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FEATURE ARTICLE

WHERE DOES MY WATER COME FROM AND WHY SHOULD I CARE? ATTITUDES ASIDE, THE REALITY OF IDAHO WATER SUPPLY MEANS CURTAILMENTS ARE COMING

By Andrew J. Waldera

"Political refugees" are moving to Idaho in droves—conservative, oftentimes middle-life retirees relocating to Idaho from urban areas of California, Washington state, Oregon and other so-called "blue" states dominated by populous urban centers. Because many of these "refugees" are arriving from the urban centers of their former home states they have little context or understanding of where their drinking and irrigation water come from, and the systems involved in providing that water to the tap and their ranchette pastures. While Idaho is a "red" state, the "refugees" are very politically active after years of being ignored in their former home states and in many respects seem to be even more conservative than native and other long-time Idahoans. While Idaho is largely getting "redder," it is not without some challenges and concerns in the context of water development, use, and conveyance.

For example, while native and long-time, earlier transplant Idahoans are very private property rights oriented, recent transplants are, perhaps, even more so. Long-time Idahoans understand and are largely supportive of irrigation infrastructure and the easements supporting them and the water they convey. More recent transplants are challenging the nature and scope of irrigation easements on their "private" property and arguing against various statutes giving rise to the easements and the enforcement of them. While some with education come to understand and appreciate them, others do not. Irrigation entities are facing increasing challenges and arguments from many of their new neighbors.

What About the Water?

Some recent transplants similarly harbor philosophical disagreement over various ditch maintenance activities, especially aquatic herbicide treatments and ditch burning. These activities are vital and routine forms of irrigation ditch maintenance met with increasing resistance and argument. Some of those arguments include allegations that these maintenance activities interfere with the use of ditch and canal roads for recreational purposes of others (newcomers treating dirt and gravel irrigation ditch roads as biking, running, and walking trails).

As climate change and population growth hare straining water supplies across the state, many irrigation entities are exploring and incorporating alternative water supplies to bolster their existing water supply portfolios—chiefly irrigation reuse of municipal and industrial effluent under Idaho's Recycled Water Rules and permitting programs. Like many states throughout the relatively arid western United States, Idaho has a robust recycled water classification and permitting program ranging from Class A (the highest/cleanest grade) to Class E (the least treated). Recycled municipal and industrial process water has the advantage of being ever-present and drought proof and has been used to augment irrigation water supplies for decades. However, recent transplants are questioning the appropriateness of the development and use of recycled water supplies for fear of exposure to as-yet unregulated constituents generally known as "emerging contaminants of concern" such as PFAS, PFOS, pharmaceutical residues and other personal care product residues.

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Water Supply Augmentation

During the 2026 Legislative Session, water supply augmentation through cloud seeding was hotly contested and highly controversial. Concerns over cloud seeding ranged from legitimate questions over chemicals and methods used (often assuaged by education and explanation) to the truly bizarre such as cloud seeding serving as a surreptitious cover for the airborne administration of broad-spectrum immunizations.

While many of these issues seem relatively harmless and disposable in isolation, the political refugees moving to Idaho are, for better or worse, a formidable force. They are highly motivated and politically active after years of philosophical repression in their home states. They organize and pursue positions from the bottom up as opposed to the top down. Instead of taking positions in small numbers and working though regulatory and legislative leaders from the top down, the refugees often take to social media platforms to influence discourse, accumulate followers, and exert pressure from the grassroots bottom up. The "refugees" are quickly lending credence to the saying that social media is becoming (if not already) the fourth branch of government no matter documented platform flaws and factual inaccuracies. And while many refugees are retirees, they are later mid-life retirees (often public service pensioners from law enforcement and other public safety professions—EMS and fire fighters) with more passion and energy than typical, later-in-life retirees.

With Water Supply Diminution, Water Rights Curtailments are Coming

The Idaho Department of Water Resources (IDWR) is grappling with the diminution of water supply. The IDWR has sent early notice to Snake River water users with Trust Water Rights, indicating that minimum flows at Murphy may drop below 3,900 cfs this summer, potentially leading to curtailment action.

On June 2, 2026, in a forecast for Snake River water flows, officials with the Idaho Department of Water Resources (IDWR) is predicting that there is a chance that river flows may fall below the minimum flow of 3,900 cubic feet per second at the Murphy gage this summer.

In conjunction with the forecast, IDWR is sending out a notice to all water users who have Trust Water Rights, reminding them that they could be subject to curtailment if Snake River flows fall below 3,900 cfs this summer, officials said. The notice encourages Trust Water Users to plan ahead and be aware of the online tools and resources available to them.

"The purpose of this letter is to remind water users that water rights or permits that divert Trust Water may be curtailed when water flows in the Snake River at the Murphy gage fall below established minimum stream flows of 5,600 cfs during the non-irrigation season in the winter and 3,900 cfs during the summer irrigation season" IDWR's Water Administration Bureau Chief Nick Miller said in a June 1st letter to Trust Water Users.

"Importantly, the flow at the Murphy Gage fell below the minimum for six days in late March of this year during the non-irrigation season," Miller said.

