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CALIFORNIA WATER NEWS

THE PURE WATER ANTELOPE VALLEY DEMONSTRATION FACILITY

The Antelope Valley resides in a particularly arid portion of southern California and was the subject of protracted groundwater litigation spanning 20 years. Palmdale Water District (PWD) received a $14.8 million WIFIA loan from the U.S. Environmental Protection Agency (EPA) to help fund the Pure Water Antelope Valley Demonstration Facility (Pure Water). The total cost of the demonstration facility is $24.5 million, with construction expected to take 15 months. If successful, the project brings much-needed water supplies to the region.

Background of Pure Water

The Pure Water Antelope Valley project is an advanced water purification program aimed at purifying recycled water for potable use. The goal is to create a reliable local water supply for the Antelope Valley, reducing reliance on imported water and building drought resilience. The EPA is providing low-cost financing through its Water Infrastructure and Innovation Act (WIFIA) program.

The demonstration facility will allow the district to gather data to complete the planning, design, and construction of the full-scale advanced water purification facility and new groundwater injection wells. This full-scale facility, estimated to be operational in mid-2029, will provide 5,000 acre-feet of water per year by treating recycled water for groundwater augmentation.

Economic and Environmental Benefits

The loan reportedly is projected to save PWD $4 million in interest over twenty years compared to traditional financing. A master agreement allows for up to $145 million in total EPA loans to support both the demonstration and full-scale facilities, which together are estimated to cost $281.3 million.

The facility will purify recycled water using advanced treatment: micro-filtration, reverse osmosis, and UV light with oxidation—removing 99.99 percent of contaminants. Once fully operational (expected by mid-2029), it will provide 5,000 acre-feet of water annually for groundwater augmentation. The project aims to improve drought resilience, local water control, and groundwater quality. It will sustain 20+ full-time jobs over a 50-year lifespan.

Particularly innovative about Pure Water is reportedly an innovated to reduce costs related to brine disposal. The facility will be the first in California to host Project Monarch, a water management and carbon capture system by Capture6, which will reduce costs related to brine disposal.

Capture6

Project Monarch is a pilot carbon removal and water recovery facility developed by Capture6, a startup specializing in direct air capture (DAC) technologies. Capture6's system integrates carbon dioxide removal with water purification by repurposing industrial-scale technologies. Here's the dual-action process: (i) Carbon Removal: Uses a saltwater-based solvent to capture CO_2 directly from the atmosphere; and (ii) Water Recovery: Treats desalination brine—normally a waste product—to recover over 50 percent of freshwater, making it usable for drinking or agriculture.

This synergy is anticipated to allow the facility to permanently remove CO_2 from the air, reduce the cost and environmental burden of brine disposal, and increase local water availability in drought-prone regions. Other potential benefits reportedly are enhanced water supply while mitigating adverse effects of climatological changes. The synergy may reduce operational costs for the water district by turning waste into a resource. Size wise, the project is designed to be expanded into a full-scale facility by 2030, with the pilot expected to be operational by 2026.

Conclusion and Implications

The collaboration between Capture6 and Palmdale Water District is the first of its kind in California, providing a model for how climate resilience and infrastructure modernization can go hand-in-hand for water supplies and air quality issues.

The water supply benefits appear clear, while providing the additional air quality benefits. And with the Antelope Valley having a water history in recent decades burdened with the decades-long groundwater adjudication, the Pure Water project provides a refreshing sense of also providing water for groundwater replenishment to further assist with basin management and long-term sustainability of the water supplies.
(Wes Miliband)

REGULATORY DEVELOPMENTS

PLEASANT VALLEY GSA TO SIGNIFICANTLY INCREASE PUMPING FEES FOLLOWING AN INADEQUATE DETERMINATION OF ITS GROUNDWATER SUSTAINABILITY PLAN BY DWR

The Pleasant Valley Groundwater Sustainability Agency (GSA) is proposing to increase groundwater pumping fees within the Pleasant Valley groundwater basin in response to the California Department of Water Resources' (DWR) determination that the Groundwater Sustainability Plan (GSP) for the basin is inadequate. The pumping fees would increase from $8 to $25 per acre-foot. If pumping is reduced as a result of the fees, it may help the basin avoid a determination by the State Water Resources Control Board to place the basin in probationary status and potentially significant restrictions on groundwater pumping.

Background

In 2014, California enacted the Sustainable Groundwater Management Act (SGMA) designed to halt overdraft of the state's groundwater basins. SGMA requires local Groundwater Sustainability Agencies in medium- and high-priority groundwater basins, which includes 21 critically overdrafted basins, to develop and implement Groundwater Sustainability Plans. GSPs are intended to provide a roadmap for reaching the long-term sustainability of a groundwater basin, which includes near-term actions like expanding monitoring programs, reporting annually on groundwater conditions, implementing groundwater recharge projects and designing allocation programs. GSPs are intended to achieve sustainability in overdrafted groundwater basins within a 20-year time horizon. Each GSP has its own goals specific to the covered groundwater basin and must be accomplished within the 20-year period. To achieve the sustainability goal for the basin, the GSP must demonstrate that implementation of the GSP will lead to sustainable groundwater management, which means the management and use of groundwater in a manner that can be maintained during the planning and implementation horizon without causing undesirable results, such as subsidence, water quality degradation, and lowering of groundwater levels. Undesirable results must be defined quantitatively by the GSAs.

DWR reviews GSPs to determine whether there is a reasonable relationship between the information provided and the assumptions and conclusions made by the GSA, including whether the interests of the beneficial uses and users of groundwater in the basin have been considered; whether sustainable management criteria and projects and management actions described in the GSP are commensurate with the level of understanding of the basin setting; and whether those projects and management actions are feasible and likely to prevent undesirable results. To the extent overdraft is present in a basin, DWR evaluates whether a GSP provides a reasonable assessment of the overdraft and includes reasonable means to mitigate the overdraft. DWR also considers whether a GSP provides reasonable measures and schedules to eliminate identified data gaps. DWR is also required to evaluate whether the GSP will adversely affect the ability of an adjacent basin to implement its GSP or achieve its sustainability goal. If DWR deems a GSP inadequate, the basin becomes subject to the jurisdiction of the State Water Resources Control Board (SWRCB), which may place the basin in probationary status prior to implementing an interim plan until a compliant GSP is adopted.

