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CALIFORNIA WATER NEWS

STUDY REVEALS COLORADO RIVER BASIN GROUNDWATER LEVELS DROPPING FASTER THAN SURFACE WATER

With Colorado River Basin (Basin) operating guidelines set to expire in October 2026 and negotiations still underway, the seven Basin States, federally recognized tribes, and Mexico have seen a twenty percent decrease in Colorado River flows over the past century. Surface water shortages in the Basin have been well-documented and widely publicized, while groundwater conditions have historically been less visible. A recent study from researchers at Arizona State University, however, reveals that groundwater underlying the Basin is depleting at a faster rate than surface water supplies in the Colorado River, Lake Mead, and Lake Powell.

Background

More frequent and severe droughts, variable water cycles, and increasing demands for Colorado River water have reduced the reliability and availability of surface water resources in the Basin. This reduction, in turn, has put additional pressure on the region's groundwater supplies. A study by K. Abdelmohsen et al. of Arizona State University, published in *Geophysical Research Letters* (May 2025), analyzed over two decades of NASA satellite observations to find that increased dependence on groundwater in the Basin has led to rapid rates of depletion from 2003 to 2024.

According to the study, groundwater level reductions in the Basin are outpacing observed surface water losses. Over the past 20 years, the Basin has lost 27.8 million acre-feet of groundwater—nearly equal to Lake Mead's full capacity of 31 million acre-feet. The study also finds that groundwater depletion has accelerated: since 2015, the Basin has lost groundwater at triple the rate of the previous decade, with the most pronounced increases occurring in Lower Basin states, Arizona and California.

Co-Managing Colorado River Water Resources

The study reports agricultural use has contributed to groundwater depletion in the Basin since the 1980s, accounting for 52 to 80 percent of total water withdrawals. The expansion of industrial farming—including crops like alfalfa and perennial trees—has been accompanied by investments in deeper wells and greater pumping capacity, further exacerbating the trend. Data centers, while less water-intensive than agriculture, represent a new, rising demand for limited supplies. Analysis by the study authors suggests that the increases in depletion in recent years are consistent across the Basin, despite regional differences in groundwater use and the geographic variation of individual subbasins.

The study argues coordinated co-management of groundwater and surface water supplies is critical to supporting climate resilience and protecting the region's long-term groundwater sustainability. California began regulating groundwater on a statewide level under its Sustainable Groundwater Management Act (SGMA) in 2014. While groundwater dependence in the state continues to rise and the highest priority basins have not stabilized or recovered, the study acknowledges that the full implementation of SGMA has not taken full effect, and measurable improvements likely require more time. Arizona established its own Groundwater Management Act in 1980 with the sustainability goal to achieve safeyield by 2025. Only 18 percent of Arizona (by area) is currently subject to active groundwater management, but depletion rates in those active management areas have slowed.

The study's authors contend more coordination is needed, including federal oversight and collective research into the consequences of groundwater depletion like risks to food production, human and environmental health, economic stability, and climate resilience. They consider the inclusion of groundwater planning in the ongoing interstate Basin discussions to be a "national imperative."

This message coincides with the prospect of federal intervention into the ongoing Colorado River operation negotiations, by executive or legislative action. At a June 2025 conference, a senior adviser to Interior Secretary Doug Burgum commented that should

the Basin states fail to reach an agreement on post-2026 operations, the Secretary is prepared to step into his role as "watermaster" over the Lower Basin states. The watermaster position has its origins in a 1928 law that gives the Secretary authority to apportion water– both surpluses and shortages– in California, Arizona, and Nevada. The adviser also opined that legislative changes to the collection of laws and regulations that govern the Basin could be warranted.

Conclusion and Implications

As surface water is projected to become scarcer in the Colorado River Basin, the Arizona State University study highlights the additional dangers of diminishing groundwater supplies. The study urges Basin stakeholders to effectively manage groundwater in conjunction with surface water allocations as negotiations over post-2026 Colorado River operations continue.

A copy of the Colorado River Basin groundwater study is currently available at: https://agupubs.onlinelibrary.wiley.com/doi/epdf/10.1029/2025GL115593.
(Jillian Gronnerud, Austin Cho)

LAND CONSERVATION AND WATER RIGHTS RESTORATION FOR THE YUROK TRIBE

The Yurok Tribe has regained ownership of 47,097 acres of ancestral land along the lower Klamath River, which is reportedly the largest land return in California history.

Background

The reclaimed area includes Blue Creek, now renamed the Blue Creek Salmon Sanctuary and Yurok Tribal Community Forest. Blue Creek is vital to the Yurok people spiritually, culturally, and ecologically. Industrial timber operations have occurred in the area for decades, however, the creek has maintained high water quality and ecological resilience.

The Plan

Logging operations reportedly disrupted natural wood recruitment in streams, reducing vital fish habitat. The Yurok Tribe plans to reintroduce fallen wood to the streams, creating cover and resting spots for salmon at different life stages. In addition, the following illustrate various components of the Plan.

The Return of Good Fire

The tribe plans to reintroduce controlled burns—historically used by Indigenous communities for forest management. These "good fires" help reduce underbrush, prevent catastrophic wildfires, and encourage growth of native plants. It creates a healthier, more resilient forest ecosystem, mimicking natural cycles disrupted by industrial logging.

Upland Forest Rehabilitation

Industrial timber practices have according to some stakeholders left ecological scars, especially on hillslopes. The Yurok aim to rebalance the forest structure by managing tree density and promoting biodiversity. This could involve thinning overgrown areas, replanting native vegetation, and restoring wildlife corridors.

Creek Habitat Restoration

Blue Creek's fish habitat was also reportedly degraded by the loss of naturally fallen wood, which helps create stream complexity. The tribe will add logs and woody debris back into the creek—a process called "wood loading." Wood loading slows down water flow; creates deep pools for adult salmon; and offers shelter and feeding areas for juvenile fish.

Holistic Watershed Management

The plan undertakes the whole landscape as interconnected—the forest, stream, and ocean. Restoration is not just about salmon, but instead about reviving ecosystem functions for generations to come. The efforts also support cultural revitalization, ensuring the land nurtures both people and wildlife.

Funding Snapshot

$70 million is slated for the plan and related projects. Blue Creek land back project was financed

through a smart mix of mostly private funding sources, with limited public support. About $56 million came from private capital, including carbon credit sales, New Markets Tax Credits, and philanthropic foundations like the Packard and Wyss Foundations. Only $8 million came from direct state grants, notably from California's Wildlife Conservation Board and State Coastal Conservancy. An additional $3.3 million from carbon revenue is being directed to the Yurok Tribe for ongoing land stewardship.

This financing model reflects a trend where innovative conservation deals rely less on public dollars and more on market-based and philanthropic mechanisms.

