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WWL

WESTERN WATER NEWS

PRIVATE INTERESTS AND PUBLIC RESOURCES: THE CURRENT LEGAL LANDSCAPE OF COLORADO'S BLUE RIVER

The rivers of Colorado present some of the best trout angling opportunities in the United States. Among these rivers is the Blue River, a 65-mile-long tributary of the Colorado River that flows from southern Summit County to its confluence near Kremmling. The Blue was once one of the most productive fisheries in the state until recent studies by Colorado Parks and Wildlife (CPW) discovered increasingly high rates of fish mortality. Now, anglers and advocates are scrutinizing the current state of the Blue River and exploring the legal mechanisms available to redress these issues.

Background

Along its path to the Colorado River, the Blue weaves through the Blue Valley Ranch, a 2000-acre property owned by billionaire Paul Tudor Jones II. The ranch, under Jones's ownership, has been known to stock large amounts of rainbow trout that are regularly fed fish pellets. These fish grow to massive size and routinely exceed 30 inches in length, earning the river its nickname; Jurassic Park. However, in CPW's recent survey, biologists found unnatural variation in seasonal fish populations, fish with large amounts of pellet feed in their stomachs, and evidence of a parasite epidemic known as gill lice among the rainbow trout population. The biologists state that the larger, unhealthy population of rainbow trout can displace resident fish in the river, exacerbating mortality above rates normally associated with catch-and-release fishing.

Representatives for the Blue Valley Ranch have voiced their disagreement with the CPW study. The ranch has cited warm water temperatures, low flows, and high angling pressure as causes for the increase in fish mortality. The ranch has also stated that pellet feeding operations are aimed at preventing starvation when flows and habitat reduction compromise natural food production. To combat these issues, the Ranch and the Friends of the Blue River proposed the institution of a permit system for use of the Blue River. The proposed system would limit daily numbers of boaters and, according to the ranch, help to keep fish populations strong by reducing angling pressure. Critics contend that the proposed permit system represents a further restriction on already limited public access along the lower Blue, following a federal land transfer initiated by the Blue Valley Ranch last year. The federal land transfer, which was supported by state representatives, expanded public access near the Blue's confluence with the Colorado and reduced access closer to the property line of the Blue Valley Ranch.

To no surprise, the proposed changes to access and declining fish populations have sparked debate regarding who is to blame and how the problems may be addressed.

The Legal Landscape

River Access in Colorado

Colorado river access laws are unique compared to most other states. In Colorado, touching the riverbed in areas where the river runs through private land can be considered trespassing. The Colorado Supreme Court reaffirmed these laws in their 2023 decision in *State v. Hill*. 530 P.3d 632 (Colo. 2023); 27 *W. Water L. & P'lcy Rptr*. 262 (July 2023). Hill enjoyed fishing a hole along the Arkansas River that abuts private lands. On multiple occasions, the property owners chased Hill off the property with force, throwing rocks at him on one occasion. Hill filed suit asserting that the river and riverbed is public land owned by the state of Colorado and held in trust for the people, giving any member of the public a right to fish there. Specifically, Hill argued that under the equal footing doctrine, which provides that each newly admitted state that enters the Union enters on equal footing with the original thirteen states, a state gains title to the beds of waters navigable at the time statehood located within its borders. The Colorado Supreme Court declined to address the merits of this claim,

stating that Hill lacked standing because his claim rested on the State's ownership of the riverbed, rather that his own legally protected interest.

Under Colorado law, Blue Valley Ranch is well within its right to exclude boaters and other recreators who touch the riverbed and streambanks along the property on the Blue River. Whether a permit system limiting recreational use is legally enforceable remains unclear. Nonetheless, the ranch maintains that such a system is necessary to stabilize declining fish populations.

At the same time, Colorado courts repeated refusal to recognize public trust interest in streambeds signal that the state government intends to keep current laws. There is little indication that the legal landscape will shift in the near term, resulting in the governing law remaining intact for the foreseeable future.

Fish Feeding in Colorado

In addition to the permit system and stream access, many advocates have asserted that Colorado should change its regulations regarding fish and wildlife feeding.

Colorado regulation 2 CO ADC 406-0:021 states that no person shall deposit, distribute, or scatter grain, hay, minerals, salt, or other foods the person knows or reasonably should know constitute a lure, attraction or enticement for big game not lawfully held in captivity. As for fish, Colorado regulations state that fish may be taken with the aid of bait, but not by chumming. Chumming is defined as placing fish, parts of fish, or other material upon which fish might feed in the waters of this state for the purpose of attracting fish to a particular area in order that they might be taken, but such term shall not include fishing with baited hooks or live traps.

Feeding food pellets to stocked fish to sustain populations does not seem to fit squarely into either regulation. It appears that the Blue Valley Ranch has not broken any law by scattering food pellets into the Blue. However, according to CPW, the feeding has caused issues that these regulations are designed to prevent.

Although Colorado retains the authority to expand its regulations to address large-scale fish feeding, there is no meaningful indication that such changes are coming. The all-you-can-eat buffet for fish on the Blue River does not seem to be going anywhere any time soon.

Conclusion and Implications

The controversy over the Blue River marks a departure from traditional disputes in Colorado water law. Historically, conflicts have centered around allocation of water rather than the recreational values water supports. The Blue River controversy flips the script, pitting lucrative private interests against recreational use of a public resource. Regardless of one's position on the matter, the outcome of this controversy has the potential to reshape major aspects of Colorado water law.
(Colton Goldfarb, John Sittler)

WASHINGTON STATE FACES A FOURTH CONSECUTIVE YEAR OF DROUGHT

Washington State is confronting the possibility of a fourth consecutive year of drought, as many watersheds across the state continue to experience prolonged dry conditions. In 2025, the Washington State Department of Ecology (Ecology) issued a drought emergency declaration for the North and Central Cascade Mountains and portions of Puget Sound. That declaration remains in effect through April 7, 2026. Based on current hydrologic conditions, there is growing concern that Ecology may issue an additional drought emergency declaration affecting much of the state for the upcoming water year.