The Pleasant Valley GSA, roughly covering 48,000 acres in western Fresno County, submitted its initial GSP in 2022, but the DWR found it to be incomplete on January 18, 2024. Citing several deficiencies, the GSA was granted 180 days to make corrections and resubmit a revised plan. Despite the Pleasant Valley GSA's efforts, the revised plan, submitted on July 16, 2024, was deemed inadequate by the DWR on February 27, 2025. As a result of the inadequate determination, the Pleasant Valley GSA faces potential state intervention by the SWRCB.

The Inadequacy Determination by DWR

In its inadequacy determination, DWR detailed three key deficiencies in the GSA's revised plan.

First, the plan failed to adequately address the chronic lowering of groundwater levels because it did not clearly define significant and unreasonable effects related to chronic lowering of groundwater levels. DWR also determined that the GSP needed to quantitatively define undesirable results based on a combination of minimum threshold exceedances required by the GSP Regulations. DWR also indicated that the GSA should describe and discuss the rationale for the undesirable results definition. Further, DWR determined that the GSA needed to select the minimum threshold at a level indicating a depletion of supply that may lead to undesirable results; sufficiently support the assumptions and methodology used for the development of minimum thresholds; and discuss how the selected minimum thresholds impact beneficial uses and users, including both agricultural and domestic wells. For domestic wells, the DWR indicated that the GSA should consider referring to DWR's guidance document titled Considerations for Identifying and Addressing Drinking Water Well Impacts. Finally, DWR required the GSA to sufficiently discuss the relationship between the minimum threshold for groundwater levels and other applicable sustainability indicators such as reduction of groundwater storage, degradation of groundwater quality, and land subsidence.

Second, DWR determined that the GSP did not include a a reasonable assessment of overdraft conditions and reasonable means to mitigate overdraft. DWR required the GSA to reevaluate the assessment of overdraft conditions in the basin and provide a reasonable means to mitigate the overdraft in the basin. This would include should include projects and management actions that can sufficiently augment the water supply to mitigate the overdraft. Further, the GSP would need to demonstrate that the GSA is committed financially to implementing the projects and management actions, including mandatory demand reduction in case the water supply augmentation projects fall short.

Third, DWR found that the GSA's proposed management criteria did not sufficiently consider all groundwater users and uses, and the definition of "undesirable results" was vague and difficult to understand. For instance, DWR found the GSA's plan for groundwater quality was inadequate, determining the plan's definition of undesirable results to be too narrow, (*e.g.*, focusing on pistachios while omitting other beneficial uses and crops).According to the DWR, these deficiencies failed to demonstrate the plan's ability to achieve sustainability and prevented the DWR from being able to accurately evaluate the plan's likelihood of success.

Pleasant Valley GSA Board Votes to Develop a Compliant Groundwater Plan

In response to the threat of state intervention, the Pleasant Valley GSA board voted 6-1 to hire a consulting firm to develop a compliant groundwater plan. The plan is estimated to cost $493,000 and take approximately 13 months to complete. To fund this effort, the board is proposing the significant increase in pumping fees, raising them from $8 to $25 per acre-foot. This proposal, a 212 percent increase, will be put to a vote among growers through a Proposition 218 election, scheduled for a hearing on October 28. If the measure passes, the GSA would lower its existing land assessment fees from $6 per acre to $3.25 per acre in an attempt to shift the financial burden from land ownership to water usage.

This financial and political issue unfolds against the backdrop of local elections. The Pleasant Valley Water District, which also acts as the Pleasant Valley GSA, announced that all seven of its board seats will be up for election on November 4, 2025. Accordingly, the outcome of a Proposition 218 proceeding may impact the outcome of the local election.

Conclusion and Implications

While the GSA's proposed pumping fee increase, if approved, is intended to help the GSA financially accomplish SGMA compliance, it remains to be seen whether a new GSP will be deemed adequate by DWR and thus avoid SWRCB oversight and intervention. Access to the inadequate determination of the GSP available here: https://sgma.water.ca.gov/portal/service/gspdocument/download/10945
(Miles Kreiger, Steve Anderson)

STATE WATER RESOURCES CONTROL BOARD RELEASES REVISED DRAFT BAY-DELTA PLAN UPDATE

On July 24, 2025, the State Water Resources Control Board (State Water Board) released a Revised Draft Update to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Watershed (Bay-Delta Plan). The Revised Draft Update proposes to adopt the two implementation pathways previously introduced to achieve new water quality objectives: a default regulatory pathway and an alternative means of compliance through voluntary agreements under the Healthy Rivers and Landscapes (HRL) program. Written public comments may be submitted by September 29, and the State Water Board will hold a two-day public hearing on September 24-25 to receive input.

Background

The Bay-Delta watershed includes the San Francisco Bay, the Delta, Suisun Marsh, and the San Joaquin and Sacramento Rivers. It serves as one of the largest ecosystems for fish and wildlife habitat and production in the United States, a source of drinking water for two-thirds of California's population, and the water supply for some of the State's most productive agricultural areas. The Bay-Delta watershed also serves as the water source for the two largest water projects in California, the federal Central Valley Project (CVP) and State Water Project (SWP).

Under the Porter-Cologne Act, the State Water Board and regional boards are responsible for regularly adopting water quality control plans for the protection of beneficial uses. (Revised Draft Update, at p. 5.) Specifically, a water quality control plan must "ensure that the state's waters are put to the best possible use, and that the public interest is served." (*Ibid.*) To fulfill this obligation, the State Water Board must develop water resources in an orderly manner, prevent the waste and unreasonable use of water, and protect the environment. (*Ibid.*)

The last substantial update to Bay-Delta water quality standards occurred in the 1990s, culminating in the 1995 Bay-Delta Plan and the State Water Board's adoption of Decision (D-1641) in 1999, as revised in 2000. Under D-1641, the State Water Board assigned responsibility to the CVP and SWP to meet the water quality and flow requirements in the Bay-Delta watershed through conditions imposed on their water rights. The most recent update occurred in 2018, when the State Water Board changed flow standards for the Lower San Joaquin River and three of its major tributaries—the Tuolumne, Stanislaus, and Merced Rivers.

