acre-feet in annual reduction from Mexico, to establish a foundation of 1.5 million acre-feet in total yearly reductions.

The newly advanced May 2026 proposal builds directly upon that initial proposal, establishing an interim, short-term bridge spanning calendar years 2026, 2027, and 2028. The shortened implementation term was deliberately selected by the Lower Basin states to account for changing hydrological conditions while allowing the seven Basin States additional time to negotiate a comprehensive, long-term consensus without interstate litigation. Financially and administratively, the proposal is structured as a joint venture, necessitating explicit approvals from state legislative bodies, such as the Arizona Legislature—and the respective governing boards of relevant California and Nevada water agencies.

The Plan

The Lower Division States' proposal is structured as an integrated, non-severable operational package. The individual components of the plan are interdependent and cannot be legally or operationally modified in isolation. The primary operational segments span Lake Powell release schedules, the coordination of Upper Initial Unit operations, mandatory state-by-state Lower Basin reductions, expanded system conservation mechanisms, rules governing Intentionally Created Surplus (ICS), infrastructure upgrades, and the establishment of a dedicated Tribal Pool.

Under the specific parameters outlined for the Lower Basin reductions, the states commit to a fixed conservation volume of 1.25 million acre-feet per year (MAFY) for calendar years 2027 and 2028. This volume is allocated among the states as follows: Arizona is allocated 760,000 acre-feet per year (KAFY), with 440 KAFY to California and 50 KAFY to Nevada. To satisfy these reduction mandates, water contractors may either reduce their standard water orders or apply a corresponding volume of accumulated ICS, subject to specific volumetric restrictions tied to the elevation of Lake Mead. For example, if Lake Mead's elevation on January 1 is above 1,025 feet, the maximum annual ICS withdrawals are capped at 400,000 acre-feet for California, 200,000 acre-feet for Arizona, and 50,000 acre-feet for Nevada. These limits scale downward as reservoir elevations decline,

reaching zero if Lake Mead drops below 1,000 feet. Furthermore, the plan introduces a 3 percent annual evaporation loss on stored ICS starting in 2027 and institutes a 10 percent system assessment on all newly created ICS, which automatically converts that water into system water to bolster reservoir volumes.

Beyond fixed reductions, the proposal introduces an expanded system conservation program designed to yield a minimum cumulative contribution of 700,000 acre-feet, with a target performance goal of 1 million acre-feet through 2028. With appropriate funding, the estimated state-level baseline contributions for this expanded conservation are 300,000 acre-feet each from Arizona and California, and 100,000 acre-feet from Nevada. Cumulatively, when combining fixed reductions, expanded conservation, and related mechanisms, the plan identifies over 3.2 million acre-feet of total Lower Basin water savings over the implementation term.

Upper Basin Operations

A critical element of the analysis involves the integration of Upper Basin operations, which the Lower Basin states position as foundational prerequisites for their water reductions. The plan adopts a coordinated management approach regarding the Upper Initial Units (UIU) of the Colorado River Storage Project Act, such as Flaming Gorge Reservoir. The proposal requests that Reclamation trend Flaming Gorge releases toward 1 million acre-feet to protect downstream infrastructure. Starting in 2027, if the minimum projection shows Lake Powell dropping below an elevation of 3,515 feet, the plan mandates that at least 600,000 acre-feet must be released from the UIUs above baseline levels.

These upstream parameters directly dictate the scheduled annual releases from Lake Powell to Lake Mead. For water year 2026, the release is expected to be maintained at 6.0 million acre-feet. Beginning in water year 2027, the standard release will be set at 8.0 million acre-feet if Lake Powell's elevation is at or above 3,540 feet on October 1 of the preceding year. If the elevation is below 3,540 feet, the scheduled release drops to 7.0 million acre-feet. Adjustments to these release schedules are permitted under improved hydrologic conditions to allow both the Upper and Lower Basins to share the benefits of increased inflows.

Federal Trust Mechanism

Finally, the proposal incorporates a federal trust mechanism through the creation of a 280,000 acre-foot Tribal Pool in Lake Mead. This pool is designed to assist the federal government in meeting its trust responsibilities to Tribes in Arizona. The pool will operate within Arizona's broader ICS limitations, with water acquired through a combination of existing Bureau of Reclamation ICS and discounted contributions from Arizona tribes, including the Gila River Indian Community.

Conclusion and Implications

The submission of the proposal establishes a quantified, near-term framework intended to stabilize the Colorado River through 2028 while long-term post-2026 guidelines are finalized. It strictly emphasizes the limits of federal power, noting that the Department of the Interior lacks the statutory authority to unilaterally enforce these Lower Basin reductions, conservation activities, or Tribal Pool provisions without a formal agreement. Furthermore, implementation is contingent on securing sufficient federal and state cost-sharing funds.

The plan may also bring some interstate tensions to the forefront. While preserving the Upper Division States' legal delivery obligations under the Colorado River Compact, the Lower Basin states advocate for Upper Basin usage cuts, identifying the Upper Basin's historical reluctance to reduce usage as the primary barrier to a seven-state agreement. Finally, the plan mandates infrastructure accountability by requiring a federal risk-mitigation plan for Glen Canyon Dam by 2027 and physical durability testing of its outlet works. Ultimately, while advanced on a voluntary, non-precedential basis, the proposal would bind the system to strict volumetric constraints, financial partnerships, and coordinated reservoir operations over the next two years. The proposal can be found here: https://crb.ca.gov/wp-content/uploads/2026/05/20260501-lower-division-states-proposal-2026-2028.pdf.
(Darien Key, Miles Krieger)

CEQA REFORM INITIATIVE MEASURE LIKELY TO APPEAR ON STATEWIDE CALIFORNIA BALLOT IN NOVEMBER

The white fritillary, a flower not found in southern California, plays a major role in Season 3 of the HBO drama ®*Euphoria*, where its status as an endangered plant very much endangers an Los Angeles County seaside senior living project being developed by the character portrayed by Jacob Elordi. The flower's presence on the project site causes the (ambiguous) planning and zoning commission to halt construction, pending the requisite environmental studies and mitigation.

Notwithstanding the plot's backwards land use and environmental review timeline, the impact that the California Environmental Quality Act (CEQA) can have on development projects has entered the pop culture consciousness. CEQA's notoriety may be short lived, however.

In April 2026, the proponents of the "Building an Affordable California Act" submitted over 945,000 signatures (nearly twice the 546,651 required) to place on the November ballot the most far-reaching reforms to the CEQA in the environmental statute's 56-year history. Sponsored by the California Chamber of Commerce and other business and utility organizations, the measure proposes to simplify the environmental review process for certain "essential projects" and to streamline legal challenges to such projects.

