Volume 35, Number 9
June 2025

CALIFORNIA WATER™
LAW & POLICY Reporter

CONTENTS

CALIFORNIA WATER NEWS

Lower Colorado States Call for Improvements to Glen Canyon Dam 191

Reviving the Desert: California Advances Restoration of the New River and Continues Progress for the Salton Sea Management Program with East Pond Expansion Filling 192

LEGISLATIVE DEVELOPMENTS

Senate Bill 72 and the Economics of Water Supply Planning in California 195

REGULATORY DEVELOPMENTS

Federal Fisheries Agencies Propose Rule Rescinding the Regulatory Definition of 'Harm' Under the Endangered Species Act 197

Department of Water Resources Completes Its Initial Evaluation of Remaining Groundwater Sustainability Plans in California. 198

Chowchilla Subbasin Potentially Avoids Probation Hearing 200

California Regional Water Quality Control Board Issues Proposed Cease and Desist Order against E. & J. Gallo Winery 201

RECENT CALIFORNIA DECISIONS

Court of Appeal:
Fifth District Court of Appeal Reverses Preliminary Injunction Involving Fish Flows 203
Bring Back the Kern v. City of Bakersfield, ___Cal.App.5th___, Case No. F087487 (5th Dist. Apr. 2, 2025).

First District Court Affirms Trial Court's Rejection of Challenge to City Community Services District Charges Made without Voter Approval . . . 204
Gomes v. Mendocino City Community Services District, ___Case No. A167862 (1st Dist. Apr. 14, 2025).

EDITORIAL BOARD

Robert M. Schuster, Esq.
Executive Editor
Argent Communications Group

Steve Anderson, Esq.
Best Best & Krieger, LLP

Austin Cho, Esq.
Downey Brand LLP

Derek Hoffman, Esq.
Fennemore Craig

Wesley Miliband, Esq.
Miliband Water Law

ADVISORY BOARD

David R.E. Aladjem, Esq.
Downey Brand, LLP

Mary Jane Forster Foley
MJF Consulting Inc.

Prof. Brian Gray
U.C. Hasting College of Law

Robert B. Maddow, Esq.
Bold, Polisner, Maddow,
Nelson & Judson

Antonio Rossmann, Esq.
Rossmann & Moore

Michele A. Staples, Esq.
Jackson Tidus

Amy M. Steinfeld, Esq.
Brownstein Hyatt Farber Schreck

ARGENT COMMUNICATIONS GROUP

WWW.ARGENTCO.COM

Publisher's Note: Accuracy is a fundamental of journalism which we take seriously. It is the policy of Argent Communications Group to promptly acknowledge errors. Inaccuracies should be called to our attention. As always, we welcome your comments and suggestions. Contact: Robert M. Schuster, Editor and Publisher, 530-852-7222; schuster@argentco.com

WWW.ARGENTCO.COM

Copyright © 2025 by Argent Communications Group. All rights reserved. No portion of this publication may be reproduced or distributed, in print or through any electronic means, without the written permission of the publisher. The criminal penalties for copyright infringement are up to $250,000 and up to three years imprisonment, and statutory damages in civil court are up to $150,000 for each act of willful infringement. The No Electronic Theft (NET) Act, § 17 - 18 U.S.C., defines infringement by "reproduction or distribution" to include by tangible (i.e., print) as well as electronic means (i.e., PDF pass-alongs or password sharing). Further, not only sending, but also receiving, passed-along copyrighted electronic content (i.e., PDFs or passwords to allow access to copyrighted material) constitutes infringement under the Act (17 U.S.C. 101 et seq.). We share 10% of the net proceeds of settlements or jury awards with individuals who provide evidence of illegal infringement through photocopying or electronic distribution. To report violations confidentially, contact 530-852-7222. For photocopying or electronic redistribution authorization, contact us at the address below.

The material herein is provided for informational purposes. The contents are not intended and cannot be considered as legal advice. Before taking any action based upon this information, consult with legal counsel. Information has been obtained by Argent Communications Group from sources believed to be reliable. However, because of the possibility of human or mechanical error by our sources, or others, Argent Communications Group does not guarantee the accuracy, adequacy, or completeness of any information and is not responsible for any errors or omissions or for the results obtained from the use of such information.

Subscription Rate: 1 year (11 issues) $1025.00. Price subject to change without notice. Circulation and Subscription Offices: Argent Communications Group; P.O. Box 201, Galena, IL 61036-0201; 530-852-7222 or 1-800-419-2741. Argent Communications Group is a division of Argent & Schuster, Inc., a California corporation: President/CEO, Gala Argent; Vice-President and Secretary, Robert M. Schuster, Esq.

California Water Law & Policy Reporter is a trademark of Argent Communications Group.

CALIFORNIA WATER NEWS

LOWER COLORADO STATES CALL FOR IMPROVEMENTS TO GLEN CANYON DAM

In February 2025, representatives from the Colorado River's Lower Basin states submitted a letter to the U.S. Department of the Interior effectively requesting, in part, consideration of potential improvements to Glen Canyon Dam.

Background

Glen Canyon Dam is a large concrete dam along the Colorado River in northern Arizona, just upstream of the Upper/Lower Basin dividing line at Lees Ferry. Completed in 1964, the Dam is perhaps best known for retaining Lake Powell, a recreational and scenic attraction in southern Utah, and also as the fourth tallest dam in the United States. Lake Powell is an important storage reservoir for water delivery to the Lower Basin states; its capacity of over 25 million acre-feet makes it the second-largest reservoir by capacity in the United States (after Lake Mead).

Issues with the Dam

Drought conditions on the Colorado River over the past 25 years have lowered Lake Powell's surface elevation to approximately 3,560 feet above mean sea level. The minimum lake elevation required to allow flow through the Dam's penstocks to generate hydroelectric power is 3,490 feet. In a low-storage emergency, the Lake could also release water downstream via its four eight-foot diameter outlet works, sometimes referred to as bypass tubes, located at an elevation of 3,370 feet (below which is the Lake's dead pool elevation). Unfortunately, the U.S. Bureau of Reclamation discovered cavitation damage in those outlets while conducting a high-flow experiment in 2023. Last year, the Bureau initiated a $9 million project to reline these steel tubes with a solvent borne epoxy.

