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WESTERN WATER NEWS

LOWER COLORADO STATES CALL FOR IMPROVEMENTS TO GLEN CANYON DAM

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

Background

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

Issues with the Dam

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

Colorado River Alternatives Analysis

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

Lower Basin Alternatives Letter

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

In addition to these Dam-related alternatives requests, the letter more generally appealed to the newly-appointed Secretary of the Interior, Doug

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

Conclusion and Implications

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

NORTHERN COLORADO WATER DISTRICT AND SAVE THE POUDRE REACH LANDMARK SETTLEMENT OVER NORTHERN INTEGRATED SUPPLY PROJECT

After decades of legal battles, environmental reviews, and public debate, the Northern Colorado Water Conservation District and the non-profit organization Save the Poudre have reached a settlement over the long-controversial Northern Integrated Supply Project (NISP). Signed on February 28, 2025, the agreement marks a significant milestone in Colorado's ongoing water management efforts.

Northern Integrated Supply Project

At the center of the dispute is NISP—a major water infrastructure project aimed at supporting Northern Colorado's growing population by constructing two new reservoirs: Glade Reservoir, northwest of Fort Collins, and Galeton Reservoir, northeast of Greeley. Initially proposed in the early 2000s, NISP also includes a forebay reservoir below Glade, five pump stations, improved canals to divert water from the Cache la Poudre River, and approximately 50 miles of buried pipelines. To accommodate Glade Reservoir, six miles of U.S. Highway 287 will be rerouted to avoid flooding.

The project is designed to add 40,000 acre-feet of new water supply, which is enough to support roughly eighty thousand families across 15 participating cities, towns, and water districts. Northern Water projects that demand will rise sharply as the region's population is expected to double by 2050. While conservation efforts remain important, the district argues that new water sources are essential to meet future needs, and that we cannot conserve our way to a sufficient water supply.

Opposition to NISP

Environmental groups, particularly Save the Poudre, have long opposed NISP, arguing that it threatens the ecological health of the Cache la Poudre River, a federally designated Wild and Scenic River. They contend that the small amount of undiverted flow remaining is critical, with peak flows every few years essential for maintaining water quality and ecosystem vitality. The group has advocated instead for enhanced conservation efforts and upgrades to existing infrastructure, expressing concerns over NISP's cost and potential to accelerate regional growth.

Despite these concerns, Northern Water maintains that NISP will provide long-term economic benefits through job creation during construction, enhanced recreational opportunities, and increased ecotourism once the reservoirs are complete. The project is also identified in the Colorado Water Plan as essential to the state's long-term water strategy. These negotiations between Save the Poudre and the district continue after the district received its federal permitting approval from the U.S. Army Corps of Engineers in January 2023. NISP received this permit after nearly two decades of work demonstrating the project's need and adhering to wetland mitigation requirements.

2025 Settlement Agreement

This February, parties finally reached a settlement agreement that provides $100 million in funding over 20 years for the benefit of the Poudre River, specifically the stretch between the Poudre Canyon mouth and its confluence with the South Platte River. Rather than direct payment to Save the Poudre, the funds will be administered through a dedicated entity to support river improvement projects. As part of the agreement, Save the Poudre will drop its federal lawsuit challenging the Section 404 Clean Water Act permit issued by the U.S. Army Corps of Engineers in January 2023.

Conclusion and Implications

Some restoration projects, including a fish passage near Fort Collins and a wetlands area in Windsor's Eastman Park, are already underway. Construction on the Glade Reservoir is expected to begin in 2026. On April 16, 2025, approximately one hundred and fifty industry representatives gathered to learn about the contracting and construction process that lies ahead for NISP. The district is eager to move forward with construction now that the final hurdles facing that project have been cleared.

In a rare instance of compromise in Western water disputes, both sides now share a goal: ensuring a sustainable water future for Northern Colorado, albeit through different approaches. This settlement offers a potential blueprint for balancing growth with conservation in the region.
(Lauren Hoover, John Sittler)

CALIFORNIA TRIBES SIGN AGREEMENT TO SHARE 50,000 ACRE-FEET FROM TRINITY RESERVOIR

In April 2025, the Hoopa Valley and Yurok Tribes signed an agreement to share 50,000 acre-feet of water from Trinity Reservoir on the Trinity River. The agreement is an important step to implement a prior act of Congress allocating water for downstream users to accommodate dam construction and the use of Trinity River water for the Central Valley Project.