Conclusion and Implication

This land conservation and water rights restoration for and by the Yurok Tribe is a landmark effort likely to effectuate positive impacts for decades to come. The plan may implicate broader efforts with the Klamath River recovery efforts, which involves in part removal of four dams. To this large impact for the Klamath River ecosystem, and the removal of four dams, over four hundred miles of salmon habitat upstream are now accessible again. Blue Creek provides the first major cold-water refuge for migrating salmon headed upriver, making it a literal lifesaver in a warming climate.

The Yurok Tribe's restoration and stewardship of the forest and streams directly strengthens the entire watershed's ecological health. The tribe's fisheries department, reportedly staffed with nearly 100 specialists, is now central to managing salmon survival and monitoring outcomes basinwide.

Collectively, all of these efforts are a powerful convergence of land justice, climate action, and biodiversity conservation. Ultimately, the plan and its projects are not just a land return. This is a linchpin in one of the most ambitious river and fish recovery efforts in U.S. history.
(Wes Miliband)

ABANDONED VESSELS ARE REMOVED FROM THE SACRAMENTO-SAN JOAQUIN DELTA BY THE STATE LANDS COMMISSION

The California State Lands Commission recently led its largest-ever abandoned vessel abatement and restoration at the Skarry site in Sevenmile Slough. These vessels had deteriorated over years, posing environmental, navigational, and public-safety risks.

Background

Sevenmile Slough is a waterway in the Sacramento-San Joaquin River Delta, located northeast of Brannan Island, between Twitchell Island and Andrus Island. It connects to the San Joaquin River and features marshy areas, riparian vegetation, and tule islands, making it important habitat for various wildlife. The slough is also part of Brannan Island State Recreation Area, offering day-use areas and recreational opportunities.

The California State Lands Commission is a state agency that manages and protects public lands and waterways, including sovereign lands (like tidal and navigable waters) and school lands. It is responsible for ensuring public access, preserving natural and cultural resources, and promoting responsible economic development. The Commission is comprised of the Lieutenant Governor, the State Controller, and the State Director of Finance.

Skarry Brothers, a marine construction firm, had left heavy equipment in the water, including crane barges, tugboats, and other debris. The last responsible owner, Michael Skarry, passed away without clearing the site.

The Removal and its Impacts

Removal involved almost 1,000 tons of debris and over 1,000 gallons of diesel fuel, as well as gathering recycled scrap metal and disposing of other materials properly. A daily team of fourteen specialists, including divers and salvage crews, conducted underwater searches and discovered additional submerged vessels.

This effort is illustrative of a broader, multi-year effort by the State Lands Commission to inventory and eliminate abandoned commercial vessels. Part of the goal reportedly is to enhance public safety, protect the environment, improves access, and save taxpayer money. Officials emphasized collaboration

and pledged ongoing commitment to protecting California waterways.

Legal Framework regarding Abandoned Vessels in California Waterways

California has a robust legal framework to support the removal of abandoned vessels from its waterways. Here are the key laws and programs:

- Senate Bill 595 (Wolk, 2011): Grants the State Lands Commission authority to remove abandoned or trespassing vessels without notice if they pose navigational, environmental, or public safety hazards.

- Assembly Bill 1323 (2015): Allows public agencies to remove marine debris—including sunken or beached vessels—after ten days if it's in or on public waterways or state lands.

- Harbors and Navigation Code § 525: This statute makes vessel abandonment illegal without consent of the property owner; holds the last registered owner liable for removal costs; and imposes fines of $1,000 to $3,000, plus potential reimbursement of removal expenses. More generally, sections 550 through 552 provide expedited procedures and environmental safeguards for removing marine debris, including abandoned vessels.

Funding and Support Programs

Programs and statutory authority provide a revenue stream for these types of clean-up programs. The Surrendered and Abandoned Vessel Exchange (SAVE) combines the Abandoned Watercraft Abatement Fund and Vessel Turn-In Program. SAVE offers grants to local agencies for removal, storage, and disposal of recreational vessels.

Public Resources Code § 6302 gives the State Lands Commission jurisdiction over navigable waters and authority to remove derelict vessels through an administrative process, including significant fines. Violating California's abandoned vessel laws can lead to significant financial and legal consequences, such as: (i) Harbors and Navigation Code § 525 authorizing fines ranging from $1,000 to $3,000 for abandoning a vessel without consent, and (ii) holding the last registered owner is liable for removal and disposal costs, even if they did not personally abandon the vessel. Additional consequences include: (i) liens on property to recover costs; (ii) legal actions or enforcement actions from agencies like the State Lands Commission; and (iii) criminal charges for more severe cases involving environmental damage or repeated offenses.

Conclusion and Implications

Abandonment of vessels would ideally be avoided. The public policies and legal mechanisms provide avenues and reasons to avoid unlawful abandonment. Inevitably, abandonment occurs. Programs and efforts such as the one recently undertaken in the Sacramento-San Joaquin Delta provides various positive implications to the environment and public safety by removing tons of debris and fuel, while eliminating navigational hazards, particularly in high-use areas such as the Delta. The legal authorities and funding mechanisms described above, coupled with this clean-up effort, provide proof-of-concept and that public agencies can intervene effectively.
(Wes Miliband)

REGULATORY DEVELOPMENTS

EPA ANNOUNCES ITS INTENT TO UPDATE 2024 EFFLUENT LIMITATIONS GUIDELINES FOR STEAM ELECTRIC POWER

On June 30, 2025, the U.S. Environmental Protection Agency (EPA) Administrator Lee Zeldin announced the agency's intent to update the 2024 Effluent Limitations Guidelines (ELGs) for Steam Electric Power Generating Units. This action advances the goals of President Trump's "Unleashing American Energy" Executive Order [https://www.whitehouse.gov/presidential-actions/2025/01/unleashing-american-energy/] by ensuring the country has "reliable, affordable electricity while protecting our nation's water resources under the federal Clean Water Act."

Background

ELGs are national industry-specific wastewater regulations based on the performance of demonstrated wastewater treatment technologies (often called "technology-based limits"). They are intended to represent the greatest pollutant reductions that are economically achievable for an entire industry and are incorporated into permits designed to be protective of human health and environmental quality.

Steam electric facilities use fuels (such as coal, oil, and natural gas) or nuclear reactions to heat water in boilers, which generates steam. The steam is used to drive turbines connected to electric generators.