"The Department recently issued a Spring Forecast for flows at the Murphy Gage, which predicts flow rates may fall below the minimum stream flow of 3,900 cfs in late June/early July of this year. As a result, your water right(s) may need to be curtailed."

"Trust Water Rights" refer to a legal framework established by the 1984 Swan Falls Settlement in Idaho. This agreement resolved a major conflict between Idaho Power Company and the State of Idaho regarding how to balance the Snake River's water use for agricultural development and other uses versus Idaho Power's use for hydroelectric generation. "Trust Water Rights" refer to water rights issued after the 1984 Swan Falls Settlement and are subject to maintaining the required minimum flows at the Murphy Gage. The water rights may be in the Snake River or in tributary aquifers.

According to IDWR's database, there are more than 4,000 Trust Water Rights. The June 1st letter was mailed to all of the approximately 3,300 owners of Trust Water rights and their representatives. If Snake River flows drop below 3,900 cfs at the Murphy gage, that would be the first time that has occurred during the irrigation season since the Swan Falls Settlement occurred in 1984.

The State of Idaho, via IDWR, has the authority to allocate this Trust Water for future beneficial uses (such as agricultural, municipal, and commercial development) in accordance with Idaho law.

Conclusion and Implications

That the term "political refugees" is part of the lexicon of the Idaho Legislature and long-time political consultants and lobbyists in the state is a testament to their growing presence and influence across Idaho. Idaho water users and agricultural interests are taking notice as key incumbent legislators versed in local water and agricultural issues are facing challenges in republican party primary elections that are increasing in frequency.

The notion that Idaho was not "red" enough was hardly a thought a decade ago. But the refugees are coming and they are changing the narrative. What this means to Idaho water user interests in the long term remains to be seen. In the short term, there are palpable bumps in the road requiring increasing amounts of time, energy, and education. For more information on the recent IDWR threat of curtailment, *see:* https://idwr.idaho.gov/wp-content/uploads/2026/06/News-Release-20260602-IDWR-sends-early-notice-to-Snake-River-water-users-with-Trust-Water-Rights.pdf.

Andrew J Waldera is a partner at Sawtooth Law Offices, PLLC, based in Boise, Idaho. Andrew practices in the areas of water, land use, environmental/natural resources, and agricultural law. He represents clients in judicial, administrative, and local government proceedings regarding water rights and land use matters under state and federal law, including under the Idaho Local Land Use Planning Act and the federal Clean Water Act, Endangered Species Act, and hazardous waste management and defense matters under the Resource Conservation and Recovery Act and the Comprehensive Environmental Response, Compensation and Liability Act. Andrew is a long-serving Editor for the *Western Water Law & Policy Reporter* covering water rights issues in Idaho and within the Snake River Plain Aquifer region.

WESTERN WATER NEWS

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

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

Background

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

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

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

The Plan

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

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

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

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

Upper Basin Operations

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

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

Federal Trust Mechanism

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

Conclusion and Implications

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

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

REGULATORY DEVELOPMENTS

WASHINGTON STATE ENVIRONMENTAL REGULATION AND PERMIT-EXEMPT STOCK WATER RIGHTS

The Washington State Department of Ecology recently issued two compliance orders and a penalty order against the owners of King Ranch, alleging that they dredged alkali wetlands to create stock water ponds. King Ranch appealed the penalty orders, asserting that it had the authority to dredge the stock water ponds in furtherance of its permit-exempt groundwater right. (*King Ranch v. Wash. Dep't of Ecology*, Pollution Control Hearings Bd., No. 23-007c) It also filed a state court action, arguing that the penalty order functionally seeks damages in a civil suit, which implicates the Washington State Constitution's "inviolate" right to a jury trial. While this case could resolve a lingering contest between the water user's quantity right and the regulator's obligation to preserve water quality, the case might be resolved on its facts.

Background

King Ranch manages thousands of acres across private, state, and federal lands. It contends that it has dredged several ponds for stock watering for generations, thereby perfecting a permit-exempt groundwater right. However, based on aerial imaging and two site visits, Ecology contends that King Ranch created the stock water ponds around 2021 by excavating 34 alkali wetland sites. Therefore, Ecology issued a penalty order and two compliance orders requiring King Ranch to restore the affected wetlands. King Ranch appealed these orders to the Pollution Control Hearings Board, an administrative tribunal.

In their appeal, King Ranch maintains that the subject sites were never wetlands, and that the areas are only wet because of its work in furtherance of its water rights. In the alternative, it argues that Ecology is prohibited from impairing or conditioning the full withdrawal of King Ranch's groundwater right, a right that depends on dredging the ponds. Ecology maintains that the sites were wetlands before King Ranch excavated them, and that, regardless of whether King Ranch had a water right, it was still bound by statutes regulating water quality and well digging.

King Ranch has also filed a complaint in state court seeking declaratory relief that it is entitled to a jury trial under the Washington State Constitution and arguing for incorporation of the Seventh Amendment of the United States Constitution.