Colorado River Alternatives Analysis

Operation of the Colorado River is currently governed by the Department of the Interior's 2007 Interim Guidelines. These 20-year guidelines are set to expire at the end of 2026. In January, the Bureau released an Alternatives Report, outlining the alternatives to be considered as part of its ongoing development of an environmental impact statement (EIS) for Post-2026 operations. The Bureau made the base assumption that, as part of these post-2026 operations, Lake Powell's surface level must be held to an elevation at or above 3,490 feet to ensure the Bureau's ability to provide adequate releases to the Lower Basin. In effect, the only alternative being considered by the Bureau directly related to Glen Canyon Dam is delivery curtailments in the event of low Lake levels.

Lower Basin Alternatives Letter

Representatives from each of the Lower Basin states, Arizona (Thomas Buschatzke), California (J.B. Hamby), and Nevada (John Entsminger), pushed back on the Bureau's Alternatives Report by targeting, in part, the absence of an alternative addressing infrastructure repairs or modifications to the Dam. The letter, dated February 13, highlighted language from the Bureau's 2024 Technical Decision Memorandum indicating that "continuous long-term operation of the outlet works" would require "a major overhaul or replacement of the hollow-jet valves," and that the epoxy relining of the outlet works "won't prevent the risk of additional cavitation when operating at low reservoir levels." In the Lower Basin states' opinion, failing to incorporate a Dam-improvement alternative violates the National Environmental Policy Act (NEPA) for a couple reasons: (a) the operating assumption that Lake Powell levels should be held to 3,490 feet as a long-term supply solution "impermissibly limits the range of reasonable alternatives," and (b) modifying or improving the Dam is so closely tied to effective operations that any independent studies regarding Dam improvements—especially if undertaken under a NEPA categorical exclusion—are unacceptable.

In addition to these Dam-related alternatives requests, the letter more generally appealed to the

newly-appointed Secretary of the Interior, Doug Bergum, to reconsider the Lower Basin's proposed operating alternative, which the Bureau elected not to consider. This proposal included 1.5 million acre-feet of voluntary reductions in apportionments and featured a "more holistic, systemwide approach" to water management, using the volume in all Colorado River reservoirs to manage the system and dictate reductions. Under the current operating system, releases are determined, and shortage reductions triggered, by the elevations of Lakes Mead and Powell.

Conclusion and Implications

The letter from representatives of the Lower Basin states is one development in the broader, ongoing challenge to ensure water is available throughout the Colorado basin. Especially under the pressure of the looming expiration of the 2007 Guidelines and given the time required to develop an EIS, it remains to be seen whether the Bureau will incorporate these suggestions to consider infrastructure improvement alternatives in its EIS, including improvements to the Glen Canyon Dam.
(Evan Klouse, Micheline Nadeau Fairbank)

REVIVING THE DESERT: CALIFORNIA ADVANCES RESTORATION OF THE NEW RIVER AND CONTINUES PROGRESS FOR THE SALTON SEA MANAGEMENT PROGRAM WITH EAST POND EXPANSION FILLING

California officials recently celebrated a major environmental and public health milestone in the Imperial Valley: the completion of the New River Improvement Project in Calexico and the progress of the broader Salton Sea Management Program (SSMP). These two initiatives, while distinct, are closely tied together by geography and environmental impact, both addressing long-standing ecological and public health challenges in Southern California's desert region.

Background

The New River, which flows from Mexicali, Mexico, into Calexico, California, has long been a conduit for pollution, carrying untreated waste, industrial discharges, and solid waste into the United States. The contamination posed severe public health risks and significantly degraded the ecosystem along the river's path and ultimately at the Salton Sea—California's largest inland lake.

Recognizing the urgent need for remediation, the City of Calexico, in partnership with several California state agencies, including the Department of Water Resources (DWR), the State Water Resources Control Board, and California State Parks, implemented the New River Improvement Project. The $46.5 million project installs several new infrastructure components: a trash screen to remove solid waste, a diversion structure to reroute polluted flows, and a pump-back system that introduces treated water into the river channel. These interventions prevent contaminated water from passing through a 1.5-mile stretch of the river in Calexico before it empties into the Salton Sea.

In parallel, the state has been ramping up other efforts at the Salton Sea, whose receding waters and rising salinity have created an environmental and public health crisis. Once a recreation hub, the Salton Sea has suffered from reduced inflows, mostly due to agricultural water conservation and reallocation. As the lake shrinks, exposed lakebed—called playa—emits airborne dust, worsening air quality in an already pollution-burdened region. This has led to higher rates of asthma and other respiratory issues among local residents.

To address this, Governor Gavin Newsom's administration launched a ten-year Salton Sea Management Program (SSMP) focused on building 30,000 acres of habitat and dust suppression projects. A centerpiece of the plan is the Species Conservation Habitat Project, which recently reached a milestone with the filling of the East Pond Expansion. Originally planned as a 4,100-acre project, state and federal investments totaling nearly $445 million have expanded the project's footprint to over 9,000 acres.

Strategic Shift Toward Environmental Restoration

Both the New River Improvement Project and the SSMP reflect a strategic shift toward environmental restoration and public health protection in the Salton Sea region. The projects address interrelated issues: pollution control, habitat loss, air quality, and climate resilience.

From a public health perspective, the New River Improvement Project marks a tangible reduction in exposure to toxic pollutants for the residents of Calexico. Historically, the New River has ranked among the most polluted waterways in the United States, with raw sewage, industrial discharges, and pesticides contributing to its degraded state. By installing infrastructure that intercepts and treats water before it flows through populated areas, the project is believed to significantly mitigate risks to human health and local wildlife.

Stakeholders see this as a collaborative success. DWR Director Karla Nemeth emphasized the state's broader goal of providing clean, safe, and affordable water, while Calexico Mayor Diana Nuricumbo credited longstanding partnerships for enabling the city to improve its river and wetlands. These sentiments suggest that state-local coordination was key to overcoming decades of inertia surrounding the New River's condition.

At the Salton Sea, the Species Conservation Habitat Project and the broader SSMP aim to reverse ecological decline and prevent public health deterioration due to dust emissions from exposed playa. Air quality in the Imperial and Coachella Valleys is among the poorest in the state, and the retreat of the Salton Sea has further exacerbated the problem. Restoration efforts seek to stabilize the situation by reflooding areas to trap dust and create wetlands that can support biodiversity—especially bird species traveling the Pacific Flyway.

The habitat created by the East Pond Expansion includes berms, engineered water delivery systems, and nesting islands intended to support fish and bird populations. Project leaders have highlighted the initiative's dual goals of ecosystem restoration and improved public health, framing it as a model of integrated environmental planning.

