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WESTERN WATER NEWS

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

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

Background

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

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

Stringent Enforcement Mechanisms in the Subbasin

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

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

The tension between these two GSAs is further complicated by disagreements over pumping allocations and their relationship to land subsidence. South Fork Kings GSA has established a "safe yield" al-

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

Data-Driven Management

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

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

Conclusion and Implications

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

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

LEGISLATIVE DEVELOPMENTS

2026 COLORADO LEGISLATIVE PREVIEW

The Colorado General Assembly convened on January 16, 2026, with a slate of water-related bills on the table. The measures span a wide range of subjects, from pollutant control to the regulation of water quality for mobile home communities across Colorado. The proposed legislation shows Colorado's commitment to successful and comprehensive water management.

State Regulation of Underground Injection Control Wells—HB 26-1112

Underground injection wells (also called Underground Injection Control wells or UIC) are used to place contaminated fluid in porous geologic formations such as deep sandstone and limestone deposits. 40 CFR 144.3 Injected fluids generally consist of water, wastewater, or water mixed with hazardous chemicals. They are also used as an effective solution for the storage of substances like carbon dioxide. The Safe Drinking Water Act requires the EPA to develop UIC well program requirements that protect underground sources of drinking water from endangerment. Under this requirement, the EPA has created six classes of UIC wells ranging from non-hazardous injections to injections for carbon storage and geological sequestration.

The EPA may grant primacy enforcement and regulatory authority to a state for UIC wells. Safe Drinking Water Act §§ 1422, 1425. HB 26-1112 declares that it is in the public interest for Colorado state agencies to regulate all UIC well classes in a manner that protects public health, safety, and welfare, the environment wildlife resources, and underground sources of drinking water. The bill would direct the Colorado Energy and Carbon Management Commission to lead the state's primacy enforcement and regulatory authority application to obtain regulatory authority over UIC wells. This process will include collaboration with the Division of Reclamation, Mining, and Safety, the Division of Water Resources, Colorado Department of Natural Resources, Colorado Department of Public Health and Environment, and the Colorado Department of Labor and Employment. From there, the State of Colorado will have regulatory authority over UIC wells and processes related to their implementation across the state.

This bill would represent an extension in the current regulatory framework of alternative storage methods for historically hazardous substances and a commitment to keeping Colorado's groundwater resources free from pollution.

Mobile Home Park Water Quality—HB 26-1145

The Colorado Department of Health and Environment Water Quality Control Division (WQCD) currently administers a program that tests and remediates water quality issues for mobile home parks in Colorado. The program provides a comprehensive test for water quality issues that affect both the health and safety of residents. HB 26-1145 would authorize the WQCD to strengthen the requirements for the remediation of welfare-related water quality violations.

By increasing the duties and requirements on park owners, the bill provides more transparency and authority to the WQCD's existing regulatory authority. HB 26-1145 would authorize the division to issue orders requiring the park owner to perform additional water testing, perform temporary measures necessary to address acute health risks, make additional reports to the division, create a remediation plan, implement a remediation plan, or respond to the division in connection with a remediation plan. The bill also provides additional authority for the WQCD to issue cease-and-desist orders and penalties of up to $5,000 for continuing violations.

This bill provides teeth to the existing framework for water quality in Colorado's mobile home communities and reflects the state's commitment to ensuring public health and safety in all communities across the state.

Modifications to Standards for Irrigation Equipment—HB 26-1034

HB 23-1161, passed in 2023, established environmental standards for irrigation controllers as well

as other product standards aimed at saving energy, water, and improving air quality. The bill garnered attention for its potential to ensure appliances used in homes and businesses don't waste money, energy, and water. HB 23-1191 requires irrigation controllers and spray sprinkler bodies sold and leased after January 1, 2026, to meet environmental standards outlines by the federal WaterSense program specifications. The WaterSense program is aimed at introducing weather-based intelligence and other technologically advanced irrigation controls in order to help homeowners and businesses make irrigation schedules more water efficient.

However, those strict standards have been met with opposition by some members of the General Assembly, so HB 26-1034 aims to repeal the environmental standard for irrigation controllers established under HB 23-1161 and modifies the environmental standard for spray sprinkler bodies. Under the proposed legislation, spray sprinkler bodies would no longer need check valves and certifications regarding water efficiency and performance. HB 26-1034 has received bipartisan support and has undergone two engrossments in the first two months of the year. It is likely that this bill will continue to gather attention as it navigates through the General Assembly.

HB 26-1034 signals a refinement of laws aimed at conservation and environmental protection to meet applicable standards needed in major industries in Colorado.

Prohibiting Discharges of Preproduction Plastic Materials—SB 26-016

SB26-016 was created in response to a finding by the General Assembly that plastic feedstock materials, when released into the environment, contribute to plastic pollution, aquatic life harm, and pollution in communities near industrial and transportation corridors. Plastic feedstock consists of flakes, powder, recycled chips, and other plastic related materials created as a result of plastic production. This colorful and confetti-like substance has created a pollution problem in waters all around the world, including here in Colorado.