Steam electric power plants discharge large volumes of wastewater containing pollutants into waters of the United States. The discharges include toxic and bioaccumulative pollutants (selenium, mercury, arsenic, nickel), halogen compounds (bromide, chloride, iodide), nutrients, and total dissolved solids which can cause health and environmental harm through surface water and fish tissue contamination. The pollutants discharged by this industry can cause severe health and environmental problems in the form of cancer and non-cancer risks in humans, lowered IQ among children, and deformities and reproductive harm in fish and wildlife. Many of these pollutants, once in the environment, remain there for years. Due to their close proximity to these discharges and relatively high consumption of fish, some minority and low-income communities have greater exposure to, and are, therefore, at greater risk from, pollutants in steam electric power plant discharges.

The Process

The Steam Electric Power Generating Effluent Guidelines apply to a major portion of the electric power industry. These are plants primarily engaged in the generation of electricity for distribution and sale which results primarily from a process utilizing fossil-type fuel or nuclear fuel in conjunction with a thermal cycle employing the steam water system as the thermodynamic medium. There are approximately 914 of these facilities located throughout the United States

EPA reviewed existing regulations and identified the 2024 Steam Electric ELG Rule as a potential undue burden on energy resources. The 2024 Rule imposes stringent requirements on certain wastewaters from facilities, requiring facilities not to discharge any pollutants from certain types of industrial wastewaters. These types of requirements are known as zero-discharge requirements.

The Proposed Rule

On March 12, 2025, Administrator Zeldin announced EPA would reconsider 2024 pollution limits for coal power plants to help unleash American energy, advance President Trump's Day One executive orders, and Power the Great American Comeback. [*See:* https://www.epa.gov/newsreleases/epa-announces-it-will-reconsider-2024-water-pollution-limits-coal-power-plants-help]

This summer, EPA intends to take the next step to advance this action by proposing to extend compliance deadlines for many of the zero-discharge requirements in the 2024 Rule and the deadline for facilities to decide whether to submit a Notice of Planned Participation. EPA also intends to explore other flexibilities to promote reliable and affordable power generation.

This initial rulemaking will also seek additional information on zero-discharge technologies, including cost and performance data. This information will help EPA determine whether to move forward with a second rulemaking to address zero-discharge technologies and other flexibilities to ensure the U.S. electric utilities can better meet projected energy demand over the next decade. The scope of this second rulemaking could also address unmanaged combustion residual leachate, another type of wastewater.

EPA Administrator Lee Zeldin Chimes In

EPA Administrator Zeldin was quoted as saying:

> Domestic energy production has never been more important than it is now. As our electric grid faces unprecedented load growth, EPA remains committed to promoting reliable, affordable, and domestically-sourced resources—including beautiful, clean coal—to support American manufacturing, job creation, and economic and energy independence. . . .We know there are serious concerns about the compliance timelines, and we must consider more realistic options that may prevent the burdensome costs required by the current regulation from hurting American families.

Conclusion and Implications

For more information about the current Steam Electric Effluent Limitations Guidelines and Standards, *see:* https://www.epa.gov/eg/steam-electric-power-generating-effluent-guidelines
(Robert Schuster)

KAWEAH REVISES GROUNDWATER MANAGEMENT PLANS TO AVOID STATE WATER BOARD ENFORCEMENT

In June 2025, the State Water Resources Control Board (Water Board) indicated that the groundwater sustainability plan for the Kaweah subbasin in the San Joaquin Valley could be returned to oversight by the Department of Water Resources (DWR), thus avoiding jurisdiction, fees, and a potential interim plan by the Water Board. This is the second plan to satisfy Water Board concerns so as to be returned to DWR's jurisdiction.

Background

Enacted in 2014, SGMA ushered in a paradigm shift in the local management of groundwater. Under the Sustainable Groundwater Management Act (SGMA), local Groundwater Sustainability Agencies (GSA) are tasked with achieving long-term sustainability of their groundwater basins. A single subbasin may be managed by multiple GSAs. These GSAs work in tandem to develop a plan to achieve the sustainability goals of SGMA, *i.e.* a Groundwater Sustainability Plan (GSP). GSPs are comprehensive documents for how groundwater sustainability will be achieved and how the basin will avoid undesirable results, such as groundwater depletion, land subsidence, and negative water quality impacts, among other negative results. SGMA uses "minimum thresholds" to set numeric values to define undesirable results.

Under SGMA, the Department of Water Resources first reviews GSPs as to whether they are complete or incomplete. If a GSP is deemed incomplete, for instance because it is missing required components under SGMA or because DWR determines the GSP will not achieve the sustainability goals of SGMA, DWR will typically return the GSP for further revision and resubmission. If, however, a GSP fails to meet the sustainability objectives of SGMA, DDWR will deem the GSP "inadequate." An inadequate designation results in a jurisdictional shift from DWR to the State Water Board. SGMA provides that:

> . . . in those circumstances where a local groundwater management agency is not managing its groundwater sustainably, the State needs to protect the resource until it is determined that a local groundwater management agency can sustainably manage the groundwater basin or subbasin." (Wat. Code, § 10735 et seq.)

To ensure SGMA is implemented successfully, the State Water Board may temporarily intervene in groundwater management after DWR determines

that proposed management of a groundwater basin is inadequate due to deficiencies in the GSP(s) for the basin.

The Water Board will first consider whether to designate a basin as "probationary," which triggers several requirements. The State Water Board may designate a basin probationary if state intervention authorities are triggered and after providing notice and holding a public hearing (Wat. Code, § 10735.2, subd. (a)). The overall goal of probation is to gather information to help local GSAs address deficiencies in their plans, so they can sustainably manage their groundwater resources as soon as possible. During a probationary designation, the State Water Board will require many groundwater extractors to report their extractions, which will help resolve data gaps related to groundwater use, and State Water Board staff will provide guidance to GSAs working to develop an adequate sustainability plan (or plans). Concurrently, GSA efforts to fix deficiencies should continue.

After GSAs have adopted a revised plan (or plans) that resolve the deficiencies, they can seek to exit probationary status by submitting the plan (or plans) to the Water Board. If the Water Board determines that deficiencies were addressed, the Water Board may resolve to have the GSA (or GSAs) exit probation. If, however, deficiencies in the GSP remain, the Board has authority to institute an interim plan, which includes corrective actions, a schedule for those actions, monitoring, and enforcement. To date, no basin has been placed on probation.

Previously, the Chowchilla subbasin also transitioned in early June from state enforcement back to DWR oversight. The Water Board is expected to formally consider the staff recommendation for Kaweah at a meeting scheduled for the fall. Returning to DWR oversight would help landowners avoid certain fees under the Sustainable Groundwater Management Act.

The Chowchilla Subbasin

The Kaweah subbasin recently became the second subbasin in California's San Joaquin Valley to avoid direct state intervention in its groundwater management. Water Board staff indicated that the revised GSPs submitted by the East, Mid, and Greater Kaweah GSAs were sufficient to recommend a return to Department of Water Resources (DWR) oversight.