Despite recent progress, some aspects of the restoration effort may prompt further consideration. For example, the long-term feasibility of maintaining improvements, particularly in light of ongoing water scarcity, could potentially present challenges. Similarly, the pace of implementation may be an area of focus for future planning, especially as projects expand beyond the current ten-year framework.

Additionally, the state's ambition to transform the Salton Sea region into a hub for lithium extraction and battery production introduces new economic and environmental considerations. While this move aligns with California's transition to a zero-emission economy, it is unclear how industrial development might interact with ongoing restoration and environmental justice efforts.

Conclusion and Implications

The recent developments in Calexico and around the Salton Sea underscore California's evolving approach to complex environmental issues and emphasizes collaboration, infrastructure investment, and integrated planning. The completion of the New River Improvement Project represents a significant public health safeguard for one of the state's most environmentally burdened communities. Simultaneously, restoration work at the Salton Sea offers hope that the region's ecological decline can be slowed or even reversed.

As with any large-scale project, these efforts raise longer-term questions. For one, the sustainability of restored river flows and refilled wetland habitats hinges on future water availability in an era of increasing scarcity. The state's consideration of water importation as part of the Salton Sea's future underscores the scale of the challenge.

There are also broader environmental justice implications. Residents of the Imperial Valley, many of whom are low-income and Latino, have borne disproportionate health and economic burdens linked to environmental degradation. The current restoration initiatives may begin to address historical neglect, but ongoing community engagement and equitable governance will be crucial to ensure these projects deliver lasting benefits.

Finally, the intersection of restoration and resource extraction, such as the proposed lithium development, presents both opportunity and risk. If managed well, it could bring jobs and investment to a region in need; if poorly planned, it could further strain an already fragile environment.

In sum, while significant progress has been made, the projects at Calexico and the Salton Sea are still part of a larger, unfinished story—one that will require continued attention, transparent policymaking, and a long-term vision to secure a healthier, more sustainable future for the region. The press release of the New River Improvement is available at: https://water.ca.gov/News/News-Releases/2025/May-25/State-and-Local-Agencies-Complete-New-River-Project-in-Calexico

The press release of the East Pond Expansion Filling is available at: https://www.gov.ca.gov/2025/05/22/california-reaches-major-restoration-milestone-at-the-salton-sea/?utm_medium=email&utm_source=govdelivery
(Miles Krieger, Steve Anderson)

LEGISLATIVE DEVELOPMENTS

SENATE BILL 72 AND THE ECONOMICS OF WATER SUPPLY PLANNING IN CALIFORNIA

California faces significant long-term water supply challenges, driven by factors such as climate change, regulatory changes, environmental demands, and reductions in water from the Colorado River. The California Water Plan is the State's plan for the orderly and coordinated control, protection, conservation, development, and use of the water resources of the state. The California Department of Water Resources (DWR) is required to update the Plan every five years, and to include a discussion of various strategies in the plan update, including, but not limited to, strategies relating to the development of new water storage facilities, water conservation, water recycling, desalination, conjunctive use, and water transfers, that may be pursued in order to meet the future needs of the state.

However, a new economic analysis by researchers Jay Lund (UC Davis), Josué Medellín-Azuara (UC Merced), and Alvar Escriva-Bou (UC Davis) quantifies the potential economic consequences of inaction. The study, *Inaction's Economic Cost for California's Water Supply Challenges*, estimates that the state could lose up to 9 million acre-feet of water annually by 2050—equivalent to one or two Lake Shastas. This loss would be enough water to serve up to 9 million households and could result in economic damages between $3.4 billion and $14.5 billion per year.

The research identifies four primary drivers of anticipated water loss: limitations on groundwater extraction due to the Sustainable Groundwater Management Act (SGMA), declining snowpack from climate change, increased environmental water needs, and reduced allocations from the Colorado River. The projected impacts include the fallowing of up to 3 million acres of farmland, the loss of 67,000 jobs, and substantial disruptions to California's agricultural and rural communities.

Senate Bill 72, authored by Senator Anna Caballero, is a legislative response to these growing concerns. The bill seeks to establish a statewide water supply target and directs the Department of Water Resources (DWR) to develop 9 million acre-feet of new water supply by 2040. It also proposes revisions to the California Water Plan, expanding stakeholder involvement to include tribes, labor, and environmental justice interests. As part of the 2033 update to the plan, SB 72 would require the department to set an interim planning target for 2050 and evaluate strategies such as stormwater capture, water recycling, desalination, and expanded storage.

Senate Bill 72

The new economic study by Lund and his colleagues provides an empirical foundation for understanding the potential costs of failing to adapt California's water infrastructure and management policies. Their findings indicate that absent coordinated state action, the state's economy and agricultural output may face significant contraction. While past water strategies have emphasized conservation, the researchers conclude that conservation alone will not be sufficient to address projected deficits. Instead, the study emphasizes the need for comprehensive investment in both traditional and emerging water supply technologies.

Senate Bill 72 attempts to operationalize this vision. The bill builds upon the existing California Water Plan and requires the DWR to consider all beneficial uses of water, including urban, agricultural, and environmental needs, while also ensuring access to safe drinking water. The bill also introduces a cost-benefit framework for evaluating projects that could help meet the state's supply targets. Moreover, it mandates updating the California Water Plan with a planning framework that includes measurable outcomes and long-term supply targets. For instance, SB 72 would amend Water Code section 10004.6 to provide as follows:

> As part of the 2033 update to The California Water Plan, the department shall update the required planning target pursuant to subdivision (f) for 2050. Subsequent updates of the plan shall include a range of water supply targets that

consider future scenarios with a 50-year planning horizon at a watershed scale. The target shall consider the identified and future water needs for a sustainable urban sector, agricultural sector, and environment, recognize the impacts of climate change on the state's water resources, ensure safe drinking water for all Californians, and reflect statewide, regional, and local planning efforts. In establishing the long-term supply target, the department shall analyze current and future water needs trends, including identifying additional water necessary to sustain public trust resources.

Supporters of the bill, including water agencies, counties, and business coalitions, argue that it will bring necessary structure and coordination to long-term planning. They view SB 72 as an essential tool to align local and regional efforts with statewide objectives, citing the urgency of addressing water security in the face of intensifying climate and economic pressures.