As part of the current planning process to update the Bay-Delta Plan, the State Water Board released a staff report in September 2023 and an earlier draft update in October 2024. The October 2024 draft update proposed significant changes to the existing Bay-Delta Plan, including flow, cold water habitat, and other provisions that would impose new obligations on water users beyond the requirements imposed by D-1641. The new flow objectives would require 55 percent of unimpaired flows to remain instream, within an adaptive range of 45 to 65 percent. The 2024 draft update proposed implementing the new water quality requirements under two concurrent pathways: a default regulatory pathway imposing the numeric unimpaired flow requirements on most water users, and an alternative voluntary agreement (VA) pathway that would involve a combination of flow and non-flow habitat commitments under the HRL program. The implementation details of the 2024 update largely focused on the regulatory pathway, noting that more information was needed to flesh out the HRL accounting and enforcement protocols. The State Water Board held a multi-day hearing and subsequent smaller virtual working group meetings to receive public input and written comments in late 2024 and early 2025.

The 2025 Revised Draft Update

Incorporating changes from prior comments and public participation in the workshops and working group meetings, the 2025 revised draft update proposes to move forward with a Bay-Delta Plan update that incorporates both the regulatory pathway and the HRL pathway for an expanded set of participating entities. (Revised Draft Update, at pp. 63-93.) The Revised Draft Update also includes new information on HRL flow accounting and monitoring and adds Tribal Tradition and Culture as a beneficial use to be protected by the Bay-Delta Plan. (*Id.* at pp. 8-10.)

The Regulatory Pathway

The 55 percent unimpaired flow numerical standard and adaptive range of the regulatory pathway remain largely unchanged, though the Revised Draft Update adds possible "water supply adjustments" to adopt a lower adaptive range of required unimpaired flows, down to 35 percent, for certain watersheds based on water availability. The water supply adjustments state that water right holders must allow 55 percent of unimpaired flows in the wettest third of years, 45 percent of unimpaired flow in the middle third, and 35 percent of unimpaired flow in the driest third. (Revised Draft Update at pp. 46-47.) The Revised Draft Update also includes tributary-specific water supply adjustments, based on the unique physical and hydrological conditions of those regions. (*Id.* at pp. 47-49.)

The updates to the regulatory pathway were made in response to concerns that unimpaired flows could negatively impact water supplies by drawing down reservoir supplies. The water supply adjustments appear to give water rights holders greater flexibility to meet environmental needs, while reducing the impacts on agriculture, municipal water service, and hydropower production.

The Healthy Rivers and Landscapes Pathway

The Revised Draft Update proposes to move forward with VAs under the HRL pathway as an alternative to the regulatory pathway to achieve the narrative biological objectives of the Bay-Delta Plan on the major tributaries to the Delta. (Revised Draft Update, at p. 63.) The most substantial updates relate to the addition of new details on the accounting and monitoring of flow and habitat contributions by participants under the HRL program. Appendix A to the Revised Draft Update includes a monitoring and evaluation program, while Appendices B1 and B2 describe accounting protocols for the flow and non-flow habitat contributions on each tributary.

As described in section 4.4.9.2, the flow contributions associated with individual VAs depend on the water source and water year type. (*Id.* at p. 65.) The Revised Draft Update sets out a "default schedule" that defines the proportion of the annual VA flow commitments that should be provided each month. (*Ibid*; see also Table 10 through Table 14.) However, parties to the VAs will need to consult with the State Water Board to determine the specific schedules for the release of water to meet their respective VA flow commitments, based on tributary and water source, each year. (*Ibid.*) Another important update in the Revised Draft Update is the inclusion of Appendix B.1, which details the draft accounting for each VA tributary, export reduction commitments, and water purchases.

Another significant update concerns the potential termination or extension of VAs after their eight-year term. Section 4.4.9.10 states that after a VAs has been implemented for six years, the participant may submit a request to the State Water Board to extend their VA. (Revised Draft Update at p. 89.) After receiving the extension request, the State Water Board will solicit public comments and hold a public workshop to discuss the possible extension and modification of the VA. After the public workshop, the State Water Board will prepare a draft recommendation on whether to extend, modify, or terminate the VA request. This draft recommendation must include the supporting rationale for the decision and is subject to a 45-day public review and comment period before the State Water Board can make a final decision. (*Id.*)

Conclusion and Implications

The State Water Board will hold public hearings to receive comments on the Revised Draft Update on September 24-25, 2025, at 1001 I Street, Second Floor Sacramento, CA 95814 and via video and teleconference. The deadline to submit written comments to the State Water Board is September 29, 2025. The final Bay-Delta Plan update is on track for adoption towards the end of 2025.

The Revised Draft Update is available at: https://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/.

(Jake R. Voorhees, Austn Cho)

RECENT FEDERAL DECISIONS

U.S. DISTRICT COURT FINDS CERTAIN WATER CONTRACTS WITH THE U.S. BUREAU OF RECLAMATION DO NOT REQUIRE NEW ENVIRONMENTAL REVIEW UNDER THE FEDERAL ESA AND NEPA

Center for Biological Diversity, et al., v U.S. Bureau of Reclamation,
___F.Supp.4th___, Case No. 1:20-cv-00706 (E.D. Cal. June 30, 2025).

On June 29, 2025, the U.S. District Court for the Eastern District of California ruled that the conversion of specific water contracts for the federal Central Valley Project (CVP) does not necessitate new environmental review. This decision arose from two lawsuits filed by environmental organizations, including the Center for Biological Diversity, Restore the Delta, and the Planning and Conservation League, which were consolidated before the court. The plaintiffs argued that the conversions were subject to environmental review under two major federal statutes: the National Environmental Policy Act (NEPA) and the federal Endangered Species Act (ESA).

Background

NEPA requires federal agencies to prepare the Environmental Impact Statement (EIS) for any "major Federal actions significantly affecting the quality of the human environment." The ESA, on the other hand, mandates that the federal agencies consult with the US Fish and Wildlife Service and/or the National Marine Fisheries Service to ensure that any "agency action" is not likely to jeopardize a listed species or adversely modify its critical habitat.

The dispute centered around the Water Infrastructure Improvements for the Nation Act (WIIN Act), a 2016 law signed by President Barack Obama. The WIIN Act aimed to address drought conditions in California and fund water storage projects by providing incentives for contractors to convert their temporary water service contracts into permanent repayment contracts. The U.S. Bureau of Reclamation's (Reclamation) interpretation of the WIIN Act was that it made the conversion process a nondiscretionary, mandatory action upon the request of a contractor, thereby exempting it from the environmental review requirements of NEPA and the ESA. Reclamation also interpreted the WIIN Act as stripping the bureau of discretion to modify any contractual rights other than those related to specific financial terms.