Background

The Trinity River originates in the Salmon-Trinity Mountains (also known as the Trinity Alps) of northwest California. The Trinity River drains approximately 2,965 square miles and flows generally southward until Lewiston, where it then flows northwesterly, joining the Klamath River in Humboldt County near the boundary of the Hoopa Valley Indian Reservation. From this point, the lower Klamath River continues in a northwesterly direction, flowing through Humboldt County and the Yurok Indian Reservation before reaching the Pacific Ocean south of the California-Oregon border. The US Bureau of Reclamation's Trinity River Division (TRD) facilities include Trinity Dam and Reservoir and Lewiston Dam and Reservoir on the Trinity River in Trinity County. The facilities allow a portion of the water from the Trinity River to flow to its confluence with the Klamath River. Since the completion of the TRD, the facilities have diverted Trinity River water outside of the Trinity River basin and into the Sacramento River Basin to the east, making it available for delivery to the Bureau of Reclamation's contractors for Central Valley Project Water.

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.

Integration and Coordination of the Trinity River Division

In 1955, Congress adopted Public Law 84-386 (PL 84-386). In relevant part, PL 84-386 provides in relevant part that:

> . . .the operation of the Trinity River division shall be integrated and coordinated, from both a financial and an operational standpoint, with the operation of other features of the Central Valley project, as presently authorized and as may in the future be authorized by Act of Congress, in such manner as will effectuate the fullest, most beneficial, and most economic utilization of the water resources hereby made available.

There are two primary conditions to this provision, as follows:

> That the Secretary is authorized and directed to adopt appropriate measures to insure the preservation and propagation of fish and wildlife, including, but not limited to, the maintenance of the flow of the Trinity River below the diversion point at not less than one hundred and fifty cubic feet per second for the months July through November and the flow of Clear Creek below the diversion point at not less than fifteen cubic feet per second unless the Secretary and the California Fish and Game Commission determine and agree that lesser flows would be adequate for maintenance of fish life and propagation thereof; the Secretary shall also allocate to the preservation and propagation of fish and wildlife, as provided in the Act of August 14, 1946 (60 Stat. l 080), an appropriate share of the costs of constructing the Trinity River development and of operating and maintaining the same, such costs to be nonreimbursable: Provided further, That not less than 50,000 acre-feet shall be released annually from the Trinity Reservoir and made available to Humboldt County and downstream water users [Proviso 2].

Humboldt County and the Bureau of Reclamation entered into a water contract on June 19, 1959, as authorized under PL 84-386. Proviso 2 conditioned the integration of the Trinity River Division into the Central Valley Project (CVP) with the requirement that not less than 50,000 acre-feet shall be released annually from Trinity Reservoir and made available to Humboldt County and downstream water users. Language related to releases in the1959 water contract was incorporated as a condition in state water rights permits issued for operation of the TRD.

The Agreement

Leaders of the Yurok and Hoopa Valley tribes have now executed an agreement to share and manage the 50,000 AF of water from the Trinity Reservoir allocated by the 1955 Act (Agreement). The Agreement is thus part of the 1955 Act's purpose, in part, to support affected downstream communities, as implemented by the1959 contract between the Bureau of Reclamation and Humboldt County. Importantly, the agreement provides not only for water sharing between the Hoopa Valley and Yurok Tribes but also outlines cooperation with Humboldt County in the use and stewardship of that resource. The inclusion of these coordination terms reflects a range of local interests—tribal, county, ecological.

The agreement is also notable in terms of intertribal collaboration. The Hoopa Valley and Yurok Tribes have separate governance structures and distinct histories, and the Agreement aligns their shared geography and interest in Trinity River management issues. The Agreement also sets the stage for finalizing a broader negotiation with Humboldt County. The Agreement thus functions as a step toward a regional approach to water governance.