Critics, however, raise concerns about the bill's focus on quantitative water supply targets. A coalition of environmental groups argue that the bill prioritizes supply augmentation without equivalent attention to environmental flows or demand reduction. They also contend that the bill could undercut the role of the State Water Resources Control Board and may conflict with existing policies such as the Delta Reform Act. Others, such as the Mono Lake Committee, express concerns about the affordability of high-cost infrastructure solutions and question whether the bill adequately defines "water needs" in a policy context.

Conclusion and Implications

The economic research and SB 72 together underscore the high stakes of California's water future. While the economic modeling emphasizes the risks of continued inaction, the legislation proposes a framework for proactive planning. Importantly, the study is largely from an economics standpoint and does not necessarily address some of the environmental concerns with establishing a statewide water supply target, as envisioned in SB 72. Whether SB 72 will ultimately be enacted remains uncertain; a similar version of the bill passed the Legislature last year but was vetoed by Governor Newsom due to budget concerns.

If adopted, SB 72 could help establish a long-term planning mechanism for addressing California's projected water shortfall, potentially reshaping how the state evaluates, finances, and implements water supply projects. However, the debate surrounding the bill illustrates the complexity of balancing economic, environmental, and governance considerations in water policy. As the state moves toward the 2033 update of the California Water Plan, SB 72 could serve as a test case for whether California is prepared to undergo significant structural reforms as an attempt for long-term water reliability for all its communities. The economic study available at: https://www.cawaterforall.com/inactions-economic-cost-for-ca-water-supply-challenges

Senate Bill 72 available at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260SB72
(Miles Krieger, Steve Anderson)

REGULATORY DEVELOPMENTS

FEDERAL FISHERIES AGENCIES PROPOSE RULE RESCINDING THE REGULATORY DEFINITION OF 'HARM' UNDER THE ENDANGERED SPECIES ACT

On April 17, 2025, the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) (collectively: the Services) published notice of a proposed rule in the Federal Register that would rescind the current definition of "harm" to species under the Services' federal Endangered Species Act (ESA) regulations.

Background

Enacted in 1973, the ESA is a federal statute designed to conserve species of wildlife, fish, and plants that are considered endangered or threatened. (16 USCA § 1531.) Among the ESA's key provisions is a list of prohibited acts, which makes it unlawful to engage in certain conduct involving endangered species of fish, wildlife, or plants. (16 USCA §§ 1538, 1533.) For example, the ESA prohibits the sale or offer for sale of listed species in interstate or foreign commerce, as well as their import into or export from the United States. (16 USCA § 1538.) The statute also prohibits the "take" of endangered fish or wildlife, either within the United States, the territorial waters of the United States, or the high seas. (16 USCA § 1538.) The ESA defines "take" to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." (16 USCA § 1532.)

Both USFWS and NMFS have issued regulations defining harm as it is used within the ESA definition of "take" to include harmful modifications to habitat. USFWS defines harm as "an act which actually kills or injures wildlife" in a manner that "may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering." (50 CFR § 17.3.) NMFS uses a similar definition that encompasses "significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering." (50 CFR § 222.102.) Thus, under both regulatory definitions, take is interpreted broadly to include indirect and unintentional harm to species that may be caused by changes to habitat.

Proposed Rulemaking

In the recent Federal Register notice, the Services propose to rescind the definitions of harm contained in their respective regulations. (90 Fed. Reg. 16102 (Apr. 17, 2025).) The Services explain that the current interpretation of harm—originating in regulations upheld by the Supreme Court in *Babbit v. Sweet Home Chapter of Communities for a Great Oregon* (*Sweet Home*) 515 U.S. 687 (1995), "do not match the single, best meaning" of the ESA. (*Id.* at 16103.) In *Sweet Home*, the Supreme Court upheld the USFWS regulation defining harm based on the deference afforded to agencies under *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, (*Chevron*) 467 U.S. 837 (1984), and the Secretary of the Interior's discretion in construing the intent of Congress when defining the term harm under the ESA. (515 U.S. at 708.) But last year in *Loper Bright Enterprises v. Raimondo*, (*Loper Bright*) 603 U.S. 369 (2024), the Court overruled the longstanding precedent of *Chevron* deference, holding that agency regulations must conform to the governing statute's "single, best meaning." (See 90 Fed. Reg. at 16103 [quoting *Loper Bright*, 603 U.S. at 400, 406].) In lieu of granting *Chevron* deference, the Supreme Court analyzed whether "the *statute* authorize[d] the agency action." (*Id.*)

Relying on the Dissent in *Sweet Home*

The Services cite the dissent in *Sweet Home* to support their position that the current definition of harm does not match the single, best meaning of the ESA. That dissent argued that even under *Chevron*, a definition of harm that included indirect effects was

untenable. (*Id.* [citing *Sweet Home*, 515 U.S. at 715].) The Services' notice emphasizes that "take" should be limited to actions that "reduce those animals, by killing or capturing, to human control." (*Id.* at 16103 [quoting *Sweet Home*, 515 U.S. at 717].) Under the interpretive cannon *noscitur a sociis*—the principle that a word is known by the company it keeps—the term "harm," like the nine other verbs in the definition of "take," is better understood to connote an "affirmative act []… directed immediately and intentionally against a particular animal," not merely indirect or accidental injury to a population of animals. (*Id.* [quoting *Sweet Home*, 515 U.S. at 719-20].)

Existing Definitions of Harm are Erroneous

Following *Loper Bright*, the Services conclude that the existing definitions of harm violate established interpretive canon, disregard centuries of legal history, and conflict with the structure of the ESA. (*Id.* at 16103.) They also state that a replacement definition is unnecessary, given the statute's comprehensive definition of the term "take." Further elaboration on a single component—*i.e.*, "harm"—is, in the Services' view, therefore superfluous. (*Id.*) The Services distinguish the holding in *Sweet Home* by characterizing the prior definition of harm as a permissible interpretation, but not the only possible one. Thus, the proposed rescission is consistent with *Sweet Home*, particularly in light of *Loper Bright's* abrogation of Chevron deference. (*Id.*)

Conclusion and Implications

With the removal of deference to agency interpretations in *Loper Bright*, the Services propose to rescind their regulatory definitions of "harm" to ensure that their respective definitions conform to the single, best reading of the ESA. The Services accepted public comments on the proposed rule until May 19, 2025. The Federal Register notice remains available at the following link: https://www.govinfo.gov/content/pkg/FR-2025-04-17/pdf/2025-06746.pdf
(Taylor Strain, Austin C. Cho)