Background

Under RCW 43.83B.405, Ecology is authorized to declare a drought emergency when water supplies for a geographic area, or a significant portion thereof, fall below seventy-five percent of normal levels and the resulting water shortage is likely to cause undue hardship to water users or the environment. When

potential drought conditions are identified, Ecology consults with the state's Water Supply Availability Committee (WSAC), pursuant to WAC 173-166-050. WSAC serves in an advisory capacity, evaluating water supply conditions through analysis of snowpack, precipitation, temperature, soil moisture, and forecast data. If WSAC determines that water supplies are, or are likely to be, at or below seventy-five percent of normal, it advises the Executive Water Emergency Committee (EWEC), which then evaluates whether the reduced supplies will result in undue hardship. Before issuing a drought emergency declaration, Ecology must also consult with federal, state, and local entities, consider input from affected water users, and obtain approval from the Governor. A drought declaration grants Ecology the authority to issue emergency drought permits and facilitate temporary water right transfers or leases to address short-term water shortages while protecting existing water right priorities. These measures enable water users and public entities to move more quickly than through standard water right change procedures.

March 2026 Findings

On March 12, 2026, WSAC convened to review water availability for the current water year, covering the period from October 1 through March 9. The committee found that temperatures have been consistently above normal, making this water year the third warmest on record for its first five months. Although total precipitation has been near normal statewide, its timing has been highly variable. December brought significant precipitation; however, much of it was lost to runoff or snowmelt due to elevated temperatures. As a result, streamflows have been higher than typical, while snowpack levels have declined across many regions. Data reviewed by WSAC indicated that the 2026 statewide snowpack is the fourth lowest on record, at approximately 51 percent of the median. Conditions are particularly severe in the Yakima River Basin, where March snow water equivalent measured 33 percent of average, and the U.S. Bureau of Reclamation projected junior proratable users would receive only 44 percent of their water entitlement. Forecast information further suggested a substantial likelihood that large portions of the state will remain below the 75 percent water supply threshold from April through September. Based on this assessment, WSAC recommended that Ecology proceed with the next steps in the drought declaration process.

The Yakima River Basin

In the Yakima River Basin, water supply forecasts are especially crucial because irrigation deliveries operate under a longstanding proratable system where senior water rights receive a full supply, while junior "proratable" rights get a smaller percentage during dry years. This system means that drought conditions can cause significant reductions in water deliveries for junior irrigation districts and agricultural producers.

Referral to the EWEC

Ecology will now refer the matter to EWEC, which will assess whether reduced water supplies are likely to cause undue hardship. This evaluation will consider impacts to agricultural producers reliant on irrigation, drinking water systems, and fisheries and instream resources. Ecology will also continue consultations with federal, state, and local entities and will seek the Governor's approval prior to issuing or extending a drought emergency declaration. Reduced water supply conditions can also increase the likelihood that junior water rights in certain basins may face curtailment under Washington's prior appropriation system, in which water is allocated based on priority of use. During severe shortages, senior rights generally must be satisfied before junior rights can divert water.

Conclusion and Implications

A drought emergency declaration enables Ecology to provide emergency relief measures, including expedited processing for emergency drought permits, temporary water right transfers, and access to grant funding for eligible public entities. Eligible applicants include local governments, federally recognized tribes, public utility districts, water and sewer districts, conservation districts, irrigation districts, port districts, and watershed management partnerships. Grant-funded projects may include water right leases, emergency infrastructure improvements, and fish passage barrier removal. For municipal water suppliers and other public water systems, drought declarations can also influence conservation planning, interties, and short-term water supply strategies, as utilities

work to ensure reliable drinking water while adhering to water-rights limits and regulatory requirements.

Ecology's current drought emergency declaration will expire on April 7, 2026. Water users throughout Washington will closely monitor snowpack, reservoir levels, and spring runoff conditions in the upcoming weeks, as these factors will largely determine whether the state officially enters a fourth consecutive year of drought emergency management. Based on current water supply forecasts and ongoing hydrologic challenges, it is likely that a declaration will be extended across much of Washington State for a fourth consecutive year.
(Jessica Kuchan)

LEGISLATIVE DEVELOPMENTS

IDAHO LEGISLATURE FINALIZES SIGNIFICANT AMENDMENTS TO IDAHO'S PERMIT-EXEMPT DOMESTIC USE STATUTES

During the 2026 Legislative Session (Senate Bill 1222), the Idaho Legislature clarified and finalized Idaho domestic water use statutory amendments started during the 2025 Legislative Session (Senate Bill 1083) to cap the first significant amendments to Idaho Code Sections 42-111 and 42-227 since 1995 and 2001, respectively. The statutory amendments significantly restrict the statutory-exempt use of groundwater in platted subdivision through the drilling of individual domestic wells.

Background

Idaho has long employed a significant statutory exemption from its administrative permit application process for domestic water rights. Historically, one could drill a domestic-exempt well under Idaho Code Section 42-227 and divert up to 13,000 gallons of water per day for "domestic" uses, including the irrigation of up to one-half acre of homesite property. For years, some criticized the domestic exemption as being far too generous in response to data suggesting that household domestic needs (minus irrigation) for a family of four can easily be met with approximately 600 gallons per day. Others were critical of the fact that the statutory exemption could also be used in platted rural subdivisions outside the reach of municipal services, allowing developers to avoid the need to apply for and develop community water systems.

The historical domestic exemption also became a talking point over the last few years in the context of the ongoing surface water-groundwater conjunctive use and administration disputes on Idaho's Eastern Snake Plain Aquifer (ESPA). Decades of aquifer declines, water user litigation, and water user inquiries caused the Idaho Department of Water Resources to better estimate the number of domestic-exempt wells in the state and the aggregate quantity of exempt water pumped annually (at least on paper to the upper limits of the 13,000 gallon per day statutory authorization). Department estimates suggested that the domestic use exemption totaled approximately 30,000 acre-feet of groundwater withdrawals annually—groundwater use that was otherwise immune from meaningful regulation on the ESPA and other groundwater-challenged areas (groundwater management areas and critical groundwater management areas designated by the Department).