Conclusion and Implications

It remains to be seen how the Agreement will impact discussions between the Tribes and the County.

However, the Agreement is a step toward a more regional approach to management of downstream water resources contemplated by the 1955 Act and initiated by the 1959 agreement. For more information, see the Hoopa Valley Tribe Press Release, available at: https://www.facebook.com/TheYurokTribe/posts/tribes-celebrate-historic-trinity-river-water-agreement-the-ceremony-at-the-conf/1098138675680606/ (Miles Krieger, Steve Anderson)

LEGISLATIVE DEVELOPMENTS

NEW MEXICO GOVERNOR GRISHMAN SIGNS INTO LAW SEVERAL BILLS ADDRESSING WATER SUPPLY AND QUALITY

On April 8, 2025, New Mexico Governor Michelle Lujan Grisham announced a series of bills she signed into law that advance New Mexico's 50-Year Water Action Plan through conservation of freshwater resources, enhanced water quality protections, and protecting residents from harmful PFAS chemicals. "Today marks a turning point for New Mexico's water future," said Lujan Grisham. "The Strategic Water Supply program unlocks economic opportunities by providing brackish water for manufacturing and clean energy development, while preserving our freshwater for other vital uses."

House Bill 137

House Bill 137, Sponsored by Rep. Susan K. Herrera, Sen. George K. Muñoz, Sen. Craig W. Brandt, Rep. Raymundo Lara, and Rep. Rod Montoya, establishes the Strategic Water Supply program to conserve New Mexico's limited freshwater resources by promoting the treatment and use of brackish water—naturally occurring underground salty water. Using a largely untapped water supply for manufacturing and clean energy development supports economic growth while preserving freshwater supplies for other uses.

"House Bill 137 represents a new day for New Mexico's water future, securing critical funding for local brackish water projects and unprecedented resources for aquifer mapping," said Rep. Susan K. Herrera. "This legislation was a heavy lift that required much communication, debate, and collaboration. It marks a transformative step forward in how our state manages and conserves our most precious resource." For more information on this bill, *see* https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=137&year=25

Senate Bill 21

Senate Bill 21 sponsored by Sen. Peter Wirth, majority floor leader, Sen. Roberto "Bobby" J. Gonzales, and Rep. Kristina Ortez, modernizes the Water Quality Act to enhance protection of New Mexico's water resources, a key component of the governor's 50-Year Water Action Plan. The legislation expands regulatory authority to protect surface waters no longer covered by federal law due to the U.S. Supreme Court's 2023 decision in *Sackett v. EPA*. It also gives New Mexico authority to seek U.S. Environmental Protection Agency approval to become the 48th state to gain authorization from U.S. EPA for surface water permitting. Finally, SB 21 addresses polluted groundwater that falls outside federal Superfund program jurisdiction.

"Senate Bill 21 finally gives New Mexicans control over the quality of our surface water, restoring critical protections for 90-95 percent of our waterways that were left vulnerable by the Supreme Court's Sackett decision," said Sen. Peter Wirth, Majority Floor Leader. "This legislation represents a monumental achievement that ensures our intermittent streams and wetlands will be protected for generations to come, rather than leaving those decisions to EPA administrators in Dallas."

"I am deeply grateful to see this bill signed into law today, so that no matter what happens at the federal level, New Mexico can help protect our precious water supply for many generations to come," said House sponsor Rep. Kristina Ortez. "This critical legislation ensures decisions on New Mexico's water future will be made here, by those who know these waters best."

"New Mexico is once again leading the way—today in protecting our precious water resources. I am deeply grateful to Governor Lujan Grisham and the Legislature for their leadership in protecting New Mexico's waters with the passing of Senate Bill 21–which will protect our water quality for generations to come," said Rep. Melanie Stansbury. "These protections are vital in the wake of the Federal Administration and Supreme Courts' undermining of national water quality protections. Because as we know, water is life, and I am deeply grateful to our state leaders for protecting our life-giving waters."