The Current CEQA Regime

Signed into law by Governor Ronald Reagan in 1970, CEQA was drafted to apply to "public" projects, requiring the government to conduct an environmental study to examine a project's impacts. Subsequent judicial decisions interpreted "public" to mean any project that requires governmental approval. The California Legislature subsequently amended CEQA to apply only projects that require discretionary approval (i.e. those projects that the local agency retains the discretion to revise the project to mitigate for potential environmental impacts). The Legislature also tasked the Natural Resources Agency to devise several categories of projects that are exempt from CEQA review (i.e. the categorical exemptions).

CEQA's notoriously low threshold for challenging a development project has allowed almost anyone to file a lawsuit against a project. The consequence of this, resulting in a CEQA-industrial complex of sorts, whereby law firms, special interest groups, and other consultants file environmental challenges against projects, seeking special benefits from developers (e.g. inclusion of public facilities for neighbor uses, or project labor agreements to satisfy labor union demands). Not only does each change to a project increase overall costs, but the time spent negotiating or defending a CEQA challenge extends the overall project timeline, in addition to increases in attorney and consultant fees. Consequently, reforming CEQA to eliminate avenues for abuse has become a major goal of housing and public transit advocates.

The Building an Affordable California Act

The proposed statute would make significant changes to CEQA, applying to the environmental law many of the same strategies that recent state housing laws apply to streamlining of housing projects. Broadly speaking, the proposal will establish timelines and limitations for challenges to qualifying projects.

The proposal creates a new class of "essential" projects, which are defined to include: essential housing, water, clean energy, public health, public safety, broadband Internet access, education facility, or transportation. Essential project is defined to include "all related and ancillary public, private, and utility infrastructure and public service facilities required by a utility or public agency or included in an essential project application as part of the "whole of the project."

The definitions section additionally includes discrete definitions for each specific class of essential project. For example, an "essential housing project" is defined to include a project that includes only residential units, mixed-use development (as that term is defined), transitional housing, supportive housing, emergency shelters, farmworker housing, group living accommodations, student housing units, and senior housing units.

An Initial Application

Similar to project applications under Senate Bill 330 (2019) this measure would allow a project appli-

cant to file an "initial application," which allows the lead agency to make a determination of application completeness. The lead agency must make its completeness determination within 30 days. Within 30 days of determining the application to be complete, the lead agency must decide whether the project requires an Environmental Impact Report (EIR), a Negative Declaration (ND) or Mitigated Negative Declaration (MND), or any other environmental review documentation (e.g. CEQA exemption, EIR addendum, etc.). The lead agency must certify an EIR within one year of determining the application complete, approve an ND or MND within 180 days of application completeness, or otherwise make a final CEQA determination for any other CEQA document within 90 days of determining the application complete.

If approved, the law would provide timelines for challenging a lead agency's failure to approve a project consistent with the law, but also provide strict timelines for circulating documents for public comment. An applicant may also request a preliminary scoping process and streamlined alternatives analysis, provided the applicant has notified the lead agency of its intention to proceed with this process.

Judicial Review Process

Probably most consequential is the measure's reform of the judicial review process under CEQA. The ballot measure will limit a petitioner's claims to whether the public agency complied with "objective existing laws" and whether the project's approval complies with those laws. The measure would require that a judicial action be complete (including any appellate proceedings) within 270 days, requiring application of the judicial streamlining procedures applicable to environmental leadership development projects. A court, in its own discretion, may extend the deadline by up to 90 additional days. If the court finds that the approval of the project does not comply with applicable law, the remedy will be limited only to prohibiting commencement of the noncompliant part of the project. The remaining compliant portion of the project can continue. Upon completion of corrective action, the court will dismiss the action and the project will not be subject to further challenge. A court may only order a halt to a project if the project will have a specific, adverse impact upon public safety with no feasible method for mitigating or avoiding that impact.

Providing for More Expeditious or Advantageous Review

The act allows an applicant to elect use of none, some, or all of the new law, and to use any other state statute that would "provide for more expeditious or advantageous review and approval." A prevailing wage requirement applies only to housing projects over 85 feet in height—generally these taller projects are more complicated, for which the skilled labor requirements can sometimes be a beneficial consideration. However, all other essential projects (i.e. essential projects that are not housing projects) must comply with the labor requirements contained in Section 21183.5 (from the Jobs and Economic Improvement Through Environmental Leadership Act of 2021).

Tribal Consultation

The act would still require tribal consultation to occur as is required currently under CEQA. However, the lead agency must conduct an initial screening to identify and evaluate tribal cultural resources, upon the earlier of the submittal of a preliminary application, the applicant's written notice to invoke the act, or the application for the essential project. This allows the applicant to participate in early discussions, through a meet and confer process with the tribe, as applicable.

Conclusion and Implications

The Secretary of State's office still needs to confirm the validity of signatures, but given the overwhelming volume in signatures submitted with the petition, the measure will likely appear on the November ballot. Language protecting tribal consultation and imposing prevailing wage and labor standards on most essential projects appear to be attempts by the Chamber of Commerce at forestalling any funded opposition by some of the state's major special interest groups: labor unions and the native tribes. The measure's streamlined CEQA provisions would only preclude union lawsuits against non-housing projects that comply with labor standards. Thus, the measure would not offer much protection to non-housing essential projects

that do not comply with the required labor provisions. The measure could, however, streamline the production of mid-size housing developments under 85 feet in height.

If approved by the voters, the Building an Affordable California Act would provide the most comprehensive reform to CEQA, building on the momentum achieved by the Legislature's adoption of AB 130 in 2025. Still, the ballot measure plays into CEQA's deficiencies, by mostly allowing the reform measures but only after a project largely meets certain (and often costly) requirements. Nevertheless, the measure could put a stop to frivolous lawsuits by "concerned" NIMBYs seeking to block new housing in the neighborhood. While *Euphoria*'s Season 3 wrapped up this May, the next chapter of this CEQA drama unfolds this November. For more information on the proposed act, *see:* https://oag.ca.gov/system/files/initiatives/pdfs/25-0023A1%20%28%26quot%3BEssential%20Projects%26quot%3B%29.pdf.
(Braeden Mansouri)

ANOTHER TAX LIMITATION MEASURE LIKELY HEADED TO THE NOVEMBER 2026 CALIFORNIA STATEWIDE BALLOT: "LOCAL TAXPAYER PROTECTION ACT TO SAVE PROPOSITION 13"

California voters this November 2026, may be deciding on a number of consequential questions. In addition to the ballot measure that proposes to reform the California Environmental Quality Act (CEQA), the perennial sponsor of taxation ballot measures—the Howard Jarvis Taxpayer Association (HJTA)—is now taking aim at real estate transfer taxes. The HJTA was the group responsible for placing Proposition 13 on the ballot in 1978, forever changing the ability for the state and local governments to raise revenue and causing a cascade of fiscal crises. Very generally, Prop. 13 capped property tax assessments and imposed a two-thirds vote requirement for legislatively imposing and raising taxes.