The revised GSP specifically addresses four critical issues identified by Water Board staff: (1) chronic lowering of groundwater levels, (2) land subsidence, (3) degradation of water quality, and (4) depletion of interconnected surface water. For example, the revised plan includes a $5.8 million domestic well protection program, developed in partnership with Self-Help Enterprises, a Visalia-based nonprofit. This initiative aims to assist residents whose domestic wells have gone dry due to declining groundwater levels, serving as a potential model for other subbasins. However, the program has recently encountered significant challenges. A reduction in state funding for Self-Help Enterprises has created considerable concern among groundwater agencies and prompted discussions about the financial responsibility for domestic well issues. Accordingly, while it appears that Kaweah's mitigation program will continue, it will likely require modifications.

Conclusion and Implications

The revised GSP for the Kaweah subbasin is currently accessible on the DWR portal for a 75-day public comment period, concluding on September 1st. DWR will not evaluate the GSP unless requested by the Water Board or until state intervention is officially complete.

In comparison to Kaweah, other subbasins in the San Joaquin Valley face varying stages of enforcement. The Tulare Lake and Tule subbasins have been placed on probation, though the Kings County Farm Bureau is challenging sanctions in Tulare Lake. Probationary measures are commencing in the Tule subbasin. The Kern subbasin received an extension after its February probationary hearing, with its next hearing scheduled for September 17th, acknowledging substantial progress. The Delta-Mendota subbasin is expected to come before the board later this year, and the Pleasant Valley subbasin recently received an inadequate designation for its plan.

The Kaweah subbasin's avoidance of state intervention marks a positive step toward sustainable management of the subbasin. However, it is unclear if future changes to the plan will be needed to achieve sustainability and how agencies will share costs of implementation. Kaweah's Revised GSP available at: https://sgma.water.ca.gov/portal/state/preview-intervention/4
(Steven Moctezuma, Miles Krieger)

LAWSUITS FILED OR PENDING

FIFTH DISTRICT COURT OF APPEAL RECEIVES BRIEFING ON STATE WATER BOARD'S AUTHORITY TO IMPOSE INTERVENTION FEES UNDER SGMA

On June 6, 2025, the State Water Resources Control Board (State Water Board) responded to an *amicus brief* filed by the City of Lemoore (City) in *Kings County Farm Bureau v. Cal. State Water Resources Control Board*, on appeal before the Court of Appeal, Fifth Appellate District. The State Water Board's appeal challenges a 2024 preliminary injunction by the Kings County Superior Court, which found the State Water Board overstepped its authority to impose fees on pumpers following the Tulare Lake Subbasin's probationary designation under the Sustainable Groundwater Management Act (SGMA). The City's *amicus brief* argues the State Water Board's fees violate Proposition 218 and rule against unfunded mandates, while the State Water Board responds that Proposition 218 does not apply. [*Kings County Farm Bureau v. Cal. State Water Resources Control Board,* Case No. F088720 (5th Dist. 2025).]

Background

In 1996, California voters approved Proposition 218, adding Articles XIIIC and XIIID to the state constitution to modify the tax and assessment mechanisms for public agencies to fund projects and services. (Cal. Const. art. XIII C, art. XIIID.) Article XIIID regulates propery-related fees and charges, such as water rates. (Art. XIIID § 2(e).) In short, Proposition 218 limits the amount of property-related fees to the cost of providing the services and requires specific procedures and findings for their adoption. (*Id.* at § 6(b)(1).)

The California Legislature's enactment of SGMA in 2014 made local Groundwater Sustainability Agencies (GSA) responsible for developing and implementing Groundwater Sustainability Plans (GSP) for the sustainable management of most of the state's groundwater basins by 2040. (Wat. Code, §§ 10720-10738.) Each GSP must explain how groundwater will be managed to achieve a "sustainable yield," which SGMA defines as the "maximum quantity of water that can be withdrawn annually from a groundwater supply without causing an undesirable result." (*Id.* at § 10721(w).)

The Legislature tasked the Department of Water Resources (DWR) with evaluating each GSP to determine whether it satisfies the goals and objectives of SGMA or should be deemed incomplete or inadequate. (Wat. Code, § 10733.4(d).) If DWR finds a GSP to be inadequate, the State Water Board may designate the groundwater basin as "probationary" to intervene and impose interim regulations. (Wat. Code, § 10735.2(a)(3).) Groundwater users in a probationary basin must report extractions, install meters, allow well inspections and testing, and pay interim plan implementation fees.

The Tulare Lake Subbasin

The Tulare Lake Subbasin is a critically overdrafted, high-priority groundwater basin in the San Joaquin Valley, with a history of low groundwater levels, land subsidence, and water quality issues. The five GSAs for the Subbasin developed and submitted a GSP, which DWR—in coordination with the State Water Board—deemed incomplete in 2020 and inadequate in 2022. After the DWR's "inadequate" determination and a public hearing, the State Water Board adopted a resolution placing the Subbasin on probationary status in 2024. (Resolution No. 2024-012.) Leading up to the hearing, the State Water Board also adopted emergency regulations for probationary basins that authorized a base filing fee of $300 per well, a volumetric pumping fee of $20 per acre-foot, and a 25% late penalty fee for failure to submit timely reports. (Cal. Code Regs., tit. 23, § 1040(b)(1).)

The Kings County Farm Bureau sued the State Water Board in May of 2024, seeking to enjoin the regulations and obtain a declaration, *inter alia*, that the State Water Board exceeded its authority and violated SGMA when it adopted Resolution 2024-012. On September 12, 2024, the trial court granted

a preliminary injunction, finding a likelihood that the State Water Board ignored the "good actor" provision under SGMA, failed to give proper notice to landowners, issued underground regulations, and exceeded its authority over GSP revisions. The State Water Board appealed the trial court's ruling later that month.

The City's *Amicus* Brief and the State Water Board's Answer

The City of Lemoore is located within the South Fork Kings GSA, one of the five GSAs overlying the Tulare Lake Subbasin. In support of the Kings County Farm Bureau, the City's amicus brief argues the State Water Board's adoption of extraction fees and well mitigation fees was not authorized under Proposition 218. For fees to satisfy the constitutional requirements under Proposition 218, they should "have a clear, undisputable and necessary nexus to providing the service, in this case, potable water service." The City argues that the required nexus does not exist for the State Water Board's fees, which are regulatory in nature. To the extent the fees can be imposed on the City without adding them to water rates, the City contends they would violate the prohibition against unfunded mandates and—in any event—the basis for the fees is unknown and therefore arbitrary and capricious.