Regulatory Authority

Ecology is tasked with enforcing water quality regulations, including the protection of wetlands throughout the state. Specifically, Ecology is obligated to enforce RCW 90.48.080, which makes it unlawful to dredge wetlands without a permit. However, RCW 90.44.422 provides that Ecology "may not abrogate, supersede, impair, or condition the ability of a water right holder to fully divert or withdraw water under a water right . . . recognized under chapter . . . 90.44 RCW," which includes permit-exempt stock-watering rights.

RCW 90.44.422 was a legislative response to two prominent decisions articulating the authority of environmental regulation agencies. In *Elkhorn II*, the United States Supreme Court held that Ecology was empowered to incidentally regulate quantity for the purpose of regulating water quality when issuing a water right. In *Sullivan Creek*, the Washington State Supreme Court extended this holding to permit Ecology to incidentally limit the quantity of an existing right. RCW 90.44.422 explicitly does not affect the holdings of these cases, although it does purport to limit Ecology's ability to impair or condition a water right based on statutory water quality issues.

King Ranch argues that RCW 90.44.422 protects a water right holder against regulatory concerns when exercising their right. Because King Ranch's right was dependent on dredging ponds, it maintains Ecology could not preclude that action. Ecology argues that RCW 90.44.422 only precludes Ecology from directly limiting a water right. Because Ecology did not prevent King Ranch from withdrawing the full quantity of its water right, and only restricted King Ranch

from excavating wetlands in the process, Ecology maintains that it did not violate RCW 90.44.422.

Jury Trial

In King Ranch's state court action seeking a stay of PCHB proceedings in favor of a jury trial, King Ranch advances state and federal constitutional arguments. King Ranch frames Ecology's penalty order as seeking recovery of civil penalties, which would be a common-law claim traditionally heard by a jury. Therefore, King Ranch argues that the Washington State Constitution should protect its right to a jury. King Ranch further argues that the Seventh Amendment of the United States Constitution, which has been interpreted to guarantee a jury trial in similar Clean Water Act proceedings, should finally be incorporated to the states. Nevertheless, Washington courts have interpreted its state constitutional protections to be broader than their federal counterparts, which could make a resort to the Seventh Amendment unnecessary.

Preliminary Rulings

King Ranch's claims before the PCHB and state court remain pending. While the PCHB has denied King Ranch's motion for summary judgment, this denial could be because RCW 90.44.422 limits Ecology's authority, thereby making King Ranch's disputed groundwater right material, or because Ecology can regulate as they did regardless of King Ranch's right. And although King Ranch has filed a motion for summary judgment in its state court action seeking a jury trial, King Ranch has signaled that they are willing to appeal any adverse decision to the U.S. Supreme Court.

Conclusion and Implications

This case pits the power of a state agency to regulate water quality against the right of a rancher to the full withdrawal of a permit-exempt groundwater right. If King Ranch's arguments prevail, then Ecology's regulatory authority will be wholly subordinated to the water users' rights. This will be particularly significant in light of the rising prevalence of permit-exempt groundwater rights, over which the administrative state would have even less control. If Ecology's interpretation prevails, then RCW 90.44.422 will have done little to temper Ecology's authority under *Elkhorn II* and *Sullivan Lake* to incidentally limit the full withdrawal of water under a valid water right. However, if the PCHB finds that King Ranch's ponds are as new as Ecology claims, then it could affirm Ecology's penalty and avoid interpreting RCW 90.44.422 by finding that King Ranch did not have a water right to be maintaining the ponds in furtherance of.

King Ranch's corollary state court case seeking a jury trial in state administrative proceedings may fundamentally change the nature of administrative enforcement proceedings within Washington. (Grant Thompson, Jamie Morin)

LEGISLATIVE DEVELOPMENTS

PRESIDENT TRUMP SIGNS INTO LAW H.R. 972, THE SLOAN CANYON CONSERVATION AND LATERAL PIPELINE ACT FOR 40-MILE WATER PIPELINE IN SOUTHERN NEVADA

On May 19, 2026, President Trump signed into law House Resolution 972 (H.R. or the Act), which addresses federal authorization to construct a water pipeline—a 40-mile water pipeline—beneath a conservation area in Clark County Nevada. The "lateral" pipeline is designed to transport water for use in the Vegas Valley area. The lateral pipeline will be constructed and managed by the Southern Nevada Water Authority (SNWA) which supplies water in Clark County and the general area including Las Vegas.

The Sloan Canyon Conservation and Lateral Pipeline Act

The official title of H.R. 972 is "An Act to Amend the Sloan Canyon National Conservation Act to Adjust the Boundary of the Sloan Canyon National Conservation Area and For Other Purposes."

Under the Act "Right of Way," a provision was added for a lateral pipeline right of way which directs the Secretary of the Interior, via the Bureau of Land Management (BLM), to:

> . . .grant to the Southern Nevada Water Authority. . .not subject to the payment of rents or other charges, the temporary and permanent water pipeline infrastructure, and outside the boundaries of the Conservation Area, powerline, facility, and access road rights-of-way depicted on the map. . . .

Background

The Southern Nevada Water Authority is a government agency that was founded in 1991 to manage southern Nevada's water needs on a regional basis in Clark County.