The 2025 and 2026 Statutory Amendments

Starting during the 2025 Legislative Session, and further refined during the 2026 Legislative Session, Senate Bills 1083 (2025) and 1222 (2026) preclude outside-of-the-home use of water (*e.g.*, irrigation) under the domestic exemption in "subdivisions" (defined as the division of tracts of land into 5 or more lots, parcels, or sites for the purpose of sale or building development). The definition of "subdivision" does not include the splitting of agricultural lands provided that any lots created total at least 5 acres in size each and further provided that the land use of the lots remains agricultural.

The 2025 and 2026 statutory amendments provide some additional water right flexibility in the context of "subdivisions." One benefit is the ability of a developer to construct a community potable water system for in-home use only under the new version of the domestic exemption. Previously, all community water systems required a water right permit no matter the quantity of water involved. The new exemption also converted a former "catchall" use cap of 2,500 gallons per day for "any other uses" of water to an annual volume cap of 2.8 acre-feet per year. Removal of the daily rate limit in favor of an annual volumetric cap likely eliminates the need for future fire suppression water right permit needs because: (a) such systems can now be tested to the satisfaction of local fire protection authorities provided the test does not exceed the diversion of 2.8 acre-feet (which would not be the case because while fires suppression systems are plumbed to pump more than 2,500 gpd, the test would not exhaust 2.8 acre-feet of diversion volume); and (b) under Idaho law one can fight an active fire without a water right.

The 2025 amendments also added more direct investigatory and enforcement authority to IDWR in situations where the agency has reason to believe that the subdivision-related in-home use restriction is being violated. Whether IDWR will have the staffing necessary to police and exercise the new restrictions is a different question. But the agency now has the unquestioned ability to levy fairly significant financial penalties against violates in addition to the agency's available judicial remedies.

Finally, the 2026 amendments further clarifiy the effective date of the amendments. After enactment of the 2025 amendments, questions arose in the "subdivision" context of whether the new in-home use restriction was triggered by the timing of well drilling or subdivision plat process application submission to the local land use jurisdiction. The plain language of the 2025 amendments tied the effectiveness of the in-home use restriction to the timing of well drilling, not subdivision platting. This created a situation whereby the 2025 amendments would have different impacts within already platted subdivisions—some homes would be able to irrigate up to one-half of an acre under the old exemption because they developed their lots and built their homes prior to July 1, 2025, while others would not because those homeowners drilled their domestic wells after the amendment effective date. The 2026 amendments clarified that the effective date of the new restrictions were measured from subdivision application submission date and not the domestic well drilling date on any lot within a subdivision. Consequently, if a completed application requesting a developable subdivision was filed and accepted by the local land use jurisdiction (county or city) on or before June 30, 2025, the in-home use restriction would not apply to lots within such subdivisions despite the fact that the individual domestic wells would be drilled well after the July 1, 2025 effective date of the 2025 amendments. Fortunately, this issue was caught early and IDWR was willing to forego any action under the 2025 amendments while the 2026 amendments were in process.

Conclusion and Implications

While not perfect, the 2025 and 2026 domestic use exemption statutory amendments are significant. And they are the product of over two years of stakeholder meetings and collaboration (including the input of IDWR). The proliferation of statutory domestic-exempt wells during Idaho's ongoing population boom is a real issue in areas where groundwater withdrawals are exceeding aquifer recharge. Many moving to the state seek rural "ranchette" acreage properties unavailable to them in their former domiciles. The effectiveness of IDWR enforcement of the new restrictions will be interesting to watch.
(Andrew J. Waldera)

REGULATORY DEVELOPMENTS

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

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

The Final Land Subsidence BMP: Groundwater Sustainability Agencies

Refining "Critical Head" and Zonal Management

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

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

The End of Proxy Monitoring in Subsiding Basins

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

Expanded Liability: Inclusion of Well Casings

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

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

Hardening Cross-Basin Legal Standards

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

Conclusion and Implications

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

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

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.

Apr. 3, 2026—The U.S. Environmental Protection Agency (EPA) has finalized a cleanup plan to address groundwater contamination at the Radiation Technology Inc. Superfund site in Rockaway Township, New Jersey, confirming that contamination that remains from historic rocket-engine testing is deep in fractured bedrock and is not reaching nearby homes or drinking water. The plan, informed by years of study and public input, relies on long-term monitoring to track continued improvement and ensure the site remains protective.

EPA's groundwater plan builds on decades of cleanup work completed across the site from 1994 through 2021. During that time, EPA removed contaminated soil and buried waste, demolished unsafe buildings, and cleared hazardous materials such as asbestos, polychlorinated biphenyls, or PCBs, and lead-based paint. These actions addressed the areas of highest concern and eliminated potential exposure pathways. With those risks resolved, groundwater is the final remaining area of focus.

The finalized plan amends the original 1994 groundwater remedy, which called for pumping and treating contaminated water. Additional studies showed that the approach would not be effective in the site's fractured bedrock. EPA's updated cleanup identifies three small areas where contaminants are embedded deep in fractured rock and cannot be adequately addressed by treatment systems. In those areas, EPA is formally recognizing that engineered treatment is not possible.

Across the entire site, EPA will continue long-term groundwater monitoring to confirm that conditions continue to improve and that the cleanup remains protective.

EPA accepted public comments on the proposed cleanup plan during a 45-day comment period from December 22, 2025, through February 5, 2026, and held a virtual public meeting on January 14, 2026, to present the proposal and answer questions from the community.