The State Water Board disputes the City's assertions, which it contends go beyond the scope of the Court of Appeal's review and fail as a matter of law. For the scope of review, the State Water Board responds that the City's arguments were not raised by the parties at trial, so they cannot be raised for the first time on appeal. As a matter of law, the State Water Board argues that SGMA's state intervention fees are regulatory fees, authorized under Section 1529.5 of the Water Code, and are based on groundwater extraction rather than property ownership. They are therefore not subject to Proposition 218. Further, the State Water Board argues that the fees are not an unfunded mandate because the state has not imposed a "new program or higher level of service" on the City without corresponding funding.

Conclusion and Implications

The State Water Board seeks to lift the trial court's preliminary injunction and reinitiate the probationary sanctions it adopted for the Tulare Lake Subbasin. With the latest exchange of briefing from the City of Lemoore and the State Water Board, the Court of Appeal is now asked to determine whether the fees adopted from the probationary hearing are subject to Proposition 218. The outcome of the appeal may have far-reaching implications as the State Water Resources Control Board considers probationary status for other groundwater basins in the state. As of this writing, the Court of Appeal for the Fifth District has not yet decided on the case.
(Mary Pat Peterson, Austin Cho)

RECENT FEDERAL DECISIONS

RECALIBRATING NEPA COMPLIANCE: THE U.S. SUPREME COURT'S CLARIFICATION ON THE PURPOSE AND SCOPE OF ENVIRONMENTAL REVIEW

Seven County Infrastructure Coalition v. Eagle County, Colorado, ___U.S.___, Case No. (May 29, 2025).

On May 29, 2025, the U.S. Supreme Court issued a decision in *Seven County Infrastructure Coalition v. Eagle County, Colorado*, reversing the D.C. Circuit Court of Appeals' *vacatur* of a major rail project and clarifying the contours of agency obligations under the National Environmental Policy Act (NEPA).

Background

The case centered on an 88-mile freight rail project designed to transport crude oil from Utah's Uinta Basin to the national rail network and ultimately to Gulf Coast refineries. The Surface Transportation Board (STB) had approved the project after preparing a 3,600-page Environmental Impact Statement (EIS). However, the D.C. Circuit invalidated that approval, finding the STB's environmental review deficient for not fully analyzing the upstream and downstream environmental effects, namely, oil drilling and refining operations.

In a 5-3 decision authored by Justice Kavanaugh, the Court ruled that NEPA does not require agencies to analyze environmental effects of projects outside their statutory authority or those separated in time or geography from the project under review. The opinion significantly narrows the scope of NEPA review and signals greater deference to agency discretion, especially in large infrastructure cases.

The Supreme Court's Decision

NEPA's Procedural Nature Reaffirmed

The Supreme Court reiterated a foundational principle: NEPA is a procedural statute, not a substantive environmental mandate. Agencies are required to prepare an Environmental Impact Statement (EIS) for projects that significantly affect the environment, but NEPA does not constrain the agency's ultimate decision to approve a project, even in the face of adverse environmental impacts. The statute's role is to ensure informed decision-making, not to dictate outcomes.

The Court underscored that courts reviewing EIS adequacy should not substitute their judgment for that of the agency, so long as the agency has reasonably considered the significant effects of the project at hand and feasible alternatives. This reinforces a longstanding principle from cases like *Robertson v. Methow Valley Citizens Council* and *Vermont Yankee Nuclear Power Corp. v. NRDC*, that courts should not use NEPA as a tool to obstruct infrastructure development under the guise of procedural scrutiny.

Clarifying the Scope of Environmental Effects

A core dispute in the case was whether the STB had to analyze the downstream environmental effects from increased oil refining and the upstream impacts from more drilling activity facilitated by the railway. The D.C. Circuit had found these impacts to be "reasonably foreseeable" and therefore within the EIS' scope.

The Supreme Court disagreed, holding that NEPA's textual focus is the "proposed action," not remote or speculative future projects initiated by third parties. It emphasized that even if such outcomes are foreseeable, they do not impose a legal obligation on the agency to analyze them, especially if the agency has no control over those effects.

The Court distinguished between environmental impacts that are directly or indirectly caused by the project and those that result from separate, independent projects. NEPA, the Court explained, does not require the evaluation of effects from projects the agency neither initiates nor regulates, citing *Department of Transportation v. Public Citizen*, 541 U.S. 752 (2004) and *Metropolitan Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766 (1983) to support this limitation.

The Court stated:

> To be clear, the environmental *effects* of the project at issue may fall within NEPA even if those *effects* might extend outside the geographical territory of the project or might materialize later in time—for example, run-off into a river that flows many miles from the project and affects fish populations elsewhere, or emissions that travel downwind and predictably pollute other areas. Those so-called indirect effects can sometimes fall within NEPA, as the Government explained at oral argument. . . .But if the project at issue might lead to the construction or increased use *of a separate project*—for example, a housing development that might someday be built near a highway—the agency need not consider the environmental effects *of that separate project*. To put it in legal terms, the separate project breaks the chain of proximate causation between the project at hand and the environmental effects of the separate project. . . . Moreover, and importantly, the Board here possesses no regulatory authority over those separate projects . . . In other words, agencies are not required to analyze the effects of projects over which they do not exercise regulatory authority. . . . Simply stated, a court may not invoke but-for causation or mere foreseeability to order agency analysis of the effects of every project that might somehow or someday follow from the current project. . . . In this case, in any event, the NEPA question is not close. The Board did not need to evaluate potential environmental impacts of the separate upstream and downstream projects. As to other projects upstream, the EIS rightly explained that the environmental consequences of future oil drilling in the Basin are distinct from construction and operation of the railroad line.

Deference to Agency Discretion

The opinion placed a renewed emphasis on deference to agency expertise in determining the scope and level of detail of an EIS. The Court warned against judicial micromanagement, stating that courts should not demand excessive detail or impose rigid length requirements—an approach codified in the 2023 BUILDER Act, which limits EIS documents to 150 pages and mandates completion within two years.

The Court also clarified that even where an EIS may be deficient, such shortcomings do not automatically invalidate agency decisions. *Vacatur* is not required unless the deficiency would likely have changed the agency's ultimate approval. This serves to reduce the incentive for speculative litigation that targets tangential environmental effects in order to delay or derail projects.

Impacts on Environmental Litigation and Project Development

The ruling is poised to recalibrate NEPA litigation across the country. First, it substantially narrows the field of challengeable environmental effects, particularly in energy and transportation projects. Second, it sets a precedent that courts should no longer second-guess agency decisions about whether to evaluate downstream or upstream impacts, provided those projects are separate in time or space and outside the agency's jurisdiction.

The Court explicitly criticized the use of NEPA as a tool to stall projects, including renewable energy developments, under the guise of environmental review. This decision may embolden agencies to draw clearer boundaries in their EIS scopes, potentially expediting federal approvals for railroads, pipelines, highways, and clean energy infrastructure.

