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CALIFORNIA WATER NEWS

TRIBES SIGN AGREEMENT TO SHARE 50,000 ACRE-FEET FROM TRINITY RESERVOIR

In April 2025, the Hoopa Valley and Yurok Tribes signed an agreement to share 50,000 acre-feet of water from Trinity Reservoir on the Trinity River. The agreement is an important step to implement a prior act of Congress allocating water for downstream users to accommodate dam construction and the use of Trinity River water for the Central Valley Project.

Background

The Trinity River originates in the Salmon-Trinity Mountains (also known as the Trinity Alps) of northwest California. The Trinity River drains approximately 2,965 square miles and flows generally southward until Lewiston, where it then flows northwesterly, joining the Klamath River in Humboldt County near the boundary of the Hoopa Valley Indian Reservation. From this point, the lower Klamath River continues in a northwesterly direction, flowing through Humboldt County and the Yurok Indian Reservation before reaching the Pacific Ocean south of the California-Oregon border. The US Bureau of Reclamation's Trinity River Division (TRD) facilities include Trinity Dam and Reservoir and Lewiston Dam and Reservoir on the Trinity River in Trinity County. The facilities allow a portion of the water from the Trinity River to flow to its confluence with the Klamath River. Since the completion of the TRD, the facilities have diverted Trinity River water outside of the Trinity River basin and into the Sacramento River Basin to the east, making it available for delivery to the Bureau of Reclamation's contractors for Central Valley Project Water.

The Central Valley Project (CVP) spans roughly 400 miles from the Cascade Mountains near Redding in the north to the Tehachapi Mountains near Bakersfield in the south. CVP facilities include reservoirs on the Trinity, Sacramento, American, Stanislaus and San Joaquin rivers. In particular, the CVP takes water from the Trinity River and stores it in Clair Engle Lake, Lewiston Lake, and Whiskeytown Reservoir. The water is then diverted through a system of tunnels and powerplants into the Sacramento River for the Central Valley. Additionally, water is stored in Shasta and Folsom Lakes. In total, the project consists of 20 dams and reservoirs, 11 power plants, and 500 miles of major canals, as well as conduits, tunnels and related facilities. System wide, the CVP manages approximately 9 million acre-feet of water, delivers roughly 7 million acre-feet of water annually to various CVP contracts, and generates 5.6 billion kilowatt hours of electricity annually. The CVP was initially designed to protect the Central Valley from substantial water shortages and floods. However, the CVP is operated today in ways that increase the Sacramento River's navigability, provides domestic and industrial water supplies, generates electric power, and helps regulate environmental conditions.

Integration and Coordination of the Trinity River Division

In 1955, Congress adopted Public Law 84-386 (PL 84-386). In relevant part, PL 84-386 provides in relevant part that:

> . . .the operation of the Trinity River division shall be integrated and coordinated, from both a financial and an operational standpoint, with the operation of other features of the Central Valley project, as presently authorized and as may in the future be authorized by Act of Congress, in such manner as will effectuate the fullest, most beneficial, and most economic utilization of the water resources hereby made available.

There are two primary conditions to this provision, as follows:

That the Secretary is authorized and directed to adopt appropriate measures to insure the preservation and propagation of fish and wildlife, including, but not limited to, the maintenance of the flow of the Trinity River below the diversion point at not less than one hundred and fifty cubic feet per second for the months July through November and the flow

of Clear Creek below the diversion point at not less than fifteen cubic feet per second unless the Secretary and the California Fish and Game Commission determine and agree that lesser flows would be adequate for maintenance of fish life and propagation thereof; the Secretary shall also allocate to the preservation and propagation of fish and wildlife, as provided in the Act of August 14, 1946 (60 Stat. l 080), an appropriate share of the costs of constructing the Trinity River development and of operating and maintaining the same, such costs to be non-reimbursable: Provided further, That not less than 50,000 acre-feet shall be released annually from the Trinity Reservoir and made available to Humboldt County and downstream water users [Proviso 2].

Humboldt County and the Bureau of Reclamation entered into a water contract on June 19, 1959, as authorized under PL 84-386. Proviso 2 conditioned the integration of the Trinity River Division into the Central Valley Project (CVP) with the requirement that not less than 50,000 acre-feet shall be released annually from Trinity Reservoir and made available to Humboldt County and downstream water users. Language related to releases in the1959 water contract was incorporated as a condition in state water rights permits issued for operation of the TRD.

The Agreement

Leaders of the Yurok and Hoopa Valley tribes have now executed an agreement to share and manage the 50,000 AF of water from the Trinity Reservoir allocated by the 1955 Act (Agreement). The Agreement is thus part of the 1955 Act's purpose, in part, to support affected downstream communities, as implemented by the1959 contract between the Bureau of Reclamation and Humboldt County. Importantly, the agreement provides not only for water sharing between the Hoopa Valley and Yurok Tribes but also outlines cooperation with Humboldt County in the use and stewardship of that resource. The inclusion of these coordination terms reflects a range of local interests—tribal, county, ecological.

The agreement is also notable in terms of intertribal collaboration. The Hoopa Valley and Yurok Tribes have separate governance structures and distinct histories, and the Agreement aligns their shared geography and interest in Trinity River management issues. The Agreement also sets the stage for finalizing a broader negotiation with Humboldt County. The Agreement thus functions as a step toward a regional approach to water governance.

Conclusion and Implications

It remains to be seen how the Agreement will impact discussions between the Tribes and the County. However, the Agreement is a step toward a more regional approach to management of downstream water resources contemplated by the 1955 Act and initiated by the 1959 agreement. For more information, see the Hoopa Valley Tribe Press Release, available at: https://www.facebook.com/TheYurokTribe/posts/tribes-celebrate-historic-trinity-river-water-agreement-the-ceremony-at-the-conf/1098138675680606/ (Miles Krieger, Steve Anderson)

GOVERNOR NEWSOM EXPANDS SUSPENSION OF CEQA AND COASTAL ACT TO COVER UNDERGROUNDING, UPGRADING, AND RELOCATION OF LA-FIRE-DAMAGED ELECTRIC AND TELECOMMUNICATION INFRASTRUCTURE

Since January 2025, Governor Newsom has issued several Executive Orders addressing the Los Angeles wildfires and wildfire preparedness across the state, including most recently an order exempting the upgrading, undergrounding, and relocation of certain affected utilities from the California Environmental Quality Act (CEQA) and the California Coastal Act (CCA).