April 2, 2026—At an event with Department of Health and Human Services Secretary Robert F. Kennedy Jr., U.S. Environmental Protection Agency (EPA) Administrator Lee Zeldin announced a landmark set of actions to safeguard the nation's drinking water from microplastics, pharmaceuticals, forever chemicals, and dozens of other contaminants—delivering on the Trump administration's promise to Make America Healthy Again (MAHA). At the heart of today's announcement is EPA's draft Sixth Contaminant Candidate List (CCL 6), which the agency is releasing for public comment, and is a critical tool under the Safe Drinking Water Act (SDWA) that drives research, funding, and future decisions on regulating emerging threats in public water systems.

The draft CCL 6 includes four contaminant groups—microplastics, pharmaceuticals, per- and polyfluoroalkyl substances (PFAS), and disinfection byproducts—as well as 75 chemicals and nine microbes that may be found in drinking water. For the first time in the program's history, EPA is designating both microplastics and pharmaceuticals as priority contaminant groups—a direct response to the concerns of millions of Americans who have long demanded answers about what they and their families are drinking every day. The CCL helps prioritize funding, research, and information collection to better understand the potential health risks of these substances in drinking water while advancing the agency's commitment to gold standard science.

For years, Americans have sounded the alarm about the potential for silent threats to lurk in America's drinking water. Today's actions take concrete steps to safeguard drinking water:

Microplastics—tiny plastic particles that have been detected in human blood, breast milk, and organs—are now officially on EPA's radar as a drinking water priority. This is the first time the agency has elevated microplastics to the CCL as a contaminant group, unlocking focused research and potential future regulation.

Pharmaceuticals, including antidepressants, hormones, antibiotics, and other drugs that enter water systems through human waste and improper disposal—are also being prioritized as a group for the first time. EPA is simultaneously releasing human health benchmarks for 374 pharmaceuticals, giving states, Tribes, and local water systems a critical new tool to assess risk and take action when drug residues are found at concerning levels.

Publication of the draft CCL 6 in the Federal Register will open a 60-day public comment period. Americans are encouraged to make their voices heard by submitting comments to docket number EPA-HQ-OW-2022-0946 at regulations.gov. EPA will also consult with its independent Science Advisory Board before finalizing the list, which is expected to be signed by November 17, 2026.

The SDWA requires EPA to publish a list of contaminants every five years that are not subject to any proposed or promulgated national primary drinking water regulation, that are known or anticipated to occur in public water systems, and that may require regulation. The CCL is the first step in the SDWA regulatory process. The human health benchmarks for pharmaceuticals are not regulations and are not enforceable on their own, but they are a vital resource, empowering local decision-makers to evaluate risks and protect their communities when pharmaceutical contamination is detected at concerning levels.

For more information about Contaminant Candidate Lists, visit EPA's CCL website.

Mar. 31, 2026—The U.S. Environmental Protection Agency (EPA) is releasing its final drinking water report on the Joint Base Pearl Harbor-Hickam (JBPHH) and Aliamanu Military Reservation (AMR) public water systems, which were impacted by the 2021 fuel release from the U.S. Navy-owned Red Hill Bulk Fuel Storage facility in Honolulu, Hawaii.

Following thorough decontamination efforts and rigorous drinking water quality monitoring, EPA has determined that drinking water provided by systems affected by the release has been free of fuel contamination and in compliance with federal and state drinking water regulations since 2022, in the wake of the Red Hill release. EPA will continue to support residents impacted by the Red Hill release in partnership with the Hawai'i Department of Health (DOH), which implements the Safe Drinking Water Act in the state.

The assessment of the JBPHH and AMR public water systems is among the most rigorous post-incident responses for drinking water systems of this size in the U.S. During the drinking water assessment, EPA has:

- Mandated and reviewed robust drinking water sampling by the Navy, including a three-year sampling effort at every accessible residence and all priority buildings, including schools, child development centers, and medical facilities served by the water systems.

- Reviewed data collected by the Navy on Total Petroleum Hydrocarbons (TPH) and fuel indicator compounds, including lab reports, chromatograms, and forensic studies.

- Reviewed DOH's independent investigation of TPH detections in Navy data.

- Conducted independent analysis of drinking water samples taken from the water system.

- Conducted inspections and investigations of the JBPHH and AMR public water systems and the Navy's sampling protocols.

Based on conclusions from the assessment, EPA supports these public water systems' return to ongoing routine Safe Drinking Water Act compliance monitoring. The Hawaii DOH also reviewed EPA's report and supports its conclusions.

EPA will continue to work with the Navy, the U.S. Army, and DOH to improve infrastructure and operations at the public water systems, oversee the permanent closure of the Red Hill Bulk Fuel Storage facility, and support efforts to safeguard Oahu groundwater under EPA's 2023 Administrative Consent Or-

der with the Navy and the Defense Logistics Agency.

With the release of the final drinking water report EPA is also publishing a Drinking Water Results Dashboard, providing transparency by facilitating public access to drinking water sample data.

In November 2021, a fuel release from the Red Hill Bulk Fuel Storage Facility contaminated the Red Hill Shaft, a drinking water well that serves the JBPHH and AMR public water systems. The ensuing Unsafe Water Advisory impacted approximately 93,000 drinking water consumers.

EPA worked with the Navy, the Army, and DOH to form an interagency team to restore the public water systems to full compliance with drinking water standards under the Safe Drinking Water Act.

In March 2022, the Unsafe Water Advisory was amended to allow for unrestricted use of drinking water throughout the public water systems. Drinking water from the JBPHH and AMR public water systems have met all federal and state drinking water regulations since that time.

Mar. 26, 2026—The U.S. Environmental Protection Agency (EPA) is seeking public input on its Clean Water Act Financial Capability Assessment (FCA) guidance. This non-regulatory guidance is an important resource that helps local water bills remain affordable as wastewater systems plan for needed infrastructure upgrades, including for their collection systems, pumps, and treatment plants. Using public feedback, EPA will consider updating the agency's guidance to better reflect ratepayers' ability to support infrastructure upgrades, potential impacts on rural and small communities, and other related topics.