In the end, the Court stated:

> Citizens may not enlist the federal courts, "under the guise of judicial review" of agency compliance with NEPA, to delay or block agency projects based on the environmental effects of other projects separate from the project at hand. . . .We reverse the judgment of the Court of Appeals and remand the case for further proceedings consistent with this opinion.

Conclusion and Implications

The U.S. Supreme Court's decision in *Seven County Infrastructure Coalition v. Eagle County* marks a significant narrowing of NEPA's reach, reining in decades of expansive interpretations from lower courts. Agencies must still conduct thorough environmental analyses of the projects they propose or approve, but they are not required to account for remote, speculative, or tangential effects over which they have no control.

For practitioners, this decision underscores the importance of tailoring NEPA compliance to the spe-

cific project under review and clearly delineating the boundaries of responsibility. Agencies should document why certain environmental effects are excluded from analysis and support such decisions with citations to regulatory authority, or the lack thereof.

Going forward, project proponents can expect a more predictable, constrained NEPA process, and litigation strategies will need to adapt to a judicial climate more deferential to agency discretion. While this may streamline infrastructure development, it also narrows the window for environmental review, making early and targeted public participation in the EIS process even more critical. The Supreme Court's opinion is available online here: https://www.supremecourt.gov/opinions/24pdf/23-975_m648.pdf

(Darien Key)

NINTH CIRCUIT REMANDS EPA'S REFUSAL TO UPDATE INDUSTRIAL EFFLUENT GUIDELINES UNDER THE CLEAN WATER ACT

Waterkeeper Alliance, et al. v. US EPA, et al., ___F.4th___, Case No. 23-636 (9th Cir. June 18, 2025).

On June 18, 2025, the Ninth Circuit Court of Appeals ruled in favor of a coalition of environmental groups led by Waterkeeper Alliance in their challenge against the U.S. Environmental Protection Agency (EPA). The court's decision directed the EPA to reconsider its refusal to update technology-based water pollution standards for several industrial sectors—standards that, in many cases, have not been revised in over 30 years.

Background

These standards, known as effluent limitation guidelines (ELGs), govern how facilities treat wastewater before discharging it into public waterways such as rivers, lakes, and coastal waters.

The litigation arose from the EPA's final decision in its "Effluent Guidelines Program Plan 15" (Program Plan 15), published in 2023. The plan outlined which industrial categories the agency would prioritize for updated regulations. Petitioners—Waterkeeper Alliance, Bayou City Waterkeeper, Black Warrior Riverkeeper, San Antonio Bay Estuarine Waterkeeper, Tennessee Riverkeeper, and others—challenged the EPA's refusal to update ELGs for seven categories, including the plastics, petrochemical, and pesticide sectors. They alleged the EPA ignored legal obligations to review and revise these rules in light of technological advancements and emerging pollutants.

The Clean Water Act

At the heart of the case is the Clean Water Act (CWA), the foundational environmental statute that prohibits the discharge of pollutants into navigable waters without a permit. These permits are based on ELGs, which must reflect the best available control technologies and be updated as those technologies evolve. While the CWA mandates periodic review and revision of ELGs, the EPA has not revised water pollution standards for over 80 percent of the 59 industrial categories it regulates. Many of these standards date back to the 1980s and do not reflect modern pollution control practices or account for harmful, unregulated pollutants.

The Ninth Circuit's Decision

The court's ruling marks a significant victory for environmental and public health advocates who have long argued that the EPA has failed to meet its statutory obligations. It also sets an important legal precedent for how courts interpret the EPA's duty to revise outdated environmental regulations in response to technological and scientific developments.

The Ninth Circuit's opinion, authored by Judge Lucy H. Koh, found that the EPA's refusal to revise ELGs for seven specific industrial sectors was arbitrary and capricious under the Administrative Procedure Act (APA). The court remanded the decision back to the EPA for reconsideration or a more complete explanation.

At issue were ELGs for sectors such as petroleum refining, organic and inorganic chemical manufacturing, fertilizer and pesticide production, plastics molding and forming, and nonferrous metals manufacturing. The court held that the EPA's rationale for

excluding these categories from further review was inadequately supported, particularly because it failed to evaluate three key factors: (1) recent advancements in technology; (2) pretreatment standards for indirect dischargers; and (3) unregulated but harmful pollutants.

Regarding the first factor, the EPA did not adequately consider modern advancements in pollution control technologies. Many ELGs have remained unchanged since their original promulgation in the 1980s, despite significant improvements in treatment systems. Courts have consistently held that the CWA requires periodic review to ensure ELGs reflect current best practices. The Ninth Circuit emphasized that the EPA's failure to account for newer, more effective technologies undermines the core purpose of the statute.

Regarding the second factor, the EPA's review process overlooked facilities that discharge pollutants into public wastewater treatment systems rather than directly into surface waters. Known as indirect dischargers, these facilities are subject to separate pretreatment standards. The court noted that the EPA failed to explain whether it had evaluated these standards or how their exclusion affected its decision not to revise the associated ELGs.

As for the last factor, the EPA failed to properly address concerns about pollutants not currently covered by existing ELGs. Waterkeeper Alliance has pointed out that substances such as dioxins and 1,4-dioxane are persistent and carcinogenic compounds increasingly found in industrial discharges. An Environmental Integrity Project (EIP) analysis submitted in support of the lawsuit found that many facilities routinely discharge these harmful pollutants, which contribute to ecosystem damage and public health risks.

"Category Ranking Analysis"

The court criticized the EPA's reliance on its internal "Category Ranking Analysis" to determine which ELGs merited further study. The agency employed two types of ranking systems—one based on pollutant concentration, the other on total pollutant load—but the court found that both methodologies failed to adequately justify the agency's decision to deprioritize six of the seven challenged categories.

For example, in the case of the plastics molding and forming industry, the EPA acknowledged stormwater discharges constituted 98 percent of the sector's pollution. Still, the agency concluded that updating the ELG would not yield significant pollutant reductions—an assertion the court found unsupported by the record. Similarly, for fertilizer manufacturing, the EPA had previously flagged the industry for nutrient pollution but later abandoned the review without a compelling rationale.

Despite the EPA's claim that it lacks the resources to update every outdated ELG, the court held that the agency must still demonstrate a reasonable basis for its decisions. Failing to do so renders its inaction unlawful under the APA. The court did not mandate immediate revision of the ELGs but ordered the EPA to either revise them or provide a more thorough explanation that addresses the concerns raised.

Importantly, the court also rejected jurisdictional arguments from industrial intervenors who contended that the Ninth Circuit lacked authority to hear the case. The panel confirmed that challenges to the adequacy of existing ELGs fall squarely within its jurisdiction under the Clean Water Act's judicial review provisions.

