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CALIFORNIA WATER NEWS

INVASIVE GOLDEN MUSSELS ARE FOUND IN MULTIPLE CALIFORNIA RESERVOIRS

Golden mussels, a highly invasive species native to Asia, were first detected in North America in California's Sacramento-San Joaquin River Delta in October 2024. Since then, they have been confirmed in several of California's reservoirs and waterways, posing a significant threat to water infrastructure and native ecosystems. The mussel has also been a major destructive invasive species in South America since the 1990s.

The Mussels are Found in Multiple California Reservoirs

When comparing the three invasive mussel species—golden, zebra, and quagga—it is important to note their differences in appearance, habitat tolerance, and invasiveness. The golden mussel is a newer threat to North American waterways, while zebra and quagga mussels have been established since the 1980s.

Golden mussels (Limnoperna fortunei) are similar to the invasive zebra and quagga mussels but can survive in a wider range of water conditions, including lower calcium levels. This makes many more of California's reservoirs and waterways vulnerable to infestation.

They have been found in the O'Neill Forebay, which is the link between the Delta-Mendota Canal and the California Aqueduct, threatening the broader state water system. Farther south in Pyramid Lake the golden mussels were found during August 2025 as well as quagga mussels. As of now, Pyramid Lake reportedly is the most southern point the golden mussel has been found. Other lakes include Silverwood Lake and Lake Oroville.

Potential Impacts from the Golden Mussel

Golden mussels reportedly pose a major economic threat to California's water infrastructure through biofouling, disruptions to water and energy delivery, higher water treatment costs, and damage to facilities. In other regions of the world, these issues have already resulted in costs in the hundreds of millions of dollars.

The species is known for its ability to cause massive ecological and economic damage. Mussels attach to surfaces using byssal threads and can form dense colonies that clog intake pipes, water filtration systems, and the machinery of hydroelectric power plants. This leads to costly maintenance and operational issues.

As efficient filter feeders, golden mussels consume large amounts of plankton, altering aquatic food webs. This can harm native fish species and increase water clarity, which further changes the ecosystem.

The mussels can increase the risk of harmful algae blooms and bioaccumulate toxins, which can make fish and wildlife unsafe for human consumption.

Infestations can lead to boat quarantines, mandatory inspections, and increased fees. Their sharp shells can also litter beaches.

Efforts to Prevent Spread

California is taking several aggressive and coordinated measures to combat the golden mussel infestation, with efforts led by the California Department of Water Resources (DWR), California Department of Fish and Wildlife (CDFW), and California State Parks. These efforts focus on three main areas: watercraft inspection and public education, monitoring and facility protection, and the development of new control technologies.

State agencies, including the California Department of Fish and Wildlife and the Department of Water Resources, are implementing measures to slow the spread of the invasive mussel. These efforts focus on boater education and mandatory inspections.

Boaters are urged to inspect, clean, drain, and dry their watercraft and equipment after use to prevent the overland transfer of mussels or their microscopic larvae.

Inspections and quarantine: Launch sites for reservoirs, such as Lake Berryessa, have implemented inspection programs and may require a 30-day quarantine or decontamination for watercraft coming from the Delta.

In other countries like Brazil, researchers have studied control methods such as using biocides, though these have potential environmental damage.

Conclusion and Implications

Individual boaters can take practical steps to avoid, or remove when necessary, mussels so as to help limit the spread while also better ensuring continued use and enjoyment of boating on California waterways. To remove golden mussels from a boat, you must follow the "Clean, Drain, and Dry" protocol to prevent further spread. You may need to take the boat to an authorized hot-water decontamination station for a more thorough cleaning. Scraping, high-pressure washing with hot water, and a quarantine period are key to effectively removing mussels and their microscopic larvae, known as veligers. For more information from the California Department of Fish and Wildlife, *see:* https://wildlife.ca.gov/Conservation/Invasives/Species/Golden-Mussel; and from the California Department of Water Resources, *see:* https://water.ca.gov/News/Blog/2025/May-25/Oroville-Update-5-22-2025
(Wes Miliband)

MONTEREY PENINSULA'S WATER SUPPLY EXPANDS WITH THE PURE WATER MONTEREY GOING ONLINE

The California State Water Resources Control Board (State Water Board) recently issued a Notice of Proposed Emergency Rulemaking regarding Water Rights Fees for Fiscal Year 2025-26. (The Pure Water Monterey (PWM) expansion went online in October 2025, increasing its purified water production to help supply more than 60 percent of the potable needs for the Monterey Peninsula. This milestone significantly reduces reliance on the strained Carmel River and provides a reliable, drought-proof water source.

Background

The Monterey Peninsula has a long-standing water problem due to over-reliance on limited local sources, the Carmel River and Seaside Groundwater Basin, leading to court-ordered reductions and seawater intrusion. In response, the region is pursuing multiple solutions, including the Pure Water Monterey project which purifies wastewater for groundwater replenishment, and the new California American Water (Cal Am) desalination plant. Pure Water Monterey is a key project providing a local, drought-resistant supply, while the desalination plant offers a new, independent source and helps address the ongoing water shortage and related housing issues.

Key details about the expansion:

- Capacity increase—The facility boosted its production from 5 million gallons a day to 7.6 million gallons per day. This adds 2,250 acre-feet of water annually, on top of the original 3,500 acre-feet.

- Water Sources—The PWM project recycles wastewater and also incorporates stormwater, food industry processing water, and impaired surface water.

- Advanced Purification—The water is treated using membrane filtration, reverse osmosis, and advanced oxidation with hydrogen peroxide and ultraviolet light. The "hyper-purified" water meets or exceeds all state and federal drinking water standards.

- Groundwater Replenishment—The treated water is then injected into the Seaside Groundwater Basin to replenish the aquifer, which is a major benefit for the region's overall water security.

- Reduced Environmental Impacts—The project helps reduce the stress on the Carmel River and its steelhead population by reducing the need to draw from the river. It also decreases ocean discharge of wastewater.

Significance of the Project

The State Water Board issued a cease and desist order California American Water in 2016 to stop its illegal diversions from the Carmel River. The order has been the subject of ongoing dispute and efforts

to resolve the issue. In 2009, a prior order, which was updated in 2021, had already limited Cal-Am to pumping a specific amount of water from the river and prohibited new connections. The CDO requires Cal-Am to implement sustainable water solutions, such as increased recycling and conservation, to stop these illegal diversions.

Using multiple water sources for the Pure Water Monterey (PWM) project is significant because it provides a reliable, drought-proof water supply for the Monterey Peninsula, reduces environmental harm, and helps the region meet regulatory requirements.

The key benefits of this strategy include:

•Diversifies Local Supply—The Monterey Peninsula historically relied on two primary sources that were under stress: the Carmel River and the Seaside Groundwater Basin. State and court-ordered reductions in the use of these natural sources meant the region needed a sustainable alternative. By adding treated wastewater, stormwater, and water from local industries and agriculture, PWM creates a resilient, drought-resistant water portfolio.

•Protects the Environment—By recycling water that would otherwise be discharged into Monterey Bay, the project provides multiple environmental benefits.

•Restores the Carmel River—The project's water supply reduces the need to pump from the Carmel River, which helps restore flow for native species like the endangered steelhead trout.

