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# CALIFORNIA WATER™
## LAW & POLICY Reporter

CONTENTS


### FEATURE ARTICLE

**Statewide Initiative Seeks to Constrain Judicial Review and Streamline CEQA Permitting for "Essential Projects** by Blaine R. Dyas, Esq., Remy Moose Manley, LLP, Sacramento"**.** . . . . . 49

### CALIFORNIA WATER NEWS

**California Indian Tribe Reclaims Tule River Land** . . . . . 53

**Suisun City Accepts California Forever's Application for the Area Expansion Project** . . . . . 54

**Proposition 218—Water Rate Increases Continue around California in a State of Uncertainty** . . . . . 56

### REGULATORY DEVELOPMENTS

**U.S. Bureau of Reclamation Adopts Updated Long-Term Operations Plan for the Central Valley Project and State Water Project** . . . . . 57

**California Department of Water Resources Issues New Guidance on Urban Water Management Plan Preparation** . . . . . 59

**California Sets New Perfluorohexanoic Acid Requirements for Notification and Monitoring of Public Drinking Water Supply** . . . . . 60

### RECENT FEDERAL DECISIONS

***Circuit Court of Appeals:***
**Ninth Circuit Affirms Clean Water Act Citizen Suits Must Be Forward-Looking—Environmental Group's Claims Mooted Based on Discharger's Subsequent Receipt of NPDES Permit** . . . . . 62
*Coastal Environmental Rights Foundation v. Naples Restaurant Group, LLC*, *Unpub.*, Case No. 23-55469 (9th Cir. Nov. 5, 2025).


*Continued on next page*


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## RECENT CALIFORNIA DECISIONS

***Court of Appeal:***

**Fifth District Court Addresses the Tulare Lake Subbasin in Two Separate Decisions . . . . . 64**

*Kings County Farm Bureau v. State Water Resources Control Board*, ___Cal.App.5th___, Case No. F088720 (5th Dist. Oct. 29, 2025); *State Water Resources Control Board v. The Superior Court of Kings County*, ___Cal.App.5th___, Case No. F088909 (5th Dist. Nov. 24, 2025).

**Third District Court Finds the Delta Reform Act Does Not Require DWR to Submit a Certification of Consistency Before Engaging in Preconstruction Geotechnical Work . . . . . 66**

*Tulare Lake Basin Water Storage Dist. v. Department of Water Resources*, ___Cal.App.5th___, Case No. C101878 (3rd Dist. Oct. 17, 2025).

***Superior Court:***

**Superior Court Upholds Discretion for Public Trust: Humboldt County Groundwater Ruling. . . . . 68**

*Friends of the Eel River v. County of Humboldt*, Case No. CV2201593 (Humboldt County Super. Ct. 2025).

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FEATURE ARTICLE

# STATEWIDE INITIATIVE SEEKS TO CONSTRAIN JUDICIAL REVIEW AND STREAMLINE CEQA PERMITTING FOR "ESSENTIAL PROJECTS"

*By Blaine R. Dyas*

On October 21, 2025, the California Chamber of Commerce (CalChamber) unveiled a statewide California Environmental Quality Act (CEQA) initiative titled "Building an Affordable California" (BACA), which would shorten lead agency and permitting approval timelines, substantially limit the scope of judicial review, and expedite litigation schedules for "Essential Projects," which are broadly defined to include projects related to clean energy, housing, public health and safety, transportation, and water supply. If passed by a majority of voters in the fall of 2026, BACA could mark the most significant CEQA overhaul since its inception in 1970.

## Factual and Procedural Background

Since 1911, the initiative power enshrined in Article II Section 8 of the California Constitution has allowed the people to bypass the Legislature and enact laws via direct democracy. To become law, a statutory initiative must be drafted, sent to the California Department of Justice for summary and title, signed by at least 5 percent of the total number of electors having voted in the preceding gubernatorial election, and approved by majority vote in a statewide election.

On October 21, 2025, CalChamber submitted BACA to the California Department of Justice for summary and title. Assuming it receives enough signatures, the people will vote on BACA in November 2026. At this stage, amendments are very unlikely.

## Building an Affordable California Ballot Initiative

BACA would add Chapter 1.5 to Division 13 of the Public Resources Code, also known as CEQA. BACA would shorten lead agency and permitting approval timelines, substantially limit the scope of judicial review, and expedite litigation schedules for "Essential Projects," which are broadly defined to include projects related to clean energy, housing, public health and safety, transportation, and water supply.

### Administrative Analysis and Judicial Review of Essential Projects

*(a) Application Completeness*

Lead agencies must determine whether an application for an Essential Project is complete within 30 days, or else the application is deemed complete by default. Completeness determinations must be based on a written, publicly available checklist that existed prior to the date the application was filed. If an application is deemed incomplete, the lead agency must provide the applicant with an exhaustive list of the incomplete elements of the application.

The applicant has 180 days to resubmit the application, which the lead agency can only deem incomplete based on the initial comprehensive list of missing or incomplete elements. If the lead agency fails to issue a completeness determination within 30 days of receipt of the revised application, the application is deemed complete by default. Incompleteness determinations are appealable to the lead agency's planning commission, planning director, or other applicable final arbiter, which must decide the appeal within 60 days of receipt of the appeal, or else the application is deemed complete by default.

(b) Review of Complete Applications

The lead agency must determine what level of environmental review is necessary for the Essential

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Project within 30 days of the completeness determination. Environmental review and certification or adoption must be completed within 365 days, 180 days, or 90 days for Essential Projects requiring an environmental impact report, a negative declaration or mitigated negative declaration, or an exemption, respectively. If the lead agency fails to meet these deadlines, the applicant may demand completion of the environmental documents and a hearing within 60 days of the demand. At that meeting, the Essential Project must be approved or denied. If the Essential Project is denied at that meeting, the applicant has 90 days to challenge that denial.

Public comment periods are shortened to 15 days and 30 days for mitigated negative declarations and environmental impact reports, respectively, which cannot be tolled or extended except by a court order. The record may only include comments submitted either during the comment period or at least 72 hours before the hearing on the environmental document.

Notably, all permits, authorizations, and other approvals required for an Essential Project must be approved or denied within 90 days of either the certification or adoption of the controlling environmental document (for lead agency permits and approvals) or the completeness determination (for non-lead agency permits and approvals). A state agency may extend this deadline to 180 days if that agency has a standard, pre-BACA process requiring evidentiary hearings for the type of permit at issue.

*(c) Scoping*

The applicant may choose between standard or BACA scoping. If the applicant chooses the BACA scoping process, the applicant must notify the lead agency of this choice and share a brief description of the proposed Essential Project with the lead agency and the public prior to submitting its application, along with an email address to receive preliminary comments. The applicant must keep a record of all scoping meetings and comments. Notably, the applicant need not respond to scoping comments. Scoping must be completed within 60 days of the lead agency's receipt of the applicant's notice to proceed under the BACA scoping process.

In addition to the no project alternative, applicants may limit their analysis to the impacts of the proposed Essential Project and a single "potentially feasible" alternative which, "to the extent practicable … should be designed to be compatible with applicable local zoning and land use policies," and which need not be located on a different site than the proposed project. The alternative may include on-or-off-site improvements and alternative operational parameters or programs designed to lessen the impacts of the proposed Essential Project. The no project alternative must consider reasonably foreseeable alternative uses of the project site and benefits resulting from the proposed Essential Project.

Within 15 days after the end of the preliminary scoping process, the applicant must share with the lead agency a description of the proposed Essential Project, the proposed alternative, and the no project alternative. The lead agency has 15 days to determine whether the alternatives satisfy BACA's requirements.

Notably, tribal consultation is limited to federally recognized tribes with federally held trust land, reservation land, or whose government is located within California.