SNWA provides wholesale water treatment and delivery for the greater Las Vegas Valley and is responsible for acquiring and managing long-term water resources for Southern Nevada.

From its inception, the SNWA has worked to acquire additional water resources, manage existing and future water resources, construct and operate regional water facilities and promote water conservation.

The SNWA is governed by a seven-member board of directors, which comprises one elected official from each governing board of the SNWA's seven member agencies. While the Board of Directors sets policy direction for the SNWA, the Las Vegas Valley Water District is responsible for the day-to-day management of the organization through an agreement between the SNWA member agencies.

H.R. 972

The law directs the Department of the Interior to grant the Southern Nevada Water Authority rights-of-way for the construction and operation of a 40-mile water pipeline beneath the Sloan Canyon National Conservation Area. The pipeline would have the capacity to carry 375 million gallons of water per day to Henderson and the southern Las Vegas Valley.

The project, known as the Horizon Lateral Pipeline, addresses what lawmakers have described as a dangerous gap in southern Nevada's water infrastructure. Currently, the water authority operates one large pipeline—the South Valley Lateral—that serves approximately 40 percent of the residents and businesses in the Las Vegas Valley, including the entire city of Henderson.

The new underground route is expected to save residents in the region $200 million and ensure water delivery redundancy in the case of emergencies.

The law also expands the Sloan Canyon National Conservation Area in Clark County by nearly 9,300 acres. The conservation area, designated by Congress in November 2002, includes the Sloan Petroglyph Site, which is home to more than 300 rock art panels containing 1,700 petroglyphs created by Indigenous cultures dating thousands of years.

Without congressional approval, rights-of-way may not be located through or under areas designated as wilderness, and construction of the pipeline may not

permanently adversely affect surface resources within the conservation area.

The purpose of the Horizon Lateral Program as crucial. Currently, the SNWA reports that current water deliveries to Henderson and the valley's southern region are provided by an existing large-diameter transmission pipeline known as the South Valley Lateral (SVL). Completed in the 1990s, this pipeline was built before much of the south valley was developed. After conducting analysis and planning studies in 2019, SNWA proposed new conveyance infrastructure—known as the Horizon Lateral Program—to work in tandem with the SVL and fortify the regional water delivery system. Through a phased build-out of the overall Horizon Lateral Program, individual projects within the Program will be prioritized to address near-term needs and help ensure Southern Nevada's regional water system remains "one of the most reliable in the nation."

The Horizonal Lateral Program consists of a variety of independent projects designed to enhance storage capacity, improve delivery routes, strengthen system resiliency and provide water system redundancy (system support).

Program components include:

Improvements to existing water delivery and storage facilities in the Las Vegas Valley Water District (LVVWD) service area to boost redundancy and operational flexibility throughout the regional water system

A new transmission pipeline and pumping station facility to serve the southeastern portion of the City of Henderson.

New pressure regulating valves to strengthen service and system stability during outages or emergencies.

A new transmission pipeline, reservoir and pumping station facility to boost service reliability in the southern portions of LVVWD and Henderson service areas.

Conclusion and Implications

The majority of water for southern Nevada is sourced from the Colorado River. Groundwater is an additional source to sustain the ever-growing population in the area, including the bourgeoning areas of North Las Vegas, Law Vegas and Henderson. Some have been vocal in opposition to any water projects that could, in theory, allow for more urban growth in the area with water from the Colorado River via Lake Mead in every dwindling supply. However, SNWA views this lateral pipeline project as a way to better utilize existing water sources.

Once finished, these independent program components will interconnect to complete the overall Horizon Lateral Program, linking SNWA's east and west valley distribution networks, improving operational flexibility and enhancing system capacity to accommodate the community's current and future water needs. For more information, *see:* https://www.snwa.com/infrastructure-improvements/horizon-lateral/index.html and https://www.govtrack.us/congress/bills/119/hr972/text.
(Robert Schuster)

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

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

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

The *California Cannabis* Decision

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

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

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

The "Local Taxpayer Protection Act to Save Proposition 13"

HJTA's one-page ballot measure takes specific aim at Measure ULA and claims that "court-created loopholes have allowed special interests to pass billions in new and higher taxes, including real property transfer taxes . . . ." This measure would require any citizen-let tax increase to obtain a two-thirds majority vote of the electorate before enactment.

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

Conclusion and Implications

Measure ULA, which sought to raise revenue for affordable housing projects, has resulted in some adverse consequences, despite raising more than $1 billion in three years. However, many academics studying the impact of ULA have concluded that, because the transfer tax applies to apartments, condos, mixed-use, and commercial developments (in addition to single family "mansions"), the measure has resulted in a downturn in new construction, including new affordable housing projects. Given the sweeping language of the HJTA ballot measure, the proposition would impact future tax-raising measures. Existing and proposed non-real estate taxes (e.g. L.A.

County Measure ER, which is on the June 2026 ballot and proposes a 0.5 percent sales tax increase to fund health services that face funding cuts by the Trump Administration) would not be repealed.