These bills mark milestones in the implementation of Gov. Lujan Grisham's 50-Year Water Action

Plan that aims to ensure the long-term sustainability of New Mexico's freshwater resources. For more information on this bill, *see*: https://www.nmlegis.gov/Legislation/Legislation?Chamber=S&LegType=B&LegNo=21&year=25

PFAS Contamination

The governor also signed two bills aimed at tackling toxic PFAS contamination in New Mexico, protecting New Mexicans from human health issues like thyroid disease, cancer, liver damage, birth defects, and increased risk of miscarriage.

House Bill 212

House Bill 212, sponsored by Sen. Jeff Steinborn and Reps. Joanne J. Ferrary, Debra M. Sariñana, Majority Whip Dayan Hochman-Vigil, and Kathleen Cates, protects New Mexicans from harmful PFAS chemicals by phasing out and prohibiting consumer products containing intentionally added PFAS. The bill allows for the education of consumers through the labeling of products containing intentionally added PFAS. In 2027, the bill prohibits PFAS in items like cookware food packaging and juvenile products, with additional products including cosmetics, furniture, and carpets prohibited in 2028. By 2032, all non-exempt products with intentionally added PFAS will be banned for sale in New Mexico.

The legislation exempts critical applications in medical, electronic, and manufacturing sectors while requiring inventories of PFAS-laden firefighting foams and restricting their use to emergencies. This approach safeguards public health from chemicals linked to serious diseases, prevents expensive water remediation costs, and protects New Mexico's water and land resources. New Mexican children will especially benefit from this legislation, protecting them PFAS exposure that often starts at a young age through juvenile products and other PFAS-laden products like cookware, cleaning supplies, and home furnishings.

"Addressing PFAS is one of the most important environmental issues of our time. It required tremendous collaboration to help everyone understand the necessity and impact of this legislation," said Rep. Dayan Hochman-Vigil, Majority Whip. "I am grateful to Secretary Kenney for his close work with bill sponsors and House Leadership and his tenacity throughout the legislative process. Together, we've created legislation that will protect New Mexicans from these dangerous chemicals for generations to come."

"These PFAS bills represent an important step forward in protecting New Mexico from profound contamination issues, banning these dangerous chemicals and establishing regulations that create parity with federal agencies," Sen. Jeff Steinborn. "This proactive, visionary legislation will make our state safer, protect our environment and wildlife, and demonstrates our commitment to stopping pollution before it happens rather than dealing with its aftermath." For more information on this bill, *see:* https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=212&year=25

House Bill 140

House Bill 140, sponsored by Sen. Jeff Steinborn and Rep. Christine Chandler, designates discarded firefighting foams containing PFAS chemicals as hazardous waste, enabling state-level regulation even when these substances aren't federally listed. The legislation shifts cleanup costs from taxpayers to polluters, protects communities by preventing contamination of land and water, and establishes legal clarity for regulating these toxic substances. This designation will particularly protect our military communities, including those near Cannon Air Force Base in Clovis and Holloman Air Force Base in Alamogordo. For more information on this bill, *see:* https://www.nmlegis.gov/Legislation/Legislation?Chamber=H&LegType=B&LegNo=140&year=25

Conclusion and Implications

"'The PFAS legislation protects public health and shifts cleanup costs from taxpayers to polluters, preventing expensive remediation in the future while exempting critical industrial applications," said Lujan Grisham. "These bills ensure clean water for generations while strategically positioning New Mexico for sustainable economic growth in key industries across our state."
(Robert Schuster)

REGULATORY DEVELOPMENTS

US ENVIRONMENTAL PROTECTION AGENCY OUTLINES AGENCY PLANS TO ADDRESS PFAS

On April 28, 2025, U.S. Environmental Protection Agency (EPA) Administrator Lee Zeldin outlined upcoming agency action to address Per- and Polyfluoroalkyl Substances (PFAS). In this suite of actions, Administrator Zeldin announced a long list that included in part the designation of an agency lead for PFAS, the creation of effluent limitations guidelines (ELGs) for certain PFAS to stop these forever chemicals from entering drinking water systems, and initiatives to engage with Congress and industry to establish a clear liability framework that ensures the polluter pays and passive receivers are protected. In line with Administrator Zeldin's Powering the Great American Comeback initiative, EPA's work in this space will advance Pillar 1: Clean Air, Land, and Water for Every American, and Pillar 3: Permitting Reform,

Cooperative Federalism, and Cross-Agency Partnership

EPA Administrator Zeldin stated:

> I have long been concerned about PFAS and the efforts to help states and communities dealing with legacy contamination in their backyards. With today's announcement, we are tackling PFAS from all of EPA's program offices, advancing research and testing, stopping PFAS from getting into drinking water systems, holding polluters accountable, and providing certainty for passive receivers. This is just a start of the work we will do on PFAS to ensure Americans have the cleanest air, land, and water.

