Volume 35, Number 5
February 2025

CALIFORNIA WATER LAW & POLICY Reporter™

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CALIFORNIA WATER NEWS

PROPOSED WATER DISTRICT AIMS TO PROVIDE ADDITIONAL SURFACE WATER FOR GROUNDWATER RECHARGE PROJECTS IN KAWEAH SUBBASIN

On May 6, 2025, landowners will vote on a proposal to form a new water district over a portion of the critically overdrafted Kaweah Subbasin. The Consolidated Water District (District) would serve approximately 80,000 acres of land and have access to senior surface water rights on the Kaweah and St. Johns Rivers. If formed, the District could provide irrigation water to reduce groundwater demands and facilitate recharge projects in furtherance of recently amended Groundwater Sustainability Plans (GSPs) under the Sustainable Groundwater Management Act (SGMA). Late last year, the Kaweah Subbasin avoided state intervention when the State Water Resources Control Board (State Water Board) canceled a scheduled public probationary hearing after making preliminary findings that the amended GSPs made substantial improvements.

SGMA and the Kaweah Subbasin

In 2014, the Legislature passed SGMA to establish a statewide framework for managing groundwater, prioritizing local control with state intervention as a backstop. By January 31, 2022, local Groundwater Sustainability Agencies (GSAs) for medium- and high-priority groundwater basins were required to adopt GSPs that would achieve long-term sustainability. Sustainability under SGMA involves the avoidance of six key undesirable results: (1) chronic lowering of groundwater levels; (2) significant and unreasonable reduction of groundwater storage; (3) significant and unreasonable seawater intrusion; (4) significant and unreasonable degraded water quality; (5) significant and unreasonable land subsidence; and (6) depletion of interconnected surface water. (Wat. Code, § 10721(x)(1)-(6).) If the Department of Water Resources (DWR) finds a GSP to be deficient, the State Water Board can intervene to assign probationary status and impose reporting and fee requirements for the entire subbasin.

The Kaweah Subbasin (Basin No. 5-22.11) is located in Tulare County, within the San Joaquin Valley. It was identified by DWR as high-priority basin due to critical overdraft conditions caused by continuous groundwater pumping. Three GSAs formed to co-manage groundwater use in the Kaweah Subbasin: East Kaweah GSA, Greater Kaweah GSA, and Mid-Kaweah GSA. The GSAs each submitted GSPs to manage the subbasin in 2020 and 2022. DWR first rejected the GSPs as incomplete in 2022 and, in 2023, determined the revised GSPs were inadequate because they failed to define sustainable management criteria for chronic groundwater lowering and subsidence in certain management areas. DWR's 2023 determination triggered state intervention under Water Code section 10735.2. The State Water Board scheduled a January 7, 2025, public hearing to determine whether to assign probationary status to the Kaweah Subbasin and in May of 2024, released a draft staff report recommending probation and the imposition of reporting and fee requirements.

The Kaweah GSAs further amended their GSPs on June 13, 2024 and October 3, 2024. Following a high-level preliminary review of the amended GSPs, State Water Board staff found that the GSAs made significant progress toward addressing the deficiencies and achieving sustainability. On November 15, 2024, the State Water Board canceled the scheduled probationary hearing to allow staff additional time to thoroughly review the amended GSPs. That review is currently ongoing.

The Consolidated Water District

If the District is established, it would be located primarily within the Greater Kaweah GSA and include lands owned by stockholders of four private ditch companies with senior surface water rights. Because the private ditch companies spearheading the proposed District are not local public entities, they were unable to form GSAs at the outset of SGMA planning. According to its proponents, the District

would be able to utilize its surface water rights to develop water transmission and recharge infrastructure and carry out groundwater recharge projects to improve the effectiveness of the amended GSPs in coordination with the Kaweah Subbasin GSAs. Approximately 24,000 acres within the 80,000-acre District have historically depended entirely on groundwater. In addition to benefitting from groundwater recharge projects, parcels within the District could gain expanded access to surface water from the Kaweah River and St. Johns River, resulting in reduced overall groundwater reliance in the area.

On September 4, 2024, the Tulare County Local Agency Formation Commission (Tulare LAFCo) approved the ditch companies' petition to form the District. The Tulare County Board of Supervisors has since approved the proposal to be placed on a May 6, 2025 mail-in ballot. To be approved, a majority of landowners must vote in favor of establishing the District.

Conclusion and Implications

While the probationary hearing for the Kaweah Subbasin has been canceled pending more thorough review of the amended GSPs by State Water Board staff, the State Water Board may still ultimately step in with an interim plan to manage groundwater use. At the time of this writing, the State Water Board has not released any final findings. It also remains to be seen whether the potential formation of the Consolidated Water District would provide any needed assurances that the Kaweah GSAs will achieve groundwater sustainability. If a new probationary hearing is scheduled, a notice will be issued at least 90 days in advance of the hearing date.

A copy of the Tulare LAFCo approval of the proposed District is available at: https://lafco.co.tulare.ca.us/commissioner-staff-meeting/meeting-agenda/january-2025-agenda/. Copies of the State Water Board's Draft Staff Report regarding the Kaweah Subbasin and notice of cancelation of the probationary hearing are available at: https://www.waterboards.ca.gov/water_issues/programs/sgma/groundwater_basins/kaweah-subbasin.html.
(Jake R. Voorhees, Austin C. Cho)

REGULATORY DEVELOPMENTS

EPA RELEASES DRAFT RISK ASSESSMENT ASSOCIATED WITH PFAS CHEMICALS IN BIOSOLIDS

On January 14, 2025, the U.S. Environmental Protection Agency (EPA) released a draft risk assessment, or scientific evaluation of the potential human health risks associated with the presence of toxic per- and polyfluoroalkyl substances (PFAS) chemicals in biosolids, also known as sewage sludge.

The findings for the draft risk assessment show that there may be human health risks associated with exposure to the "forever chemicals" PFOA or PFOS with all three methods of using or disposing of sewage sludge – land application of biosolids, surface disposal in landfills, or incineration. Once finalized, the assessment will help EPA and its partners understand the public health impact of forever chemicals in biosolids and inform any potential future actions to help reduce the risk of exposure.

EPA Acting Administrator Jane Nishida, said:

> EPA under President Biden's leadership has taken unprecedented actions to advance research and science on PFAS and to protect people from these dangerous forever chemicals," "This draft assessment provides important information to help inform future actions by federal and state agencies as well as steps that wastewater systems, farmers and other stakeholders can take to protect people from PFAS exposure, while ensuring American industry keeps feeding and fueling our nation.

Defining Biosolids

Wastewater produced by households and businesses, and sometimes industrial dischargers, is conveyed to a wastewater treatment plant, and ultimately treated. These treatment processes also produce a semi-solid, nutrient-rich product known as "sewage sludge" or "biosolids." EPA typically uses the term "biosolids" to mean sewage sludge that has been treated to meet regulatory standards and is thereby suitable to be land applied as a soil conditioner or fertilizer. In turn, biosolids can be beneficially reused as land applied fertilizer on agricultural fields or on nonagricultural lands to promote plant health and productivity.

The Draft Risk Assessment

This draft risk assessment focuses on a specific and narrow population of people that EPA considers most likely to be exposed to PFOA or PFOS from the land application of biosolids or through consumption of products from land where biosolids were used as fertilizer. The draft risk assessment scientifically models hypothetical human health risks for people living on or near sites impacted by PFOA or PFOS or for people relying primarily on those sites' products (e.g., food crops, animal products or drinking water). The preliminary findings of the draft risk assessment indicate that there can be human health risks exceeding EPA's acceptable thresholds, sometimes by several orders of magnitude, for some scenarios where the farmer applied biosolids containing 1 part per billion (ppb) of PFOA or PFOS (which is near the current detection limit for these PFAS in biosolids). These modeled scenarios include farms with one application of biosolids at a rate of 10 dry-metric-tons per hectare and 40 consecutive years of biosolids land application at this same rate. The modeling in this assessment also finds human health risks exceeding the EPA's acceptable thresholds in some scenarios where biosolids containing 1 ppb of PFOA or PFOS are placed in an unlined or clay-lined surface disposal unit. Once finalized, EPA will use the risk assessment to help inform future risk management actions for PFOA and PFOS in sewage sludge. For the incineration scenario, risk is not quantified due to significant data gaps.