Financial capability is one of many factors EPA considers when evaluating schedules for implementing long-term Clean Water Act control plans. The guidance provides information on how to assess a community's financial capability as part of negotiating implementation schedules under both permits and enforcement agreements. In addition, the guidance identifies specific ways to consider economic impacts to public entities when determining water quality standards variances and during antidegradation reviews. In appropriate cases, these methodologies also inform decisions about revising the designated use (e.g., drinking water supply, agriculture, recreation, and aquatic life protection) for a waterbody.

In order to implement Clean Water Act objectives without imposing burdensome financial stress on American families, EPA is seeking information and data on issues related to financial capability for communities. After reviewing the public input, the agency will revisit the guidance to address these concerns through possible revisions as part of its ongoing commitment to working with communities to protect human health and ensure practical implementation.

EPA will accept comments through May 26, 2026, via the Federal eRulemaking portal, referencing Docket ID No. EPA-HQ-OW-2026-1090. EPA also plans to hold two virtual meetings to discuss the guidance before the public comment period closes.

This effort will revise, as needed, the Clean Water Act FCA guidance. The most recent Final FCA guidance was published in March 2023 and had minor revisions in March 2024. The FCA guidance is not legally binding and is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Mar. 19, 2026—The U.S. Environmental Protection Agency (EPA) announced its proposed approval of the state of Colorado's request to administer permitting for Class VI underground injection wells (UIC) under the Safe Drinking Water Act (SDWA). The proposal would support EPA's Powering the Great American Comeback initiative, which prioritizes clean and safe water for Americans, restoring American energy dominance and advancing cooperative federalism. EPA is accepting public comments on the proposal through May 4, 2026.

After conducting a comprehensive technical and legal review, EPA is seeking comment on whether Colorado's proposed UIC program meets all requirements for approval and that the state will implement and enforce the program consistent with the SDWA.

EPA is committed to expediting the review of UIC permits and primacy applications received by the agency. The proposed approval helps fulfill this commitment. To date, six states have received primacy for Class VI wells, including North Dakota and Wyoming in EPA Region 8. More information about UIC primacy is available on the EPA website.

EPA is requesting public comment on the agency's proposed decision for 45 days after the proposal is published in the Federal Register. The public can comment on the proposal online through the Federal Register using Docket ID No. EPA-HQ-

OW-2025-2829.

EPA will hold a public hearing virtually on April 23, 2026, from 5-8 p.m. Mountain Standard Time. Registration for the hearing is available online or by email at UICprimacy@epa.gov.

UIC programs under SDWA play a key role in our nation's economic future by protecting underground drinking water supplies and ensuring that by-products of industrial and energy projects are safely stored underground. Class VI wells are used to inject carbon dioxide into deep rock formations for long-term underground storage, also known as geologic sequestration.

Mar. 16, 2026—The U.S. Environmental Protection Agency (EPA) has released a proposed plan to address a contaminated groundwater plume at the San Fernando Valley (Area 2) Superfund site, located near the city of Glendale, California. The agency is seeking public input on the plan and will consider all comments before selecting a final cleanup plan.

Area 2 is one of four Superfund sites in the San Fernando Valley, covering approximately 6,680 acres. Groundwater in the area has been contaminated with hazardous chemicals from former aerospace and other industrial activities. Since 2000, EPA's groundwater treatment system has made more than 58 billion gallons of groundwater safe for drinking and all water currently served to the public meets state and federal health and safety standards.

EPA's proposed plan includes: (1) increasing the volume of groundwater pumped by existing extraction wells; (2) installing a new groundwater well at the southern wellfield; (3) adding an activated carbon treatment unit to improve operational reliability; (4) reducing maintenance demands; and (5) upgrading the chromium treatment unit.

These actions will further strengthen the existing cleanup that contains the groundwater plume beneath Glendale and reduce overall contamination levels.

The 30-day public comment period for the proposed plan runs from March 16, 2026, to April 14, 2026. EPA will host one in-person public meeting and one virtual public meeting to discuss the Proposed Plan. EPA will give an overview of the Proposed Plan and accept verbal and written comments. The meeting will be transcribed. No registration is required.

April 1, 2026, 5:30–7:30 p.m. — Virtual meeting via Zoom.

An overview of the site and time for questions will be provided. Comments will not be accepted.

To register for the online meeting, visit the San Fernando Valley Area 2 Superfund site webpage.

The San Fernando Valley Superfund site was added to EPA's National Priority List on October 15, 1984. The federal Superfund program, established by Congress in 1980, investigates and cleans up the most complex, uncontrolled, or abandoned hazardous waste sites in the country and endeavors to return them to productive use.

Mar. 16, 2026—As part of the ongoing federal response to the Potomac Interceptor collapse, U.S. Environmental Protection Agency (EPA) will assume responsibility for water quality sampling previously conducted by the DC Department of Energy and Environment (DOEE).

EPA will conduct sampling daily, which will continue to be processed at EPA's Environmental Science Center located at Fort Meade, MD. The results for each day's sampling will be evaluated and quality assured before being posted publicly on DOEE's Potomac Interceptor Monitoring webpage. Postings for each sample result will be available approximately three days after each sampling event occurs.

In addition to water quality sampling, EPA and its federal partners have and continue to assist on the ground, providing stormwater diversion and management infrastructure, site remediation work, and general technical assistance.

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 that 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.