(d) Judicial Review, Timelines, and the Administrative Record

Petitioners must demonstrate that the lead agency's determination or findings fail to comply with objective, quantifiable, written standards that involve no personal or subjective judgement, are verifiable by reference to an external benchmark, and are knowable by the applicant and the lead agency at the time the application was submitted. Such standards include general, specific, community, neighborhood, or area plans, zoning, design and subdivision standards, or any public agency's published rules, regulations, or requirements, including the federal and state laws.

Actions must be filed within 30 days of the lead agency's notice of determination or exemption, and must conclude within 270 days, inclusive of appellate review. Judges are restricted to the substantial evidence standard; independent judgement and prejudicial abuse of discretion standards are explicitly forbidden. Any noncompliance with CEQA is not prejudicial unless there is evidence that an impact was not mitigated to a level of insignificance and feasible mitigation was available.

The administrative record is strictly limited to: (1) notices, studies, and other documents that the lead agency is otherwise required to publicly distribute, (2) timely comments submitted during the comment

period or 72 hours prior to public hearings, and (3) verbal testimony at noticed and recorded public hearings.

If a court holds that the lead agency's findings or determinations have not complied with public participation or environmental analysis and mitigation requirements *and* that the findings or determinations were not supported by substantial evidence in the record, the court must issue a peremptory writ of mandate directing the lead agency to conduct supplemental public participation, analysis, or mitigation. In the case of insufficient analysis, the writ must be specifically limited to the part, phase, or activity of the essential project subject to the insufficient analysis. Notably, a court cannot require a lead agency to rescind its approval of an Essential Project.

If the Essential Project was not subject to judicial challenge, was upheld, or was subject to a satisfactory return to the writ, no further action or proceeding is permitted against the project. Even in the face of clear and convincing evidence that an Essential Project will have a specific adverse impact on public safety, a court can only issue a *temporary* injunction targeted at that specific portion of the Essential Project. Notably, if the lead agency finds that there is no feasible mitigation measure to address that public safety impact, a court is prohibited from issuing even a temporary injunction.

### What Counts as an "Essential Project"

BACA applies to "Essential Projects," which include several categories of development: mass-market retail broadband internet access, clean energy, housing, public health and safety, transportation, and water:

- *Essential clean energy projects* include the production, generation, or storage of electricity derived from renewable sources, including "small" hydroelectric power plants of 30 MW or less, digester gas, municipal solid waste conversion, landfill gas, and more. It would also include microgrids, carbon capture and sequestration, and all transmission and distribution component upgrades included in CAISOs biannual Integrated Energy Policy Report (PRC § 25302). BACA would also apply to any transmission upgrades required to connect the project to the grid.

- *Essential housing projects* include commercial-to-residential conversions, residential developments, mixed-use projects, transitional and emergency housing, farmworker housing, group living and student housing, senior living facilities, subdivisions and common interest developments. Two-thirds of the square footage of a mixed-use development must be dedicated to residential use, or one-half if the project includes at least 500 net new residential units and does not include a hotel or similar use. Notably, mixed-use development can include industrial uses.

- *Essential public health and safety projects* include medical treatment facilities, wildfire risk reduction projects, and first responder facilities. Medical treatment facilities include medical office buildings, clinics, and health facilities, which are broadly defined in the Health and Safety Code. Wildfire risk reduction projects must be executed by a public agency with employees covered by a collective bargaining agreement. Such projects must reduce wildfire risk to either residential or commercial structures via vegetation management, fuel reduction, fuel breaks, or reduction of fuel loading. First responder facilities include police and fire stations, but do not include federal projects such as immigration detention facilities.

- *Essential transportation projects* include public streets, highways, and mass transit guideways funded by the Highway Users Tax Account (Cal. Const. Art. XIX Sec. 2, otherwise known at Prop 14 of 1976), as well as electric vehicle charging infrastructure.

- *Essential water projects* include projects to repair, replace, improve, or augment a public water system, a system that provides water to a public water system, or a system included in the State's Water Resilience Portfolio.

- *All Essential Projects* must comply with the labor requirements applicable to Environmental Leadership Development Projects under Public Resources Code section 21183.5, except essential housing projects, which must comply with AB 130's labor requirements under Public Resources Code section 21080.66 subdivision (d) paragraphs (2), (3),

and (5). Pre-BACA projects can withdraw and resubmit their applications as Essential Projects. Pre-BACA housing projects can withdraw and resubmit without losing vested rights under any housing law, including the Builders Remedy and the Housing Crisis Act. Essential Projects include all related public and private infrastructure required to support such projects, including electric, telecommunication, gas, water, wastewater, stormwater, transit, police, fire, and transportation improvements.

### Conclusion and Implications

For some of the most environmentally significant project categories that exist in the state, including nearly all forms of housing, "renewable" energy, water infrastructure, transportation, and public health and safety projects, BACA would limit judicial review under CEQA to the substantial evidence standard; independent judgement and prejudicial abuse of discretion would be explicitly forbidden. BACA would substantially limit lead agencies' ability to deem applications incomplete, delay the review of complete applications, and require additional alternatives analyses and standard scoping procedures. Additionally, BACA would exclude nearly all agency communications from the administrative record, requiring the inclusion of only certain publicly available documents. Finally, BACA would streamline the approval process by providing enforceable deadlines for both lead and responsible agencies, including deadlines for EIRs, NDs and MNDs, and associated permits.

The Building an Affordable California Initiative is available online at: https://advocacy.calchamber.com/wp-content/uploads/2025/10/Building-An-Affordable-California-Act.pdf

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## CALIFORNIA WATER NEWS

# CALIFORNIA INDIAN TRIBE RECLAIMS TULE RIVER LAND

On October 29, 2025, in a historic milestone, Governor Gavin Newsom announced the return of 17,030 acres of ancestral land to the Tule River Indian Tribe.

### Background

For thousands of yeÓars, the ancestors of the Tule River Indian Tribe lived among the rivers, oak woodlands, and rugged slopes of the southern Sierra Nevada. Their deep relationship with this landscape—marked by stewardship, cultural tradition, and spiritual connection—was profoundly disrupted as Native communities were displaced across California.

Now, in a landmark moment for both tribal sovereignty and statewide conservation efforts, the Tule River Indian Tribe is reclaiming 17,000 acres of its ancestral territory, marking the largest recorded land return in the Sierra Nevada foothills and the Central Valley region.

### Reclaiming the Land

Governor Gavin Newsom announced the restoration of the property—two former cattle ranches in rural Tulare County—following a coordinated effort between the nonprofit Conservation Fund, state agencies, philanthropic partners, and tribal leadership. The Conservation Fund originally purchased the land and, with financial support from the state, facilitated its transfer to the tribe. This newly returned property lies along the southern edge of the Tule River Reservation, expanding the tribe's direct stewardship of a landscape that once stretched across the Tule River basin and the broader foothill region home to Yokut-speaking peoples.

A ceremony featuring tribal elders, state representatives, and community members commemorated the transfer and celebrated the reintroduction of tule elk, a keystone species long absent from these foothills. For tribal members, the day held profound significance—an acknowledgment that the state is taking steps to repair historic harms while entrusting the tribe once again with care of its homelands.

Governor Newsom emphasized this in his remarks, noting that the ecological systems of California reflect the loss of their earliest caretakers. He described the land return as an essential move toward healing the relationship between the state and tribal nations, as well as restoring the ecological knowledge and stewardship practices that nurtured these landscapes for millennia.