DEPARTMENT OF WATER RESOURCES COMPLETES ITS INITIAL EVALUATION OF REMAINING GROUNDWATER SUSTAINABILITY PLANS IN CALIFORNIA

On April 29, 2025, the California Department of Water Resources (DWR) issued its final batch of initial determinations for Groundwater Sustainability Plans (GSP) in eight low- and very low-priority basins. This release marks a historic milestone in implementing the Sustainable Groundwater Management Act (SGMA), as DWR has now completed its initial review of all GSPs submitted by Groundwater Sustainability Agencies (GSA) across California. Of the eight remaining GSPs reviewed, DWR approved those for the Arroyo Santa Rosa Valley, Atascadero Area, Bear Valley, and Bedford-Coldwater basins. It issued incomplete determinations for the Castac Lake Valley, Owens Valley, Riverside-Arlington, and San Gabriel Valley basins.

Background

Enacted in 2014, SGMA established California's first comprehensive framework for managing groundwater. The statute emphasizes local control but permits state intervention if the local management within a particular basin proves inadequate. SGMA requires that all groundwater basins be managed sustainably within 20 years to prevent defined undesirable results, including: (1) chronic lowering of groundwater levels; (2) significant and unreasonable reduction in groundwater storage; (3) significant and unreasonable seawater intrusion; (4) significant and unreasonable degradation of water quality; (5) significant and unreasonable land subsidence; and (6) depletion of interconnected surface waters. (Wat. Code, § 10721(x)(1)-(6).)

DWR was tasked with classifying the state's 515 groundwater basins as very low-, low-, medium-, or high-priority, based on factors such as projected population growth, the number of public supply wells, and the extent of irrigated acreage. (Wat. Code, § 10933(b).) For all medium- and high-priority basins, SGMA required GSAs to submit GSPs to DWR for review and approval. (Wat. Code, §10720.7.) Any GSP found to be deficient was labeled incomplete

and the responsible GSAs were given an opportunity to supplement with necessary information and resubmit. If DWR found a resubmitted GSP was still inadequate, the provisions for state intervention would kick in and the State Water Resources Control Board (Board) could hold a hearing to determine whether that basin should be put on "probationary" status. (Wat. Code, §10720.7.) That process is occurring for a handful of high-priority basins in the state. Once a basin is put on probationary status, the Board is authorized to implement an interim plan and impose reporting and fee requirements on groundwater extractors in the basin.

By contrast, SGMA does not necessarily require GSAs in low- and very low-priority basins to submit GSPs to DWR for review. (Wat. Code, §10720.7(b).) Still, it encourages and authorizes the GSAs in those basins to adopt and implement GSPs voluntarily. (Wat. Code, §10720.7(b).) Importantly, SGMA explicitly exempts these basins from state intervention by the Board should the GSAs decide not to submit a GSP.

Department of Water Resources Determinations

In its evaluation of a GSP, DWR must determine whether it substantially complies with SGMA and the associated GSP regulations. This includes assessing whether the GSP's proposed management actions will achieve basin sustainability within the statutory 20-year timeframe. For instance, DWR approved the Bear Valley Basin GSP, finding that groundwater levels within the basin are relatively stable, with only short-term fluctuations attributable to climatic variation and pumping during dry periods. (DWR, Bear Valley Basin—2022 Groundwater Sustainability Plan, at p. 15.) DWR also found that the groundwater quality conditions in the basin are sufficiently described and that overall subsidence in the basin had not exceeded three inches. (*Id.* at p. 16.) In its approval, DWR concluded that the GSP contained no major inconsistencies or deficiencies and expressed "no significant concerns." (*Id.* at p. 17.)

DWR offers corrective measures in its approval determinations for the GSAs to consider for their future periodic GSP updates. It advises that the GSAs should take care to explain how thresholds for groundwater levels and storage are established and recommended improving monitoring well networks to gather data from all the principal aquifers in those respective basins.

By contrast, DWR issued "incomplete" determinations for four of the eight low and very-low priority GSPs. The reasons for an incomplete determination of these basins tend to center on informational deficiencies. For example, the Castac Valley Lake Basin GSP was deemed incomplete because it failed to establish sustainable management criteria for groundwater levels and water quality in line with SGMA and the GSP Regulations. (DWR, Castac Valley Lake Basin – 2020 Groundwater Sustainability Plan, at pp. 6-7.) Acknowledging that SGMA does not impose a specific submission deadline for low- and very low-priority basin GSAs to address the identified deficiencies, DWR requests the GSAs that received incomplete determinations to submit revised GSPs within 180 days.

Conclusion and Implications

DWR's latest issuance of determinations represents a significant milestone in California's effort to implement SGMA. All GSPs that were submitted to DWR have now received an initial determination. GSAs with approved GSPs may proceed with implementation, while those with incomplete or inadequate determinations face additional work before they will be found to be in compliance.

The status of all GSPs and DWR's determinations are available at the SGMA GSP Portal: https://sgma.water.ca.gov/portal/gsp/status

(Jake R. Voorhees, Austin C. Cho)

CHOWCHILLA SUBBASIN POTENTIALLY AVOIDS PROBATION HEARING

Since the Sustainable Groundwater Management Acts' (SGMA) implementation, several basins in California's Central Valley have faced the prospect of state intervention, but only a few have progressed to a formal probationary hearing before the State Water Resources Control Board (SWRCB). In April 2024, the Tulare Lake Subbasin became the first to be designated as probationary following a public hearing, marking a pivotal moment in SGMA enforcement.

The hearing process involves multiple stages: after the Department of Water Resources (DWR) deems a basin's Groundwater Sustainability Plan (GSP) inadequate, the SWRCB notifies the basin of its potential probationary status and offers Groundwater Sustainability Agencies (GSAs) an opportunity to correct deficiencies. If these are not resolved to the SWRCB's satisfaction, a noticed public hearing is scheduled, during which affected parties, including GSAs, stakeholders, and members of the public, may provide testimony. The SWRCB considers technical assessments, public input, and staff recommendations before voting on whether to impose probation.

Once on probation, the SWRCB begins collecting groundwater use data, imposes reporting fees, and continues evaluating whether the GSA can regain control. This formal hearing process has underscored the seriousness of SGMA compliance and the increasing willingness of state agencies to assert authority when local management falls short.