SB 26-016 aims to prohibit the discharge of plastic pellets and other preproduction plastic materials through land application or into state waters, wastewater, storm water runoff, or other runoff by a facility, point source, or person that makes, uses, handles, packages, or transports plastic pellets or other preproduction plastic materials in Colorado. The bill introduced by both senate and house democrats and has gathered quite a bit of attention with multiple engrossments and narrow vote margins at bill readings. Nonetheless, SB 26-016 signals Colorado's commitment to pollution-free and clean water resources.

Conclusion and Implications

The 2026 legislative session includes multiple water-related bills aimed at a variety of water-related problems. The bills described above demonstrate the wide-ranging nature of Colorado's current water issues and various plans to address those issues. The General Assembly's proposed bills cover groundwater quality (HB 26-1112), surface water quality (SB 26-016 and HB 26-1145), and water conservation and modification to irrigation equipment (HB 26-1034). The second session of the General Assembly will adjourn on May 13, 2026.

(Colton Goldfarb, John Sittler)

WASHINGTON STATE HOUSE BILL 2544: A PHASED ADJUDICATION MODEL FOR FEDERAL AND TRIBAL WATER CLAIMS IN THE UPPER COLUMBIA

Washington's 2026 short session was mostly quiet on water policy. One bill, however, House Bill (HB) 2544, would have restructured the launch of the long-awaited Upper Columbia River general adjudication through a two-stage "pilot" process focused initially on federal and tribal claims. The Upper Columbia basin implicates: Federal hydropower and project operations, Tribal reserved and treaty rights, Columbia Basin Project irrigation districts, Surface-groundwater connectivity, and international boundary considerations.

The measure passed the House of Origin committee but was *not* ultimately voted on the House floor. Given the complexity of modern adjudications, it presents a notable procedural experiment that Western water practitioners should follow closely.

House Bill 2544

HB 2544 proposed a phased adjudication process aimed at addressing "significant federal and tribal water rights claims prior to engaging other claimants" to reduce costs and improve efficiency. The bill clearly described this as a "pilot process" to evaluate whether similar procedural changes should be implemented statewide.

A Departure from Washington's Standard Adjudication Framework

Under Washington's general adjudication statutes (RCW 90.03.110 through .130; 90.44.220), Ecology initiates a basin-wide adjudication by filing a statement of facts and map in superior court, followed by serving summons on all known and potential claimants. The process then proceeds on a unified track.

HB 2544 would have carved the Upper Columbia out of that framework. The substitute bill explicitly provides that, when initiated, the standard statutory provisions "do not apply to this adjudication." Instead, a new section to chapter 90.03 RCW would govern.

The Department of Ecology would file the initiating report and map in Stevens County Superior Court, but service would proceed in stages.

Federal, Tribal, and Project Interests First

In the first phase, the court would direct a summons to federal and federally recognized tribal governments known to assert water rights within the adjudication area. The substitute bill also includes affected Columbia Basin Project irrigation districts with repayment contracts in settlement negotiations.

Those sovereign and project claimants could submit claims and participate in settlement negotiations before other claimants were added. During negotiations, annual status reports would be required.

The second stage would be triggered either 180 days after a motion to approve a comprehensive settlement of all federal and tribal claims, or by June 1, 2033, whichever occurs first.

Only then would Ecology identify and serve additional claimants, including property owners outside municipal or public water service areas and other known right holders.

Scope of Rights and Procedural Controls

The adjudication will include all surface and groundwater rights, including diversionary and instream claims, as well as rights claimed by the United States. The statute stresses that it does not create new water rights and only confirms existing state or federal rights.

The bill also includes structural features that will be recognizable to practitioners involved in large-scale adjudications: (1) Electronic filing and video-conferencing are encouraged; (2) State funding would cover adjudication expenses, with extraordinary county court costs reimbursed.

A 2035 report to the Legislature would evaluate the pilot and recommend statewide reforms.

The pilot would sunset December 31, 2035.

The McCarran Overlay and Sovereign Sequencing

For a national audience, the most important feature is the sequencing. By isolating federal and tribal claims at the beginning, HB 2544 implicitly responds to the jurisdictional realities of the McCar-

ran Amendment. States must organize adjudications as sufficiently comprehensive "general stream adjudications" to ensure federal participation. At the same time, federal reserved rights and tribal treaty claims often involve the most senior and legally complex issues in a basin.

The Washington proposal flips the traditional model. Rather than handling all claimants at once, it aims to settle or significantly limit federal and tribal claims before the larger group of claimants gets involved in litigation.