•Reduces Coastal Pollution—Capturing and treating urban stormwater and agricultural runoff prevents pollutants from entering the Monterey Bay National Marine Sanctuary.

•Combats Seawater Intrusion—Replenishing the Seaside Groundwater Basin with purified water helps push back against seawater intrusion, which can contaminate the aquifer.

•Creates a Multi-Benefit System
This integrated "One Water" approach is more efficient and sustainable than relying on a single source.

•Increased Volume—By including wastewater, stormwater, and agricultural runoff, the project maximizes the volume of water it can reclaim and recycle.

•Reduces Pumping—The project lessens the demand on both surface water (the Carmel River) and groundwater (the Seaside Basin).

•Community Collaboration—As a multi-agency project, PWM demonstrates a new model for regional cooperation to solve complex water supply challenges.

Conclusion and Implications

The completion of the project, managed by Monterey One Water, reportedly is hailed as a major achievement in creating a sustainable water supply for decades to come. It has also prompted the Monterey Peninsula Water Management District to request that the State Water Board lift its cease-and-desist order on new water meters, which has long restricted growth in the area. As such, the project could bring relief beyond the physical supply of water.
(Wes Miliband)

LEGISLATIVE DEVELOPMENTS

SENATE BILL 72 MODERNIZES THE CALIFORNIA WATER PLAN TO INCLUDE QUANTITATIVE PERFORMANCE MEASUREMENTS

On October 1, 2025, Governor Newsom signed Senate Bill (SB) 72 into law, amending and reorganizing sections of the Water Code to modernize the California Water Plan (CWP) in response to increasing climate variability. The CWP is the state's primary planning document for the strategic administration of California's water supplies. Authored by Senator Anna Caballero, SB 72 directs the Department of Water Resources (DWR) to update the CWP in 2028 to set new water supply targets for 2050, considering the current and future water needs of municipal, agricultural, environmental, and tribal beneficial uses throughout the state.

Background

With origins dating back to the 1800s, the CWP was formally established as Bulletin No. 3 in 1957. The CWP is California's strategic plan for statewide water supply development and management, used to guide the "orderly and coordinated control, protection, conservation, development, and utilization of the water resources of the state by all individuals." (Wat. Code, § 10005(a).) Based on early State Water Resources Control Board and DWR bulletins, the CWP promoted cooperative planning without necessarily establishing quantifiable standards to guide those water management efforts.

Under the prior law, DWR was required to update the CWP every five years, in consultation with an advisory committee that represents agricultural and urban water suppliers, local agencies, and interests from the business, agriculture, and environmental sectors. (Wat. Code, § 10004(a)(2)(A).) Through consultation with the advisory committee, DWR developed narrative policy strategies for actions like water conservation, recycling, desalination, and transfers, but did not establish quantitative metrics for accomplishing those objectives. For the past several decades, the CWP has remained relatively unchanged despite growing populations and increasing drought conditions in many parts of California. Recent studies, however, have projected a future water supply shortfall of 4.6 to 9 million acre-feet annually by 2050, equivalent to 90 percent of California's urban water use or the irrigation of 3 million acres of farmland.

Changes to the California Water Plan under SB 72

The frequency of drought, wildfire, and critical groundwater overdraft in recent years has prompted California to reexamine the vulnerabilities in its water management and planning. According to the Legislature, these recurring events have exposed the limitations of a plan focused on data collection rather than adaptive implementation based on measurable objectives. SB 72 makes a number of substantive revisions to modernize the California Water Plan and better guard against unpredictability and annual water budget shortfalls. In its repeal and replacement of Section 10004 of the Water Code, SB 72 outlines a comprehensive, scenario-based strategy that sets numeric long-term supply targets, beginning December 31, 2028, and every five years thereafter.

Another main change in the updated Section 10004 is the expanded advisory committee. Historically, the advisory committee did not include tribes, labor and trade representatives, or environmental justice interests. In practice, this limited the diversity of input in statewide planning and policy development. The expanded advisory committee now expressly provides for the inclusion of representatives from tribal governments, building and construction trades, water agencies, environmental justice groups, and other interested parties to provide input. (Wat. Code, § 10004(c).)

As for other changes, Section 10004.5 now prescribes regional analysis, peer-reviewed science, and cost-benefit evaluation to guide how local agencies prioritize infrastructure and funding. (Wat. Code § 10004.5.) Under the prior framework, the CWP prioritized data collection and descriptions of water conditions to inform broad, statewide policy recommendations. These analytical roles aimed to maintain a science-based understanding of California's water

balance but did not focus on specific future climate-adaptation and measurable outcomes. SB 72 requires that the reporting on the state's forecasted water needs must include additional requirements, such as a 50-year horizon on a watershed scale, and opportunities for scientific peer review of the draft assumptions and estimates that go into it. (Wat. Code, § 10004.6.)

SB 72 introduces an interim planning target of 9 million acre-feet of additional water, water conservation, or new water storage capacity to be achieved by 2040. (*Id.* at subd. (f).) Additional means of implementation of the interim target include stormwater capture, recycled water, graywater, and other supplies, consistent with the ongoing implementation of the *Making Conservation a California Way of Life* regulation. As part of its second update in 2033, DWR is tasked with revising and updating the 2040 interim supply planning target for the year 2050. (*Id.* at subd. (a)(2).)

SB 72 aims to convert the CWP from a periodic technical report into a governance instrument that connects California's water statutes through shared data, measurable goals, and inclusive decision making. Because the CWP will be used to guide other legislative directives and state-funded infrastructure, the updated interim planning target may also be used to encourage compliance incentives for local and regional agencies. Although SB 72 does not alter the regulatory authority of other agencies, it will help inform their work by providing an up-to-date reflection of the status and trends of California's water-dependent natural resources, water supplies, and water demands.

Conclusion and Implications

Senate Bill 72 provides updates to the California Water Plan that make it more responsive to climate change and watershed resilience needs. Beginning in 2028, the new CWP will provide measurable targets for water agencies and other stakeholders to collaborate and plan water supply further towards evidence-based governance. For more information, *see:* https://legiscan.com/CA/text/SB72/id/3271508
(Bailie Sirhall, Austin Cho)

REGULATORY DEVELOPMENTS

EPA RELEASES PLANNING TOOLS FOR WATER SYSTEMS TO ADDRESS CYBERSECURITY ATTACKS

On October 23, 2025, the U.S. Environmental Protection Agency (EPA) released new and updated planning tools that water systems across the country can use to help prevent and respond to cybersecurity incidents. These tools will help all public water systems protect access to safe water and aid systems conducting risk and emergency planning for cybersecurity.

In August 2025, the EPA announced over $9 million in grant funding for midsize and large water systems to help protect drinking water from cybersecurity threats and improve resiliency for extreme weather events. [*See:* https://www.epa.gov/newsreleases/epa-announces-availability-9-million-protect-drinking-water-natural-hazards-and]

EPA also published a report highlighting ten recommendations to strengthen resiliency to cyberattacks in the water sector.