These actions are guided by the following principles: strengthening the science, fulfilling statutory obligations and enhancing communication, and building partnerships. With this approach, EPA will provide the foundation and investment necessary for a toolbox that will help states and communities dealing with PFAS contamination. This list is the first, not the last, of all decisions and actions EPA will be taking to address PFAS over the course of the Trump Administration. There will be more to come in the future across EPA's program offices to help communities impacted by PFAS contamination.

Strengthening the Science

In "Strengthing the Science" EPA announced the following agenda:

- Designate an agency lead for PFAS to better align and manage PFAS efforts across agency programs;
- Implement a PFAS testing strategy under Toxic Substances Control Act (TSCA) Section 4 to seek scientific information informed by hazard characteristics and exposure pathways;
- Launch additional efforts on air related PFAS information collection and measurement techniques related to air emissions;
- Identify and address available information gaps where not all PFAS can be measured and controlled;
- Provide more frequent updates to the PFAS Destruction and Disposal Guidance—changing from every three years to annually—as EPA continues to assess the effectiveness of available treatment technologies;
- Ramp up the development of testing methods to improve detection and strategies to address PFAS

Fulfilling Statutory Obligations and Enhancing Communication

Regarding "Fulfilling Statutory Obligations and Enhancing Communication," EPA's strives to:

- Develop effluent limitations guidelines (ELGs) for PFAS manufacturers and metal finishers and evaluate other ELGs necessary for reduction of PFAS discharges;

•Address the most significant compliance challenges and requests from Congress and drinking water systems related to national primary drinking water regulations for certain PFAS;

•Determine how to better use RCRA authorities to address releases from manufacturing operations of both producers and users of PFAS;

•Add PFAS to the Toxic Release Inventory (TRI) in line with Congressional direction from the 2020 National Defense Authorization Act ;

•Enforce Clean Water Act and TSCA limitations on PFAS use and release to prevent further contamination;

•Use Safe Drinking Water Act authority to investigate and address immediate endangerment Achieve more effective outcomes by prioritizing risk-based review of new and existing PFAS chemicals;

•Implement section 8(a)7 to smartly collect necessary information, as Congress envisioned and consistent with TSCA, without overburdening small businesses and article importers;

•Work with Congress and industry to establish a clear liability framework that operates on polluter pays and protects passive receivers

Building Partnerships

Regarding "Building Partnerships," EPA intends to:

•Advance remediation and cleanup efforts where drinking water supplies are impacted by PFAS contamination;

•Work with states to assess risks from PFAS contamination and the development of analytical and risk assessment tools;

•Finish public comment period for biosolids risk assessment and determine path forward based on comments;

•Provide assistance to states and tribes on enforcement efforts;

•Review and evaluate any pending state air petitions;

•Resource and support investigations into violations to hold polluters accountable

Past PFAS Connection

Administrator Zeldin's leadership on PFAS dates back to his time in Congress, where he was a founding member of the PFAS Congressional Taskforce and a strong supporter of the PFAS Action Act, legislation to provide funding to support local communities cleaning up PFAS-contaminated water systems. He was, and remains, a staunch advocate for protecting Long Islanders and all Americans from contaminated drinking water.

In the process of developing and taking action on a number of these items, Administrator Zeldin personally heard from Members of Congress on passive receiver issues where local water utilities will foot the bill for contamination and pass those costs onto consumers. This mindset and the need for a polluter pays model has guided a lot of the work to be done at EPA in the future.