HJTA alleges that this ballot measure, the "Local Taxpayer Protection Act to Save Proposition 13," is necessary to reverse "court-created loopholes" in Prop. 13. At issue purportedly is the California Supreme Court decision in *California Cannabis Coalition v. City of Upland,* 3 Cal.5th 924 (2017).

The *California Cannabis* Decision

The Supreme Court in *California Cannabis* evaluated the ability of the voters to impose taxes via their initiative authority or whether Article XIII(C) of the State Constitution (added via Prop. 218 (1996)) restricts that power. The plaintiff coalition had circulated a petition to place a local measure on the ballot repealing the city's ban on cannabis dispensaries and imposing on new dispensaries an annual $75,000 "inspection and licensing fee." The measure was placed on the November 2016 ballot, where it was soundly defeated.

The Court in *California Cannabis* ultimately concluded that Prop. 218's two-thirds vote requirement does not apply to a tax measure placed on the ballot by the voters. The corollary of this was that an advocate for imposing or raising a tax could circumvent the two-thirds legislative approval requirement (e.g. what is otherwise required of a local city council) by circulating a petition and placing the measure on the ballot, requiring a simple majority vote. HJTA consequently views the Court's conclusion as an affront to its past efforts to impede any efforts to raise taxes in California.

This has since resulted in numerous "citizen-led" ballot measures to raise taxes (anymore, almost every ballot measure has significant political and financial backing by some special interest group), including the Measure ULA (2022) in the City of Los Angeles, otherwise known as the "Mansion Tax". Measure ULA enacted a 4 percent tax on the sale or transfer of properties (i.e. a real property transfer tax) valued at more than $5 million and a 5.5 percent tax on the sale or transfer of properties valued at more than $10 million. Other cities, many in the Bay Area, rely significantly on property transfer taxes.

The "Local Taxpayer Protection Act to Save Proposition 13"

HJTA's one-page ballot measure takes specific aim at Measure ULA and claims that "court-created loop-

holes have allowed special interests to pass billions in new and higher taxes, including real property transfer taxes . . . .” This measure would require any citizen-let tax increase to obtain a two-thirds majority vote of the electorate before enactment.

Second, this measure repeals any previously enacted “tax upon any parcel of real property or upon any person as an incident of real property ownership” that does not comply with the provisions of the measure. Any such tax would sunset on the first December 31 two years following the enactment of the measure.

Conclusion and Implications

Measure ULA, which sought to raise revenue for affordable housing projects, has resulted in some adverse consequences, despite raising more than $1 billion in three years. However, many academics studying the impact of ULA have concluded that, because the transfer tax applies to apartments, condos, mixed-use, and commercial developments (in addition to single family “mansions”), the measure has resulted in a downturn in new construction, including new affordable housing projects. Given the sweeping language of the HJTA ballot measure, the proposition would impact future tax-raising measures. Existing and proposed non-real estate taxes (e.g. L.A. County Measure ER, which is on the June 2026 ballot and proposes a 0.5 percent sales tax increase to fund health services that face funding cuts by the Trump Administration) would not be repealed.

If approved, the measure would undo many streams of revenue for increasingly cash-strapped localities, and also frustrate the ability for citizens to raise revenue in the future. While L.A. Mayor Karen Bass (up for reelection) and the L.A. City Council have attempted to address ULA’s shortcomings, these efforts were conditioned upon HJTA removing its measure from the ballot. Now, state leaders in Sacramento are attempting to negotiate with HJTA while the group still has the ability to remove the measure from the ballot. HJTA supposedly remains resolute in keeping the measure on the ballot.

The ULA reform track is broadly supported by a coalition of housing advocates, developers, and the trade unions. Despite HJTA’s refusal to remove the measure from the ballot, it remains to be seen whether legislative leaders can strike a deal with the group to reform some existing transfer tax measures and avoid a further expansion of Prop. 13. Initiative sponsors have until June 25 to remove the measure. For more information on the “Local Taxpayer Protection Act to Save Proposition 13,” *see:* https://www.hjta.org/saveprop13_initiative_text/.
(Braeden Mansouri)

REGULATORY DEVELOPMENTS

DEPARTMENT OF WATER RESOURCES ISSUES UPDATED WATER ALLOCATIONS FOR 2026

On May 15, 2026, the Department of Water Resources (DWR) announced its updated water allocations from the State Water Project (SWP).

An Increase Which Reflects Recent Rain and Snowpack

DWR announced an increase in water allocations from the State Water Project (SWP) for 2026. The allocation is now 45 percent of requested supplies, up from the previous allocation of 30 percent announced on January 29, 2026. The allocation establishes how much water the State plans to deliver to the 29 public water agencies served by the SWP, which provides water to 27 million Californians and 750,000 acres of farmland.

In the spring, SWP allocations are based on current hydrological conditions, existing reservoir storage, and remaining snowpack. While California saw record heat in March and early snowmelt, consistent rainstorms in April provided critical runoff through the system that allowed DWR to capture more water and meet environmental regulations without using stored water. Currently, the SWP's largest reservoir, Lake Oroville, is at 99 percent of capacity. Statewide, reservoirs are 117 percent of average for this time of year.

The challenge remains that California's snowpack, the state's frozen reservoir, is essentially gone. As of May 15, the statewide snowpack was just 12 percent of average. The snowpack peaked in mid-February and has since melted off. To learn more about how snowmelt impacts State Water Project allocations: *see:* https://youtu.be/vXdP6s8Kq0E.

Real-Time Operational Flexibility

The SWP utilized real-time operational flexibility to benefit water users and the environment despite the fact that so much of this year's precipitation came as rain instead of snow. Water managers at Lake Oroville coordinated closely with the U.S. Army Corps of Engineers to capture as much water as possible while still providing flood protection to downstream communities. These flexible operations, coupled with the improved runoff in the system resulted in an additional 400,000 acre-feet of storage in Lake Oroville. This puts the SWP in a better position to provide water supply to contractors this year while maintaining robust carryover storage to meet water supply and environmental needs should next year be dry.

Inaugural Meeting of the Advisory Committee for California Water Plan 2028

In related news, the California Department of Water Resources hosted the inaugural meeting of the Advisory Committee for California Water Plan 2028 on May 13 and 14, 2026, in Sacramento, marking "an important milestone in the implementation of Senate Bill 72 (SB 72) and a new era of statewide water planning in California."

In the 2028 Water Plan, DWR will establish, for the first time, an interim target of 9-million acre-feet of additional water supply, storage capacity, or conservation.