Supporters described the approach as efficient and cost-effective, especially in a basin with "very large federal water rights." Opponents voiced concerns about the geographic scope and the exclusion of certain tribal and other water user interests in the initial phase.

Conclusion and Implications

Although HB 2544 did *not* pass, it reflects a broader Western trend: states experimenting with procedural architecture to manage sovereign claims within general adjudications.

The main question for practitioners is whether a phased approach improves efficiency without sacrificing the "comprehensiveness" needed for McCarran jurisdiction. The clash between procedural innovation and jurisdictional sufficiency will probably shape the next phase of the Upper Columbia effort.

For now, HB 2544 remains a significant, if incomplete, experiment in adjudication design that Western water lawyers should observe as Washington revisits the Upper Columbia in future sessions. (Jamie Morin)

REGULATORY DEVELOPMENTS

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

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

Background

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

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

How Off-Stream Storage Works

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

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

Impact of Federal Record of Decision

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

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

Federal Cost Share Framework

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

participant contributions are blended, and accountability expectations, with greater commitment of public money tending to increase outside scrutiny.

Key Outstanding Approvals and Constraints

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

Conclusion and Implications

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

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

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

Background of the California Water Plan

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

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

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

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

Long Term Water Supply Targets and Strategy

Foremost among the changes made by SB 72 is the requirement that the plan include "long term water supply targets and strategies to meet those targets." The legislation itself set an interim target, to be included in the 2028 plan: 9,000,000 acre-feet of "additional water, water conservation, or water storage capacity to be achieved by 2040." That interim target is based on a DWR calculation of California's total

water use (60-90 million acre-feet per year) and an estimated 10 percent loss of existing water supply due to climate change.

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

Watershed Scale Planning

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

The Plan Development Process

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

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

Conclusion and Implications

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

NEVADA MOVES TO FORMALIZE JOINT MANAGEMENT OF THE LOWER WHITE RIVER FLOW SYSTEM HYDROGRAPHIC BASIN

In a significant development for Nevada water law and policy, the Nevada Division of Water Resources has issued a Proposed Order to designate the Lower White River Flow System (LWRFS) as a single hydrographic basin under NRS Chapter 534. The designation marks the next step in joint management of interconnected groundwater and surface water resources in southern Nevada.

Background and Legal Authority

Under NRS 534.030(2)(b), the State Engineer may declare a basin "in need of administration" after investigation and hearing. The proposed order would combine multiple sub-basins, including Kane Springs Valley, Coyote Spring Valley, Muddy River Springs Area, California Wash, Hidden Valley, Garnet Valley, and part of the Black Mountains Area, into a single administratively unified basin.

The effort builds on State Engineer Order 1309 (2020), which delineated the LWRFS as a combined administrative unit and imposed management limits. Order 1309 established a maximum average annual groundwater pumping threshold of 8,000 acre-feet to protect Muddy River flows, senior surface water rights, and habitat for the endangered Moapa dace.

Science, Statutory Authority, and Judicial Review

The proposed order relies on scientific findings demonstrating hydrologic connectivity among the sub-basins. NRS 533.024(1)(c) requires the State Engineer to consider the "best available science" in determining water availability.

In *Sullivan v. Lincoln County Water District* (2024), the Nevada Supreme Court unanimously affirmed the State Engineer's implied authority to combine interconnected basins and to conjunctively manage surface and groundwater to prevent impairment of senior vested rights under NRS 533.085. *See:* https://law.justia.com/cases/nevada/supreme-court/2024/84739.html

The Court also upheld the due process provided in issuing Order 1309, while remanding certain factual issues, including sustainable yield, for further proceedings.

Why Designation Matters

Formal designation under NRS Chapter 534 strengthens the State Engineer's regulatory and enforcement authority. The proposed order notes that total permitted rights in the LWRFS, more than 38,000 acre-feet, substantially exceed the 8,000 acre-foot pumping threshold, underscoring the need for tighter management.

A public hearing is scheduled for February 25, 2026, in Las Vegas, with written and oral testimony accepted through March 27, 2026. The Division will then begin the basin's management phase.

Policy and Stakeholder Implications

The proposed designation carries several broader implications:

- **Conjunctive Management:** It reinforces an administrative framework for managing hydrologically connected sources as a single system, consistent with recent Nevada Supreme Court precedent.

- **Prior Appropriation and Sustainability:** By formalizing a pumping limit, the order highlights the growing tension between priority administration and long-term aquifer sustainability.

- **Continuing Legal Uncertainty:** Although the Supreme Court upheld the State Engineer's authority, aspects of Order 1309, including sustainable yield and allocation mechanisms, remain subject to ongoing review.