Background

On January 7, 2025, Governor Newsom declared a State of Emergency in Los Angeles and Ventura Counties due to the severe fire and windstorms in the area (LA Fires). A few days later, Governor Newsom issued Executive Order N-4-25, suspending CEQA and California Coastal Act requirements for substantially affected properties, thereby encouraging redevelopment. Since then, Governor Newsom has issued several EO's, including most recently EO N-24-25.

Executive Orders N-4-25 and N-20-25

EO N-4-25, issued on January 12, 2025, exempted "projects to repair, restore, demolish, or replace property or facilities substantially damaged or destroyed" by the LA Fires from CEQA, the CEQA Guidelines, and CCA permitting requirements, provided the projects do not exceed the original footprint and height of the affected property by more than ten percent compared to the pre-disaster property. EO N-20-25 later specifically vested local permitting agencies with the exclusive authority to determine the applicability of those CEQA and CCA suspensions for LA Fire-affected property without being subject to external appeal.

Executive Order N-24-25

EO N-4-25 could have reasonably been interpreted to suspend the application of CEQA and the CCA to projects seeking to rebuild electric and telecommunication infrastructure that was substantially damaged or destroyed due to the LA Fires. However, upgrading, relocating, or undergrounding projects may not qualify for the suspension, which could cause significant waste and/or thwart the purposes of the original EO.

Governor Newsom addressed this gap by issuing Executive Order N-24-25 (issued on March 27, 2025), which broadens the suspension of CEQA review and CCA permitting requirements. The suspension now applies to projects aimed at upgrading, relocating, or undergrounding electric and telecommunication infrastructure that was significantly damaged or destroyed by the LA Fires. It also extends to adjacent projects—meaning those located near the originally damaged infrastructure—that involve the demolition, repair, replacement, relocation, or upgrading of that infrastructure. Additionally, the suspension covers projects to underground electric, gas, water, sewer, or telecommunication infrastructure that would share excavation routes with the damaged electric and telecommunication systems.

If the proposed project requires the suspension of other statutes, rules, regulations, or requirements within the jurisdiction of the California Environmental Protection Agency or the California Natural Resources Agency, the applicant must request an eligibility determination from the Secretary of either or both of those agencies, as applicable. The relevant Secretary must exercise sound discretion in deciding whether the suspensions under EO N-24-25 should apply, taking into account the project's purpose, the urgency of expediting such projects, and the need to protect public health and the environment.

Conclusion and Implications

Under Executive Order N-24-25, project applicants may bypass CEQA and CCA permitting requirements for projects that upgrade, relocate, or underground electric and telecommunication infrastructure substantially damaged by the LA Fires. The order also allows for the undergrounding of other utilities—such as gas, water, and sewer—within the same excavations, where applicable. If other laws under the jurisdiction of the California Natural Resources Agency or the California Environmental

Protection Agency apply to such projects, those laws are also suspended if the Secretary of either or both of those agencies, as applicable, finds the project eligible under the order. While N-24-25 seems to modestly expand the scope of N-4-25's suspensions, it notably extends those exemptions to include the demolition, repair, replacement, relocation, or upgrading of electric and telecommunication infrastructure located *adjacent to* LA-Fire-damaged infrastructure targeted for undergrounding, relocation, or upgrade.

Executive Order N-24-25 is available online at: https://www.gov.ca.gov/wp-content/uploads/2025/03/N-24-25-Undergrounding-ATTESTED.pdf
(Blaine R. Dyas)

LEGISLATIVE DEVELOPMENTS

CALIFORNIA SENATE BILL 601 PASSES THROUGH COMMITTEE—POTENTIAL NEXUS STANDARD FOR CALIFORNIA'S PORTER-COLOGNE WATER QUALITY CONTROL ACT

In April 2025, California Senate Bill 601 advanced in the Legislature for further review. The Bill introduces a new category of protected waters within the state based on prior US Supreme Court decisions before the recently issued *Sackett* decision. The Bill would have potentially important consequences for water quality compliance and planning efforts.

Background

California Senate Bill 601 (SB 601), introduced by Senator Ben Allen (D–Santa Monica), proposes to amend the Porter-Cologne Water Quality Control Act—a foundational state law enacted in 1969 that predates and complements the federal Clean Water Act (CWA). The Porter-Cologne Act gives the State Water Resources Control Board (State Water Board) and Regional Water Quality Control Boards (Regional Boards) the authority to regulate water quality through waste discharge requirements (WDRs), providing California with broad discretion to protect its water resources independently of federal action. Approved by the Senate Environmental Quality Committee on April 2, 2025, the bill now advances to the Senate Judiciary Committee for further review.

SB 601 introduces the term "nexus waters," a newly defined category of protected waters within the state. This classification is designed to encompass water bodies that were previously protected under federal jurisdiction prior to the U.S. Supreme Court's decision in *Sackett v. EPA* (2023). In effect, the bill seeks to preserve the broader scope of water protections once afforded under federal law—especially under the "significant nexus" standard—by embedding them into California statute.

The "significant nexus" test stems from Justice Anthony Kennedy's concurring opinion in *Rapanos v. United States* (2006), in which he argued that wetlands and other waters should be protected under the Clean Water Act if they significantly affect the chemical, physical, or biological integrity of traditional navigable waters. This interpretation became a regulatory standard for over a decade. However, the *Sackett* decision discarded the nexus test in favor of a narrower approach—adopted by Justice Antonin Scalia in *Rapanos*—which limits federal protection to those waters with a "continuous surface connection" to navigable waters. This ruling effectively removed previously protected streams, wetlands, and tributaries from the purview of the CWA.

SB 601 is intended to create a state-level legal framework that reinstates protections for waters excluded by the *Sackett* decision. Through this mechanism, this bill intends to impose stricter and much more expansive regulations on water quality in the state.

California in the Era of *Sackett v. EPA*—SB 601

The *Sackett v. EPA* decision limited the scope of federal water protections to only those waters with a continuous surface connection to navigable waters, discarding the broader "significant nexus" standard from Justice Kennedy's *Rapanos* concurrence. SB 601 responds directly to this by codifying the nexus test into state law, reinstating protections for California waters no longer covered federally.

Nexus Waters

The bill introduces the category of "nexus waters," defined to include all waters of the state except for specified exclusions. It mandates that water quality standards in effect as of January 19, 2025, remain in force for these waters unless updated by the State Water Resources Control Board , Regional Water Boards, or the EPA with more stringent rules. This provision ensures continuity in regulation even as federal definitions narrow.