Background

Cyberattacks against water systems have increased several-fold in recent years and can disrupt or contaminate drinking water and compromise the treatment of wastewater. EPA, federal partners, and utilities have a collective responsibility to ensure that cyber threats do not imperil the critical lifeline of clean and safe water. Clean and safe water is central to strengthening the American workforce; powering industries—from auto manufacturing to Artificial Intelligence; and advancing energy dominance. In communities, it supports small businesses, hospitals, military bases, and schools.

EPA's Develops Resources to Address Cyberthreats

To better address potential vulnerabilities and ensure all water systems have the best information and emergency safeguards available to maintain protections for drinking water and wastewater treatment operations, EPA has developed the following resources:

*Emergency Response Plan (ERP) Guide for Wastewater Utilities: This updated plan describes strategies, resources, plans, and procedures utilities can use to prepare for and respond to an incident, natural or man-made, that threatens life, property, or the environment.

•Template for Developing an Incident Response Plan: This new template assists drinking water and wastewater systems with developing a Cybersecurity Incident Response Plan (CIRP).

•Incident Action Checklists: EPA is publishing two new checklists, as requested by the water sector, to help drinking water utilities prepare for, respond to, and recover from specific emergencies such as wildfires, power outages, floods, and cybersecurity incidents.

•Cybersecurity Procurement Checklist: This checklist will help water and wastewater utilities incorporate cybersecurity into the procurement process. It will help utilities generally assess the cybersecurity practices of suppliers, including vendors and manufacturers, and their products during procurement.

EPA has determined that cybersecurity for critical infrastructure is a human health and a national security priority. EPA will continue to fulfill its core mission of protecting human health and the environment by working with the Cybersecurity and Infrastructure Security Agency, state programs, and water associations to help reduce cyber risks at water systems. The agency will also continue to collaborate with water systems to implement best management practices to swiftly address any cybersecurity concerns as they arise.

Jessica Kramer Confirmed as EPA Assistant Administrator for Water

In related news, EPA has announced that Jessica Kramer has been confirmed by the U.S. Senate to

serve as U.S. Environmental Protection Agency's (EPA) Assistant Administrator for the Office of Water. This is a new role to advance the agency's core mission of protecting human health and the environment and EPA Administrator Lee Zeldin's Powering the Great American Comeback Initiative.

The Office of Water works to ensure that drinking water is safe, wastewater is safely returned to the environment, and surface waters are properly managed and protected. The Office is responsible for implementing key environmental statutes, including the Clean Water Act, the Safe Drinking Water Act, and the Marine Protection, Research and Sanctuaries Act.

Prior to her confirmation, Ms. Kramer served as a Senior Advisor to EPA Administrator Lee Zeldin. She previously served as Deputy Secretary of Regulatory Programs at the Florida Department of Environmental Protection where she managed statewide environmental programs. Ms. Kramer also briefly served as a senior policy advisor and counsel for Government Relations at Brownstein Hyatt Farber Schreck.

Conclusion and Implications

The U.S. Environmental Protection Agency and the Cybersecurity and Infrastructure Security Agency are releasing information about a common cybersecurity vulnerability at water and wastewater systems using unsecured Human Machine Interface (HMI) devices. In the absence of cybersecurity measures, unauthorized remote users could exploit Human Machine Interfaces to view and adjust real-time system settings. These unauthorized adjustments can potentially disrupt the facility's water and/or wastewater treatment process. Learn more about EPA water-related cybersecurity efforts, *see:* EPA's water cybersecurity efforts.
(Robert Schuster)

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE RELEASES SECOND COMPREHENSIVE REVISION TO STATE WILDLIFE ACTION PLAN

In October 2025, the California Department of Fish and Wildlife released the second update to the 2005 State Wildlife Action Plan. This plan, or SWAP, provides a blueprint for comprehensive and strategic statewide wildlife conservation plans crafted to achieve specific, and detailed, conservation goals. The SWAP specifically focuses on conservation of species which are not currently listed as engendered species under the Endangered Species Act, but face the threat of such designation without intervention in the form of conservation, and habitat restoration and protection.

Background

In 2005, Congress mandated each state and territory submit a State Wildlife Action Plan for approval to the U.S. Fish and Wildlife Service as a condition for receiving federal funding for wildlife conservation. The plans must be revised at least every ten years and include specific criteria for how threats to wildlife, and their habitats, will be addressed. CDFW released the first evaluation and revision of California's 2005 plan in 2015 and, as of October, has released the second evaluation and revision. The 2025 plan is shaped by input from the public and representatives from state and federal agencies and tribes gathered through conservation partner meetings, public webinars, and inter-tribal listening sessions. The SWAP is implemented through several projects; interagency, private, and academic sector coordination; and sector-specific conservation companion plans, implemented by state agencies. To date, CDFW has received nearly $71 million to support conservation strategies through the U.S. Fish & Wildlife Service's State Wildlife Grant program, and CDFW uses these funds to support implementation of the statewide conservation projects, outlined in the SWAP, to achieve detailed conservation goals.

The SWAP's conservation strategies protect certain species, designated as "Species in Greatest Conservation Need," and achieve conservation goals through several mechanisms including identification of key threats; protection and restoration of critical, species-supporting habitats; monitoring and research plans; and creation of specific-issue focus groups. With specific regard to aquatic ecosystems and

anadromous fish, those species which largely live in saltwater body migrate to freshwater rivers to spawn, the SWAP details the primary conservation goal as management and conservation of the following species of fish: chinook and coho salmon, steelhead and cutthroat trout, green and white sturgeon, longfin smelt, and pacific lamprey and western river lamprey; as well as their critical habitats. The plan identifies specific habitat stressors as: population growth and increased infrastructure as a result of community expansion; dams and water management/use; and climate change. The SWAP provides specific conservation strategies to combat these stressors, all of which are crafted under the framework of six principles: water management, habitat restoration, species recovery, angling opportunities, hatchery management, and promotion of collaborative efforts through inter-agency, tribal, private, and academic partnerships.

At present, there are several state projects which address the conservation needs of the aforementioned species, and their habitats, such as the California Water Action Plan, Healthy Rivers and Landscapes Program, and the California Water Plan, among others. The SWAP recognizes these companion efforts and crafts goals that incorporate aspects of those projects in an effort to ensure successful outcomes through collaboration and shared resources. In addition, the SWAP details additional priority actions which require more immediate implementation, in addition to long-term commitment.

The State Wildlife Action Plan

The SWAP addresses statewide conservation needs by crafting specific conservation goals for four separate regions. First, North Coast and North/Central Coast conservation strategies focus heavily on salmon populations in the region and include numerous targets including as establishment of collaborative working groups for the Smith, Mattole, and South Fork Eel river salmon watersheds to support strategies to promote strong salmon populations; evaluation and restoration of coastal estuaries, and development of strategies to enhance and restore Russian Rivershed conditions, implementations of water management plans that ensure fishery and land use efforts are compatible with conservation strategies, and expansion of the Warm Spring Hatchery complex to serve as a potential regional conservation facility to species in the North Central domain.

Second, Klamath River strategies focus specifically on, both, salmon and lamprey species and include actions to improve water flow to support species migration (such as the Klamath River Dam Removal project), establishment of an inter-organizational team to promote habitat recovery plans and species monitoring programs, implementation of efforts that support the Trinity River Restoration Plan and Klamath River Settlement, and strategic species hatchery management.