EPA's analysis does not suggest that the general food supply is impacted by the use of biosolids that contain PFOA or PFOS. The U.S. Department of Agriculture and Food and Drug Administration are monitoring for PFAS in the food supply broadly and have taken protective actions to address impacted products from domestic and imported sources. Based on the best available data, biosolids account for less

than one percent of the fertilized acreage of productive agricultural land in the United States per year. EPA recognizes that certain "hot spots" and specific farming operations may have higher levels of PFOA or PFOS if contaminated sludge was applied, and that further collaboration with impacted operations and other federal agencies will be important to fully understand risks and support impacted farmers.

EPA's analysis finds that the risks of exposure to PFOA and PFOS through biosolids increases proportionally with the amount of those chemicals in the biosolids. This means that if you lower the concentration of PFOA or PFOS in biosolids or the amount of biosolids applied to agricultural land, you lower the risk. The actual risks from exposure to PFOA or PFOS will vary at farms that land-apply biosolids or at biosolids disposal sites based on the amount of PFOA or PFOS applied, as well as geography, climate, soil conditions, the types of crops grown and their nutrient needs and other factors. Where smaller amounts of PFAS-contaminated biosolids have been spread, or fewer applications have been made over time, or lower concentrations of PFOA and PFOS were in the biosolids, the risk will be reduced.

The findings of the draft risk assessment underscore the importance of proactive federal and state policies to control and remove PFAS at their source. Under EPA's PFAS Strategic Roadmap, the agency has provided tools to restrict PFAS from entering the environment and to hold polluters accountable, including increasing reviews of new PFAS before they enter commerce and encouraging states to use their Clean Water Act permitting authorities and industrial pretreatment programs to require industrial dischargers of PFAS to remove them before sending their effluent to the environment or to wastewater treatment plants. Moving forward, EPA is working to set technology-based limits on discharges from several industrial categories—including PFAS manufacturers, electro- and chrome-platers and landfills—under the agency's Effluent Limitations Guidelines program.

Forever Chemicals in Wastewater

PFOA and PFOS get into sewage sludge via the wastewater that enters municipal wastewater treatment plants (WWTPs), which do not intentionally use or add these substances in their treatment processes. WWTPs may receive PFOA or PFOS from manufacturers and other facilities that currently use, or historically have used, these PFAS and release contaminated wastewater to WWTPs. Households and businesses can also be sources, as PFAS from consumer products (*e.g.*, cookware, clothing or cosmetics that may contain certain PFAS) are washed down drains and make their way to a WWTP.

EPA and State Actions on Forever Chemicals

Under EPA's PFAS Strategic Roadmap, the agency has made historic progress in advancing the science and establishing standards to protect communities from PFAS pollution. These actions include finalizing the nation's first drinking water standards for PFAS, holding polluters accountable to clean up PFAS across the country and declaring PFOA and PFOS hazardous substances under the Superfund law. By releasing this draft risk assessment, EPA is providing stakeholders with a rigorous, data and science-driven report that, once finalized it may help the agency determine whether regulating PFOA and PFOS in sewage sludge under the Clean Water Act is appropriate.

Several states have begun monitoring for PFAS in sewage sludge and published reports and data that are publicly available. EPA's draft risk assessment document provides an overview of PFOA and PFOS occurrence data from peer-reviewed literature and state reports in Section 2.4 and Appendix A. Some states continue to collect additional sewage sludge PFAS monitoring data.

Conclusion and Implications

EPA's draft risk assessment document, *Draft Sewage Sludge Risk Assessment for Perfluorooctanoic Acid (PFOA) and Perfluorooctane Sulfonic Acid (PFOS)*, will be available for public comment for 60 days following announcement in the Federal Register. To learn more about the draft risk assessment and how to comment on it, *see:* https://www.epa.gov/biosolids/draft-sewage-sludge-risk-assessment-perfluorooctanoic-acid-pfoa-and-perfluorooctane

EPA risk assessments follow a scientific process to characterize the nature and magnitude of health risks to children, adults, and the environment from pollutants based on modeled exposure scenarios. An environmental risk assessment considers three primary factors: 1) presence (i.e., how much of a pollut-

ant is present in the environment), 2) exposure (i.e., how much contact a human or wildlife has with the pollutant), and 3) the toxicity of the pollutant (*i.e.*, the health effects the pollutant causes in humans or wildlife).
(Robert Schuster)

EPA PARTIALLY APPROVES, PARTIALLY DISAPPROVES CALIFORNIA'S 2024 INTEGRATED REPORT REGARDING CLEAN WATER ACT 303(D) LISTINGS

As of December 13, 2024, the United States Environmental Protection Agency (EPA) partially approved the Clean Water Act Section 303(d) list portion of the 2024 California Integrated Report. While the majority of the 303(d) list was approved, EPA identified 53 waterbody-pollutant combinations that may need to be added to the list.

Background

Under Section 303(d)(1) of the Clean Water Act (CWA) and related EPA regulations, states, territories, and authorized Tribes must identify water bodies that are not meeting water quality standards. These water bodies may be added to a list called the "303(d) list." If the pollution controls already in place (like technology-based effluent limitations) are not enough to meet these standards, the water quality limited segment (WQLS) must be included on the list. Subsequently, there is a Total Maximum Daily Load (TMDL) that is to be determined for these WQLS.

Under 40 CFR 130.7(b)(6), the state, territory, or Tribe must include, as part of their submissions to the EPA, documentation to support the state's determination to list or not list its waters. This includes: description of the methodology used to develop the 303(d) list; description of the data and information used to identify the waters; a rationale for any decision to not use any existing and readily available data and information for any one of the categories of waters; public participation documentation, such as public comments and the responses; and any documentation related to the assembly and evaluation of all existing and readily available water quality-related data and information in developing the 303(d) list.

States are required to report their 303(d) lists to the EPA by April 1 of every even-numbered year. The EPA reviews and either approves or disapproves the list within 30 days. If the EPA disapproves, it will add the missing water bodies and seek public comments before finalizing the list. If the list is approved, the state must include it in its Water Quality Management plan.

EPA's Actions

The EPA partially approved California's 2024 303(d) list, determining that the list encompasses waters consistent with the CWA 303(d) and 40 CFR 130.7 requires. California added 636 new waterbody-pollutant impairment listings to California's 2024 303(d) list. Moreover, the EPA approved of California's exclusion of waters identified on the previous 303(d) list, approximately 101 water bodies, finding that the state's decision to delist were reasonable and justified on existing and readily available water quality-related data and information.

The EPA partially disapproved California's 2024 303(d) list because the EPA found that California did not provide an approvable basis for excluding nine WQLSs that were incorrectly classified as Category 4b and 44 WQLSs that were incorrectly classified as Category 3 for benthic community effects. The EPA will seek out comment for 30 days on the inclusion of 53 impairments it has identified for inclusion on California's 2024 303(d) list.

The EPA reviewed and approved California's 2024 303(d) list, confirming it met the requirements of the Clean Water Act and EPA regulations. This approval was based on the state's data and its process for determining whether water quality standards (WQS) were met, along with public comments and responses.