Conclusion and Implications

Each year, the Department of Water Resources provides an initial State Water Project allocation in December based on available water storage, projected water supply and water demands. Allocations are updated monthly as snowpack, rainfall and runoff data is analyzed, with a final allocation typically determined near the end of the season in May or June. This season, the initial allocation was 10 percent on December 1, updated to 30 percent on January 29, and increased to 45 percent as of May 2026. Recently, better-than-expected rainfall in late winter/early spring has meant that the May assessment has allowed for increases in early projections. Director Karla Nemeth referenced that as of May 15, 2026, "California's reservoirs are full, but most snowpack

melted off weeks ago. We must use this stored water carefully. . .” Historical data on State Water Project allocations is available online at: https://water.ca.gov/programs/state-water-project/management/swp-water-contractors.
(Robert Schuster)

LAWSUITS FILED OR PENDING

PENDING BEFORE THE CALIFORNIA SUPREME COURT, AMICUS BRIEFS IN *BRING BACK THE KERN V. CITY OF BAKERSFIELD*, ITS FIRST MAJOR WATER CASE IN 25 YEARS

On July 16, 2025, the California Supreme Court granted review in *Bring Back the Kern v. City of Bakersfield* (2025) 110 Cal.App.5th 322 (*BBTK*). *BBTK* is the first major water rights case to go before the Supreme Court in 25 years. [*Bring Back the Kern v. City of Bakersfield*, ___Cal..5th___, Case No. S290840 (2026); 110 Cal.App.5th 322 (5th Dist. April 2, 2025).]

Background

The Court of Appeal reversed an injunction requiring unspecified additional flows of water in the Kern River, which the trial court had granted under Fish and Game Code section 5937. The water districts appealing the injunction argued that the trial court was required to first determine whether requiring such flows was "reasonable" under Article X, Section 2 of the California Constitution. They also argued that Section 5937 has been misunderstood by the trial courts and does not authorize a private party to enforce it absent action by the California Department of Fish and Wildlife (CDFW). Plaintiffs argued that the legislature, by enacting Section 5937, already determined that preserving fish by whatever means necessary is the reasonable use of water.

May 4, 2026, was the deadline for briefs by amici curiae (friends of the court), outside parties with an interest in the case that want to brief the Court on its wider implications. The case has attracted statewide interest, and sixteen separate briefs were filed, representing a broad range of interests and perspectives on the case.

Amici Supporting the Plaintiffs

The California Attorney General's office, on behalf of the Attorney General and CDFW, filed a brief repeating many arguments made by the plaintiffs. The Attorney General's brief particularly focused on the interpretation of the statute and whether enforcement requires an order from CDFW, arguing that the Court should defer to the interpretation of the statute by CDFW and the Attorney General.

California Trout and other non-government organizations (NGOs) with a history of bringing claims under Section 5937 filed a brief describing their prior trial court litigation under the statute and repeating arguments made by the plaintiff in favor of their interpretation on the constitutional issue.

Trout Unlimited, another environmental NGO, filed a brief laying out its proposal for a procedural framework to consider Section 5937 cases. Their approach would place the burden of creating an interim flow regime on the dam operator and then place a high burden on anyone challenging the reasonability of that flow regime.

Two other briefs were filed, one by the California Water Impact Network and one by the Winnemem Wintu Tribe and a group of environmental and fishing NGOs, all arguing that enforcing the Court of Appeal's standard would result in underenforcement of the statute.

Amici Supporting the Water Districts

Scholars from the California Constitution Center, a non-partisan academic research center at the University of California, Berkeley, School of Law, argued that even if the legislature intended Section 5937 to be a determination of reasonableness under the constitution, the final resolution of such constitutional questions must come from the courts.

The Association of California Water Agencies (ACWA) filed a brief urging the necessity of meeting the constitution's mandate that the beneficial use of water be maximized. It described a wide range of practical considerations that must be taken into account by the trial court on remand.

The Regional Water Authority and Northern California Water Agency described the development of the constitutional doctrine of reasonable use, including its origins in the early American common law. It

also forwarded two examples of physical solutions, a court decision on the American River and a settlement on the Yuba River, as models for the resolution of such cases.

The San Joaquin Tributaries Authority argued, on behalf of public agencies tasked with operating and administering dams, that the Court should put an end to private enforcement of Section 5937 and instead leave the initiative with the expert-driven processes of CDFW and the dam operators.

The Southern California Water Coalition argued that establishing absolute rules under the reasonableness standard would undermine the resolution of California's groundwater management problems, which depends in part on adjudications of competing claims to groundwater under Article X, Section 2.

The Bay Area Council argued that the plaintiffs' constitutional position would destabilize municipal water supplies and jeopardize the development of affordable housing.

The California Water Association urged the Court to remand the case for further proceedings, pointing out that the factual record is not well developed due to the absolute position taken by the trial court, which no party is now defending.

The Property and Environment Research Center, an environmental NGO headquartered in Montana, argued that creating an absolute rule of the kind suggested by the plaintiffs would destabilize water rights priorities and disincentivize reasonable settlements that achieve the goal of balancing competing interests.

Tom Taylor, M.S., a scientist with decades of experience in fisheries biology and the establishment of flow regimes, argued that the plaintiffs' proposed absolute rule would not allow for proper management of instream resources because it would not consider the impact of mandated downstream flows on upstream resources. He argued that the trial court will need to consider the specific fish populations in the Kern River and their needs in order to properly consider all of the factors required in the reasonableness analysis.

A large coalition of agricultural organizations argued that the state's surface water and groundwater systems are necessarily integrated and that courts must consider the holistic impact of proposed flow requirements on that integrated system.

Wheeler Ridge-Maricopa Water Storage District, whose jurisdiction is adjacent to one of the water districts affected by the plaintiffs' proposal, drew the Court's attention to the impact of reductions in surface supply on the groundwater levels not only of the user but of adjacent users, which should also be considered in a reasonableness analysis.

Conclusion and Implications

These amicus briefs represent a broad cross-section of the competing interests, complex regulatory and policy issues, and legal arguments that make cases under Section 5937—and indeed all water rights disputes—both complex and consequential. Everyone involved in such disputes, and in California's water industry more broadly, would do well to familiarize themselves with these arguments, as this is not the last case in which they will be relevant. The Fifth District Court of Appeal's opinion is available online at: https://www4.courts.ca.gov/opinions/revpub/F087487.PDF.

(Brett Stroud)

CALIFORNIA SUPREME COURT ASKED TO REVIEW COURT OF APPEAL'S DECISION IN LAS POSAS VALLEY GROUNDWATER ADJUDICATION

The California Supreme Court is poised to rule on three petitions for review arising out of the Las Posas Valley groundwater adjudication (LPV Adjudication). Under its rules, the Court has until June 14, 2026, to decide whether to grant review, though it may extend that time if necessary. [*Las Posas Valley Water Rights Coalition, et al. v. Ventura County Waterworks District. No. 1, et al.*, California Supreme Court Case No. S296211]. The Court of Appeal's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/B330837.PDF.