The plaintiffs contended that these converted contracts would seal the federal water deliveries to agricultural users, such as the Westalnds Water District, without proper consideration of the long-term environmental consequences. They argued that the CVP, an enormous water storage and delivery system, has previously caused substantial environmental damage by altering freshwater flows in the San Francisco Bay Delta, blocking salmon migration, and producing toxic runoff. The plaintiffs' lawsuits contended that Reclamation's conversion of contracts, covering approximately three million acre-feet of water, without any contract specific environmental review violated the APA, ESA, and NEPA.

The District Court's Ruling

U.S. District Judge Jennifer Thurston sided with Reclamation. The court's decision hinged on the principle of agency discretion, or lack thereof, under the WIIN Act. The court found that Reclamation's interpretation of the WIIN Act as a statutory command to convert the contracts was more plausible than the plaintiffs' interpretation.

The key legal question articulated by the court was whether:

> Reclamation's obligations under the WIIN Act regarding contract conversion make it impossible for the agency to exercise discretion for the protected species' benefit.

To avoid the consultation obligation under the ESA, a competing statutory mandate must require an agency to perform specific, nondiscretionary acts rather than achieve broad goals. In this case, the court concluded that the WIIN Act did indeed im-

pose such a specific, nondiscretionary duty. The court agreed that the statute:

> . . .requires contract conversion upon request by farmers and other water users. . .[and]. . .strips the bureau of discretion to modify any contractual right other than those related to the financial terms specifically addressed in the statute.

The court's analysis acknowledged that a principal purpose of the WIIN Act was to fund the construction of water storage projects. According to the court, in order to achieve this, Congress provided incentives, such as the contract conversions, to encourage contractors to opt into the accelerated prepayment contracts. This legislative intent, according to the ruling, demonstrated that Congress intentionally created a scenario where Reclamation was left without the authority to impose environmental conditions on the converted contracts. The decision implies that Congress, by the deliberate wording the WIIN Act, intended to bypass the need for a new environmental review for these specific conversions.

The court also considered the long history of CVP operations and their environmental impacts, noting that Reclamation itself:

> . . .admits that deliveries/diversions under CVP contracts have adverse environmental impacts, including by entraining fish, altering flow patterns in the Delta, and reducing freshwater flows.

Reclamation Had No Discretion to Modify the Contracts Beyond Certain Financial Aspects

Despite this, the decision focused on the narrow legal question of whether the WIIN Act provided an exception to the broader environmental statutes. Ultimately, the court concluded that because Reclamation had no discretion to modify the contractual terms beyond the specified financial aspects, it was not required to perform new environmental reviews under NEPA or the ESA. The ruling essentially affirmed Reclamation's position that the WIIN Act created a direct, ministerial action that did not qualify as a "major federal action" with discretion to impact the environment.

Conclusion and Implications

This ruling in favor of the Bureau of Reclamation upholds the conversion of certain CVP water contracts without requiring an updated environmental review. It is not clear whether plaintiffs will appeal the ruling. However, the decision may support the conversion of other temporary contracts to be converted under the WIIN Act, which may have notable implications for water management in California. The *Center For Biological Diversity v. United States Bureau of Reclamation* ruling by the U.S. District Court of the Eastern District of California can be accessed here: https://www.courthousenews.com/wp-content/uploads/2025/06/biological-diversity-vs-reclamation-ruling.pdf
(Miles Krieger, Steve Anderson)

RECENT CALIFORNIA DECISIONS

TOXICITY BY REDEFINITION? CALIFORNIA'S STATE WATER BOARD CLASHES WITH CEQA AND FEDERAL STANDARDS IN A DECISION BY THE FIFTH DISTRICT COURT

Camarillo Sanitary District et al. v. State Water Resources Control Board, ___Cal.App.5th___, Case No. F087362 (5th Dist. Aug. 5, 2025).

In an August 5, 2025, published opinion from the Fifth Appellate District Court of Appeal, in *Camarillo Sanitary District et al. v. State Water Resources Control Board* the court addressed the legality of California's newly adopted water quality policy known as the "Toxicity Provisions." Central to the case was California's effort to modernize its approach to measuring whole effluent toxicity (WET) in discharged waters, a metric not defined by a single chemical, but by the overall toxic effect on aquatic life.

The controversy stemmed from the State Water Resources Control Board's (State Water Board) decision to adopt the Test of Significant Toxicity (TST), a statistical model developed by the U.S. Environmental Protection Agency (EPA) in 2010 but never formally codified under federal law. While the State Water Board asserted the TST provided a more scientifically robust method for analyzing water toxicity, plaintiffs, including public wastewater treatment entities, challenged its legality under both federal and state law.

A major focus of the litigation was compliance with the California Environmental Quality Act (CEQA), especially given the policy's environmental and procedural ramifications.

The Toxicity Provisions: A Statewide Shift in Policy

The Toxicity Provisions were initially adopted in December 2020 and revised in October 2021. They apply to all inland surface waters, enclosed bays, estuaries, and coastal lagoons in California, including both waters of the United States and state surface waters. The policy mandates that effluent toxicity be analyzed using the TST, regardless of which EPA-approved bioassay method is used.

Unlike traditional toxicity testing, which used statistical endpoints like the No Observed Effect Concentration (NOEC) or the 25 percent Inhibition Concentration (IC25), the TST redefined toxicity in a binary "pass/fail" framework based on bioequivalence testing. It reversed the traditional null hypothesis by presuming toxicity unless disproven and set a toxicity threshold of a 25 percent difference in biological response (e.g., growth or survival) between a test sample and control.

This had major implications for National Pollutant Discharge Elimination System (NPDES) permits, which are issued under the federal Clean Water Act and require the use of federally approved test procedures. The core legal question became whether the TST could lawfully substitute for NOEC and IC25 under federal standards.

The Court of Appeal's Decision

CEQA Review and the Use of a Substitute Environmental Document

The State Water Board used a Substitute Environmental Document (SED) instead of a full Environmental Impact Report (EIR), invoking its certified regulatory program under CEQA. Appellants contended this was improper because they believed a statewide water policy did not fall within the basin planning exemption.