California added 636 new waterbody-pollutant impairment listings to the 303(d) list compared to the 2020-2022 list, as detailed in the 2024 Integrated Report (IR). Fact sheets in Appendix B explained the evidence for these new listings. The state also removed 101 waterbodies from the list. These delistings were justified for reasons like corrected data, updated

water quality standards, and evidence showing that the waters now meet the standards. The EPA agreed that the state provided sufficient justification for these removals.

According to the EPA, in California's 2024 IR, the state mistakenly placed nine waterbody-pollutant combinations into Category 4b, which is for waters with advance restoration plans (ARPs). These waters should have been placed in Category 5, the 303(d) list, because ARPs are not approved by the EPA as alternatives to the required TMDLs under EPA regulations. These nine waterbodies still need TMDLs and the EPA has determined they should stay on the 303(d) list until water quality standards are met, or until the state identifies the pollutant causing the impairment.

Additionally, California included 44 waterbodies in Category 3, which means the water quality is improving. But these waterbodies were not placed on the 303(d) list (Category 5) for benthic (bottom-dwelling) community effects, despite California finding those effects exist, even if it had not yet determined the pollutant causing those effects. California uses a system called the California Stream Condition Index (CSCI) to assess the health of rivers and streams, and the 44 waterbodies scored low on this index. According to the CSCI scores, biological health of these waters is impaired, which means they are not meeting water quality standards for aquatic life.

The EPA disagreed with California's decision to exclude these 44 waterbodies from the 303(d) list. According to EPA rules, if a waterbody is impaired, it should be listed on the 303(d) list, even if the exact pollutant is unknown. The EPA's cautious approach conflicts with California's in that the EPA does not require an association between degraded benthic macroinvertebrate communities and at least one pollutant to be demonstrated as a condition to include a waterbody as impaired for benthic community effects on the 303(d) list. According to EPA guidelines, biological assessments (such as the CSCI scores used by California) can be enough to determine that a waterbody is impaired or threatened and, therefore, should be listed. The EPA reviewed the data and confirmed that these 44 waterbodies should remain on the 303(d) list until the pollutant causing the impairment is identified and TMDLs are developed, or until the state proves no pollutant is responsible.

Conclusion and Implications

The EPA's partial disapproval highlights EPA's approach to including impaired waterbodies on the 303(d) list: list and protect now, even if the exact cause is not yet known. This disapproval also underscores the EPA's preventative use of the Clean Water Act and related regulations. It remains to be seen how, if at all, the EPA's approach to listing allegedly impaired waterbodies will change under a new administration. EPA's Partial Approval/Disapproval is available at https://www.epa.gov/system/files/documents/2024-12/ca-2024-303d-list-epa-partial-approval-disapproval-2024-12-12.pdf
(Steven Moctezuma, Miles Krieger, Steve Anderson)

U.S. BUREAU OF RECLAMATION ISSUES FINAL DECISION REGARDING LONG-TERM OPERATION OF THE CENTRAL VALLEY PROJECT AND STATE WATER PROJECT

On December 20, 2024, the U.S. Bureau of Reclamation released its decision for the long-term operation of the Central Valley Project and State Water Project (the Decision). The Decision helps build the state's resilience to drought, benefiting both water users and the environment.

Background

The Bureau of Reclamation approved a new plan for the long-term operation of the federal Central Valley Project (CVP) and the Delta facilities of the State Water Project (SWP). The CVP and SWP play a vital role in California's water supply. Together, they deliver water to more than 30 million people, irrigate over 4 million acres of the state's agricultural lands, and generate up to 4 million surplus megawatt-hours of carbon-neutral energy annually. The U.S. Bureau of Reclamation (Reclamation) and the Department of Water Resources (DWR) coordinate operations pursuant to the 1986 Coordinated Operations Agreement (COA), as amended in 2018, which provides the operational framework to guide the operations of

project facilities and features to meet requirements and water management goals for the CVP and SWP. The Decision is to continue the operation of the CVP and SWP for authorized purposes while meeting the requirements under federal laws and the State of California's water rights, permits, and licenses pursuant to Section 8 of the Reclamation Act. The Decision was completed in coordination with partners from the DWR, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and California Department of Fish and Wildlife.

The Central Valley Project

The CVP is a complex, multi-purpose network of dams, reservoirs, canals, hydroelectric power plants, and other facilities, spanning 400 miles. The CVP reduces flood risk for the Central Valley, supplies domestic and industrial water, and provides water to major urban centers in the Greater Sacramento and San Francisco Bay areas. Additionally, the project provides water to restore and protect fish and wildlife and enhance water quality. The CVP is operated consistent with federal Reclamation laws, rules, regulations, promulgations, and policies. Section 2 of the Rivers and Harbors Act of August 26, 1937, transferred construction of the CVP from the Secretary of War to the Secretary of the Interior. The purposes of the CVP were modified by statute several times, including by the Waterfowl Management Act of August 27, 1954. Congress directed Reclamation to operate the CVP for the following purposes: (1) river regulation and flood control; (2) irrigation and domestic uses and fish and wildlife mitigation; (3) power and fish and wildlife enhancement.

The State Water Project

The SWP is a collection of canals, pipelines, reservoirs, and hydroelectric power facilities that extend more than 705 miles throughout the state. The SWP delivers clean water to 27 million Californians, 750,000 acres of farmland, and businesses throughout the state. The SWP was constructed through the Burns-Porter Act (Water Code Sec. 12930-12944). Recognizing the need for criteria for the coordinated operation of the CVP and SWP, Reclamation and DWR entered into an initial Coordinated Operations Agreement (COA) in 1960, followed by a more comprehensive and detailed agreement in 1986, authorized by P.L. 99-546.

The Final Decision

The Decision provides a long-term action plan for the continued operation of the CVP and SWP in the state. The Bureau's Decision includes: (1) a new framework for Shasta Reservoir operations to benefit Chinook salmon; (2) plans to benefit delta smelt through revised operational criteria for Delta exports; and (3) plans for early implementation of the Healthy Rivers and Landscapes (HRL) Program.

The Decision implements the Shasta Framework in Alternative 2, which includes actions by the Sacramento River Settlement Contractors to address the effects of multiple years of drought on water temperature management for winter-run Chinook salmon during egg incubation. The Decision also includes actions under Reclamation and DWR control within the Delta to minimize effects on delta smelt due to Delta exports. The Decision limits Delta exports in the south Delta based on flow and turbidity. Delta exports include any water diverted from the Delta for use outside the Delta, including water pumped by the State Water Project and Central Valley Project pumping plants, Contra Costa Water District, and other agencies. The Decision recognizes many stressors on delta smelt, many of which are not under Reclamation and DWR's control. The diversions are intended to better protect the habitat of the delta smelt. Incorporation of the HRL Program will increase Delta outflow, which may address ecosystem drivers on delta smelt populations.

The Decision incorporates and supports the early implementation of components of the Healthy Rivers and Landscapes Program. The HRL Program was previously called Voluntary Agreements. The HRL Program is intended to improve environmental flows and restore key habitats in California waterways. The HRL Program works to: (1) increase river flows, (2) restore aquatic habitat, and (3) use scientific data to guide decisions while encouraging collaboration from local, state, and federal agencies. The Decision includes the operation of CVP and Delta facilities of the SWP under the HRL Program, consistent with provisions included in the Memorandum of Understanding Advancing a Term Sheet.

Conclusion and Implications

Reclamation's recent Decision is to continue the operation of the CVP and SWP. This new plan provides a framework to increase the state's resilience to drought while improving environmental flows and restoring key habitats in the state's waterways. (Christina Suarez, Derek Hoffman)

STATE WATER RESOURCES CONTROL BOARD PROPOSED RULEMAKING REGARDING UNDERGROUND STORAGE TANK REGULATIONS

The State Water Resources Control Board (State Water Board) is proposing amendments to California's Underground Storage Tank (UST) Regulations to update them with current technology and reflect recent changes in the Health and Safety Code. The amendments aim to improve UST safety, streamline the regulatory structure governing USTs, and enhance environmental protections by addressing issues such as tank classification and closure deadlines, especially for single-walled tanks. The amendments are set to take effect on January 1, 2026.