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

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

EPA NEWS AND SANCTIONS

RECENT EPA NEWS, INVESTIGATIONS, 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.

June 4, 2026—The U.S. Environmental Protection Agency (EPA) is announcing a settlement with an international agribusiness company for claims of violations of the Toxic Substances Control Act (TSCA) at its facilities in California and Washington. Wilbur-Ellis Company agreed to pay a penalty of $630,737 for failing to properly report chemical production. As a result of EPA's action, the company returned to compliance with federal chemical production reporting requirements.

Wilbur-Ellis, which distributes and markets agricultural products, animal nutrients, and specialty chemicals, manufactures chemicals at several locations in California and in Washington.

EPA claims Wilbur-Ellis violated TSCA in the following ways:

> Manufacturing a new, unreported chemical substance on at least 29 different occasions at their California facilities located in Willows, San Joaquin, and Rio Linda and their facility in Pomeroy, Washington, and failing to submit a notice of its intent to manufacture that chemical
>
> Processing a separate chemical on at least one occasion, after EPA designated it as an "inactive substance," and failing to submit a notice of processing for that chemical.
>
> Producing more than 25,000 pounds of three additional chemical substances at its San Joaquin and Rio Linda facilities, and failing to submit required quadrennial chemical production data for these chemicals, a filing essential to EPA's ability to screen, assess, and manage chemical risks

To return to compliance under federal law, the company submitted the relevant premanufacture notice and revised chemical data reporting.

Under TSCA, manufacturers intending to produce a new chemical must submit a premanufacture notice, so that EPA can review if the substance presents an unreasonable risk to human health and the environment. In addition, all manufacturers are required to notify EPA before reintroducing substances that have been unreported, or "inactive," in American commerce since 2006, ensuring EPA can monitor and maintain an accurate list of chemicals in production and use. Chemical importers and manufacturers are required to submit chemical data reporting information to EPA every four years. EPA makes the non-confidential business chemical information it receives available to the public.

June 3, 2026—The U.S. Environmental Protection Agency (EPA) Deputy Administrator David Fotouhi announced the agency's forward-looking Superfund Solutions initiative [https://www.epa.gov/superfund/superfund-solutions-initiative]to accelerate cleanups of contaminated sites nationwide, including the more than 1,340 Superfund sites on the Superfund National Priorities List (NPL). Through this new long-term initiative, EPA will deploy gold-standard science, streamline decision-making and cut red tape, make swifter clean up decisions, modernize tools, and increase cooperative federalism to deliver human health and environmental protections for communities across the country.

Superfund cleanup is a bedrock EPA program that protects human health and the environment by identifying and remediating sites contaminated with hazardous substances. The cleanup and revitalization of contaminated land reinvigorates sites into productive community spaces like parks and sports fields, wildlife areas, or new homes or businesses. Over the past 15 years, these renewed sites have generated over $868 billion for local economies and employed hundreds of thousands of Americans.

For years, process challenges and bureaucratic delays have stood in the way of even more progress being made on cleaning up contaminated sites. However, the Trump EPA's renewed focus of delivering on its core mission of protecting human health and the environment, something previous EPA leadership deprioritized, has proven that significant progress can happen at sites when resources are deployed correctly.

Since January 2025, more than 290 Superfund site cleanups have been completed, over 59 million cubic yards of contaminated soil and water have been cleaned up, and $864 million from responsible parties have been recovered. The Trump EPA's work has cut two years off the cleanup timeline at the West Lake Landfill site in Missouri and shaved 15 years off the cleanup timeline for the PCE Southeast Contamination site in Nebraska, proving that EPA can deliver tangible results faster.

May 20, 2026— EPA is announcing $27.5 million in funding to protect California and the same amount to protect Nevada from exposure to lead in drinking water. This investment will go directly to states through the Drinking Water State Revolving Fund and is part of EPA's unwavering commitment to advancing cooperative federalism and Making America Healthy Again. This funding will go toward finding and replacing lead pipes (also known as lead service lines) that deliver water to homes. Communities can use these funds for identifying lead pipes, planning removal projects, and funding replacement of these lead service lines. Lead is a powerful neurotoxin that is especially harmful to children. Each lead pipe removed and replaced delivers real, tangible environmental and health benefits to communities across our great nation.

Providing clean, safe drinking water is a top priority under EPA's Powering the Great American Comeback Initiative and reducing exposure to lead is a critical piece of ensuring clean air, land, and water for all Americans.

The Drinking Water State Revolving Funds are financial assistance programs run by states to help water systems achieve the health protection objectives of the Safe Drinking Water Act. The agency is distributing funding based on the best available information on the location of approximately 4 million lead service lines across the country. As good stewards of taxpayer dollars, EPA will work with states to ensure this funding is promptly provided to communities to support efforts to reduce exposure to lead through drinking water.

EPA is committed to tackling the lead issue like never before. EPA recently published a revamped lead website, found at epa.gov/lead, including a new StoryMap about Lead and Children's Health. The streamlined website allows parents and caregivers, contractors, health care professionals, and other users to quickly find critical information on how to prevent exposures from lead. This is one of many actions being undertaken by EPA under the government-wide Federal Lead Action Plan, which was launched in President Trump's first term as a blueprint for reducing lead exposure through collaboration among federal agencies.