The return also aligns with California's broader conservation commitments, including the "30x30" initiative, which aims to conserve 30 percent of the state's lands and coastal waters by 2030. Tribal land management, rooted in cultural burning, resource gathering, and ecological balance, has increasingly been recognized as essential to achieving meaningful conservation outcomes. The Tribal Nature-Based Solutions grant program—established under the Governor's directive for agencies to collaborate directly with tribes—provided a key portion of the project's funding alongside grants from the Wildlife Conservation Board and private donors.

Tribal Council Chairman Leister "Shine" R. Nieto Jr. highlighted the cultural and ecological importance of the return, describing it as the embodiment of true land restoration. Regaining these acres, he explained, will allow tribal members increased access to traditional foods, medicinal plants, and sacred sites. It will also reinforce environmental stewardship practices, encourage wildlife recovery, and strengthen generational connections to the land. The tribe envisions the Yowlumne Hills area as a place for healing, gathering, and cultural continuity.

Historically, the Tule River Reservation encompassed over 91,000 acres, though contemporary boundaries include approximately 55,000 acres of forest and rangeland. The returned property, which forms a natural bridge between Giant Sequoia National Monument, the reservation, and wetlands of the San Joaquin Valley, enhances the tribe's capacity to protect important wildlife corridors, safeguard watersheds, and restore ecological balance across a region facing increasing climate pressures.

### Tule Elk

A central component of the restoration is the reintroduction of tule elk—an animal of cultural importance and ecological significance. The tribe, working with the California Department of Fish and Wildlife (CDFW), is bringing elk back to the foothills after decades of absence. Their presence will contribute to the revitalization of the area's ecological community, which has recently also seen the return of gray wolves. Last year, the tribe and CDFW worked together to reintroduce beavers to the region as part of an effort to restore natural water systems and support biodiversity. Their collaborative work also assists in the recovery of the California condor, further cementing this land return as a model of tribal-state ecological partnership.

State officials echoed the importance of these efforts. California Natural Resources Agency Secretary Wade Crowfoot emphasized that the project represents an intersection of cultural resilience, wildlife restoration, and environmental justice. The return of tule elk, he said, demonstrates what is possible when tribal leadership guides conservation work and when the state invests in strategies rooted in Indigenous stewardship systems.

### Other Potential Benefits

Beyond cultural restoration, the land return carries significant benefits for regional communities. The protection and revitalization of the area's watersheds are expected to improve groundwater recharge, reduce flood risks, and secure more reliable water supplies for downstream communities—many of which are disadvantaged and reliant on vulnerable water systems. Enhancing the ecological health of the foothills and valley lands will support agriculture, wildlife habitat, and climate resilience across a broad landscape that extends far beyond tribal borders.

### Conclusion and Implications

In reclaiming more than 17,000 acres of ancestral land, the Tule River Indian Tribe is not simply recovering territory—it is reclaiming its role as a steward of ecosystems that have sustained generations. The return marks a commitment to healing both land and community, strengthening sovereignty, restoring cultural heritage, and renewing a relationship with place that has existed since time immemorial. For more information, *see:* https://www.gov.ca.gov/2025/10/29/tule-river-indian-tribe-of-california-reclaims-over-17000-acres-and-reintroduces-tule-elk-on-ancestral-land/

(Mona Goodarzi)

## SUISUN CITY ACCEPTS CALIFORNIA FOREVER'S APPLICATION FOR THE SUISUN EXPANSION PROJECT

On October 8, 2025, the real estate development corporation known as California Forever submitted an application for the 2,700-acre Suisun City to annex 22,873 acres of unincorporated Solano County farmland into the city's limits. The application includes details on how California Forever plans to develop these acres into a proposed city capable of housing approximately 400,000 people. Now that Suisun City has accepted the application, California Forever will begin the more detailed planning stages for annexation, including an environmental impact report and water use plan.

### Background

Before submitting its application, California Forever, acting through its subsidiary, Flannery Associates, spent an estimated $900 million to purchase more than 50,000 acres of farmland in Solano County. In 2023, California Forever announced that it had purchased this land to build a new city for up to 400,000 people. It touted "well-paid jobs in new industries, affordable homes in safe, walkable neighborhoods, and new sources of clean energy for the region," and pledged to dedicate more than 20 percent of the area to parks, trails, ecological habitat, community gardens, and other open spaces. A first phase would have developed about 15,700 acres of land with 65,000 residences, a downtown entertainment district, and a manufacturing park.

Much of the company's land, however, is zoned for agriculture and converting to urban development required Solano County voters to approve a ballot initiative. In 2024, California Forever attempted qualify a ballot initiative to secure that approval but

ultimately withdrew it. Instead of pursuing another ballot measure, California Forever and Suisun City agreed to fold that project into the Suisun City Expansion Project. That approach allows the company to avoid the voter-approval requirement under the County's organized growth initiative. To move forward, the project will need approval from the Suisun City Council and from the Solano Local Agency Formation Commission (LAFCO).

### What About the Water Supply?

A central unresolved question is how California Forever plans to source enough water to serve 400,000 people. For the initial build-out, envisioned to house 100,000 residents, the company will need about 12,600 acre-feet of water annually. California Forever states it has access to roughly 13,700 to 16,400 acre-feet of water per year from existing groundwater and surface water supplies. To exercise those rights, the company plans to convert current farm operations, such as almond orchards, into solar farms or a mixed-use neighborhoods. It also proposes to use recycled water generated within the city for irrigation.

To meet the longer-term demands of 400,000 residents, California Forever proposes a diversified portfolio of water resources: recycled water, imported water, and additional groundwater pumped from the basin beneath the proposed city. It has stated on its website that it will not seek water from Lake Berryessa but will rather look to transfer water from outside of Solano County. (California Forever, Water, available at: https://californiaforever.com/water/.) According to its water availability analysis, the city will be able to generate 25,000 to 35,000 acre-feet of recycled water annually from indoor water use, which could be used to irrigate streetscapes, city parks, landscaping, and potentially for industrial and other indoor non-potable uses.

### Opponents Dispute the Imported Water Component of the Plan

Opponents point out that California Forever has not identified specific sources for the imported-water component of its plan, even through that would represent about one-third of the city's anticipated supply. They warn that these supplies may never materialize or could prove too expensive for homeowners. (Ashley Sharp, "Where is California Forever getting the water for its proposed new city of 400,000 people?," (June 19, 2024) available at: https://www.cbsnews.com/sacramento/news/where-is-california-forever-getting-the-water-for-new-city/.) Critics also caution that overreliance on groundwater could lead to overdraft and that the city's extensive impermeable surfaces and infrastructure would reduce recharge capabilities. (Daniela Ades, "Water Resources Remain Uncertain In California Forever," (Nov. 30, 2023) available at: https://www.greenbelt.org/blog/water-resources-california-forever/.)

### Conclusion and Implications

On November 12, 2025, Suisun City released a "Notice of Preparation of an Environmental Impact Report and Notice of a Public Scoping Meeting" for the Suisun City Expansion Project. According to the notice, the environmental impact report will evaluate the expanded city's effects on groundwater recharge and sustainability, changes to surface water hydrology, and the impacts associated with importing water for use in the proposed city.

California Forever's annexation application is available at: https://www.suisun.com/Departments/Development-Services/Suisun-Expansion-Project-Application-and-Documents.
(Jake Voorhees, Austin Cho)

# PROPOSITION 218—WATER RATE INCREASES CONTINUE AROUND CALIFORNIA IN A STATE OF UNCERTAINTY

Since its enactment and later being applied to water rates starting in the 2006 case of *Bighorn-Desert View Water Agency v. Verjil,* 39 Cal.4th 205 (2006), Proposition 218 has been full of litigation matters since then. Over the past several years, more published cases have been issued that either create uncertainty or make it more difficult for public agencies to impose rate increases, or both. Operations, maintenance, and capital improvement project costs, however, continue to persist and often rise over time, thus making rate increases often necessary to keep public agencies on pace to meet their customers' needs. This reality exists for municipal and agricultural entities throughout the state of California.