Permitting Requirements

SB 601 significantly broadens permitting requirements. Businesses engaged in regulated industries

must demonstrate enrollment in either the National Pollutant Discharge Elimination System (NPDES) or California's Waste Discharge Requirements (WDR) program when applying for or renewing a business or construction permit. For projects disturbing over one acre, applicants must report total disturbed acreage and relevant identification numbers issued by the State Water Board, all under penalty of perjury. These changes expand administrative responsibilities for applicants and local governments alike.

Water Quality Control Plans

The bill purports to allow the State Water Board to adopt water quality control plans for any waters of the state, removing the prior limitation to only federally recognized waters. This authority extends to the inclusion of nexus waters in tools like the California Integrated Report and Total Maximum Daily Load (TMDL) calculations. These changes reflect an intent to align state planning more comprehensively with evolving ecological and regulatory realities.

Private Right of Action

A key feature of SB 601 is the introduction of a private right of action, allowing individuals to bring lawsuits in superior court to enforce water quality standards related to nexus waters. This citizen enforcement mechanism is intended to mirror aspects of the federal CWA and is intended to strengthen oversight. However, it also raises concerns about increased litigation and potential regulatory delays.

Expansion of Civil and Criminal Penalties

The bill also addresses enforcement by revising and expanding civil and criminal penalties. Starting January 1, 2026, the State Water Board's executive director must annually adjust civil penalties, which apply to violations such as unauthorized discharges and failures to report. Proceeds from these penalties will be directed to state pollution cleanup funds, reinforcing the link between enforcement and environmental remediation.

Additional Provisions

Additional provisions of the bill update permit terminology and expand definitions within the Porter-Cologne Act. For example, "navigable waters" and "discharges" are redefined to include nexus waters, aligning state definitions more closely with the bill's intent to cover previously protected federal waters. The legislation also applies the same regulatory standards to discharges involving dredged or fill material.

Opposition to SB 601

Opposition to SB 601 comes from a broad coalition of business groups, agricultural interests, and water and wastewater utilities, who argue the bill imposes excessive regulatory burdens under the guise of restoring federal protections. Critics contend that the definition of "nexus waters" is overly vague, exposing businesses and local governments to increased litigation through a new private right of action. They also express concern that the bill disregards economic and housing considerations when issuing permits, extends federal permitting requirements to previously unregulated discharges, and introduces harsh penalties even for minor violations. Opponents argue that California already has strong water protections in place, and they view SB 601 as an unnecessary overreach that could delay essential infrastructure projects, increase costs, and have limited additional environmental benefit.

Conclusion and Implications

While Senate Bill 601 reflects an intent to maintain and strengthen water quality protections in the face of reduced federal oversight, its sweeping regulatory scope is likely to trigger significant legal challenges. By introducing stricter permitting standards, broadening enforcement authority, and enabling private lawsuits, the bill will impact a wide range of stakeholders—developers, farmers, and local governments—many of whom argue the measures are excessive. As a result, despite its environmental ambitions, SB 601 is poised to face extensive litigation that could shape how, and to what extent, these new protections are ultimately implemented.

For more information on the bill, *see:* https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260SB601

(Miles Krieger, Steve Anderson)

PROPOSED BILL WOULD REQUIRE COURTS TO DEFER TO GROUNDWATER SUSTAINABILITY PLAN SUSTAINABLE YIELD DETERMINATIONS IN ADJUDICATION PROCEEDINGS

On February 21, 2025, Assembly Member Diane Papan, the Chair of the Assembly Committee on Water, Parks, and Wildlife, introduced Assembly Bill (AB) 1413 to amend provisions of the Sustainable Groundwater Management Act (SGMA) and expand the role and authority of Groundwater Sustainability Agencies (GSAs) when it comes to groundwater adjudications. The amendments would require courts adjudicating groundwater rights to defer to the sustainable yield determinations set by GSAs in validated Groundwater Sustainability Plans (GSPs).

The Sustainable Groundwater Management Act and Current Law

SGMA was enacted in 2014 for the purpose of addressing statewide groundwater overdraft issues (which occur when average annual pumping exceeds the yearly supply of groundwater) and the adverse effects of unsustainable groundwater pumping. SGMA called for local agencies to elect to form Groundwater Sustainability Agencies to manage their respective portions of groundwater basins identified as high- and medium-priority by the Department of Water Resources (DWR). A basin's priority level is a function of the extent of critical conditions such as overdraft.

Each GSA of a high- or medium-priority basin was tasked with creating and implementing a GSP to monitor groundwater conditions and provide a long-term roadmap for sustainability and overdraft prevention by, among other things, setting a sustainable yield. "Sustainable yield" is defined as the quantity of groundwater that can be pumped from a basin on an annual basis without the risk of an overdraft or other desirable results. (Wat. Code, § 10721(w).) Undesirable results, in turn, include: (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) depletions of interconnected surface water that have significant and unreasonable adverse impacts on beneficial uses. (*Id.* at subd. (x).) In addition to adopting a GSP, a GSA has the power to adopt rules, regulations, and ordinances to carry it out. (*Id.* at § 10725.2.)

SGMA was not enacted for the purpose of determining or altering surface water rights or groundwater rights established under common law or statute. (Wat. Code, § 10720.5(b).) Groundwater rights are developed based on three potential theories: overlying rights, appropriative rights, and prescriptive rights. When a basin lacks sufficient water to provide for all groundwater users, or when a dispute between individual groundwater users arises, the law provides for those rights to be determined in a groundwater adjudication. (*Id.* at § 10737; Code Civ. Proc., § 830 *et seq.*) In a comprehensive adjudication, the court may determine all groundwater rights of a given basin and determine the basin's safe yield. In contrast to the statutory criteria for a GSA to determine a sustainable yield, a "safe yield" has been defined by the courts as the maximum quantity of water which can be withdrawn from a groundwater supply under a set of given conditions without causing a gradual lowering of groundwater levels and eventual depletion of supply. (See: *City of Los Angeles v. City of San Fernando,* 14 Cal.3d 199, 278 (1975).) Under existing law, a court may adjudicate a groundwater basin already subject to a GSP and set a safe yield, as-long-as the court determines the judgment will not:

> . . .substantially impair the ability of a groundwater sustainability agency, the State Water Resources Control Board, or [DWR] to comply with the Sustainable Groundwater Management Act and to achieve sustainable groundwater management. (Code Civ. Proc., at § 850 (b); see also Wat. Code, § 10737.8.)