Conclusion and Impliations

The Ninth Circuit's decision in *Waterkeeper Alliance v. EPA* underscores the legal and environmental significance of maintaining up-to-date water pollution standards. The ruling affirms that the EPA cannot rely on decades-old guidelines without evaluating new technologies, accounting for emerging contaminants, or justifying its inaction with a sound explanation. While the court did not compel immediate revisions, its remand order increases pressure on the agency to act swiftly and transparently.

This decision carries broad implications. First, it opens the door for renewed scrutiny of ELGs across numerous industrial sectors, especially those discharging persistent toxic pollutants or relying on outdated controls. Second, it strengthens the role of environmental advocacy groups in compelling agency accountability through litigation. And third, it reinforces the Clean Water Act's original vision: that pollution limits must evolve alongside scientific understanding and technological innovation.

The Ninth Circuit remanded the case to EPA for further proceedings, as the EPA must either provide a clearer explanation of its decision or reconsider its decision. The court's decision gives the agency 45

days to seek further review. Either path will demand significant administrative resources and may provoke further legal challenges from both environmental and industry stakeholders. Although the EPA is already deep into the process of finalizing its 16th Effluent Guidelines Program Plan, the agency has not proposed updates to the disputed ELGs in its current draft. Preliminary Plan 16, released in December 2024, was open for public comment until mid-January 2025, and now appears close to completion. Given how far along the process is, the EPA may choose to address the Ninth Circuit's remand outside of the current planning cycle—either through a standalone action or by incorporating changes into the upcoming Program Plan 17. Should the EPA go with substantial ELG modifications, industries may be subject to much different discharge requirements and should therefore be on alert. The court's opinion in *Waterkeeper Alliance v. EPA* decision is available here: https://storymaps.arcgis.com/stories/79d51b5579ef4b0493b3c8471443bba4

(Steven Moctezuma, Miles Krieger, Steve Anderson)

RECENT CALIFORNIA DECISIONS

FIRST DISTRICT COURT FINDS COMBINED WASTEWATER AND STORMWATER SYSTEM IS A 'SEWER' FOR PURPOSES OF PROPOSITION 218

Gluck v. City & County of San Francisco, ___Cal.App.5th___, Case No. A170087 (1st Dist. May 30, 2025).

The Court of Appeal for the First Judicial District has affirmed in part and reversed in part a trial court's order sustaining a demurrer to challenges contesting charges associated with a combined wastewater and stormwater sewer system.

Background

San Francisco has had a combined sewer system since the 1850s, which collects and treats wastewater and stormwater in the same network. The San Francisco Public Utilities Commission (SFPUC) is the public agency that provides sewer services to the city. The combined wastewater and stormwater flows are carried by sewer pipes for treatment at one of SFPUC's treatment facilities. The final flows are discharged to the San Francisco Bay and Pacific Ocean.

A 2023 report described proposed sewer rates based on flow and strength factors. It then identified a new stormwater charge structure, with "Simplified" tiers for residential customers based on parcel size and the average amount of permeable and impermeable area for parcels within each tier, and "Standard" rates for non-residential customers based on actual square footage of permeable and impermeable area. The proposed rate structure changes would be phased in over seven years.

Proposition 218

In 1996, the voters approved Proposition 218, which added provisions to the California Constitution pertaining to property-related charges imposed by local government. Proposition 218 added Articles XIII C and XIII D to the California Constitution. Section 6(c) of article XIII D imposes a voter approval process for all new or increased property-related fees and charges, subject to a critical exception:

> Except for fees or charges for sewer, water, and refuse collection services, no property related fee or charge shall be imposed or increased unless and until that fee or charge is submitted and approved by a majority vote of the property owners of the property subject to the fee or charge or, at the option of the agency, by a two-thirds vote of the electorate residing in the affected area." Proposition 218 did not define "sewer.

Section 6(b) of article XIII D imposes a proportionality requirement:

> A fee or charge shall not be extended, imposed, or increased by any agency unless it meets all of the following requirements: [¶] (1) Revenues derived from the fee or charge shall not exceed the funds required to provide the property related service. [¶] (2) Revenues derived from the fee or charge shall not be used for any purpose other than that for which the fee or charge was imposed. [¶] (3) The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel.

At the Trial Court

Plaintiffs asserted five causes of action. The first alleged that the City improperly implemented the new rate structure for stormwater service charges without submitting it for voter approval. The second and third causes of action alleged that, by using sewer charges to fund stormwater services, the City had derived revenue from charges that were excessive and used for an improper purpose. The fourth cause of action alleged that the City's charges were disproportionate because they were based on wastewater factors (*e.g.*, flow and strength) but not stormwater

factors (*e.g.*, impermeable surface area). The second, third, and fourth causes of action appeared to target the stormwater charges the City had imposed under the prior rate structure and was continuing to impose while "phasing in" the new rate structure. The complaint alleged that the California Constitution does not permit a delay during the "phasing in." The fifth cause of action sought injunctive and declaratory relief regarding the City's imposition and collection of sewer and stormwater charges.

The City responded that the first, second, and third causes of action failed because the City's combined sewer system provides "sewer" services under the exception to Proposition 218's voter approval requirement. To support its interpretation of the term "sewer" in article XIII D, section 6(c), the City cited Government Code § 53751.2. Section 53751, added by Senate Bill No. 231, states that the term "sewer" should be interpreted to include services necessary to collect, treat, or dispose of sewage, industrial waste, or surface or storm waters, and any entity that collects, treats, or disposes of any of these necessarily provides sewer service. The City asserted that the fourth cause of action did not allege facts showing the City's sewer rates either exceeded "the proportional cost of sewer services" or were unreasonable under article XIII D, section 6(b). Finally, the City argued that the fifth cause of action failed because it "depends entirely on allegations in the other causes of action."

Plaintiffs replied that as to their first three causes of action, the City had misclassified stormwater charges as "sewer" charges, and the City could not rely on Senate Bill No. 231 because it is unconstitutional. They argued they had alleged sufficient facts in their fourth cause of action, contending that the fact that stormwater costs continue to be recovered through sewer rates, based on factors irrelevant to the cost of managing storm drainage, is sufficient to state a claim under Proposition 218.

The trial court sustained the demurrer to all counts and entered judgment for the City.

The Court of Appeal's Decision

Plaintiffs' challenge to the constitutionality of Senate Bill No. 231 was an as-applied challenge. An as-applied challenge "contemplates analysis of the facts of a particular case or cases to determine the circumstances in which the statute or ordinance has been applied and to consider whether in those particular circumstances the application deprived the individual to whom it was applied of a protected right."

The Court of Appeal affirmed the trial court's order sustaining the demurrer on the first, second and third counts. It found that construing the term "sewer" in article XIII D, section 6(c) as inclusive of combined sewer systems is both reasonable and justifiable. It declined to rule on the constitutionality of Senate Bill No. 231.