Background

The State Water Board is proposing amendments to California's Underground Storage Tank (UST) Regulations to update them in line with current technologies and operational practices, and to implement recent changes in the Health and Safety Code.

The proposed changes include removing outdated deadlines and provisions related to single-walled USTs, which must be closed by December 31, 2025, under Health and Safety Code section 25292.05. These USTs will no longer be allowed to operate, except for specific tanks meeting the "new underground storage tank" criteria. The regulations will replace the current "existing" and "new" UST classifications with a system of Type 1, Type 2, and Type 3 classifications based on the installation date of the tanks, aligning with requirements in the Health and Safety Code.

The proposed amendments will reorganize the regulations for better structure and clarity, grouping related topics together and eliminating redundant sections. For example, the term "local agency" will be replaced with more specific terms, such as "Unified Program Agency" and "Cleanup Oversight Agency," to reflect the roles defined in the Health and Safety Code. Additionally, terminology like "leak" will be replaced with the more precise terms "release" or "unauthorized release," consistent with state law, while the term "line leak detector" will remain in use for industry consistency.

The State Water Board also proposes technical amendments that do not change regulatory requirements but improve the clarity, syntax, grammar, and cross-referencing of the regulations. These are primarily non-substantive edits that aim to improve readability and consistency across the regulations.

The purpose of these amendments is to enhance the safety and integrity of USTs by raising construction, monitoring, and testing standards, improving tracking and notification procedures, clarifying agency responsibilities, and updating abatement and corrective action protocols. This will help reduce the risk of hazardous substance releases and soil and groundwater contamination, ultimately benefiting public health, worker safety, and the environment. The changes are expected to decrease cleanup costs and improve the overall safety of UST systems. The proposed regulatory changes aim to enhance California's UST Regulations by setting higher standards for UST construction, monitoring, and testing, as well as improving tracking, notification procedures, and clarifying agency responsibilities. These amendments also update abatement and corrective action procedures to reduce the risk of hazardous substance releases and prevent soil and groundwater contamination. As a result, the proposed changes are expected to improve public health, worker safety, and environmental protection, while lowering cleanup costs for businesses and the UST Cleanup Fund. Additionally, the updates will help reduce confusion in the regulated community and align with the state's policy of ensuring safe, clean, and accessible water for all.

A Closer Look

The proposed regulatory changes aim to enhance California's UST Regulations by setting higher stan-

dards for UST construction, monitoring, and testing, as well as improving tracking, notification procedures, and clarifying agency responsibilities. These amendments also update abatement and corrective action procedures to reduce the risk of hazardous substance releases and prevent soil and groundwater contamination. As a result, the proposed changes are expected to improve public health, worker safety, and environmental protection, while lowering cleanup costs for businesses and the UST Cleanup Fund. Additionally, the updates will help reduce confusion in the regulated community and align with the State's policy of ensuring safe, clean, and accessible water for all.

Classification and Closure Deadlines

With respect to UST classification and closure deadlines: The proposed amendments update the UST classification system by replacing the existing "new" and "existing" categories with three new classifications: Type 1, Type 2, and Type 3. These new classifications are based on the installation date of the USTs, aligning with requirements from the Health and Safety Code. Additionally, provisions related to the closure of single-walled USTs, which must be permanently closed by December 31, 2025, under Health and Safety Code section 25292.05, will be deleted from the regulations. Owners of USTs should determine the date on which their USTs were installed to determine which classification their classification.

Terminology Changes

With respect to terminology changes: The proposed rulemaking seeks to replace vague or ambiguous terms with more specific, legally defined terms for better clarity and consistency. For example, the term "local agency" will be replaced by either "Unified Program Agency" or "Cleanup Oversight Agency" to distinguish between the two types of local agencies with different roles under the Health and Safety Code. Moreover, the term "leak" will be replaced with the more precise terms "release" or "unauthorized release," which are defined terms under the Health and Safety Code. However, "line leak detector" will remain in use to describe devices that monitor buried pressurized piping for catastrophic releases, as it is an industry standard term.

Regulatory Consistency

With respect to regulatory consistency and alignment with state law: The proposed amendments ensure the UST regulations align with recent updates to the Health and Safety Code, including changes enacted in 2012, 2014, 2018, and 2023. This alignment eliminates any potential inconsistencies between the regulations and statutory requirements. The State Water Board has reviewed related regulations and determined that no conflicts with federal law or other state regulations exist. The amendments are designed to improve the effectiveness of the UST regulations while remaining consistent with broader environmental and public health policies in California.

Benefits and Public Health

With respect to anticipated benefits and public health protections: The primary objective of the amendments is to enhance public health, environmental protections, and worker safety. By updating UST construction, monitoring, testing, and oversight requirements, the regulations will reduce the risk of hazardous substance releases and contamination of soil and groundwater. The changes are expected to lead to improved tracking and notification procedures, clearer agency responsibilities, and more efficient corrective actions in the event of a release. In the long run, these amendments aim to help reduce cleanup costs and safeguard California's water resources, benefiting both the public and the environment.

Conclusion and Implication

The regulations will go into effect on January 1, 2026. The State Water Board has consulted with UST industry representatives, including testers and installers, and conducted an Economic and Fiscal Impact Statement and an Economic Impact Analysis to support these amendments. These changes are not expected to conflict with federal regulations or other state laws. The written comment period for this proposed rule ended on January 17, 2025.

The proposed rule represents an effort by the State Water Board to update regulations based on current industry practices regarding USTs which have been determined to be effective in preventing unauthorized releases of hazardous substances from entering soil or

groundwater. With the written comment period now closed, it is unclear what recommendations and concerns the State Water Board will adopt and address in implementing in the new rule. The Proposed Rule-making is available online at: https://waterboards.ca.gov/water_issues/programs/ust/leak_prevention/chapter16/rewrite.html
(Steven Moctezuma, Miles Krieger, Steve Anderson)

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.

Civil Enforcement Actions and Settlements—Water Quality

Jan 17, 2025—Cattle feedlot operators Wickstrum Farms Inc. and Wickstrum Cattle LLC of Pottawatomie County, Kansas, will pay a combined $70,000 in civil penalties to resolve alleged violations of the federal Clean Water Act.

According to the U.S. Environmental Protection Agency (EPA), the companies failed to comply with multiple Clean Water Act permit requirements, resulting in discharges of pollution into local streams.

In the settlement documents, EPA alleges that the companies' facilities contained approximately 9,862 head of cattle combined. During a 2023 inspection, EPA observed uncontrolled discharges from the feedlots entering into tributaries to Pleasant Run Creek. The operators have since constructed additional runoff controls and have addressed the causes of the discharges.

Pollution associated with manure, feed, and other animal waste runoff may include nutrients (particularly nitrogen and phosphorus), organic matter, solids, pathogens, and odorous/volatile compounds.

Under the Clean Water Act, animal feeding operations that contain threshold numbers of livestock are required to obtain permits and follow the requirements outlined in those permits to reduce pollution runoff. Failure to obtain a permit or to follow the requirements of a permit may violate federal law.

Jan. 17, 2025— The U.S. Environmental Protection Agency (EPA) has initiated an Administrative Order on Consent with the C&H Sugar Company Inc. in response to Clean Water Act violations at the company's sugar refinery in Crockett, California. The order targets the plant's unauthorized discharges of pollutants into the Carquinez Strait, a body of water that connects with the San Francisco Bay, in direct violation of the Clean Water Act.