Third, South Coast and Southern California conservation strategies detail strategies to benefit the steelhead such as remediation of downstream barriers which prevent the Steelhead from entering rivers and streams, modification of land use practices and water management strategies which negatively affect steelhead populations, and establishment of a monitoring program to further evaluate steelhead populations and related ecological process.

Fourth, the conservation strategies for the Sacramento-San Joaquin River region address recovery strategies for the chinook salmon and steelhead populations of the region and lists specific conservation goals for each species including integration of current conservation efforts within current National Marine Fisheries Service and CDFW recovery programs, the Central Valley Project Improvement Act, the Bay Delta Conservation Plan, the San Joaquin River Restoration Program, as well as dam reintroduction projects on the Yuba, Feather, and Sacramento rivers.

Conclusion and Implication

While the State Wildlife Action Plan is not a regulatory tool and does not provide specific mandates, it does guide priorities and funding while encouraging inter-agency coordination thereby creating greater potential for successful outcomes. The nearly 800-page SWAP provides extensive, and detailed, conservation strategies to accomplish the listed conservation targets, creating an underpinning for greater statewide water policy and water management practices. Any creation of, or amendment to existing, water policies which may affect or alter streamflows, connectivity, water storage practices, should to take into account, and incorporate, the conservation strategies detailed in the SWAP, both, because of the benefit of public input that has already been generated in creation of the revision, but because of the greater database of information and resource which has been

compiled. Further, the goals and strategies detailed in the SWAP may likely play an influential role in how decision makers evaluate, approve, or deny permits for projects, or project proposals, which have the potential to alter or impact streamflow, negatively affect key species or surrounding habitats, or otherwise create outcomes that would be in contradiction to the outlined conservation goals in the SWAP. In this manner, the strategies and guidelines provided in the SWAP have the potential to directly influence the regulatory process, and continued evolution of water-related policy in the state. The State Wildlife Action Plan is available at https://wildlife.ca.gov/SWAP/Final
(Miles Krieger)

DISPUTE BETWEEN CITY AND DEVELOPER HIGHLIGHTS TENSIONS BETWEEN SGMA AND STATE HOUSING POLICY

On September 22, 2025, the California Department of Housing and Community Development (HCD) issued a technical assistance letter that questions the City of Patterson's decision to reject a developer's tentative subdivision map for a proposed housing development. The Keystone Ranch development project (Project) sought to subdivide 95 acres into 719 single- and multifamily housing units in Stanislaus County. At a meeting in April 2025, the Patterson City Council rejected the subdivision map, finding groundwater supplies were insufficient to meet demands. The developer filed suit, arguing the City violated housing law by demanding an unreasonable condition to fund a $20 million groundwater recharge facility.

Background

The City's primary water supply is groundwater from the Delta-Mendota Subbasin. The Subbasin is considered "critically overdrafted," putting it at the highest priority for developing and implementing one or more Groundwater Sustainability Plans (GSPs) under the Sustainable Groundwater Management Act (SGMA). The six GSPs adopted for the Delta-Mendota Subbasin in 2022 acknowledged a net overdraft of 140,000 acre-feet per year. The GSPs described projects and management actions to address groundwater deficits via supply augmentation and reduction of current demands, but the Department of Water Resources deemed them inadequate in 2023. A new single GSP was adopted in 2024, which the State Water Resources Control Board will consider alongside potential state intervention and probationary status.

California also faces a housing shortage, estimated between 1 million and 3.5 million units. Meanwhile, housing costs in the state far exceed the national average. The Legislative Analyst's Office (LAO) has reported that a "bottom-tier" home in California costs about 30 percent more than a "mid-tier" home elsewhere in the country. Recent efforts to counter the housing shortage include amendments to the Housing Accountability Act (HAA) and the passage of the Housing Crisis Act (HCA). Together, these laws work to limit local governments' ability to deny or downsize housing projects, hinder growth, impose undue development fees, or deliberately delay projects.

The Keystone Development Project

The Project was proposed within the Zacharias Master Plan, a 1,200-acre area in Stanislaus County that the City annexed in 2023. The City issued, pursuant to the California Environmental Quality Act (CEQA), a final Environmental Impact Report (EIR) for the Zacharias Master Plan in 2021; the EIR did not identify groundwater impacts, but in the years since its adoption, concerns over groundwater sustainability and legal challenges prompted the City to consider a need for additional environmental analysis and mitigation. As part of a settlement of the EIR litigation, the City agreed to require developers to fund a recharge project and purchase surface water to offset groundwater demands.

At its April 2025 meeting, the City Council called for a supplemental EIR for the Zacharias Master Plan as a condition for Project approval. Additionally, the City sought to impose development fees on the Project proponents to fully fund a $20 million groundwater recharge basin to supplement the City's water supply. According to the City, the recharge basin is needed to comply with SGMA and its settlement

of the EIR litigation. The City Council indicated it would withhold a "will-serve" letter for the Project until it achieves offsets that account for the development's increased demands. Because the recharge basin would supply more than just the proposed development, the City noted the Project developer would be given a chance to recoup costs in excess of its proportional share via fee credits and reimbursements.

When the Project developer refused to accept the conditions of approval, the City rejected the subdivision map and stated its intent to move forward with recirculation of the EIR for the Zacharias Master Plan to incorporate new groundwater data from the 2024 GSP. The Project developer sued the City, alleging, among other things, that the City's denial violated state housing law. (*Keystone Ranch, LLC v. City of Patterson et al.*, Stanislaus County Superior Court Case No. CV-24-003269.) The Project developer's briefing elaborates on its housing violation claims, arguing in part that the City failed to support its denial of the Project with necessary findings that the Project would adversely impact public health or safety based on standards in effect at the time of the Project application.

HCD Involvement

In its September letter, HCD similarly characterizes the City's decision as inconsistent with state housing law, namely the HAA and HCA. HCD focuses on the City's requirement for the Project to shoulder the cost of the groundwater recharge facility, which it considers a considerable burden on the Project. HCD also notes that the City failed to make sufficient findings under the HAA to deny the Project, and that the Zacharias Master Plan purported to limit developers' contributions to "their respective fair share" of infrastructure projects. HCD states that the funding condition and other requirements may run afoul of the HCA, as they operate as *de facto* restrictions on housing development. HCD requests that the City respond to its letter in writing by October 22, 2025, indicating how it plans to implement the guidance provided in its letter.

Conclusion and Implications

The arguments raised by the Project developer, HCD, and the City highlight an apparent tension between the state's competing policies for expanded housing and groundwater sustainability. HCD suggests the City has a choice to respond with written findings and analysis that demonstrate compliance with the HAA and HCA, or provide a timeline for revisiting its rejection of the Project. The City, on the other hand, contends that it cannot approve a development that runs afoul of SGMA as the Delta-Mendota Subbasin faces potential probationary status. A copy of HCD's letter to the City of Patterson is available at: https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/patterson-hau-1958-ta-092225.pdf.
(Josh Bailey, Austin Cho)

MANAGING THE SUBSURFACE: HOW THE CALIFORNIA DEPARTMENT OF WATER RESOURCES' DRAFT BEST MANAGEMENT PRACTICES PLANS TO ADDRESS LAND SUBSIDENCE

The California Department of Water Resources (DWR) released a draft Land Subsidence Best Management Practices (BMP) for public comment in July 2025. The BMP was drafted for the purpose of developing guidelines to assist Groundwater Sustainability Agencies (GSAs) in addressing subsidence in the state. The BMP details the goals set by the Sustainable Groundwater Management Act that are intended to minimize or eliminate the impacts of subsidence. The public comment period ended on September 22, 2025. The finalized BMP is expected to be released before the end of the year.