May 19, 2026—A former plant manager and a supervisor of a Nashville, Tennessee, facility pleaded guilty in U.S. District Court for the Middle District of Tennessee to conspiring to bypass waste pretreatment systems and discharge the waste into the Nashville sewer system, and to tampering with a monitoring device at the facility.

David Ray Stark, the former Plant Manager at Allwaste Onsite LLC, doing business as Onsite Environmental (Onsite Environmental) pleaded guilty yesterday. Caleb Warren Randall, a former plant supervisor at Onsite Environmental, pleaded guilty on April 22. According to court filings, both men admitted to bypassing treatment processes at the facility and discharging untreated wastes into the Nashville sewer system in late 2022 and early 2023. Stark and Randall also admitted that they directed plant employees to tamper with a sampling device that Nashville's Department of Water and Sewerage Services placed at the facility to monitor discharges into the sewer system in January 2023.

According to court documents and statements made in court, the tampering by Stark, Randall, and Onsite Environmental involved removing the hose of the sampling device from the facility's discharge flume and placing it into a bucket filled with cleaner water that was not representative of the actual waste discharged to the sewer. Stark and Randall face a maximum sentence of five years in prison and $250,000 in fines. Stark's sentencing hearing is scheduled for Aug. 19 and Randall's sentencing hearing is scheduled for Aug. 4.

The Clean Water Act established the federal pretreatment program—which is delegated to states and municipalities—to provide a permit system to protect sanitary sewer infrastructure from industrial discharges which may harm sewer systems and wastewater treatment plants. Under an approved Clean Water Act pretreatment program, municipalities can require the reduction of harmful pollutants in wastewater from industrial discharges prior to the wastewater being discharged to the sanitary sewer system. These pretreatment requirements protect the local sewer systems — which are generally designed to process domestic sanitary sewage — from industrial wastes which can harm sewer pipes and the treatment processes carried out at wastewater treatment plants.

May 18, 2026—The U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (USACE) released the finalized cleanup plan in a second Record of Decision Amendment (ROD-A) for the contaminated groundwater plume associated with the former Cornhusker Army Ammunition Plant in Grand Island, Nebraska.

The cleanup plan – which is also called an amended—based on the remedial investigation and feasibility study conducted by USACE. A remedial investigation identifies the nature and extent of contamination at a site, while a feasibility study evaluates potential alternatives for cleanup. This amended remedy replaces the groundwater extraction treatment system with native bacteria that can break down the contaminants at an accelerated rate. Using bacteria to clean up contaminants is called bioremediation. A public comment period was conducted in February 2025.

The bioremediation treatment, using blackstrap molasses whey, vegetable oil, and corn steep, will provide a source of carbon for bacteria to consume, producing an environment that will see the deterioration of contaminants in the groundwater.

The overall goal of the amended remedy is the restoration of the groundwater to support that resource's future unlimited use and unrestricted exposure. USACE also determined that implementing the bioremediation remedy would provide significant cost-savings and speed up the clean-up process while continuing to protect human health and the environment.

EPA Region 7 and the Nebraska Department of Water, Energy and Environment (DWEE) reviewed the amended remedy and support its implementation.

The former Cornhusker Army Ammunition Plant is a 12,042-acre site near Grand Island, Nebraska. The U.S. Army built the plant in 1942 to produce munitions and provide support functions during World War II. The plant area includes five major production areas where munitions were loaded, assembled and packed: a fertilizer manufacturer; two major storage facilities; sanitary landfills; and burning grounds where materials contaminated with explosives were ignited.

Improper disposal of contaminated wastewater and other plant operations resulted in groundwater contamination on-site and migration beyond the property boundary. USACE is conducting remedial investigations, remedial actions, and continuous groundwater monitoring.

Apr. 16, 2026—Aghorn Operating Inc., an oilfield company, Trent Day, an executive of Aghorn, and Kodiak Roustabout Inc., entered guilty pleas and were sentenced yesterday in relation to criminal worker safety and federal clean air and safe drinking water violations. According to court documents, Aghorn owns and operates oil wells in and near Odessa, Texas. Odessa is in the Permian basin where oil reserves are "sour," meaning they have high hydrogen sulfide content. Hydrogen sulfide gas can be deadly at high concentrations.

The case leading to these pleas is the result of an investigation of the Oct. 26, 2019, death of Aghorn employee Jacob Dean and his wife Natalee Dean. Both were overcome by hydrogen sulfide at an Aghorn facility in Odessa.

Day agreed to plead guilty to a Clean Air Act (CAA) negligent endangerment charge and serve five months in prison. Aghorn pleaded guilty to CAA negligent endangerment and an Occupational Safety and Health Act willful violation count for the death of Jacob Dean. Kodiak pleaded guilty to a felony violation of the *Safe Drinking Water Act* for falsifying oil well integrity tests. Aghorn will pay a $1 million criminal fine and Kodiak will pay a $400,000 criminal fine. These pleas were made under agreements the defendants entered into with the United States. Under the agreements, other pending charges will be dismissed. Yesterday, the court accepted the defen-

dants' guilty pleas and sentenced them in accordance with their plea agreements.