The court disagreed, affirming that California's basin planning program under CEQA includes both regional and statewide water policies. The court cited prior administrative findings and the Board's own regulations (Title 23, Cal. Code Regs., § 3777) to support this conclusion.

While the SED acknowledged potentially significant impacts in areas like agriculture, air quality, and hydrology, especially if new toxicity controls were implemented, it classified these impacts as too speculative for full analysis. The court upheld this ap-

proach, drawing from precedent in *Ebbetts Pass Forest Watch v. California Dept. of Forestry & Fire Protection* and emphasizing that CEQA does not require analysis of uncertain future actions where parameters are unknown. The SED's qualitative review of sample projects and mitigation measures satisfied CEQA's informational requirements.

Conflict with the Federal Clean Water Act

The appellate court ruled that the State Water Board's mandate to use the TST in NPDES permits violated the Clean Water Act. Under 40 C.F.R. Part 136, only NOEC and IC25 endpoints are approved for WET testing in freshwater chronic toxicity. These methods are method-defined analytes, meaning the analyte (toxicity) is defined by the method used to measure it.

Because the TST applied a fundamentally different definition of toxicity and used an unapproved statistical endpoint (*i.e.*, not NOEC or IC25), it amounted to a de facto redefinition of the analyte. This violated the federal rule that prohibits modifying EPA-approved methods for such analytes.

The court rejected arguments that the TST was merely an analytical method. It emphasized that statistical decisions, such as changing the null hypothesis or adjusting the toxicity threshold, directly altered the definition of "toxic." Therefore, it was not a permissible modification but an unauthorized substitution that exceeded both federal and state authority in the context of NPDES permitting.

State Law Authority and the Role of CEQA

Despite federal preemption under the Clean Water Act for NPDES permits, the court affirmed the State Water Board's authority under California law to adopt the Toxicity Provisions as a general state policy for water quality control. Under Water Code §§ 13140 and 13142, the State Water Board can formulate essential principles and guidelines to regulate activities affecting state water quality, even when those activities overlap with federal regulation.

Critically, the court upheld the State Water Board's CEQA process, including its findings of no significant environmental impact from reasonably foreseeable compliance measures (primarily additional monitoring and data analysis). While more intrusive compliance strategies, such as structural upgrades, were discussed, the court agreed these were speculative and not mandatory outcomes of the new policy.

The CEQA claims were further weakened by the plaintiffs' failure to develop several of their objections with specific citations or reasoned analysis. The court dismissed those under standard waiver principles.

Conclusion and Implications

This decision draws a clear jurisdictional line between federal and state regulatory powers when it comes to water quality enforcement. While California retains broad authority to regulate water quality under state law, even by enacting policies more stringent than federal baselines, it cannot mandate alternative methods in NPDES permits that deviate from federally approved procedures.

For CEQA practitioners and environmental regulators, the case reinforces that a well-documented Substitute Environmental Document can satisfy CEQA's informational goals, even for statewide policies, so long as speculative impacts are identified and transparently discussed.

For NPDES permit holders, especially municipal wastewater agencies, the ruling offers a partial reprieve. While the Toxicity Provisions may still apply to state-only waters, they cannot currently enforce the TST in federal permits unless and until the EPA formally adopts it under 40 C.F.R. Part 136.

As federal and state agencies continue to evolve their scientific tools, this case highlights a recurring challenge in environmental law: balancing regulatory innovation with procedural and jurisdictional limits. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/F087362.PDF
(Darien Key)

FOURTH DISTRICT COURT, IN PROPOSITION 218 CASE, AFFIRMS $79 MILLION REFUND OVER SAN DIEGO WATER RATES

Patz v. City of San Diego, ___Cal.App.5th___, Case No. E083543 (4th Dist. July 30, 2025).

In *Patz v. City of San Diego*, the California Court of Appeal for the Fourth Judicial District reaffirmed and clarified critical requirements for compliance with Proposition 218, specifically Article XIII D, Section 6(b)(3) of the California Constitution. The ruling significantly impacts how local governments must justify tiered water rate structures under constitutional cost principles.

Background

Plaintiffs Daniel Patz and Joan Mann Chesner, on behalf of a certified class of all single-family residential (SFR) water customers served by the City of San Diego since August 14, 2014, challenged the legality of the City's tiered water rate system. Under the system, SFR customers faced escalating rates for higher levels of consumption, while non-SFR customers were charged uniform rates. Plaintiffs contended that the tiered rates charged to SFR customers exceeded the proportional cost of providing water service to those parcels, in violation of Proposition 218.

After a bifurcated trial, the court found in Phase I that the City failed to carry its burden under Article XIII D, Section 6(b)(5) to prove that the tiered rates complied with the proportionality requirement of Section 6(b)(3). In Phase II, the court awarded $79,541,880 in refunds, representing the total overcharges from 2014 to March 31, 2022, and ordered monthly accruals of $643,750 thereafter until the City adopts rates consistent with the Constitution.

Proposition 218 and Section 6(b)(3)

Proposition 218, enacted by California voters in 1996, added Articles XIII C and XIII D to the California Constitution to impose substantive and procedural limitations on the ability of local governments to impose taxes, assessments, and property-related fees and charges.

Section 6(b)(3) of Article XIII D requires that the amount of a fee or charge imposed on a parcel shall not exceed the proportional cost of the service attributable to that parcel. Section 6(b)(5) further imposes the burden on the government agency to affirmatively demonstrate compliance in any legal challenge.

This case squarely addresses how strictly courts will enforce that proportionality mandate, particularly when governments adopt increasing block or tiered rate structures as a tool to promote conservation or shape consumption behavior. As Patz confirms, tiered pricing must still be cost-justified at each level of consumption. Conservation objectives cannot override constitutional cost principles.

The Court of Appeal's Decision

The City of San Diego's defense rested on cost-of-service studies prepared by a consulting firm that relied on general industry standards from the American Water Works Association's (AWWA) M1 Manual. The City applied the "base-extra capacity method," which allocates costs among customer classes based on peak demand projections rather than time-of-use or parcel-specific consumption patterns.

However, the trial court found, and the Court of Appeal affirmed, that the City failed to show that the tiered rates reflected the actual cost of providing water at each usage level. The City did not present reliable, parcel-specific data or time-of-use analytics to justify why higher usage necessarily resulted in proportionally higher delivery costs. Instead, the City relied on generalized assumptions and conservation-oriented tier breakpoints that were not tied to demonstrable cost variations.