Background

In response to ongoing, and in some areas increasing, land subsidence that has affected California's aquifer systems and has had costly impacts on critical infrastructure across the state, the DWR designated land subsidence as one of the six key sustainability indicators that must be managed and avoided. The Subsidence BMP provides guidance to GSAs on effectively managing this issue, with raising groundwater levels as high and as quickly as possible to avoid or minimize compaction as the core best management practice. The BMP is intended to serve as a guide

for GSAs in collecting sufficient information to understand the magnitude of subsidence under various groundwater level conditions and the establish appropriate management criteria to prevent "undesirable results."

Addressing Land Subsidence

The Sustainability Groundwater Management Act (SGMA) requires Groundwater Sustainability Plans (GSPs) to establish Sustainable Management Criteria (SMC) for subsidence, including undesirable results, minimum thresholds (MTs), and measurable objections (MOs). The BMP provides essential updates on how GSAs should refine these criteria and their corresponding management actions.

Minimum Thresholds

MTs for subsidence must be established based on the rate and cumulative extent of subsidence that substantially interferes with land uses. The best practice proposed in the draft BMP is to set MTs using a combination of all available monitoring methods: including leveling surveys, extensometers, Global Navigation Satellite System (GNSS)/GPS, and Interferometric Synthetic Aperture Radar (InSAR) to ensure accuracy. Further, GSAs must coordinate with the owners and operators of potentially affected infrastructure to formally define the amount and location of subsidence that would cause substantial interference. This coordination is non-negotiable for effective management under the BMP.

Groundwater Level SMC

Second, to avoid or minimize further subsidence, the BMP provides that best practice is to align groundwater level SMC with the subsidence goal by ensuring groundwater levels are set above the critical head as high and as quickly as possible. The draft BMP advises against using groundwater levels as a proxy for setting subsidence MTs, as subsidence can be measured directly. While the GSP Regulations permit proxies, direct measurement is deemed the best practice to minimize uncertainly due to complex subsurface geology.

Enhanced Monitoring

Third, GSAs must establish more frequent monitoring protocols. The best practice is to review subsidence monitoring data at least quarterly to detect sudden or unexpected changes and allow for the timely implementation of Projects and Management Actions (PMAs). The BMP also emphasizes establishing groundwater pumping reporting in areas near infrastructure experience subsidence. This provides temporal and spatial data needed to understand the direct relationship between pumping, groundwater levels, and the local effects of compaction. This enables management to adjust practices before undesirable results occur.

Technical Issues and Challenges in Subsidence Management and Proactive Measures

The BMP highlights specific technical issues that require greater focus from GSAs and represent new challenges in achieving sustainability. For example, the draft BMP formalizes the concept of "critical head" as the groundwater level elevation below which inelastic compaction of fine-grained sediments begins. Managing groundwater levels only to avoid historical lows may be insufficient because the critical head is often at a higher elevation than previously experienced lows. Thus, the draft BMP requires GSAs to utilize multiple methods to accurately estimate the critical head of the basin. This shift compels a more conservative management approach where MOs must aim to raise and maintain groundwater levels above the critical head to prevent further compaction.

The draft BMP introduces the framework of four management scenario based on whether subsidence is currently occurring and the degree of which groundwater levels are managed above or below historical lows. This structure compels GSAs to be practice and prepare specific responses. For instance, in a high-risk scenario, such as an area with existing subsidence where thresholds would allow levels to fall below the critical head, the GSA is expected to immediately implement aggressive action. This includes demand reduction of groundwater pumping, implement managed aquifer recharge (capturing excess water into recharge basins) and aquifer storage and recovery (injecting water into an aquifer via wells), and shifting pumping to less compactable aquifers to address overdraft pumping.

Legal Issues, Damage of Subsidence and Interference with Property Rights

The draft BEMP directly addresses legal issues

concerning liability for subsidence damage, noting that under California law, groundwater pumpers may be liable for damages caused by subsidence from their pumping. The draft BMP cites the court case *Los Osos Valley Associates v. City of San Luis Obispo,* (1994) which held that an entity was liable for physical damage to another's building due to groundwater pumping operations. However, the draft BMP excludes a legal disclaimer, stating that it is a technical guidance document, not a substitute for compliance with SGMA and GSP regulations.

Regardless, the overall framework of the subsidence BMP centers on avoiding "critical damage" which is referred to as "significant and unreasonable" impacts to infrastructure. Specifically, the draft BMP states that the best practice for the establishment of undesirable results for subsidence includes two components: (1) a qualitative description of the conditions the GSA has identified where subsidence may substantially interfere with surface land uses, including the potential effects on infrastructure, land uses, and property interests, and (2) a quantitative mix of minimum threshold exceedances that represents when subsidence is significant and unreasonable such that it substantially interferes with land uses.

The draft BMP describes subsidence damage as costing Californians hundreds of millions of dollars annually in repairs and jeopardizes public safety. The draft BMP specifically lists potential critical damage types including physical damage, reduced service reliability, increasing maintenance on city and community infrastructure, such as cracking, joint failure, reduced capacity and alignment of transmission poles for pipelines and other utilities, as well as reduced conveyance, lining damage, and loss of capacity for canals. Other types of damage specifically listed are loss of grade, structural failure, and reduced flood capacity for flood and control and drainage facilities, and casing collapse and reduced capacity for pumping facilities.

Conclusion and Implications

The draft Subsidence BMP document is an attempt by the Department of Water Resources to elevate groundwater management standards for SGMA implementation in order to address costly subsidence issues in California. Following the close of the comment period in September 2025, it is unclear how different the final Subsidence BMP will look after the DWR considers and responds to public comments received. The DWR's draft Best Management Practices can be accessed here: https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/Groundwater-Management/Subsidence/Files/Subsidence_BMP_Public_Draft.pdf
(Miles Krieger)

KERN COUNTY'S GROUNDWATER SUSTAINABILITY PLANS AVOID PROHIBITION—ON A FEW CONDITIONS

California's Sustainable Groundwater Management Act (SGMA), enacted in 2014, continues to reshape how local agencies manage one of the state's most precious and contested resources: groundwater. SGMA empowers Groundwater Sustainability Agencies (GSAs) to develop and implement Groundwater Sustainability Plans (GSPs) that achieve "sustainable groundwater management" within 20 years. The law also provides the California Department of Water Resources (DWR) with oversight authority, while the State Water Resources Control Board (State Water Board) steps in if a basin's plans fall short.