## Background

Proposition 218 governs the process for increasing property-related fees and charges, including rate increases. It imposes procedural and substantive requirements on local governments to ensure transparency and taxpayer consent. Before imposing or increasing any property-related fee or assessment, an agency must hold a public hearing and provide written notice to affected property owners. Generally, the notice must include the proposed amount, the basis for its calculation, and that the reason for the amount. At the hearing, the agency must consider all protests submitted by property owners. If a majority of property owners submit written protests, the agency cannot impose the fee or charge. (*Plantier v. Ramona Municipal Water District,* 7 Cal.5th 372, 386 (2019).)

Proposition 218 also requires that any increase must comply with its substantive provisions, such as the proportionality requirement, which mandates that fees or assessments not exceed the cost of the service attributable to the parcel. Changes to the methodology for calculating fees are considered fee increases if they result in higher charges for any person or parcel. Such changes require proper notice and compliance with Proposition 218's procedural requirements. (*Patz v. City of San Diego,* 113 Cal. App.5th 225, 302 (2025); *see also, Coziar v. Otay Water District,* 103 Cal.App.5th 785 (2024).)

## Recent Examples of Water Rate Increases

Several entities have pursued rate increases over the past couple years as the cases above have gone through the court process, including City of Fairfield, San Lorenzo Valley Water District, City of Sanger, and City of Redding.

The Oakdale Irrigation District (OID) very recently undertook a rate increase effort for agricultural and domestic users, reportedly driven by rising operational costs, inflation, and infrastructure needs, with rates already up annually since 2020. OID has had 3 percent annual increases since 2020, with further annual reviews. The District considered new rates annually, like the November 4, 2025, hearing for various Improvement Districts.

## Conclusion and Implications

Recent court cases, particularly in 2024 and 2025, reinforce a strict interpretation of Proposition 218, primarily emphasizing the need for local governments to directly link property-related fees to the actual cost of service for each parcel. This has significant implications, especially for water utilities and rate structures designed for conservation or social programs. The ruling in *Coziahr v. Otay Water District* affirmed that water rates must strictly adhere to the "proportional cost of the service attributable to the parcel." The strict judicial interpretation has emboldened taxpayer associations and increased the likelihood of legal challenges against local government fees and assessments, particularly those perceived as funding general services rather than specific property benefits.

(Wes Miliband)

## REGULATORY DEVELOPMENTS

# U.S. BUREAU OF RECLAMATION ADOPTS UPDATED LONG-TERM OPERATIONS PLAN FOR THE CENTRAL VALLEY PROJECT AND STATE WATER PROJECT

In December 2025, the U.S. Bureau of Reclamation (Reclamation) adopted an updated long-term operations plan for the Central Valley Project (CVP) and State Water Project (SWP) that is intended to implement Executive Order 14181 signed by the President of the United States.

### Background

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

The State Water Project (SWP) is a water storage and delivery system comprised of reservoirs, aqueducts, power plants, and pumping plants spanning more than 700 miles from northern to southern California. According to the California Department of Water Resources (DWR), the SWP supplies water to more than 27 million people across California and irrigates roughly 750,000 acres of farmland. The SWP is capable of delivering roughly 4.2 million acre-feet of water per year. However, the amount of water available to water contractors varies each year because supply is impacted by variability in precipitation and snowpack, operational conditions, as well as environmental and other legal constraints.

The Record of Decision (ROD), developed under the framework of the National Environmental Policy Act (NEPA), adopts an updated LongTerm Operation Plan for these critical water systems. The ROD provides a summary of the submitted alternatives, information, and analyses in the final environmental impact statement, together with other relevant material in the record.

On January 24, 2025, President Trump issued Executive Order 14181 "Emergency Measures To Provide Water Resources In California and Improve Disaster Response In Certain Areas." A Presidential Memorandum titled "Putting People Over Fish" was signed four days before the Executive Order and references a reliable water supply, but the specific direction to the CVP is found in Executive Order 14181. The newly adopted ROD implements initial actions in response to Executive Order 14181.

### The Record of Decision

The ROD considers various "actions" related to the operation of the CVP and the SWP. The actions being considered are for the purpose of: (1) meeting requirements under federal and state law; (2) satisfying Reclamation's contractual obligations and agreements, including with CVP water users; and (3) implementing CVP fish and wildlife project purposes and meeting federal trust responsibilities to Tribes, including those in the Central Valley Project Improvement Act (CVPIA). Operation of the CVP and SWP serves multiple purposes, including river regulation/flood control, improvement of navigation; irrigation uses, domestic uses, and fish and wildlife mitigation, protection, and restoration; power generation; and

fish and wildlife enhancement. Operation of the CVP and SWP also provides recreation and water quality benefits.

### Action 5

After considering four alternative actions and a no-project alternative as contemplated by NEPA, Reclamation decided to implement "Action 5." Action 5 modifies components included in the "preferred alternative" of a previously issued environmental impact statement for long-term operations of the CVP in 2024. The preferred alternative in that ROD was Alternative 2, which was analyzed as the Proposed Action in certain biological opinions issued by the U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) in 2024.

Further, Action 5 is intended to respond to Section 2 of Executive Order 14181 by operating the CVP to deliver more water to high need communities, including by increasing storage and conveyance and coordinated operations of federal and state facilities.

In addition, Action 5 removes the Delta Smelt Summer and Fall Habitat Action (Fall X2) and the Early Implementation measure of the Delta export reduction of the Healthy Rivers and Landscapes (HRL) Program, formally Voluntary Agreements from Alternative 2 (section 5.9 of Action 5, Spring Delta Outflow). Action 5 also updates Alternative 2 Delta operating criteria and governance. Removal of Fall X2 is based upon the USFWS 2024 LTO Biological Opinion determination that Fall X2 is not anticipated to have observable effects on Delta smelt survival.

According to Reclamation, the Early Implementation measure removal is due to a lack of necessary processes and progress to develop data and a program that could assist with determining whether and how to implement the HRL Program. Updates to Delta operating criteria include conditions for Old and Middle River management at no more negative than 5,000 cubic feet per second (cfs), and a stormflex action of 6,500 cfs. Under Action 5, the governance structure was revised to support actions that restrict water supply to those that provide a material benefit to listed species by using predictive tools for realtime assessment of environmental conditions.

According to the ROD, under Action 5, annual CVP deliveries may increase by up to 180,000 acre feet (AF) beyond amounts contemplated in Alternative 2, and SWP may increase by up to 220,000 AF compared to Alternative 2.

### Conclusion and Implications

The updated LTO for the CVP and SWP appear to respond to certain mandates from Executive Order 14181 by adapting the preferred alternative in the prior LTO, which in turn was based on biological opinions from USFWS and NMFS. It remains to be seen whether the updated LTO will be challenged in court and, ultimately, whether it will be implemented. The Record of Decision for Updated Long-Term Operations Plan is available here, https://www.usbr.gov/mp/nepa/includes/documentShow.php?Doc_ID=57167
(Miles Krieger)

# DEPARTMENT OF WATER RESOURCES ISSUES NEW GUIDANCE ON URBAN WATER MANAGEMENT PLAN PREPARATION

On November 17, 2025, the California Department of Water Resources (DWR) released a Draft Urban Water Management Plan Guidebook (Draft Guidebook) for public comment, in anticipation of the deadline for Urban Water Management Plans (UWMP) on July 1, 2026.