Conclusion and Implications

Nevada's proposed designation of the Lower White River Flow System Hydrographic Basin reflects a watershed moment in state water administration. By codifying joint management of interconnected water resources under NRS Chapter 534, the State Engineer advances a science-based, administratively powerful structure designed to balance long-standing water rights with the urgent need to sustain critical flows and ecological values. With public hearings

imminent, stakeholders will have a direct opportunity to shape how this basin, and potentially others across the state, are governed in an era of increasing hydrologic scarcity.
(Micheline Nadeau Fairbank)

PENALTIES & SANCTIONS

RECENT INVESTIGATIONS, SETTLEMENTS, PENALTIES AND SANCTIONS

Editor's Note: Complaints and indictments discussed below are merely allegations unless or until they are proven in a court of law of competent jurisdiction. All accused are presumed innocent until convicted or judged liable. Most settlements are subject to a public comment period.

Mar. 4, 2026—The U.S. Environmental Protection Agency (EPA) launched the Real Water Technical Assistance (RealWaterTA) initiative, a back-to-basics approach to support drinking water and wastewater systems using proven, best-practice approaches that will most effectively address local needs while partnering with states and Tribes.

In a memorandum from EPA Assistant Administrator for Water Jess Kramer, the agency issued a call to action to align all technical assistance for drinking water and wastewater systems with tried-and-true services, such as engineering and design expertise, operational support, workforce development, and financial management. The goals of RealWaterTA focus on public health and compliance with the Safe Drinking Water Act and Clean Water Act. It also prioritizes accountability for technical assistance providers and real-world results. This initiative will benefit Americans nationwide, especially in rural areas where small systems face challenges operating and maintaining vital water infrastructure.

The memorandum issued today rescinds a March 2023 memo that undermined the practical nature of technical assistance by broadening the scope of work, making it less effective at water quality improvements and public health protection. The 2026 RealWaterTA memo refocuses federal funding and resources back to the core tenants of technical assistance for water infrastructure under the Safe Drinking Water Act and the Clean Water Act.

RealWaterTA will focus on eight priorities when helping water systems reliably provide safe drinking water and effectively treat wastewater over the long term. RealWaterTA will:

- Support returning to and maintaining compliance;
- Focus on traditional and innovative water infrastructure;
- Define the scope of technical assistance;
- Strengthen technical, managerial, and financial management;
- Empower the water workforce;
- Improve financial readiness and access to financial assistance;
- Reduce inefficient costs; and
- Drive real-world results.

Mar. 4, 2026—The U.S. Environmental Protection Agency, U.S. Department of Justice (EPA), and the state of Washington reached agreement on a proposed settlement with more than 100 potentially responsible parties to address hazardous substances released into the Lower Duwamish Waterway in Seattle. Cleanup work is estimated to cost $668 million and take at least ten years to complete.

Under the settlement, the Lower Duwamish Waterway Group—which consists of the Boeing Company, city of Seattle, and King County—agreed to design and perform the cleanup plan EPA selected for the in-water portion of the Lower Duwamish Waterway Superfund site.

The cleanup plan requires Boeing, Seattle, and King County to conduct dredging and capping and take other measures to clean up the most contaminated parts of the Waterway. To help fund the required work, the Lower Duwamish Waterway Group will receive about $130 million from other responsible parties and about $140 million from federal agencies.

"This settlement finally ensures full-scale cleanup of the Lower Duwamish Waterway," said EPA Office of Enforcement and Compliance Assurance Assistant Administrator Jeffrey A. Hall.

The Lower Duwamish Waterway Superfund site is a five-mile segment of Seattle's only river, the Duwamish. The Waterway has served as Seattle's major industrial corridor since the early 1900s, hosting industries such as airplane manufacturing, timber operations, steel mills, and chemical production. Discharges from these industries, and sewage and stormwater systems, contributed to sediment contamination within the waterway.

EPA identified 41 hazardous substances in sediments that pose significant risks to human health and the environment in the Waterway; These include polychlorinated biphenyls (PCBs), arsenic, carcinogenic polycyclic aromatic hydrocarbons, dioxins, and furans.

The settlement is authorized under the Comprehensive Environmental Response, Compensation, and Liability Act (commonly known as Superfund) and Washington State's Model Toxics Control Act for releases of hazardous substances.

The consent decree was lodged in U.S. District Court for the Western District of Washington, is subject to a 30-day public comment period, and final court approval.

Mar. 2, 2026—The U.S. Environmental Protection Agency (EPA) sent a notice to Tetra Tech Inc. detailing the failure of its subcontractor—ALS Houston—to meet data quality standards in groundwater sampling conducted at the East Palestine train derailment site in the fall of 2025. Rigorous and ongoing validating analysis confirms there is no ongoing exposure to toxic chemicals from the derailment endangering the public health or environment in East Palestine.

In September 2025, as part of the quality assurance and quality control process, EPA identified potential discrepancies in groundwater sampling data from the government's contractor for 2-butoxyethanol, a colorless solvent used in household cleaners, paints, varnishes, and paint strippers.