Assembly Bill 1413

AB 1413 would make adjudications significantly more deferential to the findings in a GSP by binding a court's groundwater determination of safe yield to the GSP's sustainable yield determination for the basin. Specifically, it would prohibit a court, when in the process of adjudicating a comprehensive groundwater action, from setting a safe yield for the basin in excess of the sustainable yield established in a valid GSP. Similarly, AB 1413 provides that allowing pumping beyond the sustainable yield set by a GSP would substantially impair the ability of a GSA, the

State Water Board, or DWR to comply with SGMA. AB 1413 would also require that the GSP be presumed valid unless a court makes an express finding that it is invalid.

Under current law, a GSA seeking to legally solidify a GSP may file a validation action in court—preemptively preventing challenges to the GSP—where interested parties may intervene to challenge the GSA's decision making. When an action is not preemptively brought, individual members of the public may also file reverse validation actions to force validation proceedings as an alternative method of challenging the GSA's decision making. AB 1413 makes a GSP sustainable yield determination binding on future water right adjudications if the agency's decision is upheld pursuant to either one of these two actions. A minor procedural change in connection with validation proceedings for GSPs is also proposed: the bill would permit GSAs to file such actions within 180 days following the adoption of the plan, in contrast to existing law that permits a GSA to file a validation action no sooner than 180 days following the adoption of a GSP.

AB 1413 would also require a court to consolidate any action against a GSA in a basin subject to groundwater adjudication with other pending comprehensive adjudication proceedings in the basin, and direct the court to try issues related to sustainable yield prior to deciding other facets of the case.

Conclusion and Implications

The success of AB 1413 will ultimately depend on the Legislature's willingness to fundamentally alter of the respective roles of the courts and GSAs with regard to groundwater rights. By tethering groundwater adjudications to the sustainable yields established in GSPs, AB 1413 would significantly limit the power of the courts to independently analyze and allocate groundwater rights in a contested groundwater basin.

The text of AB 1413 is available for review at: https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202520260AB1413
(Sarah Nagle, Austin Cho)

REGULATORY DEVELOPMENTS

U.S. ENVIRONMENTAL PROTECTION AGENCY OUTLINES AGENCY PLANS TO ADDRESS PFAS

On April 28, 2025, U.S. Environmental Protection Agency (EPA) Administrator Lee Zeldin outlined upcoming agency action to address Per- and Polyfluoroalkyl Substances (PFAS). In this suite of actions, Administrator Zeldin announced a long list that included in part the designation of an agency lead for PFAS, the creation of effluent limitations guidelines (ELGs) for certain PFAS to stop these forever chemicals from entering drinking water systems, and initiatives to engage with Congress and industry to establish a clear liability framework that ensures the polluter pays and passive receivers are protected. In line with Administrator Zeldin's Powering the Great American Comeback initiative, EPA's work in this space will advance Pillar 1: Clean Air, Land, and Water for Every American, and Pillar 3: Permitting Reform,

Cooperative Federalism, and Cross-Agency Partnership.

EPA Administrator Zeldin stated:

> I have long been concerned about PFAS and the efforts to help states and communities dealing with legacy contamination in their backyards. With today's announcement, we are tackling PFAS from all of EPA's program offices, advancing research and testing, stopping PFAS from getting into drinking water systems, holding polluters accountable, and providing certainty for passive receivers. This is just a start of the work we will do on PFAS to ensure Americans have the cleanest air, land, and water.

These actions are guided by the following principles: strengthening the science, fulfilling statutory obligations and enhancing communication, and building partnerships. With this approach, EPA will provide the foundation and investment necessary for a toolbox that will help states and communities dealing with PFAS contamination. This list is the first, not the last, of all decisions and actions EPA will be taking to address PFAS over the course of the Trump Administration. There will be more to come in the future across EPA's program offices to help communities impacted by PFAS contamination.

Strengthening the Science

In "Strengthing the Science" EPA announced the following agenda:

- Designate an agency lead for PFAS to better align and manage PFAS efforts across agency programs;
- Implement a PFAS testing strategy under Toxic Substances Control Act (TSCA) Section 4 to seek scientific information informed by hazard characteristics and exposure pathways;
- Launch additional efforts on air related PFAS information collection and measurement techniques related to air emissions;
- Identify and address available information gaps where not all PFAS can be measured and controlled;
- Provide more frequent updates to the PFAS Destruction and Disposal Guidance—changing from every three years to annually—as EPA continues to assess the effectiveness of available treatment technologies;
- Ramp up the development of testing methods to improve detection and strategies to address PFAS.

Fulfilling Statutory Obligations and Enhancing Communication

Regarding "Fulfilling Statutory Obligations and Enhancing Communication," EPA's strives to:

- Develop effluent limitations guidelines (ELGs) for PFAS manufacturers and metal finishers and

evaluate other ELGs necessary for reduction of PFAS discharges;

•Address the most significant compliance challenges and requests from Congress and drinking water systems related to national primary drinking water regulations for certain PFAS;

•Determine how to better use RCRA authorities to address releases from manufacturing operations of both producers and users of PFAS;

•Add PFAS to the Toxic Release Inventory (TRI) in line with Congressional direction from the 2020 National Defense Authorization Act ;

•Enforce Clean Water Act and TSCA limitations on PFAS use and release to prevent further contamination;

•Use Safe Drinking Water Act authority to investigate and address immediate endangerment Achieve more effective outcomes by prioritizing risk-based review of new and existing PFAS chemicals;

•Implement section 8(a)7 to smartly collect necessary information, as Congress envisioned and consistent with TSCA, without overburdening small businesses and article importers;

•Work with Congress and industry to establish a clear liability framework that operates on polluter pays and protects passive receivers

Building Partnerships

Regarding "Building Partnerships", EPA intends to:

•Advance remediation and cleanup efforts where drinking water supplies are impacted by PFAS contamination;

•Work with states to assess risks from PFAS contamination and the development of analytical and risk assessment tools;

•Finish public comment period for biosolids risk assessment and determine path forward based on comments;

•Provide assistance to states and tribes on enforcement efforts;

•Review and evaluate any pending state air petitions;

•Resource and support investigations into violations to hold polluters accountable

Past PFAS Connection

Administrator Zeldin's leadership on PFAS dates back to his time in Congress, where he was a founding member of the PFAS Congressional Taskforce and a strong supporter of the PFAS Action Act, legislation to provide funding to support local communities cleaning up PFAS-contaminated water systems. He was, and remains, a staunch advocate for protecting Long Islanders and all Americans from contaminated drinking water.