Background

The Kern County Subbasin, one of California's most critically overdrafted groundwater basins, remains a bellwether for SGMA implementation across the state. Spanning roughly 1.78 million acres in the southern San Joaquin Valley and managed by 20 GSAs, the subbasin is a complex patchwork of agricultural, municipal, and industrial groundwater users. Its challenges, declining groundwater levels, land subsidence, and deteriorating water quality, reflect the core tensions SGMA seeks to resolve.

State Water Board Review

In September 2025, the State Water Board's staff issued a detailed review of the 2025 Draft GSPs submitted by Kern County's GSAs. The report concluded that while substantial progress has been made toward compliance, several deficiencies persist that

could still trigger state intervention under SGMA's enforcement framework

The State Water Board's review follows several years of back-and-forth between Kern's GSAs, DWR, and the State Water Board. In 2022, DWR deemed the subbasin's GSPs "inadequate," referred the basin to the State Water Board, and initiated the state intervention process. Despite subsequent revisions in 2024, deficiencies persisted, particularly in coordination, groundwater-level management, and well-mitigation programs.

By June 2025, Kern's GSAs submitted seven amended draft GSPs for review. These included one main basin-wide plan and six GSA-specific supplements. The State Water Board staff found that most prior deficiencies had been "substantially, though not completely" addressed. Key improvements included:

- Basin-wide coordination: For the first time, GSAs adopted consistent, coordinated approaches to setting sustainable management criteria, including minimum thresholds and measurable objectives.

- Monitoring enhancements: GSAs identified and committed to filling data gaps in groundwater level and quality monitoring by 2026.

- Well mitigation funding: A $3.5 million annual revolving fund was established to address domestic well failures, providing up to $90,000 per well for replacements and emergency drinking water support within 24–72 hours of impact reports.

- Water quality protections: Of 330 representative wells tested, 308 had minimum thresholds aligned with state drinking water standards, and all GSAs committed to mitigation for quality degradation caused by GSA actions.

This progress represents one of the most comprehensive revisions to groundwater management strategies under SGMA to date.

Persistent Deficiencies and Legal Hurdles

Despite these strides, the State Water Board's staff identified several key deficiencies that must be resolved before Kern County's subbasin can exit state scrutiny.

Governance Uncertainty

The Kern Non-Districted Land Authority (KNDLA), formed to manage groundwater in non-districted areas, faces a sunset clause in May 2026 under its Joint Exercise of Powers Agreement. If the agreement expires without renewal, substantial portions of the subbasin could become "unmanaged," triggering automatic state intervention under SGMA. The Board's staff recommended eliminating the sunset provision to ensure continuous local oversight.

Inadequate Well Mitigation for Small Systems

While domestic wells are eligible for mitigation funding, state small water system wells (5–14 connections) were relegated to a lesser "technical assistance" track and are ineligible for replacement funding. Staff found this approach inconsistent with SGMA's mandate to protect all beneficial uses and recommended that such systems be upgraded to full mitigation eligibility.

Subsurface Uncertainty and Subsidence Attribution

Kern's GSAs still struggle to distinguish between subsidence caused by groundwater pumping and that caused by non-GSA activities such as oil extraction or aqueduct engineering. Accurate attribution is critical because SGMA requires mitigation only for subsidence resulting from GSA-managed pumping. Until better quantification methods are developed, potentially in collaboration with DWR and the California Geologic Energy Management Division, this issue remains unresolved.

Partial Addressing of Groundwater Quality

The 2025 GSPs improved definitions of undesirable results for water quality degradation but left uncertainty regarding mixed-cause contamination, situations where groundwater management actions may only partially contribute to degradation. The Board emphasized that SGMA's protections extend to post-2015 operations that exacerbate existing contamination, even if preexisting pollution is involved

Technical and Policy Innovations

GSAs introduced new threshold exceedance policies, requiring investigation after any single monitor-

ing site breach, and well owner notifications within 30–60 days of confirmed exceedances. The plans also feature collaboration with Self-Help Enterprises, a nonprofit that will administer well mitigation, marking a growing trend of public-private partnerships in SGMA implementation.

In addressing subsidence, GSAs set 2040 as the target year for halting land sinking, aligning with SGMA's 20-year sustainability timeline. They also initiated a cost-sharing framework with the Friant Water Authority to address post-2020 subsidence along the Friant-Kern Canal, one of the region's most critical water conveyance structures.

At the same time, the plans incorporate environmental considerations, including maintaining managed wetlands under the no net loss of wetlands policy. The Semitropic Water Storage District GSA, for instance, was urged to engage with wetland managers to ensure that surface and groundwater allocations continue to support vital Pacific Flyway habitats.

The Legal and Administrative Path Forward

Under California Water Code section 10733.4, the State Water Board may return a subbasin to DWR's oversight if it finds that GSAs have corrected major deficiencies and are capable of achieving sustainability. Kern County now stands at that threshold. The staff recommendation is conditional: the basin should be returned to DWR only if three remaining issues are resolved: (1) full well mitigation for all impacted drinking water wells, including those with 1,2,3-trichloropropane (1,2,3-TCP) contamination; (2) inclusion of small water systems in the mitigation track; and (3) removal of the KNDLA's sunset clause.

Failure to meet these conditions could lead to probationary status, a designation that would impose state-imposed pumping reporting and potential fees on groundwater extractors.

Conclusion and Implications

The Kern County Subbasin represents a critical test of SGMA's balance between local control and state oversight. The progress reflected in the 2025 Draft GSPs demonstrates meaningful alignment with SGMA's objectives: data-driven management, stakeholder inclusion, and measurable protection for groundwater users. Yet, persistent gaps, particularly in governance continuity, mitigation equity, and data precision, illustrate the challenges of translating SGMA's broad mandates into locally enforceable policies.

From a legal standpoint, the Kern case underscores SGMA's evolving jurisprudence. The Act's non-remedial nature does not absolve agencies from addressing ongoing groundwater degradation linked to post-2015 activities. Instead, SGMA creates a dynamic framework in which preventive management and adaptive governance are key to avoiding probationary oversight.

If the GSAs implement the Board's recommendations by early 2026, the subbasin could transition back to DWR's oversight, reinforcing SGMA's preference for local problem-solving over state control. Conversely, continued deficiencies may invite further SGMA enforcement powers, setting a precedent for how California's groundwater will be governed in the future.

(Darien Key, Derek Hoffman)

CALIFORNIA TRIBAL CONSULTATION GUIDELINES TO BE UPDATED

On September 25, 2025, Governor Gavin Newsom's Office of Land Use and Climate Innovation (LCI) announced its extensive plans to update California's Tribal Consultation Guidelines (Guidelines) to further protect Tribal cultural resources and continue to foster relationships with the Native communities throughout the state.

Background

LCI, previously known as the Office of Planning and Research, was established in California in 1970. Since its creation, LCI has been responsible for cultivating and implementing forward-thinking initiatives within the state government and beyond. LCI's work aims to emphasize and resolve critical issues including land use, climate resilience, housing opportunities, and community empowerment.

In 2005, the California legislature passed Senate Bill 18, which aimed to protect Native American cultural heritage. Senate Bill 18 required California's local governments to consult with neighboring Native American tribes before adopting new plans or amending existing plans that would affect any sacred, historic, or cultural sites or objects belonging to the Native Americans.