Mar. 19, 2026— Ford Motor Company (Ford) and the Borough of Ringwood, New Jersey, have agreed to a consent decree with the United States under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), also known as the Superfund law.

This agreement requires Ford and Ringwood to perform the final phase of cleanup, known as Operable Unit 3, at the Ringwood Mines/Landfill Superfund Site located in Ringwood, New Jersey. The New Jersey Department of Environmental Protection and the Administrator of the New Jersey Spill Compensation Fund are also parties to the agreement as co-plaintiffs with the United States. The cleanup, expected to cost $3.4 million, addresses benzene, 1,4-dioxane, and lead contamination in groundwater and mine water associated with the historic disposal of paint sludge and other industrial waste at the Site. In the future, this groundwater may be used as a drinking water source for nearby communities. But today, use of the contaminated groundwater would pose an unacceptable health risk to those communities; this risk will be addressed by the cleanup required by this settlement.

The approximately 500-acre Ringwood Mines/Landfill Superfund Site is located in a historic iron mining district and includes forested land, abandoned mine pits and shafts, a closed municipal landfill, and areas currently used as state parkland, utility corridors, and municipal property. Several brooks drain the site and ultimately flow to the Wanaque Reservoir, a drinking water source for more than two million New Jersey residents.

From the late 1960s through the early 1970s, portions of the site were used to dispose of waste materials, including paint sludge and other industrial waste generated at Ford's automobile assembly plant in Mahwah, New Jersey. Investigations found that some of these materials contributed to contamination in soil, groundwater, surface water, and mine shafts.

The site was added to the Superfund National Priorities List in 1983, removed in 1994 after cleanup actions were completed, and restored to the list in 2006 following the discovery of additional contamination. EPA divided the site into multiple cleanup areas, known as operable units. Cleanup work under Operable Unit 2, which addresses contaminated soil, waste, and fill material in several former mine and disposal areas, is nearing completion under a consent decree entered in 2020.
(Robert Schuster)

LAWSUITS FILED OR PENDING

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

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

Background

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

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

Amici Supporting the Plaintiffs

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

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

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

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

Amici Supporting the Water Districts

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

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

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

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

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

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

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

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

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

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

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

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

Conclusion and Implications

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

(Brett Stroud)

RECENT STATE DECISIONS

COLORADO SUPREME COURT FINDS WATER ENTERPRISES IN COLORADO NOW HOLD THE POWER OF EMINENT DOMIAN

Northern Integrated Supply Project Water Activity Enterprise v. VIMA Partners, 2026 CO 9 (Colo. 2026).

In a recent May 4, 2026, opinion handed down from the Colorado Supreme Court, water activity enterprises now have confirmed authority to bring an eminent domain proceeding against a private property owner and condemn private property for water-related activities.

Background

Northern Integrated Supply Project Water Activity Enterprise (the "Enterprise", a business owned by Northern Colorado Water Conservancy District (Northern), filed a petition of condemnation in Weld County District Court seeking to acquire both permanent and temporary construction easements on land owned by VIMA Partners. The Enterprise requires easements for the surveying, locating, construction, operation, and maintenance of water delivery pipelines and related infrastructure as part of a regional supply and distribution project called the Northern Integrated Supply Project (NISP or the Project). The Project aims to supply 40,000 acre-feet of new, reliable water supplies to 15 municipalities in districts in northern Colorado annually.

Procedural Background

In the petition for condemnation submitted to the court, the Enterprise identified multiple legal sources for its authority to implement the power of eminent domain. Most prominently, Article XVI in Section 7 of the Colorado Constitution and Colorado Statutes C.R.S. 37-86-102, 104(1), 37-45.1-103(4), and 37-45-118(1)(c). VIMA Partners filed a motion for judgement on the pleadings following the petition, arguing that none of the legal authorities asserted by the Enterprise granted it eminent domain powers, which VIMA argued are the exclusive authority of water conservancy districts. The District Court in Weld County denied the motion for judgement, ultimately siding with the Enterprise.

The Supreme Court's Decision

On appeal, the Colorado Supreme Court applied the canons of statutory interpretation to interpret the Colorado General Assembly's intent for the statutes cited by the Enterprise. VIMA Parters contended that the water enterprise statutes and statutes involving the powers of eminent domain must be narrowly construed, with any ambiguities in the language resolved in favor of the condemned landowner. As such, VIMA argued, the condemnation power should be limited to water conservancy districts and not extended to water enterprises. However, the Court did not agree with these contentions, holding that the language of the statutes was clearly intended to provide such powers to water enterprises and that case law calling for narrow interpretation is distinguishable. All parties agreed that water conservancy districts hold eminent domain powers, and the Court's ruling confirms that these powers extend to subsidiary water enterprises as well. Ultimately, the Court affirmed the district court ruling confirming the Enterprises' condemnation authority as a water enterprise.