In March 2023, DWR determined the Chowchilla Subbasin's 2022 GSP to be inadequate, triggering state intervention. The principal issues identified included deficient criteria and management actions for addressing chronic groundwater level declines and land subsidence. However, in April 2025, the SWRCB issued a staff assessment recommending that the SWRCB not proceed with a probationary designation, citing substantial revisions made in the GSAs' 2025 GSP.

Strengthened Groundwater Level Management

One of the most notable improvements in the 2025 GSP involved changes to how groundwater level sustainability was measured and managed. Previously, the 2022 GSP established minimum thresholds (MTs) using projections that allowed up to 40-80 feet of additional drawdown in some areas, particularly in the western subbasin where subsidence risk is high.

In response, the GSAs revised MTs to reflect 2015 groundwater levels and defined measurable objectives (MOs) based on 2011 levels. This revision offers significantly more protection to drinking water wells. The 2025 GSP also limits the number of dry domestic wells to a maximum of 50 under current interim milestones (IMs), with an allowance for up to 75 in the event of plan amendments which amounts to 10-15 percent of domestic wells in the subbasin.

Furthermore, the GSAs committed to implementing a subbasin-wide Demand Management Program by January 1, 2026, which will deploy mandatory pumping restrictions if trigger conditions—such as approaching undesirable results—are met.

Domestic Well Mitigation Program Expansion

Another key improvement was the enhancement of the Domestic Well Mitigation Program (DWMP). In 2022, the DWMP excluded public water systems and state small water systems, and it lacked clarity on funding and mitigation timelines.

The 2025 GSP remedies these shortcomings by expanding eligibility to include public and small water systems, introducing a defined short-term mitigation delivery timeline (within one business day), and offering a mechanism to fund well replacements exceeding the prior $30,000 cap. The GSAs also established funding commitments through a Memorandum of Understanding (MOU) with Chowchilla Subbasin Growers, ensuring long-term financial sustainability for the program.

Importantly, the revised DWMP now includes provisions to mitigate water quality impacts—an element absent from the 2022 plan. This was achieved through coordination with the Chowchilla Management Zone (CMZ), which helps monitor and address nitrate and other contaminants in impacted domestic wells.

Land Subsidence Commitments

Subsidence, particularly in the western subbasin, was another major concern in the 2022 GSP. Prior

approaches relied on groundwater levels as a proxy for subsidence, without adequate correlation or explanation. The 2025 GSP transitions to direct measurement of land surface elevation, setting MTs and MOs at zero feet of subsidence, subject only to minor annual measurement error margins.

The plan also introduces a cumulative subsidence cap of two feet by 2040—set to protect critical infrastructure such as the San Joaquin River Restoration Project—and includes annual engagement with infrastructure operators. Interim milestones are designed to taper down to zero subsidence by 2040.

To address previous gaps, especially in the Eastern management area, the 2025 GSP includes the Demand Management and Subsidence Mitigation Measures MOU. This agreement provides both voluntary and mandatory measures, including a penalty and allocation framework, to curtail groundwater extraction if undesirable subsidence trends emerge. A revised Subsidence Workplan also calls for the installation of additional GPS monitoring units and improved modeling tools.

Surface Water and Water Quality

Although surface water interaction (SWI) was not a central deficiency in DWR's 2022 determination, the 2025 GSP includes an Interconnected Surface Water Workplan to strengthen monitoring along the San Joaquin River and enhance modeling. While interim MTs remain in place, the GSAs are expected to revise these once DWR releases updated guidance.

On water quality, the 2025 GSP maintains annual sampling for nitrate, TDS, and arsenic, and includes newly added monitoring wells. While the SWRCB did not find the GSP deficient in this area, it recommended refining sustainability criteria for quality at locations where pre-SGMA contamination exists, and increasing sampling frequency to capture seasonal variations.

Conclusion and Implications

The April 2025 staff assessment concludes that the Chowchilla Subbasin GSAs have made substantial improvements across all critical areas, including groundwater level protections, domestic well mitigation, land subsidence management, and governance structures such as demand management frameworks. These changes addressed the core deficiencies identified in the 2022 GSP and alleviated Board staff concerns regarding the 2022 version.

As a result, SWRCB staff recommended against proceeding with a probationary hearing designation and instead advocated for returning the subbasin to DWR jurisdiction. Board staff have issued several forward-looking recommendations, including enhancing notification systems for well users, tightening temporary mitigation response timelines, and refining groundwater quality metrics.

The Chowchilla Subbasin's experience highlights the scope of revisions needed to convince the SWRCB that a GSP has been amended enough to avoid a probation hearing altogether. It underscores the importance of responsive local management, robust stakeholder engagement, and evidence-based planning to avert state intervention.
(Darien Key)

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD ISSUES PROPOSED CEASE AND DESIST ORDER AGAINST E. & J. GALLO WINERY

The California Regional Water Quality Control Board, Central Valley Region, issued a Proposed Cease and Desist Order (Proposed Order) to E. & J. Gallo Winery (Gallo) for its Fresno Winery facility in Fresno County. The Proposed Order alleges violations of Waste Discharge Requirements (WDRs) related to wastewater disposal practices that threaten groundwater quality. A public hearing is set for June 19-20, 2025.

The Proposed Order is issued under California Water Code sections 13301 and 13267, allowing the Board to enforce compliance and require technical reports. Violations may result in penalties of up to $10,000 per day per violation.

Background

The winery operates on a 700-acre property, with wastewater applied to 409 acres of land application

areas (LAAs). Wastewater is generated from various processes, including grape crushing, distillation, and composting, totaling approximately 400 million gallons annually. Wastewater is applied to 409 acres of farmland, primarily during the crush season. LAAs are double-cropped with Sudan grass and winter forage crops to maximize nutrient uptake.

The facility manages wastewater discharges through several processes and systems. One such system is the Fresno Anaerobic Treatment System (FATS) where most general process wastewater and stillage wastewater are treated. FATS' treated wastewater is discharged to the Fresno-Clovis Regional Wastewater Treatment Facility (Fresno WWTF), except during the "crush" season (August–November), when excess wastewater is diverted to LAAs. Crusher/press wastewater and untreated stillage/distillation wastewater are discharged directly to LAAs when the FATS is offline or during peak production periods. Wastewater from wine ion exchange regenerant (IER) is mixed with compost. Stormwater and leachate from the composting area are treated by FATS or discharged to LAAs to alleviate flooding. Stormwater and leachate from the byproducts storage area are collected in sumps and treated by FATS or discharged to LAAs.