In the process of developing and taking action on a number of these items, Administrator Zeldin personally heard from Members of Congress on passive receiver issues where local water utilities will foot the bill for contamination and pass those costs onto consumers. This mindset and the need for a polluter pays model has guided a lot of the work to be done at EPA in the future.

Conclusion and Implications

During President Trump's first term, EPA convened a two-day National Leadership Summit on PFAS in Washington, D.C. that brought together more than 200 federal, state, and local leaders from across the country to discuss steps to address PFAS. Following the Summit, the agency hosted a series of visits during the summer of 2018 in communities directly impacted by PFAS. EPA interacted with more than 1,000 Americans during community engagement events in Exeter, New Hampshire, Horsham, Pennsylvania, Colorado Springs, Colorado, Fayetteville, North Carolina, and Leavenworth, Kansas, as well as through a roundtable in Kalamazoo, Michigan, and events with tribal representatives in Spokane, Washington.

In 2019, the Trump EPA announced the PFAS Action Plan. This historic Plan responded to extensive public interest and input the agency received and represented the first time EPA built a multi-media, multi-program, national communication and research plan to address an emerging environmental challenge

like PFAS. EPA's Action Plan identified both short-term solutions for addressing these chemicals and long-term strategies that will help provide the tools and technologies states, tribes, and local communities need to provide clean and safe drinking water to their residents and to address PFAS at the source—even before it gets into the water.
(Robert Schuster)

US BUREAU OF RECLAMATION ANNOUNCES INCREASES IN CENTRAL VALLEY PROJECT WATER ALLOCATIONS AND DWR INCREASES WATER ALLOCATION FOR STATE WATER PROJECT CONTRACTORS

On April 28, 2025, the US Bureau of Reclamation announced increases in water supply allocation for the Central Valley Project for south-of-Delta agriculture contractors.

The Bureau of Reclamation has increased south-of Delta increase in water supply allocations from the Central Valley Project for ag contractors. The allocation has increased the allocation from 40 percent to 50 percent.

North-of-Delta Central Valley Project contactors remains at 100 percent. All other Central Valey Project contract allocations remain the same as were announced on March 27 in Reclamation's water supply update. In that report Reclamation allocated to Friant Division contractor's water supply delivered from Millerton Reservoir on the upper San Joaquin River via Madera and Friant-Kern canals: Class 1 was increased from 45 percent to 80 percent on March 14, 2025. On March 27, 2025, further increased the amount to 100 percent with Class 2 water remaining at zero percent. (https://www.usbr.gov/newsroom/news-release/5126)

California Department of Water Resources State Project 2025 Allocations

On April 29, 2025, the California Department of Water Resources also announced an increase in water supply allocations from the State Water Project.

DWR found that "moderate storm events" within the month of April:

> . . .led to improvement I snowpack and water supply runoff in the Northern Sierra. These conditions, along with a conservative forecast of conditions through the rest of the year, support the Department of Water Resources in increasing the State Water Project allocation. . .

The Department of Water Resources changed their contractor water allocation from 40 percent to 50 percent for "most" State Water Project contractors' requested Maximum Annual Table A amounts for 2025. *See:* https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Management/SWP-Water-Contractors/Files/25-05-042925.pdf

Latest Water Supply Levels in California

As recently as May 2, 2025, California Water Watch detailed the state of water in California. California Water Watch reported that "major" reservoir levels were at 117 percent of "average levels" and 51 percent of "average peak snowpack." It further reported that 27 percent of "monitoring wells" was at 27 percent below "normal levels." Precipitation in the state was measured at 21.33 inches in the water year to date, which is at 99 percent of average.

Conclusion and Implications

It has been another excellent water year as of May 2, 2025. Major reservoirs are full and despite the vagaries of climate change, the state is mostly in excellent condition for water supply. Since January 2025, CVP contractors saw a steady increase in percentages of their contract allocations. Parts of Northern California saw "water year to date" precipitation of "average" over 100 percent of normal. Central California, on average saw water year to date of 60 to 100 percent. Southern California had a different story—averages of as high as 60 percent and much of the state's southeast portions seeing zero to 40 percent of normal.

For more information on precipitation, snow pack and reservoir levels, see California Water Watch's website at: https://cww.water.ca.gov

For more information on US Bureau of Reclamation's Central Valley Project contract allocations, see: https://www.usbr.gov/newsroom/news-release
(Robert Schuster)

LAWSUITS FILED OR PENDING

A NEW CHALLENGE EMERGING UNDER SGMA: THE TRANSPARENCY REQUIREMENTS OF RECORDS

The primary focus of the Sustainable Groundwater Management Act (SGMA) over the past ten years has been formation of the groundwater sustainability agencies and groundwater sustainability plans. Those statewide efforts were previously unprecedented in California and monumental, to say the least. To a large extent, those efforts succeeded with formation of the agencies and plans. In some instances, the state is challenging the adequacy of the plans, and in other instances, groundwater adjudications have emerged. Also rearing is the extent of transparency of records as required under the California Public Records Act (CPRA). In one basin, the Indian Wells Valley Groundwater Authority (Authority) has been sued by a landowner under the CPRA, contending that the Authority did not comply by not providing records related to groundwater models and associated documents.

The Superior Court Lawsuit

The lawsuit is *Searless Valley Minerals, Inc. v. Indian Wells Groundwater Authority et al.* (Orange County Superior Court Case No. 30-2025-01457804). The case involves Searles Valley Minerals, Inc. (SVM) filing a petition for a writ of mandate and a complaint for declaratory relief against the Authority and its Board of Directors. SVM alleges that the Authority failed to comply with the CPRA by not providing requested public records related to groundwater models and associated documents.

SVM submitted two CPRA requests (August 16, 2022, and January 12, 2024) seeking documents related to groundwater models, communications, and other related files. SVM asserts that the Authority's refusal to comply with CPRA harms both SVM and the public, and that a writ of mandate is necessary to enforce compliance. SVM seeks a judicial declaration for a determination that the Indian Wells Valley Groundwater Authority has not complied with the CPRA, and, and injunction for an order compelling the Authority to fully respond to SVM's requests and provide access to all disclosable public records.