With a steadfast commitment to ensuring that the public has accurate and actionable data and information, the Agency immediately launched an investigation. EPA found that the results analyzed by the government subcontractor, ALS Houston, showed the presence of 2-butoxyethanol that did not match the results from split sampling testing at other labs. Under EPA's oversight and after extensive confirmatory testing, in February 2026, EPA's contractor, Tetra Tech, notified the agency that ALS Houston had in fact altered measurements—which resulted in the false sampling data—and as a result terminated two analysts for failure to follow standard operating procedures. Because of EPA's investigation and quick action, none of the falsified data was used to make any health, safety, cleanup, or enforcement decisions at the site. Past and current data indicate there is no risk to groundwater from 2-butoxyethanol in East Palestine.

EPA has zero tolerance for shortcuts by a lab that could result in inaccurate data and has taken the following actions to remedy this situation:

- Opened an investigation into sampling discrepancies and expanded its own rigorous quality assurance and control process.

- Rejected data submitted by the subcontractor, ALS Houston.

- Referred the data quality issues to EPA's Office of Inspector General.

- Issued a Cure Notice to the prime contractor along with a review of all active contracts with the subcontractor with an eye towards sample testing and lab analysis.

- Reviewed internal contracting processes to identify institutional controls for the agency's contract team to ensure this situation does not happen again.

- Updated—and will continue to update—its East Palestine website to ensure that the public has access to the most up-to-date information.

In addition, EPA is considering all avenues for action as the agency takes very seriously the obligations of government contractors to uphold the terms of contracts and applicable laws.

In September 2025, as soon as the EPA Region 5 office discovered a data discrepancy, the agency

opened an investigation. At that time, the agency held all data from ALS Houston and ordered the prime contractor, Tetra Tech, to perform additional data validation on data from August, September, and October.

In December 2025, after finding more discrepancies, the agency sent additional samples to EPA's PHILIS laboratory. EPA's testing confirmed there was no 2-butoxyethanol and there was no risk to the public or the environment.

In January 2026, EPA sent additional August-October samples to the PHILIS lab for re-analysis as a double check. All tests at other labs confirmed there was no 2-butoxyethanol in the samples.

As the agency's investigation continued, in February 2026, Tetra Tech notified EPA that ALS Houston had altered measurements and terminated two data analysts for failing to follow the laboratory's standard operating procedures. This failure to follow operating procedures resulted in false levels of detection.

Feb. 23, 2026—The U.S. Environmental Protection Agency (EPA) has finalized a rule adding sodium perfluorohexanesulfonate (PFHxS-Na) to the Toxics Release Inventory (TRI). The TRI is a tool that tracks and shares information about chemical releases and pollution prevention activities by factories and other facilities.

Under this rule, businesses in covered industries must begin tracking and reporting any use or release of PFHxS-Na, a well-studied PFAS chemical. The first reporting period began January 1, 2026, and the first reports will be due to EPA by July 1, 2027. Because PFHxS-Na is classified as a chemical of special concern it is subject to a lower reporting threshold, in this case 100 lbs.

PFHxS-Na is the latest PFAS chemical added to the TRI under a process established by Congress in the 2020 National Defense Authorization Act (NDAA), which directs EPA to automatically include new PFAS chemicals in the inventory each year. With this action, the number of PFAS substances tracked by TRI rises to 206.

PFAS are a group of man-made chemicals known for their persistence in the environment and the human body. Because they do not break down easily, PFAS can accumulate over time, prompting growing concern about their potential health and environmental impacts.

The TRI program enables Americans to see how facilities in their area handle toxic chemicals, supporting informed local decision-making and advancing EPA's commitment to environmental transparency.

Feb. 23, 2026—The U.S. Environmental Protection Agency (EPA) has issued a unilateral administrative order (UAO) to Atlas Operating, LLC, following an estimated discharge of 33,600 gallons of a mixture of brine production water and crude oil from its facility into an unnamed tributary of the Chikaskia River and into the Chikaskia River.

EPA received notification from the National Response Center on the evening of February 15 of a suspected discharge from an oil tank battery near Spivey, Kingman County, Kansas. An EPA On-Scene Coordinator (OSC) was dispatched that evening and arrived on-scene the following morning to assess the discharge and its impact on the Chikaskia River.

EPA and its local and state partners observed impacts 12 river miles downstream from the tank battery and immediately began working with the responsible party to strengthen containment efforts and begin preparing for oil recovery and cleanup.

Under the direction of the EPA OSC, the responsible party has been ordered to:

- Stop the flow of oil into the unnamed tributary and the Chikaskia River
- Recover and remove oil, contaminated soils, and debris in, and around, the immediate vicinity of the discharge
- Recover oil and oil-impacted debris along the impacted shorelines
- Dispose of all wastes in accordance with state, federal, and tribal regulations.