The facility generates approximately 400 million gallons of wastewater annually. WDRs limit wastewater discharge to LAAs to 54.2 million gallons per year, with the remainder sent to the Fresno WWTF.

The Alleged Violations and Proposed Order

Wastewater discharges must adhere to the following WDRs specifications: (i) Prohibition A.4: Discharges must occur only in approved locations and manners; (ii) Discharge Specifications C.1 and C.2: Waste constituents must not cause groundwater pollution or nuisance conditions; (iii) LAA Specifications D.2, D.4, D.6, D.9, and D.10: Wastewater application must be at reasonable agronomic rates, maximize crop nutrient uptake, and minimize percolation below the root zone; and (iv) Solids Specification E.1: Residual solids handling must prevent leachate infiltration into soils.

Groundwater monitoring wells allegedly show elevated levels of nitrate, amongst other constituents, exceeding maximum contaminant levels (MCLs). Groundwater monitoring data from 2001 to 2024 indicates increasing pollution trends in onsite wells, with nitrate levels up to 13 times the MCL in some areas. Offsite wells show less severe impacts, but some exceed MCLs for nitrate and other constituents.

The Proposed Order and related documents purport that wastewater was applied to land at rates exceeding crop demand, causing or threatening groundwater pollution with nitrate, electrical conductivity (EC), and total dissolved solids (TDS). Also alleged is that cracked asphalt in the byproducts storage area allows stormwater and leachate to percolate into the soil, further threatening groundwater quality.

The Proposed Order seeks the following: (i) All discharges to land must stop by June 30, 2030, unless fully compliant with WDRs; (ii) Submit and implement a work plan to address violations, including agronomic rate compliance and groundwater protection; (iii) Design and install a new pad for byproducts storage to prevent leachate percolation and protect groundwater; and (iv) The Board may order immediate cessation of discharges if violations persist.

Conclusion and Implications

This pending matter exemplifies the significant consequences of state enforcement actions, particularly in matters involving potential adverse impacts to groundwater quality. The Proposed Order impose requirements for compliance going forward, such as a work plan and implementation schedule and technical reports. Failure to comply may lead to administrative civil liability, judicial enforcement, or other actions. The order remains in effect until rescinded. Affected parties may petition the State Water Resources Control Board for review within 30 days of the order's issuance.
(Wes Miliband)

RECENT CALIFORNIA DECISIONS

FIFTH DISTRICT COURT OF APPEAL REVERSES PRELIMINARY INJUNCTION INVOLVING FISH FLOWS

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 Fifth District Court of Appeal reversed the Kern County Superior Court's orders granting a preliminary injunction and implementing a stipulation regarding water flows in the Kern River.

The case was remanded for further proceedings consistent with the appellate court's opinion, requiring the trial court to conduct a reasonableness analysis and address procedural and substantive deficiencies in any future orders. Costs were awarded to the appellants. The plaintiffs have petitioned to the California Supreme Court for review.

Background

The plaintiffs sought to enforce California Fish and Game section 5937 to ensure sufficient flows in the Kern River to protect fish populations, invoking the public trust doctrine. However, the appellate court ruled that the trial court erred by failing to consider whether this use of water was reasonable under Article X, Section 2 of the California Constitution. While the public trust doctrine supports preserving fish and wildlife, the court clarified that this must be balanced against other beneficial uses, such as domestic water supply and irrigation.

The Court of Appeal's Decision

In reversing the Superior Court, The Court of Appeal's ruling emphasized the following key points.

Failure to Consider Reasonableness

The trial court erred by not evaluating whether the use of water to keep fish in good condition, as required by Fish and Game Code section 5937, was reasonable under Article X, Section 2 of the California Constitution. The appellate court held that all uses of water, including public trust uses, must conform to the constitutional standard of reasonableness.

Definiteness of Injunction

The injunction was overly vague because it did not specify the flow rate required to keep fish in good condition. The appellate court advised that any future injunction should set clear, objective standards for compliance.

Due Process Violation

The implementation order, which prioritized Bakersfield's municipal water needs over the water agencies' rights, violated the due process rights of the water agencies. The order was based on a stipulation that excluded the water agencies, despite directly affecting their water delivery rights.

Reasonable Use of Water

The court defines reasonable use of water as a case-specific determination that depends on the totality of the circumstances, including competing demands and the availability of water. It emphasized that no single use of water, including domestic use or public trust uses like preserving fish, has absolute priority. Instead, reasonableness requires a comparison of uses, balancing environmental concerns, beneficial uses, and the needs of various stakeholders.

The court noted that what constitutes reasonable use can change over time due to evolving conditions, such as water scarcity or increased demand. It also clarified that the reasonable use requirement applies to all uses of water in California, regardless of whether they are governed by statutes like Fish and Game Code §5937.

The Public Trust Doctrine

The public trust doctrine played a significant role in this case as it intersects with California's water rights regime. The doctrine, rooted in Roman and English common law, establishes that the state holds navigable waterways and the lands beneath them

in trust for the benefit of the public. It requires the state to protect public trust uses, such as recreation, wildlife preservation, and environmental conservation, whenever feasible. The court emphasized that the state has an affirmative duty to consider public trust uses in the planning and allocation of water resources. However, this duty must be reconciled with the constitutional requirement under Article X, Section 2 that all uses of water, including public trust uses, must be reasonable.

Conclusion and Implications

The court clarified that public trust uses must be balanced against other beneficial uses, such as domestic water supply and irrigation. This balancing act reflects the broader implications of the doctrine: it protects environmental values while requiring courts and policymakers to consider the needs of all stakeholders. Stated differently, courts must ensure that public trust uses are protected "whenever feasible," but this does not mean they always take precedence over other uses. In fact, the ruling makes clear that court must weight environmental concerns against human and economic needs. An issue for further clarification that might come from this case as it navigates the legal process is to what extent vested water rights must yield to the public trust doctrine. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/F087487.PDF
(Wes Miliband)

FIRST DISTRICT COURT AFFIRMS TRIAL COURT'S REJECTION OF CHALLENGE TO CITY COMMUNITY SERVICES DISTRICT CHARGES MADE WITHOUT VOTER APPROVAL

Gomes v. Mendocino City Community Services District,
___Cal.App.5th___, Case No. A167862 (1st Dist. Apr. 14, 2025).