According to the operators of the Washington Aqueduct, which collects source water to be treated and distributed as safe drinking water, there has been no impact to drinking water. Any sewage overflow that occurred has been downstream of the Aqueduct's primary intake facility.
(Robert Schuster)

LAWSUITS FILED OR PENDING

ENVIRONMENTAL GROUPS FILE SUIT CHALLENGING U.S. BUREAU OF RECLAMATION'S OPERATION OF CENTRAL VALLEY PROJECT

On March 2, 2026, San Francisco Baykeeper and other environmental advocacy groups (Baykeeper) filed a complaint for declaratory and injunctive relief in the Eastern District of California, seeking a declaration that the U.S. Bureau of Reclamation (Reclamation) violated Endangered Species Act (ESA) Sections 7 and 9 in its current operation of the Central Valley Project (CVP) and an injunction that CVP reenter consultation and act in strict accordance with a 2024 biological opinion (BiOp). [*San Francisco Baykeeper, et al. v. U.S. Bureau of Reclamation, et al.*, Case No. 2:26-cv00671 (E.D. Cal).]

Background

The CVP is one of the largest water infrastructure and conveyance systems in the nation, consisting of extensive water infrastructure—including dams, reservoirs, water diversion facilities, conveyance channels, and pumping facilities—and serving as the "hub" of California's water system. The CVP diverts water from upstream rivers, like the Sacramento and San Joaquin Rivers, throughout the state, including into the Sacramento-San Joaquin Delta and the San Francisco Bay (together, Bay-Delta). The Bay-Delta is the most valuable estuary and wetland ecosystem on the west coast of the Americas and is home to many endangered fish species, including the winter-run chinook salmon, the California Central Valley steelhead, and the North American Green sturgeon.

Reclamation controls the water flow in upstream rivers by coordinating water releases from reservoirs, and exports large volumes of water from the Bay-Delta Watershed. These actions impact the ecological viability of the Watershed by altering the timing and volume of flows, water temperature, salinity, and other water quality characteristics.

2024 Biological Opinion

When an agency action "may affect" a listed species, the federal agency must enter into consultation with the Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS), resulting in the issuance of a biological opinion. If the service agency determines that an action is unlikely to jeopardize a species existence, it may offer an incidental take statement that will specify the allowed extent of take permitted and impose reasonable and prudent measures (RPMs) necessary to minimize that take. Under the ESA, "take" constitutes actions that would, among other things, "harm," or "kill" protected species. NMFS issued its latest BiOp regarding the CVP in 2024, mandating that Reclamation take specific actions to limit its impact on the relevant endangered species.

The Complaint

Baykeeper alleges that Reclamation failed to comply with the 2024 BiOp and exceeded the incidental take limits it set as each of the relevant species faced incidental take at greater amounts than permitted under the BiOp. Though the BiOp's incidental take statement allowed for the average take of 2,319 Central Valley Steelhead over a three-year period, by April 2025, this average had risen to more than 2,400. Further, despite meeting the thresholds for annual losses of Chinook Salmon that would trigger mandatory mitigation actions outlined by the BiOp, Reclamation failed to alter course.

Baykeeper now seeks declaratory relief finding Reclamation in violation of ESA Sections 7 and 9 for failing to comply with these mandatory measures and incidental take limits. According to Baykeeper, Reclamation's take of protected species outside of the scope of its incidental take statement is jeopardizing the continued existence of the Central Valley Steelhead and North American Green Sturgeon. Baykeeper also seeks the court to compel Reclamation and NMGS to reinitiate ESA Section 7 consultation that would ultimately result in a new BiOp to ensure future CVP operations do not jeopardize the continued existence of the listed species in the Bay-Delta Watershed.

Action 5

In response to Executive Order 14181, "Emergency Measures to Provide Water Resources in California and Improve Disaster Response in Certain Areas," 90 Fed. Reg. 8747 (Jan. 31, 2025), Reclamation will begin operating the CVP pursuant to a new operational plan—Action 5. This plan will lead Reclamation to deviate from the operations originally considered in the 2024 BiOp and would reduce protections for the relevant listed fish species—leading to greater losses of all species beyond those detailed in the BiOp. In commencing these new operations, Reclamation will also be out of compliance with the State Water Resource Control Board's water quality requirements, which are fundamental to Reclamation's permits to operate the CVP.

Reclamation itself has acknowledged that Action 5 will likely increase losses for Winter-Run Chinook Salmon, Central Valley Steelhead, and North American Green Sturgeon. Despite this awareness, however, Baykeeper alleges Reclamation did not—and does not intend to—initiate consultation with NMFS prior to commencing operations under the new plan. In seeking an injunction to reinitiate consultation, Baykeeper aims for the imposition of greater fish species protections to prevent their jeopardization.

Conclusion and Implications

San Francisco Baykeeper v. U.S. Bureau of Reclamation will have significant ramifications on Reclamation's operation of the heart of California's water system. A curtailment of flows and conveyance will impact the amount of water downstream users receive. Conversely, it would reduce the negative impacts of Reclamation's CVP operations on endangered fish species in the Bay-Delta. Further, if Reclamation were compelled to reinitiate consultation with NMFS and modify its actions to protect the listed species, Sections 7 and 9 of the ESA would undermine the Trump administration's objective of expanding California's water supply for private use. As of March 2026, only a complaint has been filed, which can be located here: https://baykeeper.org/wp-content/uploads/2026/03/Bureau-of-Reclamation-Complaint-03.02.2026.pdf (Adam Nir)

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

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

Background

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

Plaintiffs allege that the ubiquitous release of 6PPD-q into waterways via storm water runoff constitutes a "take" of dozens of populations of listed salmon and steelhead, prohibited under Section 9 of the ESA. Plaintiffs seek to prohibit the further

manufacture and distribution of tires containing 6PPD unless the companies obtain federal permits or implement mitigation measures. They argue that the industry has known about these devastating environmental impacts for years yet failed to adopt available, less toxic alternatives.

At the U.S. District Court

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

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

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

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

Conclusion and Implications

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

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

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

JUDICIAL DEVELOPMENTS

NINTH CIRCUIT FINDS EPA VIOLATED SECTION 7 OF THE ESA BY FAILING TO CONSULT WITH FISH AND WILDLIFE SERVICE BEFORE PROMULGATING CLEAN WATER ACT WATER QUALITY CRITERIA FOR CADMIUM

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

On March 3, 2026, the Ninth Circuit Court of Appeals held that the U.S. Environmental Protection Agency (EPA) violated section 7 of the federal Endangered Species Act (ESA) by failing to consult with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service (together, the Services) before promulgating its Clean Water Act (CWA) section 304(a) water quality criteria recommendation for cadmium. Center for Biological Diversity (CBD) sufficiently met the relatively low threshold for establishing Article III standing to challenge an agency action by showing it suffered harm that traceable to the EPA's recommendation, which could be redressed via consultation.