## Background

The California Legislature enacted the Urban Water Management Planning Act in 1983. The Act requires urban water suppliers—entities that provide municipal water to more than 3,000 customers, or supply more than 3,000 acre-feet of water annually—to adopt a UWMP every five years. A UWMP is used to demonstrate "water supply reliability in normal, single dry, and multiple dry water years." DWR reports the status of UWMPs to the Legislature.

UWMPs serve as planning tools for water suppliers, elected officials, and the public to understand current, historical, and projected regional water conditions and management practices. A well-drafted UWMP will provide a structured platform for integrating supply and demand under short- and long-term planning horizons. In preparing a UWMP, a supplier must address changes in climate, hydrology, and groundwater conditions, regional constraints on shared water resources, and future water shortages.

UWMPs are also used to demonstrate compliance with Senate Bill X7-7, which mandated a 20 percent reduction in urban per-capita water use by 2020. Water Code section 10608.40 requires agencies to report their progress toward meeting urban water use targets to DWR in their respective UWMPs.

The Draft Guidebook is intended to assist water suppliers in preparing their UWMPs and offers additional guidance developing an "enhanced" planning document that may be utilized by suppliers, resource planners, and policymakers. DWR issued the last UWMP Guidebook in 2020. This year's draft restates much of the prior guidance, with "minor updates and clarifications to guidance."

## Draft Guidebook Updates

The Draft Guidebook incorporates all Water Code changes since 2020 that relate to UWMPs. These amendments are generally minor and do not change the substantive requirements for UWMPs due in 2026. DWR now applies the same criteria used by the State Water Resources Control Board (State Water Board) and other state agencies to determine when a supplier with multiple public water systems qualifies as an Urban Water Supplier, subject to UWMP requirements. The Draft Guidebook also adds instructions for reporting compliance with the Water Loss Standard. Water Loss Standards were not yet available during the 2020 UWMP cycle. Retail suppliers must now report whether each public water system met the State Water Board's Water Loss Performance Standard. The Draft Guidebook instructs suppliers to use the UWMP submittal tables for reporting progress on this standard.

Since the 2020, the State Water Board has also adopted regulations for direct potable reuse. In response, DWR updated its supply-and-demand tables to allow reporting of direct potable reuse. Submittal tables for 2025 use and projected use now include the volume of recycled water used in the service area, which may be aggregated with other sources and optionally labeled "Potable" or '"Non-Potable." The Draft Guidebook also includes accompanying guidance for reporting potable reuse to help prevent double counting of indirect potable reuse.

The Draft Guidebook provides expanded guidance for Senate Bill X7-7 reporting. It introduces a submittal table for reporting 2025 progress toward the 2020 water use targets. It also includes simplified instructions for target-reporting requirements, and specific guidance for suppliers that failed to meet the 2020 target or that have undergone mergers or consolidations since 2020. Suppliers were required in their 2020 UWMPs to provide projections for lower-income housing. The Draft Guidebook now offers optional guidance on methods for projecting lower-income housing water use and incorporates regional housing needs allocations into projected land uses and demands.

Previous guidance on groundwater recharge reporting failed to distinguish between long-term storage (water placed into storage in one year and extracted in a future year) and short-term storage (water placed into storage and extracted the same year). As a result,

some suppliers risked double counting; to avoid this error, the Draft Guidebook recommends that suppliers not report water as groundwater recharge if it is placed into storage and pumped out in the same year.

### Conclusion and Implications

The Department of Water Resources held a public meeting on November 17 to outline the changes to the Draft Guidebook and explain how the public can submit comments and feedback. The 15-Day public comment period runs from November 17, 2025, to December 2, 2025 at 5:00 p.m. A copy of the Draft Guidebook is available at: https://wuedata.water.ca.gov/manage_resources.asp?reportType=urban&utm_medium=email&utm_source=govdelivery
(Taylor Strain, Austin Cho)

## CALIFORNIA SETS NEW PERFLUOROHEXANOIC ACID REQUIREMENTS FOR NOTIFICATION AND MONITORING OF PUBLIC DRINKING WATER SUPPLY

California has taken another step in its regulation of per and polyfluoroalkyl substances by setting a new notification level for perfluorohexanoic acid in drinking water. PFHxA is part of a large family of human-made chemicals used for decades in products such as stain-resistant fabrics, carpeting, food packaging, and water repellent materials. These compounds have become a growing regulatory focus due to their persistence in the environment and their frequent detection in public water systems.

On October 29, 2025, the State Water Resources Control Board's Division of Drinking Water issued a notification level of 1.0 microgram per liter for PFHxA, along with a response level of 10 micrograms per liter based on a running annual average. The agency adopted these levels after reviewing OEHHA's September 2024 notification level recommendation, which concluded that PFHxA in drinking water at concentrations above 1.0 microgram per liter may pose a potential health concern.

### California's Legal Framework for New PFAS Levels

California regulates PFHxA under its existing statutory structure for contaminants that do not yet have enforceable maximum contaminant levels. state law authorizes the Water Board to establish notification and response levels for unregulated chemicals that are detected in drinking water and that have sufficient health information to support advisory thresholds. These levels function as early public health tools by requiring transparency and public notice well before the state moves toward a binding drinking water standard.

The law requires community and non-transient non-community water systems to take specific actions when PFHxA is detected above the new notification or response levels. When levels exceed the notification level of 1.0 microgram per liter, water systems must notify their governing body, any local governing body whose jurisdiction includes the affected service area, and customers who receive the water. The governing body may be a city council, a water district board, or a county authority, depending on the system's structure. The notification must be timely and must make clear that PFHxA has been detected at a level that warrants public awareness, even though no regulatory limit has yet been adopted.

If the running annual average exceeds the response level of 10 micrograms per liter, the requirements become significantly stronger. In that circumstance, the water system must either remove the contaminated source from service or provide public notice within 30 days. Public notice must be direct and must describe the exceedance, potential concerns, and the actions being taken to reduce exposure. The state considers this response level to reflect a point at which additional measures are strongly recommended for public health protection.

### Why the State Acted Now

While the new levels are based on OEHHA's toxicological assessment, the regulatory move reflects broader policy considerations. PFHxA has been detected across California in prior statewide investigations of wells located near airports, industrial areas and landfills. It is also included in the federal Unregulated Contaminant Monitoring Rule 5 for 2023

to 2025, which means water systems throughout the country are currently gathering data on its presence. State regulators anticipate that this monitoring will reveal additional detections, and they have acted in advance to ensure that systems know how to respond if PFHxA appears in their supplies.

California has a long history of issuing notification levels for PFAS chemicals as the science develops. PFHxA is now the latest addition to that list. Adopting these levels while research and federal rulemaking continue allows the state to maintain a precautionary posture and establish public disclosure practices early.

### Conclusion and Implications

The adoption of a 1.0 microgram per liter notification level and a 10 microgram per liter response level marks further expansion of California's PFAS oversight. These thresholds do not function as binding drinking water standards, but they carry real obligations and set expectations for how water systems must inform the public when PFHxA is present.

For public water systems, the change means preparing for more monitoring, closer coordination with laboratories, and the possibility of taking wells offline or investing in treatment if higher results are found. For local governments, it means receiving timely reports from water suppliers and understanding when public notifications must be issued. For residents and businesses, it means greater access to information about what is in their water and what steps are being taken when detections occur.

California's approach is intentionally forward-looking. As the body of research on PFHxA grows and federal rulemaking continues, the state's notification and response level structure ensures that the public is kept informed of emerging contaminants long before formal regulatory limits are finalized. These new PFHxA levels signal a continued commitment to early disclosure, precautionary action, and protection of drinking water quality.
(Darien Key, Derek Hoffman)

## RECENT FEDERAL DECISIONS

# NINTH CIRCUIT AFFIRMS CWA CITIZEN SUITS MUST BE FORWARD-LOOKING—ENVIRONMENTAL GROUP'S CLAIMS MOOTED BASED ON DISCHARGER'S SUBSEQUENT RECEIPT OF NPDES PERMIT

*Coastal Environmental Rights Foundation v. Naples Restaurant Group, LLC*, *Unpub.*, Case No. 23-55469 (9th Cir. Nov. 5, 2025).