The court also rejected the City's argument that the standard of review should focus on "reasonableness." Instead, the court held that substantial evidence of proportional cost, capable of withstanding independent judicial review, was required under the Constitution. Merely adhering to industry best practices was not sufficient if the outcome was not demonstrably cost-based.

Class Certification and Refund Calculation Disputes

In a secondary challenge, the City argued that the trial court erred in certifying the case as a class action, asserting that many class members were "net

underpayers" or otherwise unharmed. The court disagreed, noting that all class members were subjected to the same unconstitutional rate structure and shared a common legal interest in relief. Variations in individual overcharges did not defeat typicality or adequacy of representation.

Plaintiffs, in their cross-appeal, contended that the refund award was undervalued by $27.5 million due to an unpled and unproven offset the court granted in favor of the City. The appellate court found no reversible error in the trial court's calculation method, which netted undercharges against overcharges across billing periods to avoid windfalls. The court affirmed this "make-whole" approach, stating it did not violate Proposition 218 or amount to "shadow ratemaking."

Conclusion and Implications

Patz sends a clear message: local agencies must ground water rate structures in parcel-specific cost data. This case moves beyond abstract reasonableness and requires quantifiable evidence that each component of a tiered rate aligns with the incremental cost of service at that level of use. Agencies that apply peaking factors or conservation incentives must demonstrate how those methodologies translate into proportional delivery costs, not merely policy preferences.

Furthermore, adopting tiered rates for one customer class (such as SFR) while applying uniform rates to others (such as commercial or irrigation) is constitutionally suspect unless the agency can affirmatively show that the differential treatment correlates with cost burdens. Failure to do so may expose agencies to constitutional liability, refund obligations, and long-term exposure to litigation.

Agencies should also consider integrating metering technologies and data systems that enable more precise tracking of time-of-use and consumption behavior, thereby supporting a defensible, data-driven cost allocation model.

The Patz decision reaffirms the judiciary's role in scrutinizing rate-setting practices under Proposition 218. It underscores that the constitutional mandate of proportionality is not satisfied by generalized assumptions, policy goals, or adherence to industry norms alone. Cost-of-service justifications must be tailored to the specific service and consumption characteristics of each ratepayer group and tier.

Going forward, local governments must be prepared to produce verifiable, granular evidence that connects rates to cost. This standard places a higher burden on agencies seeking to use tiered pricing, particularly when driven by conservation or behavioral incentives. While those goals remain important, they cannot be pursued in contravention of constitutional cost principles.

Patz v. City of San Diego emphasizes that when it comes to property-related fees, legality hinges on cost, not policy. Compliance with Proposition 218 must be measured in data, not assumptions. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/E083543.PDF
(Darien Key, Derek Hoffman)

FIFTH DISTRICT COURT FINDS FLOODWATER DOES NOT BECOME PERSONAL PROPERTY UPON EXERCISE OF "DOMINION AND CONTROL"

Sandton Agriculture Investments III, LLC v. 4-S Ranch Partners, LLC, ___Cal.App.5th___, Case No. F086484 (5th Dist. Aug. 8, 2025).

The Fifth District Court of Appeal, in a *partially* published opinion in August 2025, held in Sandton Agriculture Investments III, LLC v. 4-S Ranch Partners that the exercise of dominion and control over floodwaters does not create a personal property interest in them. In a detailed, partially published opinion, the court explained that severance is the limited circumstance in which such an interest may arise and held that floodwaters do not possess any special character warranting a deviation from the established principles of severance.

Background

In 2013, Appellant 4-S Ranch Partners (4-S Ranch) purchased over 5,000 acres of land in Merced County overlying a 500,000 acre-foot-capacity aquifer. During heavy rains, floodwaters from two nearby bypasses, the Eastside Bypass and the Mariposa Bypass, inundated the property and naturally percolated into the groundwater aquifer below.

Four years after the land purchase, 4-S Ranch borrowed $33 million from Sandton Credit Solutions Master Fund IV, LP (Sandton Credit) to refinance its debt, securing the loan with a deed of trust against the land. The deed of trust collateralized "the Land, all 'Improvements' thereupon (defined to include wells, pumps, and other equipment), and related 'Water Rights,'" which were exhaustively defined to include all of 4-S Ranch's water rights of any kind or nature, including stored water, groundwater, surface water, and drainage rights.

After 4-S Ranch defaulted on the loan and failed to satisfy an extended forbearance agreement. It filed for bankruptcy protection to prevent Sandton Credit's impending foreclosure. In the bankruptcy proceedings, 4-S Ranch valued the land at $500 million and included in its schedule of assets all 500,000 acre-feet of underlying stored water as its separate, personal property, which it valued at another $200 million. Prior to the bankruptcy, Sandton Credit had commissioned appraisals in anticipation of foreclosure that valued the land and its associated personal property at just over $27 million. Sandton Credit was ultimately authorized to proceed with foreclosure, at which point it purchased the land for $20 million and transferred it to Respondent Sandton Agriculture Investments (Sandton Ag).

In August of 2021, Sandton Ag filed suit to establish that the water rights and stored water were appurtenant to the land and passed with it via the foreclosure. In opposition, 4-S Ranch argued the stored floodwater became its personal property once it entered the 4-S property. The trial court granted summary judgment in Sandton Ag's favor, finding that the floodwater was never severed from the property, did not become 4-S Ranch's personal property, and instead passed with the land.

The Court of Appeal's Decision

Water as a Property Right

From the earliest reported decisions in California, water rights have been considered an interest in real property. A water right is not a right to the water itself, but rather to the use of water, and the right attaches to the land on which the water is used. However, as the Court of Appeal here noted, proper severance of the water from the land can create a personal property interest. The California Supreme Court has long held that, even when water is moved through pipes to residents for personal use, the water is not considered severed until "the water is taken from the pipes by the consumer." (*Copeland v. Fairview Land etc. Co.*, 165 Cal. 148, 154 (1913).) In cases where water has been captured and confined to artificial containers, that water may be considered severed from the land and become a personal property interest. Over time, the case law has differentiated between severance into portable containers and, for instance, man-made reservoirs; the latter has been expressly disapproved as a severance from the realty.