Facts and Procedural Background

Under Section 304 of the CWA, the EPA is required to develop and publish water quality criteria recommendations for about sixty individual pollutants, including cadmium. Once published, states must review and modify their water quality standards and revise them to match the new recommendations or explain to the EPA why they declined to do so. If the EPA deems a state's proposed criteria inconsistent with the CWA's requirements, it will directly promulgate that state's criteria for the relevant pollutant.

In 2016, the EPA promulgated new recommendations for cadmium without first consulting with the Services to further evaluate its potential impacts on ESA-listed species or their critical habitats. The EPA reasoned that because the recommendations weren't binding requirements imposed on the states, it was not undertaking a formal agency action—consultation would only be required before it actually decided on each individual state's water quality standards.

Plaintiffs, CBD, filed suit to invalidate the 2016 cadmium recommendations and compel the EPA to complete section 7 consultation. The trial court agreed that publication of the Section 304(a) recommendations constituted an agency action that may affect listed species under ESA section 7 and ultimately granted summary judgment in CBD's favor. The court vacated the EPA's chronic freshwater cadmium recommendation and remanded the remainder of its recommendations to the EPA for consultation with the Services. The EPA appealed.

The Ninth Circuit's Decision

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

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

The Ninth Circuit stipulated an exception to the consultation requirement where the agency deter-

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

Standing

The court first grappled with the EPA's argument that CBD lacked standing and concluded that CBD satisfied each element. To establish standing, a plaintiff must show: (1) an injury in fact that is concrete and particularized and actual or imminent; (2) the injury is traceable to the defendant's challenged action; and (3) it is likely the injury will be redressed by a favorable decision.

CBD's members had a concrete interest harmed by the recommendation as they routinely engaged in educational and recreational activities revolving around the enjoyment of the listed species. CBD established that elevated cadmium concentrations would harm those species and diminish their members' ability to participate in those activities.

The court also concluded this harm was traceable to the EPA's actions as it was foreseeable that states, which routinely adopt the EPA's recommended criteria, would loosen their water standards related to cadmium and thereby harm listed species. Consultation would have likely resulted in the issuance of a biological opinion that required the EPA to impose more stringent criteria on the states. States could either adopt these more stringent standards or have the EPA do so in their place.

Finally, the court held that CBD's injuries were redressable as consultation would likely lead to more protective section 304(a) recommendations, which the states would adopt in response. These heightened standards would then benefit the listed species CBD members seek to observe and enjoy.

ESA Section 7

Upon shifting to the merits of CBD's claim regarding the EPA's alleged ESA violations, the court held that the EPA's publication of Section 304(a) recommendations constituted an "agency action" that necessitated consultation. Under ESA Section 7(a)(2), this consultation requirement is triggered when an agency action "may affect" a listed species.

The court concluded the EPA's conduct fell within that definition of "agency action" as the promulgation of section 304(a) recommendations is a congressionally mandated activity that is authorized, funded, and carried out by the EPA. Though not necessarily binding on states, the recommendations influence water quality standards nationwide, and the EPA will directly implement the criteria in noncompliant states and tribal lands. Because of this, it was reasonably foreseeable that states would adopt these less stringent cadmium standards and affect listed species. Therefore, the recommendations were considered by the court to be an "agency action" that "may affect" listed species, and the EPA violated the ESA by failing to consult with the Services prior to their publication.

Conclusion and Implications

The Ninth Circuit's holding in *Center for Biological Diversity v. Environmental Protection Agency* underscores that the threshold for an "agency action" that "may affect" a listed species is a relatively low bar to clear if a plaintiff can make some showing of causation and redressability. The EPA's Section 304(a) recommendation for cadmium, though technically nonbinding, effectively directed states to adopt their water quality standards, and thus clearly qualified as an agency action. This decision places a hefty responsibility on the EPA to engage in consultation for each Section 304(a) recommendation it routinely makes; however, it also serves to protect ESA-listed fish species nationwide from any water quality standards that states may take pursuant to these EPA actions. The Ninth Circuit's published opinion is available online at: https://cdn.ca9.uscourts.gov/datastore/opinions/2026/03/03/23-2946.pdf
(Adam Nir, Darien Key)

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

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

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

Factual and Procedural Background

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

The District Court's Holding

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

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

The Defendants argued that the letter merely listed 200 "significant" rain events over a five-year period

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

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

Conclusion and Implications

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

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

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

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

Background

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

Shortly thereafter, the Kings County Farm Bureau and several landowners filed a petition for writ of mandate and complaint in Kings County Superior Court alleging multiple statutory and constitutional deficiencies, including lack of notice, improper fees, improper "underground regulations," unlawful

expansion of authority, and failure to apply SGMA's good-actor exclusion. In September 2024, the trial court issued a broad preliminary injunction restricting the Board from enforcing most of the probationary-related requirements.

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

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

The Court of Appeal's Decision

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

"Underground Regulation" Claims Dismissed

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

Constitutional "Tax" Claims Dismissed

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

Notice Violation Claims Rejected

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

Authority to Require Revised Plans Confirmed

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

Only the "Good Actor" Exclusion Claim Survives

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

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

Impact of the Supreme Court's Denial of Review

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

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

What Remains at the Trial Court

While the appellate decision dissolved the broad preliminary injunction, the underlying litigation is far from over. The Kings County Superior Court will now conduct a full trial on the merits of the writ of mandate. Crucially, although the Court of Appeal concluded that only the good-actor claim could support a preliminary injunction, it expressly did not resolve the underlying merits of the Farm Bureau's core writ claim. This foundational challenge—alleging that the State Water Board's probationary designation

was arbitrary, capricious, or unsupported—remains pending and will proceed on remand. The appellate opinion specifically noted that the State Board "has yet to respond to the writ of mandate".