EPA is committed to ensuring the deliverables are met by the responsible party and work, as described within the order, is completed by March 13, 2026.

Discharges of oil and hazardous substances from onshore facilities are regulated by the Clean Water Act, as amended by the Oil Pollution Act.

Feb. 20, 2026—The White House has assigned the U.S. Environmental Protection Agency (EPA) as the lead federal agency in response to the Potomac Interceptor collapse which resulted in at least 240 million gallons of raw, untreated sewage discharging into the Potomac River.

EPA will implement the President's direction to provide all necessary management and coordination among federal agencies to protect the Potomac River and the region's water supply from the ongoing infrastructure failure spill in the State of Maryland. EPA Administrator Lee Zeldin has designated Assistant Administrator for Water Jessica Kramer as Senior Response Officer overseeing the effort.

While EPA has continued to offer its full support to state and local leaders from the onset of this crisis, prior to the District of Columbia's request for federal assistance this week, neither the District nor the state of Maryland requested federal assistance.

As part of EPA's enhanced role, the agency is actively coordinating with DC Water to ensure appropriate and expeditious measures are utilized to protect public health and prevent additional overflows until the pipe is repaired and the Potomac Interceptor is fully functional again. This repair is currently projected to be completed by mid-March. EPA will also coordinate with DC Water to ensure site clean-up activities are completed well before America250 festivities on the Potomac begin. Finally, EPA will ensure DC Water evaluates all Potomac Interceptor infrastructure to identify other areas requiring maintenance or repair as expeditiously as possible.

Throughout this process, EPA will have open and transparent lines of communication with DC Water, state and local partners, and the public. The agency is committed to coordinating with all federal partners to conduct robust oversight, implement a streamlined and efficient communication strategy, and provide resources to support the completion of repairs and remediation efforts as quickly as possible.

The Potomac Interceptor is a sanitary sewer line in Maryland that conveys up to 60 million gallons of wastewater every day from parts of Virginia and Maryland to DC Water's Blue Plains Advanced Wastewater Treatment Plant. A collapse occurred late Monday, January 19, 2026, in a 72-inch diameter section of the pipe causing hundreds of millions of gallons of untreated sewage to escape and impact the nearby Potomac River. The Potomac Interceptor is managed by DC Water.

Early in the morning of January 25, 2026, DC Water activated a controlled bypass system in response to the collapse of a portion of the Potomac Interceptor on January 19, 2026. The bypass system utilizes a portion of the C&O Canal to protect the Potomac River from further contamination by containing the spill and redirecting it back into an undamaged portion of the Potomac Interceptor where it is transported for treatment.

Feb. 11, 2026—The U.S. Environmental Protection Agency (EPA) has announced more than $44 million in grant awards through its Chesapeake Bay Program Office to support water quality improvement, habitat restoration, and community stewardship efforts in the Chesapeake Bay watershed. This funding reinforces EPA's commitment to protecting clean air, land, and water for all Americans and promoting cooperative federalism by building strong partnerships with state and local partners.

The grants were awarded through the Chesapeake Bay Innovative Nutrient and Sediment Reduction (INSR) Grants and Small Watershed Grants (SWG) programs, which are administered by the National Fish and Wildlife Foundation (NFWF). The grant programs are key funding mechanisms of the federal-state Chesapeake Bay Program partnership that aim to advance measurable progress toward partner commitments under the revised Chesapeake Bay Watershed Agreement. These programs help local governments, conservation districts, tribes, nonprofits, and community partners implement conservation practices and nature-based solutions—reducing nitrogen, phosphorus, and sediment while enhancing habitat.

Some of this year's grant recipients include:

- **Chemung County, NY ($148,719)** will implement nature-based stormwater infrastructure in Elmira, New York, by retrofitting existing urban streetscapes with permeable pavers and street trees and constructing underground basins for stormwater storage and infiltration.

- **District Department of Energy and Environment ($150,000)** will retrofit three large regional stormwater ponds in Washington, DC, to improve

the quality of stormwater being discharged to the Anacostia River, advancing the long-term restoration of 255 acres of combined drainage area, enhance pond performance, and reduce stress on downstream urban wildlife populations.

•**Ducks Unlimited, Inc. ($1,163,839)** will develop and implement novel practices that will restore 200 acres of wetlands and 70 acres of associated buffer habitat in Maryland, Delaware, and Virginia.

•**Sustainable Chesapeake ($1,999,064)** will increase the capacity of farmer-led organizations to help dairy and row crop farmers access conservation resources across Virginia›s Chesapeake Bay watershed, supporting 10 dairy farmers in adopting whole-farm conservation plans, expanding manure injection on 1,000 acres, and providing incentives for 2,500 acres of cover crops.