This holding is the most recent of several controversial issues surrounding NISP. As a part of the Project, NISP seeks to create a large reservoir northwest of Fort Collins that will flood a valley containing a seven-mile stretch of US Highway 287 between Fort Collins and Laramie, Wyoming. The reservoir will be filled with water from the Cache Le Poudre and become one of the largest in the northern half of the state. In 2025, Save the Poudre, an environmental advocacy group, sued Northern Water to stop the Project, but settled for $100 million to be invested into various conservation projects and alterations to the scope project. Nonetheless, the Project remained largely intact, with this most recent win in court being seminal to its long-term implementation.

The Future of Water Enterprises in the State

Looking beyond the benefits to Northern Water, the Enterprise, and NISP, confirmation of eminent domain powers in water enterprises could create a dramatic change in the way Colorado water suppliers will handle their infrastructure. Denver Water recently dealt with a long-term injunction with the expansion of Gross Reservoir Dam as part of their plan to expand capacity amid growing population within their service area. The process of completing accompanying infrastructure has now become much easier with condemnation of prime locations now within its confirmed authority.

Conclusion and Implications

Whether the power of eminent domain for water enterprises is beneficial will continue to be a topic of debate, although that power is now clearly legal. On one hand, water enterprises can more effectively supply water to users within their service districts through new water projects. On the other hand, large-scale infrastructure, including massive dams and reservoirs, can now be constructed with significantly less burden than before. With climate change and western aridification changing the amount of available water for all uses, water districts and their associated enterprises may continue to exercise their constitutional and statutory eminent domain authority in service of expanded water projects. The Court's opinion is available online at: https://www.colorado-judicial.gov/system/files/opinions-2026-05/25SA305.pdf.
(Colton Goldfarb, John Sittler).

CALIFORNIA SUPREME COURT CLARIFIES COASTAL COMMISSION'S APPELLATE JURISDICTION

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

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

Background

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

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

The Board's decision was appealed to the California Coastal Commission. Shear defended the Board's decision but also challenged the Commission's jurisdiction to consider the appeal. The Commission denied the permit. It identified two bases for its jurisdiction: (1) the proposed residences were in a sensitive coastal resource area (SCRA) under the County's local coastal program (LCP); and (2) the proposed development was not for the sole principal permitted use for the area, but rather for one of several principal permitted uses. On the merits, the Commission concluded that no adequate wastewater service was available due to Special Condition 6, which provided that

wastewater service to undeveloped properties within the service area was prohibited unless and until the Estero Area Plan is amended to identify appropriate and sustainable buildout limits, including proof that adequate water is available to support development; and the development did not protect adequately the environmentally sensitive habitat area (ESHA) and therefore violated ESHA policies. The Superior Court denied a petition for writ of administrative mandate, and the Court of Appeal affirmed.

The Supreme Court's Decision

The Commission's Appellate Jurisdiction

Regarding the Commission's first jurisdictional ground, the Supreme Court ruled that the proposed development site is not in an SCRA. The issue turned on interpretation of the LCP, a legal issue. The Court exercises independent judgment when reviewing an agency's interpretation of the law, applying any appropriate deference to the agency's legal interpretation. Here the County and the Commission disagreed over interpretation of the law. When multiple agencies that administer a statute have provided conflicting interpretations, a court should apply the factors articulated in *Yamaha Corp. v. State Board of Equalization*, 19 Cal.4th 1 (1998) to each agency to determine not only whether either would be entitled to deference, but also whether either has a stronger claim to deference than the other. If one agency is better situated than the other to provide a definitive statutory interpretation to which a court should defer, then the court may assign greater weight to that agency's interpretation. If not, and the agencies offer incompatible interpretations, then the court should perform its interpretive task without deference to either agency. The pertinent question for deference is whether either entity's position bears clearly superior indicia of being correct compared to the other. Here, neither did. The Commission did not properly exercise appellate jurisdiction under the theory that the proposed development is in an SCRA.

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

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

Conclusion and Implications

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

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

PUBLIC FISHING, CEQA, AND DRINKING WATER PROTECTION: CALIFORNIA COURT OF APPEAL CLARIFIES RESERVOIR ACCESS OBLIGATIONS

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

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

Background

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

The appeal concerned whether the City had a clear, present, ministerial duty to obtain an amended water supply permit from the State Water Resources Control Board and immediately open the reservoir to public fishing in its natural condition. The Court of Appeal held that no such ministerial duty existed.

Prior Proceedings

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

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

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

The Court of Appeal's Decision

Governing Legal Framework

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

Health and Safety Code section 117045 provides that before opening a domestic water supply reservoir to public fishing, the public owner must determine that fishing will not affect the purity and safety of the water and must obtain a valid water supply permit setting forth the terms and conditions on which fishing may occur. Title 17 regulations also prohibit recreational use on and around a domestic water supply reservoir unless specifically authorized in a water

supply permit. Those regulations require a permit application to include detailed information concerning public access areas, sanitary facilities, the type and extent of recreational use, and the owner's program for controlling that use.

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

Mandamus Analysis

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

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

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

Fishing Rights and Constitutional Claims

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

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

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

Conclusion and Implications

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

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

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