Background

The LPV Adjudication, originally filed on March 27, 2018, is the first groundwater adjudication to be litigated to judgment and ruled on by the Court of Appeal under the "comprehensive adjudication" procedures (Code Civ. Proc., § 830, *et seq.*) in the Sustainable Groundwater Management Act (SGMA). The case was divided into three phases, each with a separate court trial, which lasted over five years. The final judgment was entered on July 10, 2023, and was appealed by several parties. The Court of Appeal affirmed the judgment in full on March 5, 2026, in a published decision.

Three petitions for review were filed, along with requests to depublish the Court of Appeal decision. (*Las Posas Valley Water Rights Coalition v. Ventura County Waterworks Dist. No. 1* (2026) 118 Cal. App.5th 1170, reh'g denied (Apr. 1, 2026), review filed (Apr. 14, 2026).) One was filed by Del Norte Mutual Water Company, one by Solano Verde Mutual Water Company, and one by a group of agricultural users. The petitions raise significant issues regarding the comprehensive adjudication procedures as well as major water rights questions that will be consequential in future adjudications.

Adjudication of Water Rights and Physical Solutions

The petitioners argue that the judgment did not first determine all existing legal rights to groundwater before it considered equitable factors and adopted a "physical solution." A physical solution is a "resolution of conflicting claims in a manner that advances the constitutional rule of reasonable and beneficial use of the state's water supply." (*City of Santa Maria v. Adam* (2012) 211 Cal.App.4th 266, 287; see Cal. Const., art X, § 2 ["because of the conditions prevailing in this State the general welfare requires that the water resources of the State be put to beneficial use to the fullest extent of which they are capable, and that the waste or unreasonable use or unreasonable method of use of water be prevented"].)

The petitioners allege that the trial court failed to adjudicate all water rights in the basin before approving a physical solution, which violates the Court's prior decision in *City of Barstow v. Mojave Water Agency*, 23 Cal.4th 1224 (2000), the last groundwater adjudication case to come before the Court. In that case, the Court held that physical solutions may not disregard the legal priorities of water rights. The petitioners argue that the trial court did not even determine those priorities, which is a necessary first step. SGMA's comprehensive adjudication provisions built this two-step requirement in, empowering the trial court to "determine all groundwater rights of a basin, whether based on appropriation, overlying right, or other basis of right, and use of storage space in the basin" and also expressly providing for the trial court to impose a physical solution. (Code Civ. Proc., § 834.)

The respondents argue that the trial court did adjudicate all water rights in the basin when it adopted a schedule of allocations in the Phase 2 statement of decision, based on evidence presented at trial. Petitioners respond that the allocations put forward by the plaintiffs in Phase 2 expressly relied on equitable factors and not strictly water rights priorities. They point to examples of parties receiving more water than they previously used and parties receiving allocations expressly intended to support future, rather than current, uses. The Respondents characterize these as factual disputes about the reasonable needs of overlying users, rather than departures from legal water rights priorities. The petitioners argue that the Court should grant review to clarify what is required in the legal priority analysis before implementing an equitable physical solution.

Rights of Mutual Water Companies

One of the major issues litigated in the LPV Adjudication was the nature of the water rights used by the mutual water companies in the basin. The petitioners argued, as they do in their petitions, that the mutual water companies had water rights of their own in the basin and that the companies should thus receive an allocation to distribute to their shareholders in accordance with their bylaws. The trial court instead found that the companies acted only as agents for the exercise of the overlying rights of their shareholders. Thus, the companies received effectively no allocation, with the water instead being allocated directly to shareholders who historically received the water from the companies. The issue is significant because many shareholders historically received more water from the companies than they would have been entitled to in a time of shortage. Thus, the petitioners argue, the trial court's approach benefits those shareholders over against shareholders that historically took less than their entitlement from the companies.

The respondents argue that these are essentially factual questions and that the Court should defer to the trial court. The petitioners respond that while the facts of the individual companies matter, the facts are not in dispute. Under existing case law, they argue, the undisputed facts legally require a finding that the companies own their own water rights.

There is also a dispute about the rights of Solano Verde Mutual Water Company. After its groundwater wells failed around 20 years ago, the company decided to bring in an imported water supply rather than immediately drill new groundwater wells. The company argues that its groundwater rights should not be considered dormant due to this period of non-use, because it should not be penalized for bringing additional surface water into the basin by being deprived of its groundwater rights. The respondents argue that Solano Verde did not have a realistic prospect of drilling new groundwater wells and its groundwater rights were rightly considered dormant.

Conclusion and Implications

The implementation of SGMA has already brought many groundwater issues around the state into active litigation, and it will likely continue to do so in the future. The comprehensive adjudication mechanism in SGMA was enacted based on the likelihood that adjudications would become more frequent as a result. Therefore, these foundational questions regarding how to implement the procedure will be of great importance in the coming years. If the Supreme Court grants review, groundwater users around the state should monitor the case closely for its implications in their groundwater basins. If it doesn't, groundwater users should consider what the Court of Appeal decision means for their rights, what questions it leaves open, and what the next step will be in the development of the state's groundwater adjudication procedures.
(Brett Stroud)

RECENT CALIFORNIA DECISIONS

CALIFORNIA SUPREME COURT CLARIFIES COASTAL COMMISSION'S APPELLATE JURISDICTION

Shear Development Co., LLC v. California Coastal Commission, ___Cal.5th___, Case No. S284378 (April 23, 2026; *modified*, May 14, 2026).

The California Supreme Court reviewed the denial of a coastal development permit to construct single family homes in a developed part of Los Osos, an unincorporated community in San Luis Obispo County in *Shear Development Co., LLC v. California Coastal Commission*.

Background

Shear purchased lots in Los Osos zoned as "Residential Single-Family," for which there are three principal permitted uses, including "Single-Family Dwellings." The lots were in an existing developed area bounded on three sides by residential development.

The County approved a coastal development permit authorizing Shear to build one residence on each of eight lots in two phases. In the first phase, Shear could build a total of four homes. In the second, which would occur only after completion of the Los Osos community sewer, the remaining residences could be built. Shear later applied for a permit to build the four homes planned for the second phase of development. These homes would be located between the homes built during the first phase. The board of supervisors (Board) voted tentatively to uphold Shear's appeal from an adverse hearing officer's decision. It directed staff to return to the Board with an environmental determination, findings for approval, and conditions for approval. Shear deleted one lot from his application due to the presence of protected snails. The Board upheld Shear's appeal as to the remaining three lots.