Senate Bill 18 also required that the legislature develop advisory guidelines for local general plans in order to guarantee proper protection of Native American resources. The first order in the consultation process begins with local government contacting the appropriate tribe notifying the tribe about the opportunity to consult on a matter. Tribes then have 90 days to accept that opportunity and officially request a consultation. The last step is met when both parties mutually agree on a path forward or otherwise conclude that a mutual agreement to move forward cannot be reached.

Another piece of legislation that has often come into play is Assembly Bill 52 which was passed in 2014 and codified in Public Resources Code Section 21080.3.1. Assembly Bill 52 was created to establish a formal consultation process when a project is subject to California Environmental Quality Act (CEQA) review, and when to identify "tribal cultural resources" and mitigate impacts to them.

Under Assembly Bill 52, a tribe that maintains traditional and cultural ties to the geographic area in which a project is proposed may request that the lead agency or local government provide written notification of any projects within the tribe's area of traditional and cultural affiliation. These CEQA-related reviews require different and often shorter time periods for tribes to request a consultation. Generally, the lead agency for a given project should contact tribes that have requested notification of such projects no later than 14 days after an application has been completed or when the lead agency has decided to accept a project. The tribes then have 30 days to request a formal consultation.

A recent case in the California Court of Appeal for the First District strengthened Assembly Bill 52. The court found that the city did not fulfill its obligation to engage in meaningful consultation with a California Native American tribe as required by Assembly Bill 52, prompting the court to overturn approvals for a hotel and roadway project. *Koi Nation of Northern California v. City of Clearlake*, ___Cal.App.5th___, Case No. A169438 (1st Dist. Mar. 14, 2025). This decision heightens the level of diligence expected from agencies and developers when carrying out and recording tribal consultation under CEQA.

The New Guidelines

The original Tribal Consultation Guidelines were adopted in 2005 and have served as a foundational resource to ensure that Tribal governments have an active and meaningful role in land use and environmental planning decisions. The revisions introduced by Governor Newsom's office intend to incorporate substantial legal and policy developments that have occurred in the 20 years since the enactment of Senate Bill 18, including the passage of Assembly Bill 52 in 2014 and relevant and binding case law.

In updating the Tribal Guidelines, the process will include an extensive schedule of consultations—both in-person and virtual—over the next 18 or so months. LCI plans to release a draft outline for Tribal review in late fall 2025, followed by a formal consultation phase designed to capture feedback and insight

from Tribal Nations and Native communities at each stage of development.

In addition, concurrent with updating the Tribal Consultation Guidelines, California's General Plan Guidelines—last updated in 2017—will also be undergoing a multiyear revision, both likely to be completed by 2027. Collectively, these updates aim to provide clear, practical, and culturally respectful direction for local governments, lead agencies, and project applicants to ensure compliance with CEQA's consultation requirements and related state planning laws.

Conclusion and Implications

Over the next two years or so, LCI will engage in sustained collaboration with tribal nations to ensure that the updated guidelines accurately reflect current statutes, new legislative mandates, and recent judicial interpretations, and to most importantly best protect the traditions, culture, and resources of neighboring native communities.
(Mona Goodarzi)

RECENT FEDERAL DECISIONS

NINTH CIRCUIT CLARIFIES THE CLEAN WATER ACT'S IRRIGATED FLOWS EXEMPTION

Pacific Coast Federation of Fishermen's Associations, Inc. v. Nickels, 150 F.4th 1260 (9th Cir. 2025).

The Ninth Circuit, on September 5, 2025, has affirmed the U.S. District Court for the Eastern District of California's holding that the federal Clean Water Act's (CWA) irrigation return flows exemption applied to Grassland Bypass Project (Project), clarifying that minor commingling with nonpoint source pollution doesn't defeat the exemption. The ruling preserves a long-standing balance between agricultural water management and environmental protection.

Background

Launched in 1996 to address selenium contamination from agricultural drainage, the Project is a Central Valley drainage system that conveys irrigation return flows from nearly 100,000 acres of farmland into the Mud Slough wetlands, a navigable water feeding into the San Joaquin River. The Project operates as a nonpoint source under the irrigation return flows exemption.

Plaintiffs filed suit in 2011 alleging the Project violated the CWA by discharging pollutants from non-agricultural sources—such as groundwater seepage and urban runoff—without a National Pollutant Discharge Elimination System (NPDES) permit. The Ninth Circuit ultimately upheld the Project's exempt status under the CWA.

The Clean Water Act and Irrigation Flows Exemption

The CWA prohibits discharge of pollutants from a point source into navigable waters without first obtaining an NPDES permit. However, the CWA contains an exemption for discharge comprised *entirely* of return flows from irrigated agriculture. The irrigation flows exemption was intended to: (i) alleviate the burden posed by having the Environmental Protection Agency (EPA) issue permits to every agricultural point source; (ii) promote equitable treatment of irrigated and non-irrigated agriculture; and (iii) address the practical difficulty of tracing diffuse agricultural runoff to upstream sources. Under the exemption, return flows from irrigated agriculture are treated as though they are nonpoint sources of pollution.

The Ninth Circuit's Decision

The Meaning of "Entirely"

Plaintiffs contended the word "entirely" should be read literally, arguing that any commingling of irrigation flows with pollutants unrelated to irrigated agriculture, even in trace amounts, negates the exemption thereby requiring an NPDES permit. The Ninth Circuit disagreed, reasoning the exemption's statutory text left ambiguous "whether 'entirely' requires every pollutant within a return flow to be from irrigated agriculture or every discharge within a return flow to be from irrigated agriculture." Judge Gabriel Sanchez, writing for the unanimous panel, offered a simple analogy: a wallet "filled entirely with twenties" may still contain a family photo and be accepted as a wallet filled entirely with twenties.

Legislative Intent and Practical Considerations

The Court of Appeals turned to the legislative history for guidance, quoting a Senate report that clarified the exemption was intended to apply to return flows that "do not contain additional discharges from activities unrelated to crop production." As the CWA only govern point source discharges, the court reasoned irrigated return flows may not contain additional point source discharge unrelated to crop production.

Next, the court looked at the congressional purpose of the exemption, finding that Congress intended to avoid imposing burdens on the EPA, treat farmers fairly, and address the difficulties presented by distinguishing diffuse, untraceable pollutants from point source discharges on farms. Plaintiffs' interpre-

tation would frustrate all of these purposes.

Finally, the court noted Plaintiffs' reading would "render the exemption a dead letter," as virtually all irrigation systems experience some incidental commingling with dust, runoff, or seepage. Under such an interpretation, no irrigated agriculture system would ever qualify for the exemption.

Analysis of The Four Alleged Pollution Sources

Plaintiffs identified four alleged sources of pollution they claimed defeated the exemption—all of which the court rejected. In doing so, the court found the sources of the pollution originated from nonpoint sources or from a point source related to crop production. Accordingly, the Project remained within the irrigation flows exemption.