The C&H refinery in Crockett receives raw cane sugar from ships that dock at the facility. During unloading, loose raw sugar was discharged to the Carquinez Strait on at least three occasions in violation of federal law. Sugary wastewater can be high in Biological Oxygen Demand, which can rapidly deplete dissolved oxygen when discharged into water bodies and thus endanger fish and other aquatic life. Other violations include failure to properly operate and maintain a wastewater system, failure to implement the company's Stormwater Pollution Prevention Plan fully, and violations of the refinery's effluent limitations.

As a result of the order, C&H has modified its sugar offloading system and will demonstrate to the EPA that the new system adequately prevents discharges into the Carquinez Strait. C&H Sugar will also update its Stormwater Pollution Prevention Plan and sugar management practices.

Jan. 16, 2025— The U.S. Environmental Protection Agency announced that Tyree Oil, an Oregon-based petroleum distribution and storage company, has paid an $87,700 Clean Water Act penalty for systemic failures to adequately maintain its Portland facility and to maintain and implement an adequate plan to prevent or respond to possible releases of oil at the facility, which closed in early 2024.

During an inspection in October 2021 EPA inspectors found extensive violations of the Clean Water Act's Spill Prevention Control and Countermeasure (SPCC) regulations, which require facilities like Tyree Oil to prepare and implement a plan to protect local waterways and shorelines from the discharge of oil. The facility's sewer lines were connected to the City of Portland's stormwater system which eventually discharges into the Columbia River.

EPA inspections found that the company failed to implement important parts of the plan that could prevent releases of oil. The agency cited the company for 13 counts of violating the Clean Water Act, among them: 1) failure to ensure that the facility's diagrams match the actual facility layout; 2) failure to maintain adequate secondary containment in the event of a spill; 3) failure to have inspection records for oil-water separators used as spill prevention equipment at the facility; and 4) failure of the facility's plan to include routine periodic leak testing procedures for underground oil piping.

At the time of the inspection, EPA apprised Tyree representatives of the deficiencies in the facility's SPCC plan and its implementation. In June 2022 Tyree updated its SPCC plan to address comments made by EPA during the inspection.

Jan. 16, 2025—The U.S. Environmental Protection Agency has finalized its third periodic review of the cleanup of polychlorinated biphenyls (PCBs) in the Upper Hudson River. The EPA looked at all the project data for water, fish and sediment collected between 2016-2021, and the fish data from 2022. The EPA's review concludes that the levels of PCBs in water and fish are going down overall, but more fish data is needed. The agency needs at least eight years of data after dredging to draw science-based conclusions about the rate of recovery in the fish. The eighth year of fish data was collected in 2024. The results of that sampling will be available in 2025. The EPA will release an addendum to the report when enough fish data is available, as soon as this year but no later than 2027.

The EPA released the draft version of its review in early July 2024 for public comment. The 120-day public comment period ended on November 7.

Some commenters asked the EPA to conclude that the cleanup is not protective of people's health and the environment. However, the EPA is not making a decision about protectiveness at this time. The EPA addendum will include a protectiveness determination.

The EPA prepared a separate document that responds to the variety of comments received.

As the EPA continues to collect and evaluate data, it is also enhancing the monitoring program to get a better understanding of the river's recovery. This includes a series of special studies that will be looking more closely at water, fish and sediment in specific areas of the river. Several of these studies are already underway.

Fish consumption restrictions and advisories will continue to be necessary to protect people's health. The primary risk to people at the site is from eating fish they catch that contains unsafe levels of PCBs. The cleanup plan that the EPA selected in 2002 for the Upper Hudson River called for dredging followed by an extended period of natural recovery – a gradual period of improvement in water, fish and sediment that the EPA projected would occur over a more than 50-year timeframe.

The fishing restrictions in the Upper Hudson River will need to remain in place until PCB levels in fish are reduced and New York State determines that changes can be made. In the Lower Hudson River, the general population can eat some types of fish that they catch, based on the New York State advice. However, anyone who can get pregnant and children under 15 should not eat any fish or crabs from the Hudson River. The EPA is working closely with the New York State Department of Health to support their education and outreach program to inform area newcomers and others who may be looking to the river as a food source.

The EPA is also committed to ensuring that General Electric Company (GE) remains accountable for the PCBs that came from its former manufacturing plants in Hudson Falls and Fort Edward and is actively working throughout the Upper and Lower Hudson River to study and address PCBs. An extensive floodplain study is underway in the Upper Hudson River to evaluate PCB contamination in soil in shoreline areas along a 43-mile stretch of river between Hudson Falls and Troy, New York. The EPA is also overseeing the deconstruction of the Powerhouse and Allen Mill in Hudson Falls, New York – two structures located adjacent to the former GE Hudson Falls plant. Under the latest agreement with GE, the EPA began an investigation in the Lower Hudson River in 2023 which includes extensive fish, water and sediment sampling between Troy and the Battery in New York City.

Jan. 16, 2025—The U.S. Environmental Protection Agency, the U.S. Department of Justice, the state of Idaho, and the City of Driggs, Idaho have agreed on a series of measures the city will undertake to address chronic violations of the Clean Water Act,

including a major upgrade of its wastewater treatment plant. The upgraded facility is estimated to cost $25 million and must be complete by December 15, 2028.

In a consent decree with EPA, DOJ, and the state of Idaho, the city will also pay a $400,000-penalty for ongoing failures to comply with its Clean Water Act permit and failing to meet compliance obligations it committed to in a 2018 legal agreement with the EPA. In 2018, the city also paid a penalty of $13,500 for violations of its permit.

However, after the city failed to meet the compliance deadlines in the 2018 legal agreement, DOJ, on behalf of EPA, filed a complaint on October 24, 2022, alleging the city exceeded its permit limits for ammonia, E. coli, biological oxygen demand, and pH thousands of times.

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

In addition to upgrading its wastewater treatment facility, the city must also: 1) Submit an updated Quality Assurance Plan by March 1, 2025; 2) Conduct collection system monitoring, including monitoring flow from the city of Victor that contributes wastewater to the Driggs wastewater treatment plant; 3) Sample influent to the treatment plant and sample effluent from the lagoon monthly; 4) Annually measure the amount of sewage sludge in the lagoons and manage sludge as needed; 5) Continue its efforts to locate and quantify sources of inflow and infiltration during periods of high groundwater levels; 6) Develop a staffing plan and hire sufficient staff; and 7) Every three months, submit a report describing progress and challenges in meeting the consent decree requirements.

Jan. 6, 2025—Two truck stops in Iowa and Missouri—Iowa 80, advertised as "the world's largest truck stop," and Joplin 44 – agreed to pay a combined $390,784 to resolve alleged violations of the federal Clean Water Act.

According to the U.S. Environmental Protection Agency (EPA), the facilities failed to comply with regulations intended to protect water bodies from petroleum discharges. EPA discovered the alleged violations during inspections of the truck stops in 2023. According to the Agency, the truck stops, which are owned by Iowa 80 Group Inc., failed to adequately develop and implement Spill Prevention, Control and Countermeasure (SPCC) plans, as required by the Clean Water Act.

Facilities that store 1,320 gallons or greater of oil products in aboveground storage tanks are subject to SPCC regulations. Such plans require, among other things, proper containment to control petroleum releases, inspections of tanks and piping, and integrity testing of petroleum storage equipment.

In response to EPA's findings, the facilities revised their SPCC plans, conducted internal and external tank inspections, and completed the necessary repairs.

The settlements are detailed in Consent Agreements and Final Orders that will be subject to a 30-day public comment period
(Robert Schuster)

LAWSUITS FILED OR PENDING

STEELHEAD PRESERVATION EFFORTS CONTINUE ON LOCAL RIVERS, AND SO TOO DOES LITIGATION

Steelhead fish, or sometimes referred to as steelhead trout, is the anadromous form of coastal rainbow trout that is native to cold-water tributaries of the Pacific coast (among other places). Steelhead spawn in freshwater, migrate to the ocean to forage for years, and then return to their original streams to spawn. As populations and related water supply demands increased, construction of reservoirs and dams increased, thus creating challenges in some areas for steelhead to migrate from the ocean to spawn on local streams.