In the *unpublished* opinion in *Coastal Environmental Rights Foundation v. Naples Restaurant Group, LLC*, the Ninth Circuit Court of Appeals mooted an environmental group's request for injunctive and declarative relief. These petitioners had challenged a restaurant owner's launch of fireworks over Alamos Bay without a pollutant discharge permit. However, the restaurant group subsequently obtained one, ensuring that future fireworks events would not violate the Clean Water Act. The Ninth Circuit further widened a Circuit Court of Appeals split regarding civil penalties for Clean Water Act violations, siding with the Eighth Circuit in concluding that a request for civil penalties does not overcome mootness when it is absolutely clear that the alleged violation is not reasonably expected to recur.

### Factual and Procedural Background

The Naples Restaurant Group, LLC (Naples) hosts an annual Fourth of July fireworks event at its restaurant, launching hundreds of fireworks from a barge in Alamos Bay. Until May 2023, Naples conducted the event without a National Pollutant Discharge Elimination System (NPDES) permit for pollutant discharges from the fireworks into the Bay. The Coastal Environmental Rights Foundation (CERF) filed a Clean Water Act citizen suit against Naples, seeking declarative and injunctive relief barring future unpermitted launches.

In April 2023, the U.S. District Court found in favor of Naples, finding that aside from a single firework falling into Alamitos Bay, CERF offered no evidence of similar or ongoing discharges. CERF appealed. However, in the following month, the Los Angeles Region Regional Water Quality Control Board (Regional Board) began issuing a general NPDES permit that authorized discharges from public fireworks displays into United States waters of the Los Angeles Region. Naples obtained one the following June.

Because the potential discharge from the fireworks event was no longer "unpermitted," the Ninth Circuit held that the case was moot. CERF then petitioned for a rehearing based on the fact that Naples had failed to pay its annual permitting fee, citing an unpaid November 2023 invoice. The Ninth Circuit thus remanded the matter back to the District Court to determine (1) whether Naples had continuously paid the annual fee and (2) whether it was absolutely clear that Naples's alleged violations were not reasonably likely to recur. The District Court answered both in the affirmative.

### The Ninth Circuit's Decision

The Clean Water Act prohibits the discharge of any pollutant into the navigable waters of the United States unless authorized via an NPDES permit issued by the Environmental Protection Agency (EPA) or a state with EPA approval. In assessing mootness, the Ninth Circuit relied on *Gwaltney of Smithfield, Ltd. v. Chesapeake Bay Foundation, Inc.*, 484 U.S. 49 (1987) and *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167 (2000) (*Laidlaw*) for guidance. These cases emphasize two principles: (1) civil penalties must serve to deter future violations—they cannot be used to remedy wholly past violations, and (2) to establish mootness, a hefty burden is placed on the defendant to show that it is "absolutely clear" that past violations could not reasonably be expected to recur. The Ninth Circuit concluded that when no reasonable possibility of such future violation exists, civil penalties lose their deterrent effect and thus become moot. It then applied these principles to CERF's requests for declaratory and injunctive relief, civil penalties, and attorneys' fees.

### Declaratory and Injunctive Relief

CERF sought a declaration that Naples violated the Clean Water Act and an injunction preventing further discharges without a permit. The court concluded that Naples met its burden in showing that its NPDES permit expressly authorized discharges from public fireworks displays, and thus, its firework event could not result in a violative discharge of pollutants into Alamos Bay. Additionally, Naples showed that it had a demonstrated record of regulatory compliance. Naples previously launched fireworks without a permit simply because it was not required at that time and promptly obtained one once it was able to. Because Naples's future discharges were permitted, and CERF could not seek injunctive relief for its past violations, this requested relief was moot.

### Civil Penalties

CERF argued that civil penalties kept the controversy alive, even if it was clear that Naples would not release unpermitted discharge again. The court wrestled with the contentious issue as to whether civil penalties should be treated differently from injunctive relief for mootness purposes. Though most circuits differentiate between the two and find that this relief can overcome a showing of mootness, the Ninth Circuit departed from this approach, siding instead with the Eight Circuit, which holds that plaintiffs lack standing to pursue civil penalties for past violations because such penalties do not redress the plaintiff's injury. Although civil penalties can remain available to deter future violations, this is not the case when the alleged violation cannot reasonably be expected to recur. The Ninth Circuit found the Eighth Circuit's approach more persuasive, noting that it had addressed similar cases related to unpermitted discharge and had done so after *Laidlaw*, interpreting *Laidlaw* to apply the same mootness standard for civil penalties and injunctive relief under the Act. Therefore, because CERF's claim rested solely on an action that was not reasonably expected to recur, CERF's claim for civil penalties was moot.

### Attorneys' Fees

Finally, the court held that a request for attorneys' fees cannot revive an otherwise moot case. Because Naples's alleged violation of the Act could not reasonably be expected to recur, the case was moot.

### Conclusion and Implications

The Ninth Circuit's decision upholds the notion that citizen suits under the Clean Water Act are forward-looking and do not exist to redress past harm. Thus, once a defendant obtains an NPDES permit authorizing the challenged discharge, claims for declaratory and injunctive relief become moot. Further, the court also clarified that civil penalty claims are moot when it is absolutely clear the alleged violations are not reasonably likely to recur, consistent with the act's deterrence goals and Article III standing requirements. It is important to note, however, that the opinion is *unpublished*, meaning the court's decision is not precedential nor binding. U.S. district courts may continue to look to the majority f Circuits for authority on the relationship between civil penalties and mootness. The Ninth Circuit's opinion is available at: https://cdn.ca9.uscourts.gov/datastore/opinions/2025/11/05/23-55469.pdf.
(Adam D. Nir)

## RECENT CALIFORNIA DECISIONS

# FIFTH DISTRICT COURT ADDRESSES THE TULARE LAKE SUBBASIN IN TWO SEPARATE DECISIONS

*Kings County Farm Bureau v. State Water Resources Control Board*, ___Cal.App.5th___, Case No. F088720 (5th Dist. Oct. 29, 2025);
*State Water Resources Control Board v. The Superior Court of Kings County*, ___Cal.App.5th___, Case No. F088909 (5th Dist. Nov. 24, 2025).

The Kings County Farm Bureau (Farm Bureau) is in a legal battle with the State Water Resources Control Board (State Water Board) regarding enforcement of the Sustainable Groundwater Management Act (SGMA) involving the Tulare Lake Subbasin. The Farm Bureau sued to challenge the state's decision to place the subbasin on probation, contending that the State Water Board acted unfairly and inconsistently. A recent appellate court ruling overturned a preliminary injunction against the state, but the Farm Bureau reportedly will pursue an appeal of that decision to the California Supreme Court. The case is *Kings County Farm Bureau v. State Water Resources Control Board* with a published opinion issued on October 29, 2025 by the Fifth District Court of Appeal (https://courts.ca.gov/opinion/published/2025-10-29/f088720).

A related case is involved in which the State Water Board appeals the trial court's rulings on the State Water Board's demurrer that sought to challenge the Farm Bureau's case at its inception. This related case is discussed below. The case is *State Water Resources Control Board v. The Superior Court of Kings County* with a published decision on November 24, 2025 by the Fifth District Court of Appeal (https://law.justia.com/cases/california/court-of-appeal/2025/f088909m.html). The Court of Appeal found in favor of the State Water Board on some of the issues.