The First District Court of Appeal, in a *partially* published opinion, has affirmed a trial court's rejection of a challenge to various charges imposed by the Mendocino City Community Services District (District) without first obtaining voter approval.

Background

Cal. Water Code §§ 10700 through 10717 (Act) authorizes the District to establish programs for the management of groundwater resources and imposes procedures the District must follow to enact such a program, including noticed public hearings and an opportunity for registered voters to file written protests. (§§ 10703-10706) If the District proposes a groundwater management program that garners protests from more than 50 percent of eligible voters, the program shall be abandoned, and the District may not consider another program for a period of one year. (§ 10706). The procedures codified in §§ 10703 to 10706 are mandatory.

The Act also authorizes the District to fix and collect rates for the extraction of groundwater (§ 10708), and to levy a water replenishment assessment (§ 10709). Before the District may levy a water replenishment assessment or otherwise fix and collect rates for the extraction of groundwater, it must hold an election and obtain the majority approval of the voting electorate (§ 10710).

The District adopted a series of ordinances and related resolutions in 2020: Ordinance Nos. 2020-1, 2020-2 and 2020-3. These measures collectively established groundwater management regulations and fees, and a water shortage continency plan. Ordinance No. 2020-1 requires, among other things, that all developed parcels in the District must have a valid groundwater extraction permit and limit groundwater extraction to an allotment approved by the District. To obtain the required permit, the property owner must submit a written application accompanied by a fee in an amount determined by the Board to cover the cost of administering this groundwater extraction permit process. Many applicants must submit a hydrological study and pay a fee as determined by the Board to cover the cost for the District to review the study. All applicants must agree to install a water meter, and once an extraction permit is issued, the permittee must submit monthly meter readings to the District. Ordinance No. 2020-1 imposes misdemeanor and financial penalties for failure to comply with its

requirements and contains a prevailing party attorney's fee provision.

Ordinance No. 2020-2 establishes water conservation policies and year-round water conservation measures, and it incorporates a water shortage contingency plan that the District adopted pursuant to a related resolution. This ordinance establishes misdemeanor and financial penalties, as well as other enforcement procedures, and contains a prevailing-party attorney's fee provision.

Ordinance No. 2020-3 set fees and charges for the 2020–2021 fiscal year, and thereafter unless revised. This ordinance is not limited to groundwater management programs but lists all fees and charges adopted by the District.

At the Trial Court

A landowner within the District sued for declaratory and injunctive relief ruling that the District exceeded its authority and failed to proceed as required by law when adopting the 2020 measures. He argued that fees imposed by the District must be adopted pursuant to § 10710's requirement for voter approval through an election. He did not challenge the District's compliance with §§ 10703 to 10706 nor with Proposition 218, which have mechanisms for securing popular approval through a majority-protest procedure.

The trial court rejected all of Gomes's claims, except that it found that Ordinances 2020-1 and 2020-2 contained an invalid provision authorizing the District to recover attorney's fees and costs for prevailing in litigation. The trial court ruled that the District lacked statutory authority to adopt these provisions, but that they were severable. These rulings adverse to the District were not appealed.

The Court of Appeal's Decision

The Court of Appeal ruled that the Legislature did not require voters to approve in an election all groundwater-related charges, nor did it limit application of §§10708 and 10710 to per-unit charges for extracting groundwater. A rate that requires majority voter approval is any charge that is assessed for a specific activity: "the extraction of groundwater." A rate "for the extraction of groundwater" means a charge for extracting groundwater. The monthly charge imposed by the District on all developed parcels in the District that extract groundwater or receive extracted groundwater is not a rate for extracting groundwater. It is a fee that property owners using groundwater pay the District for groundwater management services in general. The District has authority to charge for its groundwater management services that is independent of, and not limited by, its authority to fix and collect rates for the extraction of groundwater.

The groundwater extraction permit charges also are not a rate "for the extraction of groundwater." By paying permit-related fees, a property owner secures permission to participate in a program for the preservation of a finite groundwater resource, a program that has been implemented in accordance with §§ 10703 through 10706. Unless a property owner already has a permit, payment of permit fees is a prerequisite for participating in the groundwater program—which means the fees are a prerequisite for extracting groundwater within the district—but they are not themselves a charge for extracting groundwater. A property owner might pay to obtain a permit and allotment because the ordinance requires "all developed parcels" to have one, but that does not necessarily mean the property owner is actively engaged in extracting groundwater. There is a subtle but important distinction between a charge that is a prerequisite to an activity and a charge that is levied for actually engaging in the activity. A permit is a prerequisite to participating in an activity, here the extraction of groundwater, but having a permit does not mean the permittee is actually engaged in the permitted activity. Paying the fees is a necessary—but not sufficient—condition for the extraction of groundwater. If the permit-related fees are any kind of rate, they are a rate for obtaining a permit to extract the allotted amount of groundwater, not a rate for the extraction of that groundwater. The service for which the District is charging is its determination of how much groundwater a property owner may draw, consistent with the District's water use standards and a site's hydrology. The property owner pays the permit fees to obtain this assessment and approval; and the property owner pays without regard to whether—or how often—he or she actually extracts this quantity of groundwater. Indeed, Ordinance No. 2020-1 requires all owners of developed property to have a permit—and have paid the associated fees—even if they are not actively engaged in the extraction of groundwater.

Finally, the penalties the District imposes for violating its groundwater ordinances are not charges for extracting groundwater, but fines for violating the ordinances. A penalty is not a charge paid for a service or benefit. It is a mechanism for enforcing a regulatory scheme.

Conclusion and Implications

In the end, the court found:

> . . .in the published portion of the opinion we reject Gomes's claim on the merits and affirm the judgment. As we shall explain, although the ordinances Gomes challenges in this action impose fees on property owners that relate to the district's groundwater management services, these fees are not imposed "for the extraction of groundwater" (§ 10710) and, thus, do not require voter approval in the manner set forth in section 10710.

The court's *partially* published opinion is available online at https://www4.courts.ca.gov/opinions/documents/A167862.PDF
(Lauren J. Caster, Derek Hoffman)

CALIFORNIA WATER™
LAW & POLICY Reporter

California Water Law & Policy Reporter
Argent Communications Group
P.O. Box 201
Galena, IL 61036-0201

CHANGE SERVICE REQUESTED

FIRST CLASS MAIL
U.S. POSTAGE
PAID
AUBURN, CA
PERMIT # 108