The specific and original requests, as contained in the complaint's exhibits, are as follows:

- Contracts and Agreements: Any contract, agreement, plan, or scope of work entered into by the Indian Wells Valley Groundwater Authority (IWVGA) since January 1, 2015, regarding the development, use, refinement, calibration, creation, review, analysis, and/or modification of any groundwater model.

- Communications: All communications regarding the groundwater model, including model files, reviews documented in the Groundwater Sustainability Plan (GSP), and reviews by Stetson Engineers, Inc.

- Model Files: All files necessary to run the groundwater model, including input/output files, calibration runs, management runs, and other related documentation.

- Drafts of Reviews: All drafts of the review of the groundwater model.

- Documents Used by Stetson Engineers: All documents provided to or used by Stetson Engineers, Inc. related to the groundwater model.

- Other Documents: Any other documents relied upon by IWVGA decision-makers, staff, or consultants in reviewing GSP Appendix 3-H.

Of important note, the lawsuit's complaint does not contain the Authority's written responses to the CPRA requests, nor has anything happened yet in the court process given the somewhat recent filing of the lawsuit and the first scheduled court event is a case management conference set for July 10, 2025. Accordingly, the Authority likely will have much to say in response to the allegations and relief sought by SVM.

Conclusion and Implications

This case is important in dual contexts of SGMA governance at the local level and more generally with CPRA requirements. SGMA explicitly in its opening statutes declares that California water rights are not changed by SGMA, however, implementation decisions often requiring "ramp downs" or similar measures calling for groundwater extractors to use less water can generate questions of whether water rights are being infringed. Groundwater models and similar technical efforts utilized for making those local governance decisions may lend insight into the water rights aspect. More generally for CPRA purposes are nuanced legal questions as to the boundaries of "public records" and related exemptions such as for privileged records, drafts, and the like. As such, this is an important case to monitor for California water rights and related management efforts by public agencies. All stakeholders, public and private, become implicated by how these rules are utilized.
(Wes Miliband)

RECENT FEDERAL DECISIONS

FEDERAL CIRCUIT FINDS NMFS' REQUIREMENT FOR INCREASED WATER TO BYPASS DAM DIVERSION TO PROTECT SPECIES DIDN'T CONSTITUTE A "RIPE" TAKING

United Water Conservation District v. United States, ___F.4th___, Case No. 2023-1602 (Fed. Cir. Apr. 2, 2025).

In *United Water Conservation District v. United States* the Federal Circuit Court of Appeals analyzed a claim challenging the effect of a letter from the National Marine Fisheries Service's Office of Legal Enforcement noting a significant issue with ongoing take of endangered fish species and demanding operations consistent with a previous Biological Opinion was a claim for a regulatory taking, which was unripe because the plaintiff had not applied for an incidental-take permit. United Water Conservation District filed the suit for alleged taking under the Fifth Amendment claiming the National Marine Fisheries Service's (NMFS) requirement to increase the amount of water bypassing its diversion dam to protected endangered species of trout resulted in a loss of water the United could otherwise be used for beneficial purposes

Background

United Water Conservation District, the holder of a right to divert 144,630 acre-feet of water from the Santa Clara River, received a letter from NMFS' Office of Legal Enforcement notifying it that a significant issue regarding the ongoing take of the endangered Southern California steelhead trout existed at United's Freeman Diversion dam, and demanding that United commit to implementing interim operating measures consistent with the reasonable and prudent alternatives contained in a 2008 Biological Opinion. According to United, compliance with this demand requires an increase in bypass flow, either to remain in the river or be diverted to a fish ladder. It alleged that compliance with the Biological Opinion caused United to lose 49,800 acre-feet it otherwise would have been permitted to divert.

Physical Taking Versus Regulatory Taking

The Fifth Amendment provides that private property shall not "be taken for public use, without just compensation." To establish a taking under the Fifth Amendment, a party must prove that it had a cognizable property interest at the time of the alleged taking and that "the government's action amounted to a compensable taking of that interest."

A taking under the Fifth Amendment can either be physical or regulatory in nature. A physical taking is the "paradigmatic taking" and occurs by "a direct government appropriation or [a] physical invasion of private property." A "[g]overnment action that physically appropriates property is no less a physical taking because it arises from a regulation."

A regulatory taking differs from a physical taking in that, instead of asking "whether the government has physically taken property for itself or someone else—by whatever means," the question is whether the government "has instead restricted a property owner's ability to use his own property." A regulatory taking claim:

> . . .is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue.

At the Court of Federal Claims

United is a water conservation district created pursuant to California law to serve as the water management agency for the Santa Clara River and the Oxnard coastal plain.

United sued the United States for a taking under the Fifth Amendment. United characterized the Government's action as a physical taking and contended that its claim was ripe. The United States insisted that United's claim was for a regulatory taking and was not ripe because United had not applied for an incidental-take permit under Section 10 of the Endangered Species Act.

The Court of Federal Claims found that United's claim was an unripe claim for a regulatory taking, because United had not exhausted its administrative remedies. It distinguished caselaw on which United relied because in the cited decisions the water right holder was required to return water it already had diverted, whereas in United's situation the water was bypassed rather than diverted into United's canal. The court dismissed the complaint for lack of subject matter jurisdiction.

The Federal Circuit's Decision

The Federal Circuit ruled that the reasonable and prudent alternatives under the 2008 Biological Opinion operate as regulatory restrictions on the use of a natural resource and do not constitute a physical taking. A regulatory taking claim like United's is not ripe until the right holder obtains a final agency action. United had not been denied an incidental-take permit under Section 10 of the ESA, and therefore it did not plead a ripe regulatory taking claim. The Court of Appeals held that the Court of Federal Claims properly dismissed United's complaint for lack of subject matter jurisdiction.

Conclusion and Implications

In the end, the Court of Appeals found that since a regulatory takings claim is not ripe until the rights holder obtains a final agency action—having yet to have denied an incidental take permit under Section 10 of the Endangered Species Act—"United had therefore not pleaded a ripe takings claim," and that the District Court properly dismissed its complaint for lack of subject matter jurisdiction.

The court's opinion filed April 2, 2025, is available online here: https://www.cafc.uscourts.gov/opinions-orders/23-1602.OPINION.4-2-2025_2492406.pdf
(Larry J. Caster, Austin Cho)

RECENT CALIFORNIA DECISIONS

SIXTH DISTRICT COURT UPHOLDS SANTA CLARA GROUNDWATER CHARGES UNDER PROPOSITION 26

Great Oaks Water Company v. Santa Clara Valley Water District, ___Cal.App.5th___, Case No. H050939 (6th Dist. Feb. 28, 2025, *published* Mar. 28, 2025).