### Background

The Tulare Lake Subbasin is located in the southern part of California's San Joaquin Valley, primarily within Kings County. It is part of the larger Tulare Lake Hydrologic Region and is south of the Kings and Kaweah rivers and north of the Kern River.

Enacted in 2014 and taking effect on January 1, 2015, SGMA mandates sustainable groundwater management through locally developed plans for over-drafted basins, subject to state oversight. The Tulare Lake groundwater subbasin was designated as a high-priority basin, requiring local agencies to form Groundwater Sustainability Agencies (GSAs) and submit a Groundwater Sustainability Plan (GSP) to the Department of Water Resources (DWR).

Five groundwater agencies developed a single groundwater plan for the Tulare subbasin. DWR found the submitted GSP for the Tulare subbasin inadequate in 2020 and again in 2023, leading the State Water Board to designate the basin as probationary during April 2024. The Farm Bureau filed a writ of mandate and complaint in May 2024, alleging multiple legal violations.

### The Court of Appeal's Decision in *Kings County Farm Bureau v. State Water Resources Control Board*

The Farm Bureau filed a petition for a writ of mandate and complaint against the State Water Board, alleging the probationary designation was improper and exceeded the State Board's authority.

The Farm Bureau raised multiple claims, including improper notice, exceeding authority, and violations of constitutional and statutory provisions. The trial court issued a preliminary injunction barring the State Water Board from enforcing the probationary designation and related requirements, such as groundwater monitoring, reporting, and fees. The trial court found the Farm Bureau likely to succeed on several claims, including the "good actor exclusion" claim, exceeding authority, notice violations, and underground regulation claims.

The appellate court found that the trial court abused its discretion in granting the broad preliminary injunction. It determined that the Farm Bureau

was likely to succeed only on the "good actor exclusion" claim, which challenges the State Water Board's decision not to analyze exclusion requests from two GSAs. The other claims were found to lack merit. The appellate court concluded that the injunction was overly broad and not tailored to the harm at issue, as the valid claim only applied to specific portions of the Tulare subbasin.

The appellate court upheld the trial court's finding that the Farm Bureau would suffer substantial harm from the immediate compliance requirements during the irrigation season, including high costs, operational disruptions, and potential economic losses. However, it noted that the trial court's balancing of harms might change if the scope of the injunction is narrowed. The appellate court upheld the trial court's decision to impose a nominal $1 undertaking, as the State Water Board failed to provide sufficient evidence of actual damages caused by the injunction.

The appellate court reversed the trial court's preliminary injunction and remanded the case for further proceedings to determine whether a narrower injunction may be appropriate. The State Water Board's petition for writ of supersedeas was denied as moot due to the reversal of the injunction. Costs were awarded to the State Board.

### The Court of Appeal's Decision in *State Water Resources Control Board v. The Superior Court of Kings County*

The Court of Appeal is reviewing a case involving the State Water Board and the Farm Bureau regarding the trial court's rulings on the State Water Board's demurrer. The court overruled the demurrer for the sixth, seventh, and ninth causes of action from the Farm Bureau's complaint. The sixth cause of action alleges underground regulations that violate the Administrative Procedure Act (APA). The seventh cause of action claims the extraction fees imposed are unlawful. The ninth cause of action seeks general declaratory relief regarding the legality of the probationary designation.

The sixth cause of action addresses alleged underground regulations by the State Water Board that violate the APA. The Farm Bureau identifies seven specific regulations it claims were not adopted according to APA requirements. The State Water Board argues it is exempt from the APA under Water Code section 10736, which the trial court rejected.

The court emphasized the importance of determining legislative intent through statutory language and context. Courts examine statutory language for its plain meaning and context within the entire statutory framework. If the language is clear, it is generally followed unless it leads to absurd results. Ambiguities in statutes allow for consideration of legislative history and public policy to clarify intent.

The court concluded that the State Water Board's actions under Water Code sections 10735.2 and 10735.8 are exempt from the APA. The court interprets the legislative intent as granting a broad exemption from the APA for actions taken under the specified sections.

The court also found that declaratory relief is not appropriate for reviewing administrative decisions made by the State Water Board, by reasoning that the Legislature has provided a specific remedy through writ of mandate for reviewing such decisions. Ultimately, the Court of Appeal ordered the trial court to vacate its previous ruling and grant the State Water Board's demurrer without leave to amend for specific causes of action.

### Conclusion and Implications

The Fifth District Court of Appeal's decisions provide judicial direction regarding implementation and enforcement issues arising under SGMA. Key takeaways are: (1) the State Water Board must provide notice to groundwater extractors before designating a subbasin as probationary and the "good actor exclusion" may be requested as part of the hearing; (2) adequate factual showings that at least portions of a basin or subbasin require those portions be excluded from a probationary designation; and (3) the State Water Board has "broad authority to act" after a subbasin is designated as probationary.
(Wes Miliband)

# THIRD DISTRICT COURT FINDS THE DELTA REFORM ACT DOES NOT REQUIRE DWR TO SUBMIT A CERTIFICATION OF CONSISTENCY BEFORE ENGAGING IN PRECONSTRUCTION GEOTECHNICAL WORK

*Tulare Lake Basin Water Storage Dist. v. Department of Water Resources*, ___Cal.App.5th___, Case No. C101878 (3rd Dist. Oct. 17, 2025).

In *Tulare Lake Basin Water Storage District v. Department of Water* the California Court of Appeal considered whether the Department of Water Resources (DWR) was required to submit a "certification of consistency" under the Delta Reform Act before conducting preconstruction geotechnical investigations for the Delta Conveyance Project. Plaintiffs argued that the early field work could not proceed until DWR certified the overall project's consistency with the Delta Plan. The appellate court disagreed and reversed preliminary injunctions issued by the trial court.

## Background

### The Delta Reform Act

The Delta Reform Act establishes a comprehensive management regime for the Sacramento–San Joaquin Delta built around the "coequal goals" of ecosystem restoration and water supply reliability. To ensure major projects are aligned with the Delta Plan, the Act requires agencies to file a certification of consistency before implementing a "covered action." A covered action (§ 85057.5) must: (1) qualify as a "plan, program, or project" under CEQA, (2) occur wholly or partly within the Delta, (3) be covered by the Delta Plan, and (4) have a significant impact on the achievement of the coequal goals. Importantly, the certification requirement attaches only at the point of "implementation," which is a term the Act does not expressly define, making its interpretation central to this case.

### CEQA's Whole-of-the-Action Doctrine and Piecemealing Concerns

California Environmental Quality Act (CEQA) regulations require agencies to evaluate the "whole of an action" rather than artificially dividing a project to evade meaningful environmental review. Courts have repeatedly struck down attempts to segment major projects into smaller components (*Laurel Heights*, *Tuolumne County Citizens*, *Save Tara*, etc.). Similarly, CEQA prohibits "piecemealing" by requiring that all reasonably foreseeable phases be included within a single environmental analysis. Plaintiffs argued that because § 85057.5 borrows CEQA's definition of "project," the Legislature intended to incorporate CEQA's entire analytical apparatus—including whole-of-the-action and anti-piecemealing principles—into the Delta Reform Act consistency process.

## The Court of Appeal's Decision

The Court of Appeal declined to fold CEQA doctrines into the Delta Reform Act's certification framework. It highlighted three analytical points: Limited incorporation by reference. The Delta Reform Act invokes CEQA's definition of "project" solely to identify the types of activities that may qualify as a covered action. Borrowing a definitional term does not wholesale import CEQA's substantive doctrines, particularly ones developed through case law rather than statutory text.