The Board's decision was appealed to the California Coastal Commission. Shear defended the Board's decision but also challenged the Commission's jurisdiction to consider the appeal. The Commission denied the permit. It identified two bases for its jurisdiction: (1) the proposed residences were in a sensitive coastal resource area (SCRA) under the County's local coastal program (LCP); and (2) the proposed development was not for the sole principal permitted use for the area, but rather for one of several principal permitted uses. On the merits, the Commission concluded that no adequate wastewater service was available due to Special Condition 6, which provided that wastewater service to undeveloped properties within the service area was prohibited unless and until the Estero Area Plan is amended to identify appropriate and sustainable buildout limits, including proof that adequate water is available to support development; and the development did not protect adequately the environmentally sensitive habitat area (ESHA) and therefore violated ESHA policies. The Superior Court denied a petition for writ of administrative mandate, and the Court of Appeal affirmed.

The Supreme Court's Decision

The Commission's Appellate Jurisdiction

Regarding the Commission's first jurisdictional ground, the Supreme Court ruled that the proposed development site is not in an SCRA. The issue turned on interpretation of the LCP, a legal issue. The Court exercises independent judgment when reviewing an agency's interpretation of the law, applying any appropriate deference to the agency's legal interpretation. Here the County and the Commission disagreed over interpretation of the law. When multiple agencies that administer a statute have provided conflicting interpretations, a court should apply the factors articulated in *Yamaha Corp. v. State Board of Equalization*, 19 Cal.4th 1 (1998) to each agency to determine not only whether either would be entitled to deference, but also whether either has a stronger claim to deference than the other. If one agency is better situated than the other to provide a defini-

tive statutory interpretation to which a court should defer, then the court may assign greater weight to that agency's interpretation. If not, and the agencies offer incompatible interpretations, then the court should perform its interpretive task without deference to either agency. The pertinent question for deference is whether either entity's position bears clearly superior indicia of being correct compared to the other. Here, neither did. The Commission did not properly exercise appellate jurisdiction under the theory that the proposed development is in an SCRA.

The Commission's second asserted basis for appellate jurisdiction was its jurisdiction over "[a]ny development approved by a coastal county that is not designated as the principal permitted use." Pub. Resources Code § 30603, subd. (a)(4)(A). The County designated three principal permitted uses for the proposed development site: passive recreation, coastal accessways, and single-family dwellings. Shear proposed to build single-family dwellings, one of the three principal permitted uses. The Commission argued, however, that this is not "the" principal permitted use—that is, the sole principal permitted use—so the Commission had appellate jurisdiction under subdivision (a)(4)(A). The Supreme Court ruled that the Commission lacked appellate jurisdiction on that ground on these facts. The Commission's appellate jurisdiction is limited to developments that are not designated as any of the principal permitted uses:

> Ultimately, the policy arguments that the parties make are not so decisive that we are persuaded to deviate from the plain text. Under the plain text, the Commission has appellate jurisdiction under subdivision (a)(4)(A) of section 30603 only when the development is not designated as the principal permitted use—or uses—under the local government's LCP. Shear's proposed development is for one of the principal permitted uses of the site. The Commission has no appellate jurisdiction over Shear's permit application under subdivision (a)(4)(A) of section 30603.

Conclusion and Implications

The California Supreme Court reversed the judgment of the Court of Appeal and remanded with directions to reverse the order of the trial court denying the petition for writ of administrative mandate and remand with directions to issue the writ of administrative mandate. The writ is to direct the Coastal Commission to vacate its decision and dismiss the appeal for lack of jurisdiction. The Court's opinion is available online at: https://pacificlegal.org/wp-content/uploads/2024/06/Shear-v.-CCC_Opinion-of-the-Court_4.23.26.pdf.

(Lauren J. Caster, Darien Key, Derek Hoffman)

PUBLIC FISHING, CEQA, AND DRINKING WATER PROTECTION: FIRST DISTRICT COURT CLARIFIES RESERVOIR ACCESS OBLIGATIONS

Dummer v. City and County of San Francisco et al., ___Cal.App.5th___, Case No. A172588 (1st Dist. May 29, 2026).

In *Dummer v. City and County of San Francisco et al.* the California Court of Appeal, First Appellate District, Division, on May 29, 2026, affirmed a judgment denying Timothy James Dummer's petition for writ of mandate against the City and County of San Francisco (City) and the San Francisco Public Utilities Commission.

Background

Dummer, a licensed California fisherman, sought public fishing access to Calaveras Reservoir. The City owns the reservoir, which lies in Alameda and Santa Clara Counties and supplies drinking water to approximately 2.7 million Bay Area residents. The reservoir is governed by the Alameda Watershed Management Plan, which currently prohibits public access and fishing at the reservoir.

The appeal concerned whether the City had a clear, present, ministerial duty to obtain an amended water supply permit from the State Water Resources Control Board and immediately open the reservoir to public fishing in its natural condition. The Court of

Appeal held that no such ministerial duty existed.

Prior Proceedings

The case followed an earlier writ proceeding filed by Dummer in 2019. In that action, the trial court recognized that the public right to fish in a reservoir is qualified and that the operative question was whether fishing could occur without affecting the purity and safety of the domestic water supply. The court ordered the City to determine whether fishing at Calaveras Reservoir could be accomplished without affecting the purity and safety of the water, but it did not order the City to open the reservoir or immediately seek a permit amendment.

The City responded by adopting Resolution 22-0135. The resolution determined that shoreline fishing by the public could occur without affecting water purity and safety, but only after review under the California Environmental Quality Act (CEQA), analysis by the State Water Resources Control Board's Office of Drinking Water, and terms to be set by the San Francisco Public Utilities Commission's General Manager. The City also authorized development of a fishing program, environmental review, a request to amend the drinking water permit, and proposed amendments to the watershed management plan.

Dummer then filed the present action after learning that the reservoir would not open immediately. He sought a writ requiring the City to obtain the amended water supply permit and provide fishing access during open season. The trial court denied the petition, concluding that Dummer had not identified any breach of a ministerial duty. After Dummer voluntarily dismissed his damages claim, final judgment was entered, and he appealed.

The Court of Appeal's Decision

Governing Legal Framework

The Court of Appeal analyzed the interaction among the Fish and Game Code, the Health and Safety Code, CEQA, and implementing regulations. Fish and Game Code section 5943 requires a dam owner to accord public access to impounded waters for fishing during open season, subject to Fish and Game Commission regulations. Health and Safety Code section 115830 provides that water supply reservoirs of public agencies shall be open for recreational use, but subject to state health regulations.

Health and Safety Code section 117045 provides that before opening a domestic water supply reservoir to public fishing, the public owner must determine that fishing will not affect the purity and safety of the water and must obtain a valid water supply permit setting forth the terms and conditions on which fishing may occur. Title 17 regulations also prohibit recreational use on and around a domestic water supply reservoir unless specifically authorized in a water supply permit. Those regulations require a permit application to include detailed information concerning public access areas, sanitary facilities, the type and extent of recreational use, and the owner's program for controlling that use.

The court also noted that CEQA may apply when a watershed management plan must be amended or when public works, access improvements, or land use changes are proposed. The court rejected any reading of the reservoir access statutes that would displace CEQA or other regulatory requirements.