Conclusion and Implications

The Ninth Circuit's decision provides clarity on the scope of the Clean Water Act's irrigated agriculture exemption, emphasizing statutory intent over literal interpretation. By affirming that minor, incidental commingling fails to invalidate the exemption, the court preserved regulatory certainty for western irrigation districts while maintain state authority over pollution from nonpoint sources. This may serve as key precedent for balancing agricultural operations with environmental mandates. However, questions remain as to how much commingling is too much. The Ninth Circuit's opinion is available here: https://cdn.ca9.uscourts.gov/datastore/opinions/2025/09/05/23-15599.pdf
(Kendall Lovell, Derek Hoffman)

RECENT CALIFORNIA DECISIONS

FIRST DISTRICT COURT AFFIRMS REFERENDUM POWERS DO NOT APPLY TO ADMINISTRATIVE ACTION

Move Eden Housing v. City of Livermore, ___Cal.App.5th___, Case No. A171937 (1st Dist. Oct. 7, 2025).

In *Move Eden Housing v. City of Livermore* the First District Court of Appeal, on October 7, 2025, rejected the latest attack on affordable housing development in the City of Livermore (City) by holding that the referendum power used to attack a resolution related to the underlying development agreement did not preclude the City from immediately re-adopting the *administrative* elements of the subject-resolution because the replacement resolution did not re-adopt the *legislative* portions of the subject-resolution.

Factual and Procedural Background:

In 2008, the City of Livermore purchased the subject property in downtown in an area bounded by Railroad Avenue, Livermore Avenue, First Street, and L Street, and recorded a deed restriction against the property requiring the development of at least 28 low-income and 56 moderate-income housing units. Ten years later, the City approved its Downtown Plan, which included two public parks, a black box theatre, science center, commercial retail space, a hotel, and affordable workforce housing on the property. Shortly thereafter, the City entered into a development agreement with Eden Housing who would develop up to 130 units of workforce housing on the property.

In 2021, the City approved the relevant land use entitlements and amended the original development agreement to grant the City an option to negotiate a future construction and reimbursement agreement with Eden Housing to construct Veterans Park. A group known as "Save Livermore Downtown" petitioned for a writ of mandate alleging the City violated the California Environmental Quality Act (CEQA) and state and local planning and zoning laws in approving the entitlements, which was denied by the trial court and this Court. (*Save Livermore Downtown v. City of Livermore*, 87 Cal.App.5th 1116 (2022).)

In 2022, the City adopted the 2022 Resolution which amended the original development agreement to clarify, among other things, that Eden Housing could use up to $5.5mil to develop Veterans Park, subject to reimbursement by the City. A group known as "Move Eden Housing" secured enough public support to secure a referendum against the 2022 Resolution, which the City rejected because, according to the City Attorney, the resolution was purely administrative and therefore not subject to referendum. Move Eden Housing petitioned for a writ of mandate ordering the City Clerk to certify the referendum, which the trial court denied. The Court of Appeal reversed in favor of Move Eden Housing because the 2022 Resolution approved, for the first time, the city legislatively approved the specific amount of $5.5mil of City money to be used to support Eden Housing's development of Veterans Park. (*Move Eden Housing v. City of Livermore*, 100 Cal.App.5th 263 (2024) (*Move Eden I*).)

At the Trial Court

In 2024, pursuant to this court's order in *Move Eden I*, and before the trial court actually issued the writ, the City repealed the 2022 Resolution instead of submitting the referendum to the people. On the same day, the City passed the 2024 Resolution which adopted the 2022 Resolution less the portions addressing Veterans Park. Move Eden Housing petitioned for a writ of mandate, arguing the City violated Elections Code section 9241 which prohibits a city from adopting a legislative act that has been repealed via referendum within one year from the date of either the people's vote in favor of the referendum or from the date the City voluntarily repealed the legislative act in advance of a referendum vote. The trial court granted the writ because "the new 2024 resolution was substantially similar to the original one, with the exclusion of the Veterans Park provisions,

and not 'essentially different,'" and because the City "effectively only repealed part of the original resolution" and "the new resolution cannot be enacted for a period of a year following the repeal."

The Court of Appeal's Decision

The First District Court of Appeal started by affirming that the people's initiative and referendum powers are to be jealously guarded by the courts whenever possible, but that those powers only apply to legislative acts, not administrative or executive. The court acknowledged that jurisprudence distinguishing between legislative and administrative acts is sometimes inconsistent:

> . . .[l]egislative acts generally are those which declare a public purpose and make provisions for the ways and means of its accomplishment. . .[while]. . .[a]dministrative acts … are those which are necessary to carry out the legislative policies and purposes already declared by the legislative body. . . .The power to be exercised is legislative in nature *if it prescribes a new policy or plan*; whereas, it is administrative in nature *if it merely pursues a plan already adopted* by the legislative body itself. (citing *San Bruno Committee for Economic Justice c. City of San Bruno,* 15 Cal. App.5th 524, 530 (2017); *Move Eden I, supra,* 100 Cal.App.5th at p. 276.)

To satisfy Elections Code section 9241, a city must entirely repeal the challenged ordinance and must not reenact the ordinance for at least one year. Here, Move Eden Housing argued the City failed to entirely repeal the 2022 Resolution because the City immediately re-adopted the 2022 Resolution via the 2024 Resolution except for the portions relating to Veterans Park, which this court declared were the *only* legislative portions of the 2022 Resolution that made it subject to referendum in the first place. Because the City effectively repealed the entire legislative portion of the 2022 Resolution, *i.e.*, the entire portion of the 2022 Resolution subject to referendum, this court found that the City indeed "entirely repealed" the legislative act as required under Elections Code section 9241.

Additionally, Move Eden Housing argued the City violated the one-year prohibition on reenacting legislative acts revoked under the referendum process. Because the City did not adopt the portion of the 2022 Resolution that made it subject to the referendum power in the first place, this Court found that the City did not violate the one-year ban on readopting a legislative act repealed via referendum under Elections Code section 9241.

Importantly, the court emphasized that:

> California has a housing supply and affordability crisis of historic proportions. . .[and that]. . .delays in construction projects can. . .threaten the viability of a project. (citing Government Code § 65589.5 subd. (a)(2)(A); *California Renters Legal Advocacy & Education Fund c. City of San Mateo,* 68 Cal.App.5th 820, 830 (2021); *Anderson v. City of San Jose*, 42 Cal.App.5th 683, 705-712 (2019); *Addressing Challenges to Affordable Housing in Land Use Law: Recognizing Affordable Housing as a Right* (2022) 1335 harv. L.Rev. 1104, 1113, fn. 70.)

If the court were to accept Move Eden Housing's interpretation of the referendum power, that power would be invoked to thwart the City's implementation of its long-planned, legislatively blessed affordable housing development "for no purpose consistent with the referendum power."

Conclusion and Implications

In denying Move Eden Housing's challenge to the City's adoption of the 2024 Resolution, the First District Court of Appeal held that a city can adopt a resolution that has been overturned via referendum within one year of its demise even if the subsequent resolution is "substantially the same as" the prior resolution, provided the replacement resolution does not adopt any legislative portion of the prior resolution. In invoking the referendum power to threaten the viability of legislatively approved affordable housing projects, petitioners should be aware that even if their referendum is successful, only the legislative portions of the subject-resolution or ordinance will be prohibited for the prescribed one-year period under Elections Code section 9241.

The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/A171937.PDF
(Blaine R. Dyas)

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