In *Great Oaks Water Company v. Santa Clara Valley Water District* the California Court of Appeal, Sixth District, affirmed a trial court decision upholding the legality of groundwater pumping charges levied by the Santa Clara Valley Water District (District) against Great Oaks Water Company (Great Oaks), a non-agricultural water user and private retailer. The dispute centered on whether the District's charges violated constitutional requirements under Proposition 26 by imposing taxes without voter approval.

Background

Proposition 26, passed in 2010, requires that any levy, charge, or exaction by a local government must be approved by voters unless it qualifies under certain exceptions, including charges for specific benefits, privileges, or services provided directly to the payor. Great Oaks alleged the charges were unlawful taxes because they exceeded the cost of the services rendered and lacked a fair relationship between the fees charged and benefits received. The Court of Appeal disagreed, siding with the District on all major points.

Proposition 26 defines a "tax" broadly but enumerates specific exceptions that, if satisfied, allow charges to be imposed without voter approval. The two most relevant exceptions are:

- Charges imposed for a specific benefit conferred or privilege granted directly to the payor; and

- Charges imposed for a specific government service or product provided directly to the payor.

To qualify under these exceptions, the charge must not exceed the reasonable cost of the governmental activity, and its allocation must bear a fair or reasonable relationship to the benefits received or burdens imposed by the payor.

The Court of Appeal's Decision

In applying this framework, the appellate court conducted an "aggregate cost inquiry" and an "allocation inquiry," as prescribed by the California Supreme Court in *San Buenaventura I* (2017). These inquiries evaluate, respectively, whether the total charges exceed the cost of the governmental activity and whether the method of allocating costs is reasonably related to the payor's impact on or benefit from that activity.

The Court of Appeal upheld the trial court's conclusion that the relevant "governmental activity" was the District's entire water utility program, not merely isolated groundwater pumping operations. The rationale was grounded in the District's "conjunctive use" policy—a coordinated approach integrating groundwater, surface water, imported water, and recycled water to maximize regional water supply reliability.

Great Oaks had argued for a narrower definition, claiming that only direct groundwater services should be considered. The court rejected this argument, noting that the District's management of alternative water sources, like treated or imported water, supports groundwater sustainability and indirectly benefits all groundwater users by preventing overdraft and enhancing recharge capacity.

Zone-By-Zone and Year-By-Year Comparisions

Using zone-by-zone and year-by-year comparisons, the court found that the charges did not exceed the cost of the overall water utility program. This approach was deemed legally appropriate under Proposition 26 and consistent with longstanding utility fee jurisprudence.

Reasonable Relationship and Allocation of Costs

In evaluating the method by which costs were allocated, the court found that the District grouped

similarly situated users (such as non-agricultural groundwater pumpers) and applied volumetric charges based on water usage. The court held this allocation method bore a reasonable relationship to the benefits conferred, citing evidence that increased usage directly correlates with increased benefits from the District's services.

Additionally, the court accepted the District's use of revenue from non-user sources, like ad valorem taxes and interest, to offset costs before calculating rates. This pooling of revenue was deemed consistent with the District's policies and did not invalidate the fairness of the allocation.

Great Oaks contended that the District improperly used groundwater charge revenues to subsidize alternative water sources not accessible to all payors. However, the Court upheld the use of "conjunctive use" adjustments, which reallocate some of the costs of treated or recycled water to groundwater users on the basis that these programs collectively benefit groundwater sustainability.

The Agricultural Discount and Use of Property Tax Revenue

Another issue was the District's provision of steeply discounted groundwater rates to agricultural users, funded via an "Open Space Credit" using ad valorem property tax revenues. Great Oaks argued that this practice violated both the District's enabling statute and the California Constitution.

The Court of Appeal rejected this argument, affirming the trial court's finding that the Open Space Credit was funded exclusively through non-rate revenues (*e.g.*, property taxes levied by Santa Clara County) and not by charges collected from non-agricultural users like Great Oaks. Consequently, the Court of Appeal concluded that the subsidy did not constitute an improper tax or violate statutory limitations.

Conclusion and Implications

This decision marks a significant affirmation of the scope and flexibility afforded to local water agencies under Proposition 26, particularly in applying cost-based fees for complex, integrated water management systems. The ruling reinforces the principle that charges can validly fund broad utility programs when grounded in well-documented cost analysis and reasonable allocation methodologies.

For water agencies, this decision underscores the importance of maintaining detailed financial and programmatic records that demonstrate the relationship between charges and services. For ratepayers, particularly commercial or non-agricultural users, the case illustrates the legal thresholds for challenging such charges under California's tax-limiting provisions.

The case also clarifies that subsidized rates for agricultural users, when funded from external sources like property taxes, are not constitutionally suspect so long as they are not cross-subsidized by charges imposed on other users. As climate pressures and water supply challenges grow, such legal clarity will be essential for the continued functioning of regional water management frameworks. The court's opinion, filed February 28, 2025 and published on March 28, 2025, is available online at: https://www4.courts.ca.gov/opinions/documents/H050939.PDF
(Darien Key)

FIFTH DISTRICT COURT REVERSES TRAL COURT INJUNCTION MODIFYING KERN RIVER OPERATIONS

Bring Back the Kern v. City of Bakersfield,
___Cal.App.5th___, Case No. F087487 (5th Dist. Apr. 2, 2025).

In *Bring Back the Kern v. City of Bakersfield*, the Court of Appeal for the Fifth Appellate District of California issued a published decision reversing an injunction and order establishing a flow rate in the Kern River because, among other reasons, the trial court did not explicitly consider the reasonableness of the competing uses for that water.

The Court of Appeal held that Fish & Game Code section 5937 did not preclude consideration of competing demands for water under article X, section 2 of the California Constitution.

On the contrary, the self-executing provisions of article X, section 2 require that:

> . . .courts must always consider reasonableness whenever adjudicating a use of water—even if the pertinent statutes do not call for a reasonableness determination themselves.