### Different Statutory Purposes

The court pointed out that CEQA's purpose is to ensure that agencies fully evaluate environmental impacts before approval. The Delta Reform Act's certification regime serves a different purpose: ensuring consistency with the Delta Plan and its policy objectives. The court emphasized that the certification process is not an environmental review mechanism and should not be interpreted as replicating CEQA.

The court found that the California Legislature *could have* expressly applied CEQA's whole-of-the-action principles if it wished. Instead, it created a separate, policy-driven procedural requirement. The absence of textual or structural signals that CEQA's anti-piecemealing rule applies was decisive for the court.

### Geotechnical Work and the Meaning of "Implementation"

The pivotal statutory question was whether preconstruction geotechnical activities constituted "implementation" of the Delta tunnel project. Because the Act does not define "implement," the court applied traditional tools of statutory construction. It concluded as follows:

- "Implementation" denotes carrying out or putting into effect the covered action, not gathering information needed to evaluate or design it.
- Geotechnical investigations are preparatory and do not commit DWR to a final project configuration.
- The work does not advance or alter the Delta Plan objectives in a way that would constitute "significant impact."
- Delta Stewardship Council guidance interprets early-stage data collection as outside the certification regime.

As a result, the geotechnical activities were not a covered action and did not trigger the certification requirement.

### Reversal of the Injunctions and the Role of the Trial Court on Remand

Because the trial court grounded its injunctions in an erroneous statutory interpretation, the Court of Appeal reversed the orders. It directed the trial court to reassess the plaintiffs' motions for preliminary injunctions using the corrected legal standard. This includes rebalancing: (1) likelihood of success on the merits and (2) interim harm. With the statutory foundation for the injunction removed, plaintiffs face a significantly higher burden on remand.

### Conclusion and Implications

*Tulare Lake Basin v. DWR* clarifies that the Delta Reform Act's certification regime is narrower than CEQA and is triggered only when an agency begins implementation of a covered action, not when it engages in preliminary investigative work. While the ruling allows agencies greater flexibility in sequencing early project activities, it preserves the Act's central oversight function by maintaining the certification requirement for actual project implementation. The decision reinforces a textual approach to statutory interpretation and provides agencies clearer guidance in planning complex Delta infrastructure. This case will likely influence how future litigants frame challenges at the intersection of CEQA and the Delta Reform Act. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/C101878.PDF

(Christina Suarez, Darien Key, Derek Hoffman)

# SUPERIOR COURT UPHOLDS DISCRETION FOR PUBLIC TRUST: HUMBOLDT COUNTY GROUNDWATER RULING

*Friends of the Eel River v. County of Humboldt*, Case No. CV2201593 (Humboldt County Super. Ct. 2025).

The County of Humboldt has prevailed in a lawsuit filed by the Friends of the Eel River (FOER) regarding the regulation of groundwater extraction in the lower Eel River Basin. FOER sought a determination that the County had a duty to create a program to regulate groundwater pumping and an order to halt new well permits, arguing that uncontrolled extraction during dry times depletes surface flows and harms protected resources like salmon and steelhead. The environmental organization highlighted that data collected for the County's Groundwater Sustainability Plan (GSP) showed extraction caused a loss of about 14 cubic feet per second (cfs) to surface flows during late summer, which can be critical when river flows are low. Judge Kelly L. Neel's decision provides clarification on the County's obligation as a trustee of a public water resource under the Public Trust Doctrine.

## Background

The Public Trust Doctrine, rooted in common law, establishes that the state and its political subdivisions, such as counties, hold the state's waters and wildlife in trust for the public. The doctrine imposes a duty to consider the effects of water allocation on public trust values—including navigation, commerce, fishing, recreation, and habitat preservation—and to avoid or minimize harm where feasible and with consideration of the public interest.

FOER's lawsuit aimed to compel the County to use its police powers to regulate pumping in the Lower Eel River, specifically during the late summer and early fall dry season when flows are at their lowest. FOER contended that the County's current well permitting process and its efforts under the Sustainable Groundwater Management Act (SGMA) were insufficient because they failed to address the cumulative impact of groundwater pumping on surface flows, potentially resulting in dry segments of the river during dry periods. FOER asked the Superior Court to declare the County's duty, mandate a regulatory program, and impose a moratorium on new or expanded wells.

## The Superior Court's Decision

In the ruling filed on September 29, 2025, the Humboldt County Superior Court, under presiding Judge Kelly L. Neel, denied all of the FOER's requests, including declaratory relief, a writ of mandamus, and preliminary or permanent injunctions. The core of the court's decision rested on the finding that the County had exercised its discretion regarding the public trust and the court would not compel it to do so in the specific manner requested by the FOER.

### Public Trust Applies But Is Discretionary

The court affirmed that the Public Trust Doctrine does apply where groundwater extraction adversely impacts a navigable river, such as the Eel River. However, the court emphasized that the doctrine is "inherently discretionary". The State and local agencies are not required to protect public trust resources under every conceivable circumstance—only where protection or harm minimization is feasible.

### Declaratory Relief Denied

Declaratory relief was denied because FOER's request did not preset a "narrow, precise question" but instead contested the efficacy of the County's existing efforts. The Court stated that the declaratory relief is not available to tell an administrative agency "how to do its job". Since the County explicitly recognized its duty to consider the public trust in its 2022 Eel River Valley Groundwater Basin Sustainability Plan (GSP) and its well permitting process, there was no controversy over the existence of the duty itself.

### Writ of Traditional Mandamus Denied

A writ of traditional mandamus is a method to compel the performance of a ministerial duty—an act required in a prescribed manner without the exercise of judgment. Following from its finding that the County has discretion in carrying out its public trust duties, the court ruled that the traditional mandamus will not lie to control discretion. The County's duty

to consider public trust involves balancing a host of issues—navigation, habitat, recreation, agriculture, and human consumption—all part of a discretionary decision.

The Superior Court found that the County had exercised its discretion by implementing the GSP, developing a five-part metric to measure sustainability and considering public trust issues like Chinook salmon passage. The fact that the County did not prioritize the specific life stage of the salmon or the precise dry period identified by the FOER did not equate to a failure to exercise discretion.

### Continuing Supervision Is Sufficient

While acknowledging the state's continuing public trust duty of supervision over existing water rights, the court found that the County's duty is fulfilled through its compliance with SGMA. The County needs to prepare annual reports evaluating the sustainability goals of the Basin and provide updates to the GSP every five years. The court reasoned that ongoing monitoring through scientific principles to consider the total impacts of the groundwater extraction is sufficient and does not require a massive undertaking of identifying and measuring the individual adverse impacts of every existing, decades-old well, as FOER's argument implied.

## Conclusion and Implications

The ruling carries significant implications for the local water agencies across California, especially those working to comply with the SGMA.

### Significance of the GSP

The decision strongly supports the use of a finalized and implemented GSP as a defense against public trust challenges regarding groundwater extraction. By developing and implementing a GSP that explicitly considers public trust resources and their protection as a part of the sustainability goals, the County demonstrated that it had exercised its legal duty of consideration. This makes the substantial investment of time and resources into SGMA compliance a potentially worthwhile legal safeguard against challenges seeking to compel specific regulatory actions.

### Upholding Government Discretion

The court's emphasis on the inherently discretionary nature of the Public Trust Doctrine is a favorable precedent for governments charged with such a duty. The decision confirms that agencies are free to balance various public trust factors, such as agricultural needs, habitat preservation, and human consumption, and choose a course of action without being dictated by a court of a single stakeholder's preferred priorities. This provides administrative agencies with flexibility needed to manage complex resource issue within their own GSPs.

The Superior Court's Ruling is available here: https://lostcoastoutpost.com/loco-media/loco-media/blog/post/43561/09292025_Ruling_%2B%25281%2529.pdf
(Miles Krieger)

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