•**Trout Unlimited ($812,132)** will reconnect and restore aquatic habitat and improve water quality in eastern brook trout strongholds in the North Branch of the Potomac River watershed in West Virginia and Maryland by installing more than two miles of agricultural exclusion fencing and riparian plantings, restoring 32 acres of riparian forest habitat, and implement agricultural conservation practices on 250 acres of farmland.

•**Watershed Alliance of York ($847,682)** will advance York County, Pennsylvania›s successful Watershed Forestry Program to accelerate riparian forest buffer implementation and local freshwater mussel conservation efforts, implementing 100 acres of riparian forest buffers.

Small Watershed Grants (SWG) support community-led restoration and conservation projects that deliver measurable improvements in water quality, habitat, and local benefits.

Feb. 6, 2026—The U.S. Environmental Protection Agency is highlighting progress protecting water systems from cyberattacks in 2025. EPA's Office of Water (OW) proactively identified cybersecurity vulnerabilities at 277 water systems and worked to fix the issues with individualized solutions ranging from authentication protocols to enforcing strict access controls along with other technical updates and restrictions. Cyber weaknesses included critical system components, such as technologies that control drinking water and wastewater processes, that are attractive targets to potential threat actors. This work is critical to safeguarding public health and economic growth to advance the goals of the agency's Powering the Great American Comeback initiative.

Strengthening cybersecurity for water systems is a public health and a national security priority, and EPA is working in collaboration with the Cybersecurity and Infrastructure Security Agency (CISA), states, and water associations to help reduce the risk of cyberattacks. EPA and its partners encourage water systems to implement basic cybersecurity best practices, including reducing exposure of operational technology assets to the public-facing internet, developing and maintaining an asset inventory, and implementing robust authentication protocols including strong passwords and multi-factor authentication. EPA supports water systems with implementing these controls by providing free cybersecurity assessments and technical assistance.

In August 2025, the Trump EPA announced over $9 million in grant funding for midsize and large water systems to help protect drinking water from cybersecurity threats and improve resiliency for extreme weather events.
(Robert Schuster)

JUDICIAL DEVELOPMENTS

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

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

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

Factual and Procedural Background

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

The District Court's Holding

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

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

the nature of the supposed violations and correct the problem.

The Defendants argued that the letter merely listed 200 "significant" rain events over a five-year period from 2019-2025, attributing discharges to every date where hard rain occurred. This supposedly made it unclear as to when actual discharges occurred, making the letter insufficient. The court disagreed, concluding it adequately put the Defendants on notice. "Significance" did not need to be addressed in the context of the motion. Importantly, the court emphasized that a notice letter does not need to allege specific dates when violations are ongoing, which the letter explained was occurring.

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

Conclusion and Implications

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

U.S. DISTRICT COURT ISSUES PRELIMINARY INJUNCTION IN COLUMBIA BASIN SALMON LITIGATION

National Wildlife Federation, et al. v. State of Oregon, et al., ___F.Supp.4th___, Case No. 3:01-cv-640-SI (D. Or. Feb. 25, 2026).

After the Trump administration unwound the Biden administration's Presidential Memorandum of September 27, 2023 (Restoring Healthy and Abundant Salmon, Steelhead, and Other Native Fish Populations in the Columbia River Basin) beginning in June 2025, Plaintiffs National Wildlife Federation, *et. al* and the State of Oregon (collectively: Plaintiffs") moved to lift the stay secured during the Biden administration in the Federal Columbia River Power System (FCRPS) salmon litigation pending in the U.S District Court for Oregon for decades. In addition to lifting the stay, the Plaintiffs filed motions for preliminary injunction requiring the U.S. Army Corps of Engineers and the Bureau of Reclamation to carry out certain operational and non-operational activities related to FCRPS operations and larger Columbia Basin reservoir management for the benefit of salmonid migration in the Columbia River corridor. On February 25, 2026, Judge Simon granted the Plaintiffs' motions by issuing his preliminary injunction Order. But the Order did not grant Plaintiffs the entirety of the injunctive relief sought.

The court's order contained several categories of operational and non-operational forms of injunctive relief.

The District Court's Decision

The Fish Passage Spill Operations Injunction (Operational)

The Order imposed three operational spill regimes by period of year: Spring Spill (early April to mid-June); Summer Spill (mid-June to end of August); and Fall/Winter Spill (early September to mid -November and early March to early April). The spill operations prescribed water spill regimes at each of Lower Granite, Little Goose, Lower Monumental, Ice Harbor, McNary, John Day, The Dalles, and Bonneville Dams (collectively, the Dams). The seasonal spill regimes

ranged from flow-based targets to flows capped by total dissolved gas ratios to percentages of reservoir inflows. The spill regime prescriptions prioritize salmonid migration over hydroelectric power production and irrigation. While the Intervenor-Defendants sought lower spill requirements in August when fewer fish are migrating and water use demand for other purposes is high, the court did not reduce August spill targets as requested. The court largely adopted the Plaintiffs' spill regime requests because the majority of spill according to the Order-based targets and schedule has already been implemented over several years without overtly negative repercussions to FCRPS operations.