Mandamus Analysis

The court applied the ordinary mandamus standard under Code of Civil Procedure sections 1085 and 1086. Dummer was required to show a clear, present, ministerial duty and a corresponding beneficial right to performance. A ministerial duty exists only when the agency must perform a specific act in a prescribed manner without exercising significant judgment.

Dummer argued that once the City determined fishing could occur without impairing water purity and safety, the City had a ministerial duty to apply immediately for an amended permit and open the reservoir. The court disagreed. The City had not determined that fishing could occur immediately or without further conditions. Its resolution made fishing contingent on CEQA review, State Water Resources Control Board analysis, and site-specific terms to be developed by the San Francisco Public Utilities Commission.

The court further held that Health and Safety Code section 117045 gives the State Water Resources Control Board ultimate authority over permit terms, but it does not deprive the public owner of discretion to develop and propose terms in the first instance. Because Title 17 requires the owner to submit programmatic and operational information with the application, the statutory scheme necessarily allows

the owner to evaluate access, facilities, public safety, water quality, and environmental compliance before applying.

Fishing Rights and Constitutional Claims

Dummer relied on the Fish and Game Commission's 2020 regulations authorizing year-round catch-and-release fishing at Calaveras Reservoir with artificial lures and barbless hooks. The court held that those regulations addressed statewide sport-fishing rules, including seasons, gear restrictions, and biological management. They did not resolve site-specific issues such as access roads, parking, sanitary facilities, surveillance, watershed protection, infrastructure security, or drinking water safeguards.

Dummer also invoked article I, section 25 of the California Constitution, which recognizes a right to fish, and article X, section 4, concerning access to navigable waters. The court assumed without deciding that those provisions applied but held that they did not create an unrestricted right to fish without regard to water quality, CEQA, public safety, and other regulatory requirements.

The court relied on State of California v. San Luis Obispo Sportsman's Association, which recognized that reservoir fishing access must be reconciled with protection of domestic water supplies. That precedent supported the conclusion that public access may depend on a managed fishing program, sanitary facilities, surveillance, and limits on the extent of access.

Conclusion and Implications

The Court of Appeal affirmed because Dummer did not establish that the City failed to perform a clear, present, ministerial duty. The City and County of San Francisco had made the threshold water-quality determination required by the prior writ proceeding and was taking steps toward a CEQA-compliant fishing program and amended water supply permit. No statute required immediate submission of an incomplete permit application, and mandamus could not be used to control the City's discretion over the proposed program's terms.

For California practitioners, it confirms that statutory public access rights may be enforceable, but they remain qualified where implementation requires technical, environmental, operational, and public-health judgments. It also reinforces that mandatory statutory language does not automatically create a ministerial duty when the agency must exercise judgment to comply. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/A172588.PDF.

(Darien Key, Derek Hoffman)

VALIDATION, PROPOSITION 218, AND FINALITY: FIRST DISTRICT COURT'S DECISION IN *HILLER V. MARIN MUNICIPAL WATER DISTRICT*

Hiller v. Marin Municipal Water District,
___Cal.App.5th___, Case No. A171271 (1st Dist. June 2, 2026).

In *Hiller v. Marin Municipal Water District* (*Hiller)* (June 2, 2026), the California Court of Appeal for the First Judicial District addressed a question of growing importance in California water law: how Proposition 218's substantive protections interact with the procedural finality imposed by validation statutes. The court affirmed dismissal of a ratepayer's challenge to a municipal water district's rates based on a prior validation judgment, holding that such judgments bar subsequent litigation—even constitutional claims—if not timely raised within the validation process.

The case arises at the intersection of two dominant frameworks governing water rates: (1) Proposition 218's requirement that property-related fees be proportional and cost-based, and (2) the validation statutes, as expanded by Government Code section 53759, which impose strict procedural limits on challenges to those rates.

Although *Hiller* does not advance new doctrine on the substantive legality of water rates, it is highly consequential in practice. It confirms that agencies can use validation procedures to secure near-conclusive immunity from later challenges, thereby reshaping how—and when—Proposition 218 disputes must be litigated.

Background—Proposition 218 and the Litigation

Since its adoption in 1996, Proposition 218 (Cal. Const., art. XIII D, § 6) has generated extensive litigation over water pricing, particularly regarding whether tiered or conservation-oriented rates reflect the true cost of service. Courts have emphasized that water rates must be proportionate and cannot exceed the cost of providing service, though they allow flexibility in cost allocation methodologies.

Against this backdrop, public agencies have increasingly turned to validation actions as a strategic tool. Validation proceedings—traditionally used for bonds and public financing—allow an agency to obtain a binding judgment confirming the legality of its actions, with a short statute of limitations and broad preclusive effect. Government Code section 53759, enacted by Senate Bill 323 (2021), explicitly extends this mechanism to water and sewer charges.

On May 16, 2023, the Marin Municipal Water District (MMWD) adopted Ordinance No. 464, establishing water rates for a four-year period. The district undertook a cost-of-service analysis and complied with Proposition 218's procedural requirements, including mailed notice and a public hearing.

The ordinance relied on a "base/extra capacity" model to allocate costs among customers, reflecting both fixed system costs and demand-based usage patterns. The structure also incorporated tiered pricing, a common but frequently litigated feature in California water rate design.

Before adoption, Plaintiff Tove Hiller submitted to MMWD objections on behalf of herself and similarly situated ratepayers, asserting that the proposed rates violated Proposition 218 by exceeding cost of service and improperly allocating costs among users.

Following adoption, MMWD filed a validation action to confirm the legality of its rates. The complaint detailed the methodology used to calculate rates, including reliance on financial data, historical usage, and projected system costs. MMWD thereafter obtained a final judgment validating the ordinance.

Despite the validation judgment, Hiller filed a petition for writ of mandate challenging the rates on constitutional and statutory grounds. She argued that: (1) the rates violated Proposition 218; (2) the use of validation statutes improperly insulated the rates from judicial review; and (3) her due process rights were violated because she did not receive personal notice of the validation proceeding.

The trial court sustained MMWD's demurrer without leave to amend, concluding that the claims were barred by the prior validation judgment.

The Court of Appeal's Decision

On May 13, the First Appellate District Court of Appeal issued an opinion affirming the trial court's decision and clarifying the relationship between validation statutes and Proposition 218 challenges. Initially the decision was unpublished, but upon requests by the MMWD and by the Association of California Water Agencies (ACWA), the court on June 2, 2026, issued an order granting publication.

Validation Judgments Have Broad Preclusive Effect

The court held that the prior validation judgment barred Hiller's claims in their entirety. Under the validation statutes, a final judgment is binding as to all matters that were or could have been litigated in the proceeding. The court emphasized that Government Code section 53759 brings water rates squarely within the validation framework. Accordingly, any challenge to a water rate ordinance—including constitutional challenges—must be brought within the validation action or is forfeited. This holding reinforces the principle that validation is not merely a procedural option but an exclusive path for judicial review when invoked.