Various public and private sector groups have worked hard to combat those challenges. This article highlights two approaches to illustrate how the steelhead challenges are approached, one by voluntary efforts and the other through litigation, the latter of which sometimes "spawns" voluntary efforts. To be clear, the examples below are unrelated so that the entities from one example should not be construed as against or otherwise implicated with the entities from the other example.

Background

The Yuba River is a major tributary of the Feather River, which is part of the Sacramento River system. It has three branches: North Yuba, Middle Yuba, and South Yuba. Historical activities like gold mining reduced salmon and steelhead populations. The river has several large dams and reservoirs, including New Bullards Bar and Englebright. The main challenges include preserving or enhancing spawning and rearing habitats, managing water temperatures for successful spawning and rearing conditions, and mitigating predation by other fishery and riparian species.

Several short-term and long-term actions have been utilized for decades to help recover steelhead (and salmon) populations, such as improving habitat conditions, establishing monitoring stations, and planning for a conservation hatchery. In what is widely referred to as The Yuba Accord, this landmark, multi-agency agreements seeks to balance the interests of environmental groups, agriculture, water agencies, and hydroelectric operators. Controversy started in the 1960s, followed by litigation in the 1980s, and eventually the Accord was reached and took effect in 2008.

Incidental Take Litigation Against DWR and CDFW

Filed toward the end of 2024 in Sacramento County, captioned as *California Sportfishing Protection Alliance, et al. v. California Department of Water Resources, et al.* (Superior Court Case No. 24WM000181), the petitioners commenced this action under the California Environmental Quality Act (CEQA) against two state agencies (California Department of Water Resources (DWR) and California Department of Fish and Wildlife (CDFW)). The petitioners include the California Sportfishing Protection Alliance, North Coast Rivers Alliance, San Francisco Crab Boat Owners Association, and the Winnemem Wintu Tribe.

The gist of this lawsuit is to set aside the approval of a plan for the long-term operation of the State Water Project (SWP) by DWR and CDFW, and relatedly the "Incidental Take Permit" (ITP) for the State Water Project. The petitioners argue that the approval violates CEQA, the Delta Reform Act, the California Endangered Species Act (CESA), and the Public Trust Doctrine. They seek a writ of mandate to vacate the project approvals, decertify the Final Environmental Impact Report, and ensure compliance with the relevant environmental laws.

The complaint documents the collapse of Central Valley salmon and Delta fish populations, with several species already extinct or close to extinction. The lawsuit reports imminent ecological collapse of the Delta, driven by excessive freshwater diversions and agricultural runoff. The lawsuit seeks to suspend related project activities by DWR and CDFW, by seeking, amongst other relief, a peremptory writ of mandate directing the state agencies to suspend all activities implementing the project, its Environmental Impact Report, and its ITP that could result in

any change or alteration in the physical environment until the respondents have taken all actions necessary to bring their approval into compliance with the California Environmental Quality Act, the Delta Reform Act, CESA, the Public Trust Doctrine, and the Code of Civil Procedure.

Conclusion and Implications

Naturally at this early stage of the litigation, the outcome is unknown and frankly unpredictable. What is somewhat predictable, based on common sense coupled with historical examples in these complex environmental matters, is that the judicial process will either create the final resolution or the process will go far enough through the trial and/or appellate court proceedings such that the parties work toward a long-term, durable solution on terms and conditions that are mutually satisfactory. All the while, the various water demands from water users (the environment and habitat uses) and humans (agriculture and municipal/domestic uses) must be balanced with ever-changing hydrologic *and* regulatory conditions.
(Wes Miliband)

RECENT FEDERAL DECISIONS

FEDERAL CIRCUIT COURT OF APPEALS REJECTS WATER CONTRACTORS' TAKINGS CLAIMS

City of Fresno v. United States, 124 F.4th 876 (Fed. Cir. 2024).

On December 17, 2024, the United States Court of Appeals for the Federal Circuit issued an opinion in *City of Fresno v. United States* rejecting Fifth Amendment takings claims by Friant Division Central Valley Project (CVP) contractors and water users who were denied water deliveries during the 2014 drought. The opinion affirms the 2020 dismissal and grant of summary judgment by the Court of Federal Claims in favor of the government, finding the plaintiffs failed to establish they possess property rights in the water deliveries under their CVP service contract with Reclamation (Friant Contract).

Background

The CVP is a major water infrastructure system operated by the U.S. Bureau of Reclamation (Reclamation) in the Central Valley of California, consisting of reservoirs, canals, dams, hydropower stations, and other infrastructure through which Reclamation diverts, stores, and distributes Sacramento and San Joaquin River water to contractors throughout the state. The Friant Division of the CVP includes the Friant Dam, which collects San Joaquin River water, and the Friant-Kern Canals. The plaintiffs are individual growers, irrigation districts, water districts, and the City of Fresno within the Friant Division, who either contract directly with Reclamation or pay to receive water supplied under the Friant Contract.

Prior to the formation of the CVP, Reclamation entered into a Contract for the Exchange of Waters (Exchange Contract) with senior San Joaquin River water right holders, to enable Reclamation to divert San Joaquin River water for the CVP so long as it ensures the Exchange Contractors receive specified quantities of "substitute water." Deliveries under the subsequent Friant Contract are expressly subject to the terms of the Exchange Contract, though Reclamation also agreed it would not deliver San Joaquin River water to the Exchange Contractors unless and until it was required to do so. From 1962 until 2014, Reclamation was able to deliver water to the Friant Contractors, including from the San Joaquin River, while its sourced substitute water for the Exchange Contractors from the Sacramento-San Joaquin River Delta (Delta).

In 2014, at the start of a three-year drought state of emergency, Reclamation determined it would not be able to meet its combined delivery obligations for the Exchange Contractors and Friant Contractors. Reclamation notified the Exchange Contractors that for the first time, it would need to source its critical year Exchange Contract deliveries from both the Delta and the San Joaquin River. Reclamation ultimately delivered a combination of San Joaquin River and Delta water totaling 540,000 acre-feet to the Exchange Contractors in 2014, while the Friant Contractors received essentially a "zero allocation" other than the minimum amounts necessary for public health and safety.

The Friant Contract Litigation

The plaintiffs sued the United States in the Court of Federal Claims in October of 2016, alleging Reclamation's "actions in 2014, and particularly Reclamation's diversion of San Joaquin River water to the Exchange Contractors instead of to them, constituted a breach of the Friant Contract." Without water deliveries that year, the plaintiffs alleged losses of annual and permanent crops, lost groundwater reserves, and millions of dollars spent on emergency water supplies. According to the plaintiffs, Reclamation appropriated their property in 2014, which constituted an uncompensated taking in violation of the Fifth Amendment.

Joined by the Exchange Contractors, the United States argued that there was no San Joaquin River water available to the Friant Contractors due to the drought conditions that year and the plaintiffs did not have a property interest in the water they expected to receive under the Friant Contract. Further, the terms

of the Friant Contract immunized Reclamation from liability during periods of drought as long as Reclamation was not "arbitrary, capricious, or unreasonable." The trial court granted summary judgment in the government's favor on the breach claims, agreeing with its interpretation of the contracts, and dismissed the plaintiffs' takings claims for lack of standing.