Personal Interest in Floodwaters

Arguing that floodwater is a special kind of water that becomes personal property upon anyone's exercise of control, 4-S Ranch relied heavily on a particular case, *Dannenbrink v. Burger*, 23 Cal.App. 587 (1913). In *Dannenbrink*, the upstream plaintiffs stored water in a dam, which regularly seeped back into the stream and was diverted by the downstream defendants. (Id. at 588-589.) After 25 years of allowing the dam to function in this manner, the plaintiffs repaired the dam, remedied the seepage, and filed a quiet title action to prevent the downstream defendants from asserting appropriative rights that included the seepage. (Id. at 592.) The Third District Court of Appeal sided with the defendants in *Dannenbrink*, finding their continuous use of the seepage water over a 25-year period was similar to a prescriptive title.

Dannenbrink's relevance, 4-S Ranch asserted, was based on *dictum* that described situations where water seeps from an impoundment or diversion structure and does not return to the stream. (Opinion at 15.) In those situations, the party gathering the water obtains the water "as personality." However, the court in *Dannenbrink* only reached that issue to clarify that parties gathering such water do not, by virtue of capturing the water, obtain rights in the original stream. (Id.) In the instant case, the court held "[t]he Dannenbrink court was obviously not addressing or deciding any issue even close to the one presented…." (Id.)

Severance is Required for a Personal Property Right

The Fifth District Court affirmed the trial court's ruling, finding "[m]odern case law continues to require complete severance from the land for any recognition of personal property rights in water." (Id. at 12.) The Court of Appeal expressly rejected 4-S Ranch's attempt to differentiate floodwater as somehow "'not naturally occurring.'" (Id.) Although floodwater may be "an 'abnormally occurring' class of water," floodwaters percolating into the ground are still waters in their "natural state," and percolation on its own does not constitute severance to create an interest in personal property.

The court recognized that, while it is true that landowners may take floodwaters for their personal use, that "does not mean ownership as personal property." (Id. at 15.) 4-S Ranch's cited authorities did not stand for the proposition that a landowner's right to protect itself against floodwaters entitles it to claim ownership of those waters. Even if 4-S Ranch had in some way "facilitated" the process by which floodwaters entered its property and percolated underground, merely exercising control over water is not enough to create a personal property interest. (Id. at 16.)

Conclusion and Implications

The *Sandton* opinion will likely provide useful clarification to lenders, particularly in the agricultural sector, as to what assets should be included with real property and how natural resources can be characterized as collateral. Others may be concerned the opinion could impact groundwater banking projects that distinguish between the rights of bankers and other overlying owners. However, the Court of Appeal's analysis primarily addresses severance in the context of a land foreclosure, so the opinion may be limited by the specific facts involved. The court's *partially* published opinion is available online at: https://www4.courts.ca.gov/opinions/documents/F086484A.PDF

(Joshua B. Bailey, Austin Cho)

FIFTH DISTRICT COURT CLARIFIES DAM OWNERS' MANDATORY DUTY TO MAINTAIN FISHWAYS UNDER FISH & GAME CODE § 5935

Water Audit California v. Merced Irrigation District, 111 Cal.App.5th 1147 (5th Dist. 2025).

In *Water Audit California v. Merced Irrigation District*, the California Court of Appeal for the Fifth Judicial District affirmed in part and reversed in part the trial court's order sustaining a demurrer in a suit challenging a failure to maintain and operate a fish ladder.

Background

Plaintiff is a public benefit corporation seeking to enforce fishway statutes as a private attorney general. Merced Irrigation District (MID) is a public agency that owns and operates four dams on the Merced River, including the Crocker-Huffman Dam (C-H Dam) that is the focus of this suit. The C-H Dam is equipped with a fish ladder and is the farthest downstream of these dams; progressing upstream on the Merced River are the Merced Falls Dam (also equipped with a fish ladder), McSwain Dam and New Exchequer Dam. With its fish ladder inoperable, the C-H Dam is the farthest upstream point on the Merced River that a salmon or steelhead is able to migrate for spawning purposes.

The C-H Dam's fish ladder has been closed since approximately 1972 with the exception of a brief resumption of operation in September 2023. In March 1971 the regional manager of the California Department of Fish and Game (CDFG) (now known as the Department of Fish and Wildlife) noted that his agency had requested that MID make the fish ladder on C-H Dam inoperable so that salmon would turn into a spawning channel constructed downstream of the dam. In November 2009 MID received a letter from CDFG advising that the spawning channel experiment had failed, and MID could no longer rely on the Department's letter from the 1970s. It advised that the C-H Dam impedes the passage of resident and anadromous fish up- and downstream except during rare high flow events. Meanwhile, fall-run Chinook salmon and steelhead rainbow trout populations in the Merced River had deteriorated to extremely low levels. Given this background and the then-current situation, CDFG determined that fish passage at the C-H Dam must be restored. The National Marine Fisheries Service (NMFS) adopted a similar position in November 2010 and subsequent letters. Citing the failure to reopen the fish ladder at the C-H Dam, NMFS advised that it was investigating whether a "take" of threatened Central Valley steelhead was occurring downstream of the C-H Dam.

Cal. Fish & Game Code § 5935 provides:

> The owner of any dam upon which a fishway has been provided shall keep the fishway in repair and open and free from obstructions to the passage of fish at all times.

Section 5936 of the same code states: "It is unlawful to willfully destroy, injure, or obstruct any fishway."

As relevant to the opinion authorized for publication, the operative third amended complaint and petition for writ of mandate alleged a cause of action for traditional mandamus.

The trial court dismissed the third amended complaint and petition without leave to amend, reasoning that the petition was untimely under an unspecified statute of limitations.

The Court of Appeal's Decision

Writ of Mandate

A writ of mandate under Cal. Code of Civil Procedure § 1085 is a tool to compel a public agency to perform a legal, typically ministerial, duty. A cause of action for traditional mandamus has two essential elements: (1) A clear, present and usually ministerial duty on the part of the respondent; and (2) a clear, present and beneficial right in the petitioner to the performance of that duty. These elements imply a third requirement, which is the respondent's ability to perform the duty. In addition, the petitioner must ordinarily show there is no plain, speedy, and adequate remedy in the ordinary course of law.

Mandamus will lie to compel a public official to perform an official act required by law but will not lie to control an exercise of discretion, *i.e.*, to compel an official to exercise discretion in a particular manner. Mandamus may issue, however, to compel an official both to exercise his discretion (if he is required by law to do so) and to exercise it under a proper interpretation of the applicable law. Where a statute or ordinance clearly defines the specific duties or course of conduct that a governing body must take, that course of conduct becomes mandatory and eliminates any element of discretion. In this context, "mandatory" and "ministerial" duties are generally synonymous.