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

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

Conclusion and Implications

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

While the writ of mandate proceeding remains alive—specifically regarding the foundational challenge to the probationary designation and the surviving "good-actor" exclusion—the bulk of the Farm Bureau's initial claims have been conclusively dismissed. This includes the challenges to notice adequacy, regulatory authority, and, critically, the extraction fees.

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

LAS POSAS GROUNDWATER ADJUDICATION AFFIRMED: CALIFORNIA COURT OF APPEAL ENDORSES COMPREHENSIVE BASIN MANAGEMENT FRAMEWORK

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

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

Background

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

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

Procedural Framework and Settlement Structure

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

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

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

The Court of Appeal's Decision

Water Rights Priorities and Allocation Methodology

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

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

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

Treatment of Dormant and Disputed Claims

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

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

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

Validity of the Physical Solution

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

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

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

Challenges to Governance, Fees, and Environmental Review

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

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

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

Conclusion and Implications

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

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

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

NEVADA SUPREME COURT UPHOLDS FORFEITURE OF LONG-UNUSED GROUNDWATER RIGHTS

Egger Enterprises v. State Engineer, 142 Nev. Adv. Op. 18 (N.V. 2026).

In *Egger Enterprises v. State Engineer,* the Nevada Supreme Court affirmed the State Engineer's decision to deny extensions of time to resume use of unused water and to forfeit groundwater rights that had not been placed to beneficial use for decades. The Court held that the State Engineer acted within his discretion granted by NRS 534.090.

This decision reinforces a key principles of Nevada water law: the primacy of beneficial use. The decision further reinforces the application of the anti-speculation doctrine, and the State Engineer's authority to prevent speculative retention of groundwater rights.

Background

Egger Enterprises owns a ranch in the Pine Forest Valley Hydrographic Basin in Humboldt County, Nevada. Historical irrigation practices included flood irrigation. Beginning in the late 1990s, the ranch began converting to center-pivot irrigation, leaving the corners unirrigated and the rights associated with the corners unused. Evidence showed that portions of the water rights had not been used since approximately 1997.

In the early 2000s, Egger sought to acquire adjacent federal land through the Bureau of Land Management's (BLM) Desert Land Entry process, intending to apply the unused water to new acreage. BLM required coordination with the Nevada Division of Water Resources and the filing of change applications to modify the place of use and point of diversion.

The State Engineer then forfeited a portion of the Egger's rights for non-use, but that decision was ultimately reversed for failure to give proper notice. Subsequently, the State Engineer issued a notice of nonuse and intent to declare forfeiture under NRS 534.090. Egger requested extensions to resume beneficial use, which was granted for a one-year period, but was cautioned that further extensions would require a showing of good cause. The following year's extensions were denied on the basis that the good cause had not been shown, and the unused portions of the rights were forfeited.

The Supreme Court's Decision

The Nevada Supreme Court, after reviewing the District Court's affirmation of the State Engineer's decision, affirmed, concluding that the State Engineer properly applied NRS 534.090, that substantial evidence supported the decision, and that equitable relief was not warranted.

Under NRS 534.090, groundwater rights may be forfeited after five consecutive years of nonuse. The statute allows extensions "for good cause shown" and lists factors for consideration. Egger argued the decision was invalid because the State Engineer addressed only seven of nine statutory factors or alternatively it was entitled to equitable relief.

The Court rejected this argument, holding that while the factors must be considered, the State Engineer need not make express findings on factors irrelevant to the request, particularly where the applicant did not raise them.

Instead, the Court sufficient ample evidence supporting the denial of further extensions. The State Engineer concluded Egger had not, as it sought to retain unused rights while attempting to acquire new land. The Court agreed, emphasizing that beneficial use is the foundation of Nevada water law. Relying on *Desert Irrigation* and *Sierra Pacific Industries*, the Court reiterated that water rights cannot be held for speculative future use. Because Egger did not yet own the land to which it sought to apply the water, the State Engineer reasonably found a lack of diligence. Further, the record showed nonuse since approximately 1997, far exceeding the five-year forfeiture threshold, which the Court held this supported forfeiture.

The State Engineer also considered conditions in the Pine Forest Valley basin, where groundwater withdrawals exceeded perennial yield and no unappropriated water remained. The Court held these findings were supported by substantial evidence and properly considered.

No Basis for Equitable Relief

Egger sought equitable reinstatement of the forfeited rights. The Court declined, noting that equi-

table relief in water cases is limited and must promote efficiency, sustainability, fairness, and clarity. Here, the forfeiture resulted from decades of nonuse and Egger's objective was expansion, not conservation. Under these circumstances, equitable relief was not appropriate.

Conclusion and Implications

This decision clarifies several aspects of Nevada groundwater administration. First, it reinforces that beneficial use remains the central principle of Nevada water law. Water rights exist only so long as water is put to beneficial use. Second, the ruling also strengthens the anti-speculation doctrine by rejecting attempts to hold unused rights for future development.

The decision further reinforces the State Engineer's discretion under NRS 534.090. While statutory factors must be considered, the State Engineer is not required to make findings on irrelevant factors. By affirming forfeiture in this case, the Court endorsed efforts to align water rights with actual historic use and to prevent additional strain on limited groundwater resources.

In *Egger Enterprises v. State Engineer*, the Nevada Supreme Court reaffirmed the State Engineer's authority to enforce forfeiture for prolonged nonuse and to deny extensions absent good cause. The ruling underscores Nevada's commitment to beneficial use and anti-speculation principles while supporting effective management of scarce groundwater resources. (Micheline Nadeau Fairbank)

Western Water Law & Policy Reporter
Argent Communications Group
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