Reservoir Forebay Elevations Injunction (Operational)

In addition to the fish passage spill requirements, the Order also prescribed seasonal reservoir forebay pool elevation requirements at each of the Dams. Plaintiffs requested that pool elevations be based on minimum operating pools (MOP) because lower reservoir levels beget less slack water and, therefore, faster migration. The Defendants objected that MOP-based elevations would significantly interfere with power production, transportation, and irrigation. Ultimately, the court did not require MOP-based elevations. Instead, the Court ordered pool elevations consistent with 2025 operations because 2025 operations did not hinder the viability of power production, transportation, or irrigation. Though the 2025 operations levels were (and are) higher than MOP-based elevations, the court noted that the Plaintiffs still receive some incremental relief because 2025 operations levels are still lower than pool levels otherwise allowed under the 2020 Biological Opinion under challenge.

Infrastructure Repair and Maintenance (Operational)

Though the Plaintiffs requested that several repair and improvement projects be completed at several of the Dams as part of a preliminary injunction, the court declined to do so. It did so because while infrastructure retrofitting and improvement projects could benefit salmonid survival, the timelines for making and completing such improvements is too distant and long-reaching to truly be a "preliminary" (*i.e.*, more immediate) form of relief appropriate in a preliminary injunction setting.

Non-Operational Measures

In addition to Dams and corresponding reservoirs operational prescriptions, the Plaintiffs sought a number of non-operational actions, including: (1) avian and non-native piscine species predation control; (2) collection and transportation of steelhead kelt to the Nez Perce Tribal Hatchery for reconditioning; and (3) increasing adult-trap-and-transport operations for Snake River Sockeye and development of a Nez Perce Tribal Hatchery Genetic Management Plan. The Court declined these requests noting that the 2020 Biological Opinion already contains measures similar to those requested. Therefore, there was no need to duplicate efforts by operation of a preliminary injunction.

Stay Pending Appeal

Finally, the Defendants requested a stay of the injunctive relief ordered pending appeal of the District Court's Order. The court denied the stay request on the grounds that the listed salmonid species are in a precarious position and have been for decades, and that any stay pending appeal would likely mean that no additional protective measures would be performed in 2026 causing significant and immediate risk of harm to the listed species.

Conclusion and Implications

The FCRPS litigation treadmill is running again. Though Idaho federal water storage and flood control projects operate separate from the FCRPS biological opinions (Idaho projects operate under the Upper Snake operations-based biological opinion), when the FCRPS sneezes the entire region risks catching a cold. Idaho water users are content to have FCRPS legal proceedings remain downstream but would be foolish not to keep tabs on arguments made and orders issued because the Columbia and Snake River Basins are interconnected and there has long been a push for species reintroduction upstream of Idaho Power Company's Hells Canyon Dam complex. The U.S. District Court's order is available online at: https://www.rtoinsider.com/wp-content/uploads/2026/02/opinion-and-order-columbia-river-feb-25.pdf
(Andrew J. Waldera)

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

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

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

Factual and Statutory Background

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

Procedural History

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

The Court of Appeal's Decision

Water Supply and CEQA Adequacy

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

Disclosure of Vallejo Water Purchases

Vallejo argued that the EIR failed to disclose the actual volumes of water American Canyon purchased from Vallejo and thus obscured the most relevant component of the city's water supply. The appellate court disagreed, finding that the EIR and attached Water Supply Assessment adequately described the sources and quantities of water available, including treated water and raw water under the 1996 Agreement, and provided the necessary context for evaluating the Project's water demands. The court emphasized that CEQA does not demand scientific precision

beyond what is reasonably feasible, particularly where the overall supply clearly exceeds the project's projected needs.

Place-of-Use Restrictions and Emergency Curtailments

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

Contract Litigation and Supplemental Disclosures

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

Conclusion and Implications

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

"WATER, NO INVITE"? CALIFORNIA COURT OF APPEAL FINDS CITY OF FRESNO MAY BE LIABLE FOR PROPERTY DAMAGE CAUSED BY SWITCH TO ALTERNATE WATER SOURCE

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

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

Factual and Procedural Background

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

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

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

The Court of Appeal's Decision

Inverse Condemnation

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

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

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

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

Government Code Section 815.6

The trial court previously granted summary judgment under Government Code section 815.6, which imposes liability on a public entity for breach of a mandatory duty if: (1) a legislative or constitutional enactment imposes a mandatory duty; (2) the duty

was designed to protect against the kind of injury suffered, and (3) the breach was the proximate cause of the injury. The court determined that the City could meet each of these elements.

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

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

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

Civil Code Section 3479

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

Time Bar

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

Class Certification

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

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

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

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

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

Conclusion and Implications

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