The Federal Circuit's Decision

On appeal, the plaintiffs challenged the takings dismissal and argued that Reclamation breached the Friant Contract because it was not required to deliver San Joaquin River under the Exchange Contract and, even if it was, the amount delivered exceeded what was required. The Court of Appeals rejected the breach of contract claims because Reclamation's actions were not arbitrary, capricious, or unreasonable. As for standing, the Court of Appeals found that while the Court of Federal Claims had jurisdiction to hear the plaintiffs' allegations, they failed to allege a takings claim upon which relief could be granted.

The plaintiffs argued they hold appurtenant rights to CVP water delivered to their customers or their lands, but the Court of Appeals held that under California law it is Reclamation, not the plaintiffs, that holds the appropriative water rights for the Central Valley Project. (*Id.*) It distinguished Reclamation's actions to construct the diversion and storage works that make water available from the plaintiffs' end use application of the water, finding a property interest vests in the former, but not the latter. (*Id.* at 897.) As such, the plaintiffs could not allege a takings claim for failed water deliveries under their service contract.

Conclusion and Implications

While plaintiffs may seek further review by the Supreme Court, the Federal Circuit Court of Appeals' decision reinforces a prevailing interpretation of California law that there is no cognizable property interest in a contract for water service to support a takings claim under the Fifth Amendment. The Federal Circuit's opinion is available online at: https://www.cafc.uscourts.gov/opinions-orders/22-1994.OPINION.12-17-2024_2437041.pdf
(Taylor Strain, Austin Cho)

RECENT CALIFORNIA DECISIONS

FIRST DISTRICT COURT FINDS "EXISTING STRUCTURES" UNDER THE COASTAL ACT ONLY INCLUDE THOSE THAT WERE CONSTRUCTED BEFORE THE ACT WAS ENACTED

Casa Mira Homeowners Association v. California Coastal Commission, 107 Cal.App.5th 370 (1st Dist. 2024).

In an opinion published on December 12, 2024, and later modified on December 30, 2024, the First District Court of Appeal in *Casa Mira Homeowners Association v. California Coastal Commission* held that under the California Coastal Act (Act), "existing structures" that may seek coastal armoring or shoreline protective devices include only those that were constructed before the Coastal Act went into effect in 1977. The court also found that substantial evidence did not support the Commission's finding that rerouting the California Coastal Trail was a feasible alternative to constructing a seawall.

Background

In 2018, Casa Mira Homeowners Association applied to the Coastal Commission for a Coastal Development Permit (CDP) to construct a 257-foot seawall along an eroding coastal bluff in Half Moon Bay. The proposed seawall would amor the bluff to protect several structures from erosion, including an apartment building constructed in 1972, a condominium complex and sewer line built in 1984, and a segment of the California Coastal Trail. The seawall would include a beach access stairway and replace 4,000 tons of emergency riprap that the Commission previously authorized after 20 feet of the bluff eroded and collapsed during heavy rains a few years prior.

Under section 30235 of the Coastal Act, shoreline armoring devices (such as seawalls) may be permitted to protect "existing structures"—*i.e.*, those that existed before the Coastal Act went into effect in 1977—and coastal-dependent uses threatened by erosion. Based on this, Commission staff initially recommended approving Casa Mira's proposed 257-foot seawall because the apartment building constructed in 1972 qualified as an "existing structure" while the Coastal Trail constituted a "coastal-dependent use" due to its adjacency to the ocean. The condominium complex and sewer line, however, did not qualify for armoring because they were constructed after the Coastal Act went into effect. Staff further concluded that there were no feasible alternatives to armoring the shoreline and that a 257-foot seawall would prevent the loss of the apartments and Coastal Trail while minimizing impacts to coastal resources.

The Coastal Commission agreed with staff's interpretation of section 30235 but only approved a 50-foot seawall to protect the apartments, not the Trail. Instead, the Commission argued that the Trail could be relocated to loop inland of the condominiums, which would be a feasible and less environmentally damaging alternative to the seawall.

At the Trial Court

Casa Mira petitioned for a writ of mandate to vacate the Commission's decision, which the trial court ultimately granted. The court rejected the Commission's interpretation of Coastal Act section 30235, concluding that its plain language mandates a seawall CDP if a structure presently exists and is in danger of erosion. Because the condominiums and sewer line already existed, the Commission erred in finding they were not entitled to any protection or armoring. The trial court further held that the Commission's recommendation to reloop the Coastal Trail was unsupported by substantial evidence. The Commission timely appealed.

The Court of Appeal's Decision

The First District Court of Appeal partially upheld and overturned the trial court's decision. The appellate court disagreed with the trial court and instead sided with the Commission's interpretation of Coastal Act section 30235, concluding that "existing structures" only encompassed those developed before the Act went into effect. However, the appellate court

upheld the trial court's determination that the Commission's Coastal Trail alternative was unsupported by substantial evidence.

"Existing Structures" Under Coastal Act Section 30235

The court first considered whether the trial court erred in finding the term "existing structures" under Coastal Act section 30235 refers to those that presently exist at the time an applicant seeks a CDP, as opposed to only those that existed before the Act became effective in 1977. Given the Coastal Act's inconsistent use of the term "existing," but based on the Act as a whole, the court determined the Commission's interpretation was correct. The court observed that, based on the Coastal Act's other shoreline armoring provisions, it was apparent that "existing structures" referred to those that were constructed before the Act's effective date.

The court reviewed Coastal Act section 30235 alongside section 30253, which requires "new development" to minimize adverse impacts in the coastal zone, including the alteration of bluffs from "protective devices" such as seawalls. Together, these sections created a "shoreline protection management framework"—section 30235 aims to protect structures that existed before the Act's effective date, while section 30253 imposes siting and structural requirements to minimize impacts from developments constructed after the act's enactment. Both provisions logically distinguish between structures that are entitled to the privilege of shoreline armoring when in danger (i.e., those built before 1977) and those that cannot require shoreline armoring but instead must adhere to section 30253's siting requirements for structural integrity and stability (*i.e.*, those built after 1977).

Casa Mira argued that this interpretation would render section 30235 internally inconsistent. For example, applying this rationale to the section's provision regarding "existing marine structures causing water stagnation contribution to pollution…" would prevent authorities from upgrading or phasing out those structures unless they were constructed prior to 1977. The court countered that this was an overly narrow reading of the Coastal Act that ignored other relevant provisions governing marine resources and water pollution. Notably, these marine structures must comply with their own set of mandates and are distinguishable from the kinds of "existing structures" located in coastal bluff areas, such as those at issue here.

Casa Mira further claimed section 30253 merely clarifies that a new development must not depend on a seawall when constructed. Casa Mira attempted to harmonize sections 30235 and 30253 by arguing they authorize shoreline protection due to threats of erosion that arise decades after a new development has been constructed. The court disagreed, finding two flaws with this analysis.

First, while the court agreed that section 30253 prohibits constructing new development that depends on the simultaneous construction of a seawall, nothing in that section limits this prohibition to the initial construction. Instead, and as evidenced by the Act's legislative history, the section states that new development shall not "in any way" require construction of protective devices that would substantially alter natural landforms along bluffs and cliffs, which necessarily includes a current and prospective need for armoring for the life of the structure, not merely short-term construction-related impacts of new developments.

Second, the court reasoned that interpreting "existing structures" to mean those that existed "at the time of the seawall application" would circumvent section 30235's restrictions on constructing shoreline devices. For example, coastal landowners could build a structure and then file a separate CDP application for a seawall, thus transforming the former "new development" into an "existing structure." In turn, a newly constructed building would be guaranteed shoreline armoring immediately after it's constructed if it is in danger of erosion, regardless of when it was built. This interpretation of section 30235 would improperly render the term "existing" surplusage and contravene the Coastal Act's goal of preserving the fragile coastal ecology from "overzealous encroachment."

The court thus reiterated that Coastal Act section 30235's use of the phrase "existing structures" refers to those that existed before the act's effective date of January 1, 1977. Accordingly, Casa Mira's condominiums and sewer line, which were constructed in 1984, were not "existing structures" and therefore not entitled to shoreline armoring.