A respondent may test the legal sufficiency of a petition for writ of mandate by demurrer.

Fish & Game Code 5935

The Court of Appeal focused on Cal. Fish & Game Code § 5935, quoted above. It found that the statute plainly describes a duty applicable to certain dam owners. The statute also requires the party with the duty to perform it in a prescribed manner when a given state of facts exist: if a dam is equipped with a fish ladder, the dam's owner must keep the fish ladder open and unobstructed. The statute indicates that the duty is mandatory. By all indications, compliance with § 5935 is not discretionary for dam owners. The prosecutorial discretion of the California Department of Fish and Wildlife is an entirely separate issue, as is the possibility that noncompliance may be legally excused under a given set of facts.

MID argued that it had no current duty to operate the fish ladder at the C-H Dam, citing its defensive factual allegations not found in the operative complaint and petition. The Court of Appeal observed that defendant's arguments concern the possible existence of affirmative defenses, *i.e.*, legal excuses for not complying with the statute. The arguments raise mixed questions of law and fact that cannot be determined in ruling on a demurrer. Whether MID's performance of the duty is impossible, impracticable, or otherwise legally excused are fact-based affirmative defenses that have yet to be established.

Statute of Limitations

The statute of limitations for a traditional mandamus action is determined by the nature of the underlying right or obligation that the action seeks to enforce. To determine whether the continuous accrual doctrine applies, a court looks to the nature of the obligation allegedly breached. Plaintiff here sought to enforce statutory duties of a continuing nature that are susceptible to recurring breaches. Those circumstances, along with allegations of ongoing and/or recurring breaches of those duties, permit reliance upon a continuous accrual theory and defeat an untimeliness challenge on demurrer. In addition, the brief resumption of operation of the C-D Dam fish ladder in September 2023 may support an allegation of a fresh breach within a three- or four-year statute of limitations. The Court of Appeal found plaintiff's cause of action was not time barred on the face of the pleadings or by judicial notice of the parties' evidence. The Cort of Appeal found that the trial court erred by concluding otherwise.

Conclusion and Implication

MID's defenses to plaintiff's statute-based challenge to failure to maintain and operate the fish ladder at its C-H Dam raised questions of law and fact that could not be resolved on demurrer. The court's published opinion which was issued on June 11, 2025, is available online at: https://www4.courts.ca.gov/opinions/documents/F088084.PDF
(Lauren Caster, Darien Key, Derek Hoffman)

PRELIMINARY RULING BY ORANGE COUNTY SUPERIOR COURT SEEKS TO LIMIT THE U.S. NAVY'S FEDERAL RESERVED WATER RIGHT

Mojave Pistachios, et al., vs. Indian Wells Valley Water District, et al.,
Case No. 30-2021-01187275 (Orange County Super. Ct. 2025).

A preliminary ruling in the ongoing water adjudication lawsuit, *Mojave Pistachios, et al., vs. Indian Wells Valley Water District, et al.* limited the U.S. Navy's allocation to 2,008 acre-feet annually (AFY). The ruling applies to Naval Air Weapons Station China Lake, which sits within the Indian Wells Valley groundwater basin in California.

Background

The Navy had asserted a federal reserved water right for over 6,500 AFY to account for both its current use and potential future expansion of its weapons development and personnel. The reduced amount of 2,008 AFY is based on the Navy's ten-year average annual water use of 1,536 AFY for things like testing and wildfire management, plus an additional 500 AFY for potential future programs.

The Lawsuit

The local groundwater authority's sustainability plan had already factored in the Navy's existing use, so the ruling is not expected to immediately change the area's overall water use estimates. The ruling, however, may encourage other parties to further litigate for a larger share of water rights, which could increase costs for other users in the water district.

Various phases for trial are set, as often occurs with groundwater adjudications. The Phase 1 trial, which focuses on determining if the Indian Wells Valley groundwater basin is in a state of overdraft, remains active. Further hearings will continue to address procedural and evidentiary matters before the court makes its final determination on the issue. Phases 2 and 3, if the court confirms the basin is in overdraft, will proceed to Phase 2 and 3. These later stages are anticipated to address the following issues: (i) safe yield: The court will determine the "safe yield" (the amount of groundwater that can be pumped sustainably without causing long-term harm to the basin); and (ii) physical solution and allocation: A "physical solution" will be established to proportionally allocate water rights and reduce pumping among all users in the basin, including the Navy and other parties.

Following the trial would be a final decree. Once all phases are complete, the court will issue a final decree. This legally binding judgment will determine all water rights within the disputed basin, set forth management rules, and typically establish a watermaster to administer the decree going forward. Potential appeals always exist with these cases. Parties that disagree with the final judgment may choose to appeal the ruling to a higher court.

Conclusion and Implications

On the one hand, the Indian Wells Valley Groundwater Authority contends that the federal reserved water right at Naval Air Weapons Station China Lake does not change the actual water use estimates being used in groundwater management. Implications, however, might exist for the Navy and the local community.

For the Navy, the ruling poses restraints on future growth. The ruling caps the Navy's allocation at 2,008 AFY, significantly lower than the 6,500-plus AFY that it requested for expansion. This limits the Navy's ability to increase personnel and future weapons development programs at the installation. While the allocated amount is in line with China Lake's average water use over the past decade, future growth in testing and training activities may put a strain on the available supply, which is a critical component when evaluating the federal reserved right. The ruling is likely to intensify the Navy's existing water conservation efforts and push for increased water resilience at the installation, which is part of a broader Department of Defense trend for installations at risk of water scarcity.

For the community, the Indian Wells Valley Water District had relied on transferring the Navy's unused water to serve its civilian customers without the high costs of replenishment. With the Navy's allocation drastically reduced, this "replenishment-free" water supply is at risk, potentially leading to higher water rates for local residents and businesses. Higher water

costs and reduced availability could make it more difficult for the surrounding community to grow and attract new businesses and residents.

Ultimately, this groundwater adjudication is extraordinarily complex with very nuanced and significant issues, with the federal reserved right being one such example from this ruling, which will likely bear on how this particular water right is adjudicated in future disputes.
(Wes Miliband)

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