Proposition 218 Does Not Displace Validation Procedures

Hiller argued that allowing validation judgments to foreclose later challenges undermines Proposition 218's voter-enacted protections. The court rejected this argument, finding no inherent conflict between the two regimes, explaining that Proposition 218 governs substantive requirements and procedural steps for adopting rates, while validation statutes govern judicial review. By channeling all challenges into a single proceeding, validation promotes efficiency, finality, and orderly adjudication. Consequently, in the context of a validation action, Proposition 218 rights remain intact, but they must be asserted within the procedural confines established by the legislature.

Due Process Does Not Require Individualized Notice

The court also rejected Hiller's due process argument, noting that validation statutes require publication notice rather than individualized service, reflecting their in-rem nature. Thus, such notice satisfies due process because proceedings affect a broad class of persons with shared interests and provide a reasonable opportunity to be heard. This aspect of the decision confirms longstanding precedent allowing constructive notice in validation actions, even where significant property interests are at stake.

Implicit Endorsement of SB 323's Policy Objectives

Although not framed in explicit policy terms, the court's reasoning aligns with the legislative intent behind SB 323: reducing uncertainty and litigation risk for public agencies setting water and sewer rates. By upholding the statute's application, the court effectively validates the Legislature's effort to streamline and limit post-adoption challenges.

Conclusion and Implications

Hiller is a procedural watershed decision, even if it is not a substantive one. The case confirms that validation actions are now a primary tool for water agencies. By promptly filing a validation action after adopting rates, an agency can: (1) shorten the statute of limitations for challenges; (2) consolidate all potential claims into a single proceeding; and (3) achieve finality once judgment is entered.

For challengers, *Hiller* significantly raises the stakes of timing. Ratepayers and public interest litigants must: (1) monitor agency actions closely; (2) recognize when a validation action has been filed; and (3) assert all claims—procedural and substantive—within that proceeding. Failure to do so will likely bar any subsequent challenge.

From the perspective of water agencies, the decision provides a clear path to achieving litigation certainty and protecting rate structures from prolonged attack. This certainty is particularly valuable in an era of increasing infrastructure costs, climate variability, and regulatory complexity.

The decision in *Hiller* appears to be emblematic of a broader shift in California water law toward procedural efficiency and fiscal certainty. It does not change the rules governing what rates are legal, but it significantly narrows the window in which those rules can be enforced. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/A171271.PDF.
(David Boyer)

SUPERIOR COURT OVERTURNS STATE WATER RESOURCES CONTROL BOARD ORDER DIRECTING BLUETRITON BRANDS TO CEASE AND DESIST ALL OPERATIONS

BlueTriton Brands, Inc. v. State Water Resources Control Board,
Case No. 23CECG04292 (Fresno County Super. Ct. May 5, 2025).

In May 2026, the Fresno County Superior Court overturned a 2023 State Water Resources Control Board (SWRCB) order directing BlueTriton Brands, the company that bottles and sells Arrowhead bottled water, to cease certain water diversions. In this ruling, the Court found that the SWRCB acted in excess of its authority and misapplied state law. The company is currently directly, and indirectly, engaged in two other, related lawsuits challenging its operations.

Background

For over a century, BlueTriton Brands and its predecessors have collected water from Arrowhead Springs in Strawberry Canyon pursuant to claimed groundwater rights, specifically a possessory claim recorded in 1865, and subsequent patent from the United States recorded in 1882. The recorded water rights were adjudicated in 1931 and held by various entities, through several different corporate formations, leading up to the current ownership by BlueTriton.

In 2015, in response to public complaints, the State Water Resources Control Board initiated an investigation into the claimed groundwater rights and whether the amounts of water being diverted were within the parameters dictated by the alleged rights. In 2021, as a result of this investigation, the SWRCB issued a cease and desist order directing cessation of all unauthorized diversions of water. In response, BlueTriton requested an administrative hearing and in 2023, after an extended administrative hearing process, a final order was issued limiting certain diversions by BlueTriton. Last month, the Fresno County Superior Court issued a ruling finding the SWRCB acted in excess of its jurisdiction in issuing the 2021 order, and incorrectly applied state law is in its analysis. Accordingly, the Court set aside the SWRCB's directive. The SWRCB has not yet appealed the decision.

Parallel to the administrative hearing, the U.S. Forest Service, conducted its own investigation into BlueTriton's operations and whether those operations complied with the special-use permits under which the company had operated for at least the past decade. In a July 2024 letter, the U.S. Forest Service denied BlueTriton's application for a new special-use permit, citing several grounds, including alleged noncompliance with existing permit conditions relating to the diversion and use of water. The letter effectively terminated BlueTriton's existing permit and directed the company to cease operations within seven days and submit a plan to remove infrastructure from federal lands within twelve weeks. Because the letter constituted final agency action and was not subject to further administrative appeal, BlueTriton filed suit and sought a preliminary injunction in August 2024. The injunction was later granted, allowing the company to continue operations pending resolution of the federal litigation.

In addition to these proceedings, an environmental group has sued the U.S. Forest Service in federal court, alleging that the agency improperly allowed BlueTriton's operations to continue.

The Superior Court's Decision

The court's decision is notable because it not only overturned the SWRCB's order but also addressed the scope of the SWRCB's jurisdiction to regulate the water at issue.

As the court pointed out, the SWRCB has jurisdiction over all water flowing in any natural channel and subterranean streams flowing through definite and known channels, though not ground water in any manner. Central to the analysis was how the water collected by BlueTriton should be classified. BlueTriton claimed the water at Arrowhead Springs constitutes percolating groundwater. However, in 2023 an administrative hearing officer asserted that groundwater percolating to the surface constitutes surface water if it could hypothetically flow into a surface channel. Thus, the groundwater feeding springs and surface flows in Strawberry Canyon was sufficiently connected to a subterranean stream to fall within the SWRCB's jurisdiction

In its analysis, the court reviewed testimony and evidence presented during that administrative hearing and found that, while water does percolate naturally into Strawberry Canyon, the is no evidence of a known surface stream serving as the starting point of the water moving through the underground aquifer and therefore, without a known starting point, there can be no subterranean stream. The court further reasoned that a known and definite channel must include a point where a surface stream goes underground, and a point where it reemerges. Without such limitations, any aquifer that eventually discharges water to the surface could be classified as a subterranean stream, significantly expanding the SWRCB's jurisdiction.

Conclusion and Implications

This ruling may strengthen BlueTriton's position in the pending federal litigation. More broadly, if the SWRCB does not appeal, the ruling it effectively limits the SWRCB's jurisdiction over underground water that eventually flows to the surface but is not part of a subterranean stream flowing through known and definite channels.
(Darien Key, Derek Hoffman)

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