Feasibility of Alternative Rerouting the Coastal Trail

The court also considered whether the Commission's decision to adopt an alternative that required rerouting the Coastal Trail further inland was supported by substantial evidence. The Coastal Act requires permitting seawall construction when "required to serve coastal-dependent uses" and "when designed to eliminate or mitigate adverse impacts on local shoreline sand supply." According to the Commission, the use of the word "required" indicates armoring is only permitted if it is the only feasible alternative capable of protecting the structure.

The court acknowledged there was "no dispute" the Coastal Trail constituted a "coastal-dependent use" that required "a site on, or adjacent to, the sea to be able to function at all." Commission staff had recommended realigning the Trail *slightly* inward and roughly parallel to the shoreline, and approving a 257-foot seawall, which would occupy significantly less public beach space and minimize impacts to coastal resources than the emergency riprap currently installed. Though shoreline protective structures can have a variety of other negative impacts to coastal resources, Commission staff concluded there was no viable location for the Trail to be rerouted while maintaining its aesthetic and recreational value adjacent to the ocean and beach. Staff explained that rerouting the Trail would require looping it inland of existing residential structures, including Casa Mira's condominiums, which would in turn narrow the pedestrian pathway and sacrifice coastal views. Staff thus concluded that relocation was not feasible and instead recommended measures to mitigate the proposed seawall's adverse effects.

The Commission rejected staff's recommendation—a revised staff report thereafter determined the Trail could be relocated by connecting it from the south and extending it inland of the condominiums on property owned by the Department of Parks and Recreation (DPR). The Commission claimed this would provide pedestrians with a contiguous path in "close enough proximity to the coast" while avoiding environmental impacts associated with the seawall.

While the court conceded that the Commission could disagree with its staff's recommendation, it concluded that the revised staff report failed to include an ample factual basis or explanation to justify the Commission's decision. The staff report baldly stated that relocating the Trail would avoid impacts to coastal resources and provide a path "close enough" to the coast, even though the original staff report found rerouting problematic due to additional costs and permitting. Evidence in the record also showed that the Commission's proposal would require DPR to seek a separate CDP to realign the Trail, along with new easements on the coastal bluff property—thus further contributing to cost and permitting uncertainties. Moreover, the record demonstrated that the absence of a seawall could immediately threaten the Coastal Trail's infrastructure with increased erosion during future storms. As such, it was not reasonable for the Commission to conclude that relocating the Trail could be accomplished in a successful manner within a reasonable period of time considering these economic and environmental factors. For these reasons, Casa Mira had overcome the presumption that the Commission's determination was correct by identifying evidence to the contrary.

Conclusion and Implications

The First District's decision contributes to a long line of precedent interpreting the various provisions and requirements of the Coastal Act. The court settled any confusion as to what constitutes an "existing structure" under section 30235 that qualifies for coastal armoring: any structure built before the Coastal Act went into effect in 1977 may seek a permit to construct shoreline devices to protect against erosion; all other structures developed thereafter may not but instead must adhere to section 30253's structural integrity requirements. The opinion also contributes to the growing body of case law where an applicant has successfully challenged the Commission's "feasible alternative" determination by identifying evidence to the contrary. A copy of the court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/A168645M.PDF.
(Bridget McDonald)

SUPERIOR COURT ORDERS SONOMA COUNTY TO CEASE ISSUING WELL PERMITS EXCEPT FOR EMERGENCY PERMITS

Russian Riverkeeper v. County of Sonoma, Case No. SCV-273415 (Sonoma Super. Ct. Nov 11, 2024).

The Superior Court of Sonoma County recently ruled against Sonoma County in a writ case brought by environmental organizations, Russian Riverkeeper and California Coastkeeper. At the heart of the case were amendments to Sonoma County's Chapter 25B Water Well Construction Standards. The amendments, adopted in April 2023, were intended to regulate groundwater extraction but were challenged for failing to comply with the California Environmental Quality Act (CEQA) and the public trust doctrine.

The court's ruling not only voided the amendments but also highlighted key procedural and substantive shortcomings in Sonoma County's approach to groundwater management. Specifically, the court emphasized violations of CEQA, failures under the public trust doctrine, and inadequate consideration of environmental and cumulative impacts associated with groundwater well permits. As a result of the court's ruling, Sonoma County is now prohibited from issuing new non-emergency water well permits under the voided ordinance.

The Superior Court's Decision

The Public Trust Doctrine

The public trust doctrine is a facet of California environmental law, requiring the government to protect natural resources, such as navigable waterways, for public use and ecological sustainability.

The court found that Sonoma County failed to uphold its public trust obligations when issuing groundwater well permits. While the County claimed to have established a Public Trust Review Area (PTRA) as part of its amendments, the court determined that this effort lacked sufficient evidentiary support. The court determined the County's methodology for identifying sensitive areas relied solely on the presence of salmonid habitats and ignored other critical public trust resources. Moreover, the County's failure to analyze the cumulative impacts of groundwater extraction on public trust resources underscored a broader disregard for its obligations under the doctrine.

CEQA Violations and he Role of Evidence

CEQA mandates that public agencies assess and mitigate significant environmental impacts before approving projects. Sonoma County had attempted to exempt its well construction standards from CEQA review by invoking categorical and common-sense exemptions. However, the court rejected these claims, finding no substantial evidence to support the applicability of these exemptions.

The court also criticized the County for relying on unsubstantiated assumptions about the environmental benefits of its conservation measures. Key requirements, such as water use restrictions and monitoring protocols, were deemed unsupported by any quantitative analysis or evidence demonstrating their effectiveness. This lack of evidence not only invalidated the County's CEQA exemptions but also highlighted deficiencies in its environmental decision-making process. Furthermore, the court underscored that CEQA prohibits reliance on mitigation measures to justify exemptions, as mitigation measures are relevant only when an Environmental Impact Report (EIR) or a Mitigated Negative Declaration is prepared.

The Writ of Mandate

As a result of the above rulings, the court issued a writ of mandate compelling Sonoma County to set aside its amendments to Chapter 25B of the County Code. This writ requires the County to rescind the categorical exemption it had applied under CEQA, void the amendments, and suspend the issuance of new water well permits except in emergencies. The court also directed the County to re-evaluate its groundwater management policies in compliance with both CEQA and the public trust doctrine, including proper consideration of cumulative impacts and substantial evidence for any proposed mitigation measures. The court retained jurisdiction over the matter, ensuring Sonoma County's compliance with these directives.

Conclusion and Implications

As a result of the court's rulings, Sonoma County is now prohibited from issuing new non-emergency water well permits under the voided ordinance. The court specifically ordered the County to rescind the categorical CEQA exemption it had previously applied and to suspend the issuance of permits unless it complies with the requirements of CEQA and the public trust doctrine.

Furthermore, the County is mandated to reassess its groundwater management practices, taking into account cumulative impacts, public trust resources, and adequate mitigation measures. These obligations reflect the court's insistence on more rigorous and transparent environmental decision-making processes.

The Sonoma County case charts new ground for groundwater management and environmental law in California. By holding the County accountable under both CEQA and the public trust doctrine, the Superior Court highlighted the importance of evidence-based policymaking and what public agencies should consider when balancing water use with ecological preservation.

For other jurisdictions, this decision underscores the necessity of robust environmental analysis and public trust considerations when managing shared natural resources. It also serves as a cautionary tale about the risks of relying on inadequate exemptions or unsupported assumptions in environmental planning.

Sonoma County's next steps will likely involve substantial revisions to its well-construction standards, informed by further environmental impact assessments. As California continues to grapple with water scarcity, this ruling highlights parts of the legal framework for the ever-expanding regulation of groundwater resources.

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