The court reversed the decision to sustain the demurrer on the fourth and fifth counts. To satisfy Section 6(b)(3), it is not enough for a water agency to show it uses a reasonable allocation method. Rather, an agency must show that the method produces rates that are proportional to costs. The question presented by plaintiffs' fourth cause of action was whether the City's sole reliance on wastewater factors to support sewer rates that recover costs for both wastewater and stormwater services satisfies this threshold. That presents a factual question that is inappropriate for resolution on demurrer.

Because the demurrer and the trial court's ruling on plaintiffs' fifth cause of action were based entirely on the perceived failures of the preceding four causes of action, the Court of Appeal concluded the court also erred in sustaining the demurrer on the fifth cause of action to the extent it seeks declaratory relief related to plaintiffs' proportionality claim.

Conclusion and Implication

A combined wastewater and stormwater system is a "sewer" for purposes of the exception to the voter approval requirement under Section 6(c) of article XIII D. Plaintiffs' proportionality claim posed a factual question that could not be resolved on demurrer. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/A170087.PDF (Lauren J. Caster, Darien Key, Derek Hoffman)

FLOODWATER AS PERSONAL PROPERTY? FIFTH DISTRICT COURT CLARIFIES GROUNDWATER CLASSIFICATION

Sandton Agriculture Investments III, LLC, et al. v. 4-S Ranch Partners, LLC, 109 Cal.App.5th 766 (5th Dist. 2025).

In a decision certified for *partial* publication, California's Fifth District Court of Appeal addressed a novel legal question: Can floodwaters that have seeped into an underground aquifer be classified and retained as personal property? The case involved the foreclosure of a 5,257-acre ranch in Merced County and a dispute over the rights to approximately 500,000 acre-feet of stored water allegedly worth hundreds of millions of dollars.

The borrower, 4-S Ranch Partners, argued that it retained ownership of this water post-foreclosure, asserting it had captured floodwaters and stored them underground as personal property. The lender, Sandton Agriculture Investments, countered that these water rights were appurtenant to the land and transferred with the property at foreclosure. The appellate court sided with the lender, marking a significant moment in the interpretation of California water law.

Background

Legal Classification of Floodwaters

At the heart of the dispute was whether the floodwater, once captured and allowed to seep into the aquifer beneath the property, retained a status of personal property or became real property as part of the land. Historically, California law recognizes water in its natural state, including percolating groundwater, as real property. The right to use such water is usufructuary, meaning the holder may use the water but does not "own" the corpus of the water itself.

The court clarified the classifications of water under California law, distinguishing between:

- Diffused surface water (from precipitation or springs not collected into defined streams),
- Stream water (flowing within a natural watercourse),
- Floodwater (overflow from watercourses onto land), and
- Percolating groundwater (water that has seeped into the earth and is not part of an underground stream).

Once floodwater has percolated into the soil and aquifer, it is no longer characterized as floodwater or personal property; it becomes percolating groundwater, which is legally considered part of the real property.

At the Trial Court

The trial court granted the lender's motion for summary adjudication, concluding

(1) the water was not personal property owned by borrower and (2) the rights to use of the water ran with the land and, thus, the lender acquired those rights at the foreclosure sale. Under California water law, allowing water to seep into an aquifer changes its legal classification to percolating groundwater, regardless of whether it was previously classified as floodwater or personal property. Percolating groundwater is in a "natural state" and, as such, "is part of the land." (*Copeland v. Fairview Land & Water Co.* (1913) 165 Cal. 148, 154 (*Copeland*).) Thus, summary adjudication of the lender's declaratory relief claim was proper.

The Court of Appeal's Decision

Dominion, Control, and Severance

4-S Ranch argued that by intentionally allowing floodwaters to inundate their land and seep into the aquifer for later extraction and sale, they had effectively exercised dominion over the water, converting it into personal property. However, the court disagreed. It emphasized that dominion and control are not maintained once the water percolates into the ground, as its behavior is governed by natural forces rather than human direction.

The court further anchored its conclusion in precedent requiring the severance of the water from the land before it can be considered personal prop-

erty. This means water must be extracted or placed in portable receptacles before the classification can shift from real to personal property. Merely having plans or infrastructure for future extraction does not suffice.

Implications for Secured Transactions and Foreclosures

The distinction was critical because it affected whether the underground water was subject to the deed of trust. The original loan documents included broad definitions of "Water Rights" and "Water Assets," covering all forms of water, rights, and entitlements associated with the land. The appellate court held that because the floodwaters had percolated into the aquifer, they became part of the real property and transferred to the lender upon foreclosure.

This interpretation had a cascading effect on the borrower's claims. The court rejected arguments that the lender had failed to foreclose on the water assets or that the water should be separately appraised and excluded. Additionally, the borrower's attempt to list the water as personal property in its bankruptcy filings did not sway the court.

In rejecting 4-S Ranch's arguments, the court took care to ensure consistency with California constitutional and statutory provisions. It declined to break from over a century of precedent to create a new legal category of personal property water stored underground without severance from the land. The court emphasized that creating such a rule would significantly disrupt existing water rights frameworks, potentially requiring new legal doctrines or legislative intervention.

Moreover, the opinion highlighted that characterizing such water as personal property could undermine California's constitutional requirement that water use be reasonable and beneficial, since private ownership could imply a right to waste or misuse. In the end, the court held:

> Based on our conclusions that (1) the water in question was not personal property owned by 4-S and (2) the trial court properly granted summary adjudication of Sandton's claim for declaratory relief addressing the rights and interests Sandton held in the water, it follows that the SACC failed to state causes of action for declaratory relief, conversion, injunctive relief, or an easement. Consequently, the trial court properly sustained the demurrer to those causes of action.

Conclusion and Implications

This decision confirms and reinforces principles of California water law: water in its natural state, including percolating groundwater, is part of the land and therefore real property. Any right to extract and use such water is appurtenant to land ownership and cannot be segregated as personal property absent clear severance.

This ruling serves as a cautionary guidepost for landowners, water banks, and investors. Efforts to monetize floodwater storage must account for the fact that once floodwaters percolate into the ground, they are no longer under the owner's exclusive control and are legally bound to the land. Those involved in financing, leasing, or foreclosing on agricultural and water-rich properties must carefully structure transactions to reflect this reality.

Finally, while the court left open the possibility that the legislature or California Supreme Court could revisit these principles in the future, it declined to establish a new doctrine permitting the retention of water rights as personal property post-infiltration. The court's *partially* published opinion is available online here: https://www4.courts.ca.gov/opinions/documents/F086484.PDF
(Darien Key, Steve Anderson)

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