Background

The Kern River system originates high in the Sierra Nevada Mountains. The eastern portion of the Kern River is drained by the South Fork, and the western portion by the mainstem North Fork of the Kern River. Just one and a half miles downstream of the two forks' confluence, Isabella Dam impounds the Kern River for the purpose of flood control and multiple beneficial uses of water. Below Isabella Dam, the Kern River flows through a steep canyon to the floor of the San Joaquin Valley and then flows in a southwesterly direction through the City of Bakersfield (Bakersfield) and beyond.

Water rights to the Kern River have been established through historically significant litigation and agreements between agricultural and municipal users. Relevant here, Bakersfield agreed in 1976 to assume obligations to operate the weirs in the Kern River to divert water for itself and for deliveries to other water right holders, including the real parties in interest and appellants North Kern Water Storage District, Kern Delta Water District, Buena Vista Water Storage District, Kern County Water Agency, and Rosedale Rio-Bravo Water Storage District (Appellants). During most years, Kern River water does not flow past the McClung Weir—the last weir before the river enters Bakersfield—with consistency.

Proceedings Below

A coalition of environmental groups, led by Bring Back the Kern (Plaintiffs), filed suit against Bakersfield on November 30, 2022, over its management of Kern River flows. Plaintiffs' second amended complaint—the operative complaint at the time of the appealed injunction—named Appellants as real parties in interest. On August 10, 2023, Plaintiffs moved for a preliminary injunction to restrain Bakersfield from operating the weirs to divert water that is required to keep the fish that exist below each weir in good condition. The Plaintiffs argued that the "chronically dry riverbed" located below each weir was prima facie evidence that Bakersfield was violating Fish & Game Code section 5937 and the common law public trust doctrine. Section 5937 provides, in relevant part, that dam owners:

> . . .shall allow sufficient water at all times to pass . . . over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam.

The Kern County Superior Court granted the preliminary injunction. It found that Section 5937 was a "non-discretionary, specific legislative rule reflecting the public trust doctrine" and a legislative determination of reasonableness that precluded the court from considering competing uses under article X, section 2. The injunction prohibited Bakersfield from operating the weirs "in any manner that reduces Kern River flows below the volume sufficient to keep fish downstream of said weirs in good condition." The injunction further directed Bakersfield and Plaintiffs to jointly establish flow rates necessary to comply with the order. If no agreement could be reached, then either party could request the court to make a

determination. Lastly, the order required the Plaintiffs to post a nominal bond of $1,000.

Bakersfield and certain Plaintiffs filed a joint stipulation on November 13, 2023, that established a flow rate of 40 percent of the total measured daily flow of the Kern River would be allowed to flow past the McClung Weir, subject to Bakersfield's municipal demands. Any remaining flow would be available for diversion by Appellants. Although the stipulation was not agreed to by the Appellants, the court entered an order implementing the stipulation the following day. The Appellants timely appealed the injunction and implementation order.

The Court of Appeal's Decision

The Court of Appeal resolved all seven issues on appeal in favor of the Appellants.

First, it found the trial court erred by relying on Fish & Game Code section 5937 to refuse to consider whether the injunction was reasonable in light of the competing uses of water. In rejecting arguments by Plaintiffs, the Attorney General, and the California Department of Fish and Wildlife that no reasonable use analysis is necessary to adjudicate a violation of Section 5937, the appellate court found that Section 5937 cannot be the "only relevant manifestation" of article X, section 2's requirement for reasonableness. This is because article X, section 2 is self-executing and applies regardless of whether the Legislature enacts a statute like Section 5937. In this way, the trial court erred by not giving effect to the provisions of article X, section 2 in determining the adjudicating the competing uses of water in its injunction.

Second, the Court of Appeal found that the injunction was overbroad because it did not establish the manner of compliance. The trial court's injunction did not specify how much water Bakersfield must let flow past the weirs, and was erroneous to simply require Bakersfield to "obey the law." The appellate court noted that Plaintiffs, as the moving parties, bear the burden of proving what flow rates are required to keep fish in "good condition," and advised that, in the event another injunction is issued on remand, the trial court should set an objective standard for compliance, so long as the requirement is reasonable and supported by substantial evidence that it would keep fish in good condition.

Third, the appellate court held that the Appellants timely appealed the nominal bond by filing notices of appeal within the time provided for in California Rule of Court, rules 8.104 and 8.108.

Fourth, the Court of Appeal held that the trial court failed to impose the type of undertaking required by Code of Civil Procedure section 529. Section 529 provides that, subject to four exemptions, upon granting a preliminary injunction, the court must require the moving party post a bond "to the effect that the applicant will pay the party enjoined any damages . . . the party may sustain by reason of the injunction." (Civ. Code § 529, subd. (a).) Critically, environmental litigation is not one of the four exemptions to the bond requirement and the trial court's nominal bond requirement violated Section 529.

Fifth, the appellate court held that the trial court violated the Appellants' due process rights by approving the stipulated implementation order—which the Appellants did not agree to—without providing the Appellants a right to be heard prior to entering the order. The implementation order improperly subordinated the Appellants' water rights to those of Bakersfield, despite the fact that some Appellants' rights had senior priority. The Appellants' participation in the preliminary injunction hearing did not resolve the due process concerns because there was insufficient notice that the preliminary injunction could alter the allocations of Kern River water supply. Lastly, the Court of Appeal rejected that the argument that state law creates an absolute priority for domestic uses of water over irrigation uses. Because the implementation order clearly affected the Appellants' water rights, it could only be entered:

> . . .after either an agreement of all affected parties, or after a prayer for relief in a proper petition or complaint and opportunity to be heard.

Sixth, the court determined that the appeal was not mooted by the trial court's stay of the implementation order. Because a stay could be lifted at any time, a reversal of the implementation order was needed to provide the Appellants their relief.

Finally, the Court of Appeal held that the trial court's orders modifying the injunction and the implementation order did not render the injunction non-appealable because the Appellants appealed the underlying injunction, which were only partially modified by the subsequent orders.

Conclusion and Implications

The *Bring Back the Kern* decision reinforces that courts must consider the reasonableness of competing beneficial uses of water pursuant to article X, section 2 of the California Constitution when adjudicating water allocations, even those prescribed by the Legislature. The decision also clarifies that nominal bonds are not permitted in environmental litigation matters under Code of Civil Procedure, section 529. With the reversal of the preliminary injunction and setting of a nominal bond, the matter has been remanded to the Kern County Superior Court, to be heard on December 8, 2025. The Court of Appeal's opinion, filed on April 2, 2025, is available online at: https://www4.courts.ca.gov/opinions/documents/F087487.PDF
(N. Chapman, Austin Cho)

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