Conclusion and Implications

During President Trump's first term, EPA convened a two-day National Leadership Summit on PFAS in Washington, D.C. that brought together more than 200 federal, state, and local leaders from across the country to discuss steps to address PFAS. Following the Summit, the agency hosted a series of visits during the summer of 2018 in communities directly impacted by PFAS. EPA interacted with more than 1,000 Americans during community engagement events in Exeter, New Hampshire, Horsham, Pennsylvania, Colorado Springs, Colorado, Fayetteville, North Carolina, and Leavenworth, Kansas, as well as through a roundtable in Kalamazoo, Michigan, and events with tribal representatives in Spokane, Washington.

In 2019, the Trump EPA announced the PFAS Action Plan. This historic Plan responded to extensive public interest and input the agency received and represented the first time EPA built a multi-media, multi-program, national communication and research plan to address an emerging environmental challenge like PFAS. EPA's Action Plan identified both short-term solutions for addressing these chemicals and

long-term strategies that will help provide the tools and technologies states, tribes, and local communities need to provide clean and safe drinking water to their residents and to address PFAS at the source—even before it gets into the water.
(Robert Schuster)

US BUREAU OF RECLAMATION ANNOUNCES INCREASES IN CENTRAL VALLEY PROJECT WATER ALLOCATIONS AND DWR INCREASES WATER ALLOCATION FOR STATE WATER PROJECT CONTRACTORS

On April 28, 2025, the US Bureau of Reclamation announced increases in water supply allocation for the Central Valley Project for south-of-Delta agriculture contractors.

The Bureau of Reclamation has increased south-of Delta increase in water supply allocations from the Central Valley Project for ag contractors. The allocation has increased the allocation from 40 percent to 50 percent.

North-of-Delta Central Valley Project contactors remains at 100 percent. All other Central Valey Project contract allocations remain the same as were announced on March 27 in Reclamation's water supply update. In that report Reclamation allocated to Friant Division contractor's water supply delivered from Millerton Reservoir on the upper San Joaquin River via Madera and Friant-Kern canals: Class 1 was increased from 45 percent to 80 percent on March 14, 2025. On March 27, 2025, further increased the amount to 100 percent with Class 2 water remaining at zero percent. (https://www.usbr.gov/newsroom/news-release/5126)

California Department of Water Resources State Project 2025 Allocations

On April 29, 2025, the California Department of Water Resources also announced an increase in water supply allocations from the State Water Project.

DWR found that "moderate storm events" within the month of April, ". . .led to improvement I snowpack and water supply runoff in the Northern Sierra. These conditions, along with a conservative forecast of conditions through the rest of the year, support the Department of Water Resources in increasing the State Water Project allocation. . . ."

The Department of Water Resources changed their contractor water allocation from 40 percent to 50 percent for "most" State Water Project contractors' requested Maximum Annual Table A amounts for 2025. *See:* https://water.ca.gov/-/media/DWR-Website/Web-Pages/Programs/State-Water-Project/Management/SWP-Water-Contractors/Files/25-05-042925.pdf

Latest Water Supply Levels in California

As recently as May 2, 2025, California Water Watch detailed the state of water in California. California Water Watch reported that "major" reservoir levels were at 117 percent of "average levels" and 51 percent of "average peak snowpack." It further reported that 27 percent of "monitoring wells" was at 27 percent below "normal levels." Precipitation in the state was measured at 21.33 inches in the water year to date, which is at 99 percent of average.

Conclusion and Implications

It has been another excellent water year as of May 2, 2025. Major reservoirs are full and despite the vagaries of climate change, the state is mostly in excellent condition for water supply. Since January 2025, CVP contractors saw a steady increase in percentages of their contract allocations. Parts of Northern California saw "water year to date" precipitation of "average" over 100 percent of normal. Central California, on average saw water year to date of 60 to 100 percent. Southern California had a different story—averages of as high as 60 percent and much of the state's southeast portions seeing zero to 40 percent of normal.

For more information on precipitation, snow pack and reservoir levels, see California Water Watch's website at: https://cww.water.ca.gov

For more information on US Bureau of Reclamation's Central Valley Project contract allocations, see: https://www.usbr.gov/newsroom/news-release
(Robert Schuster)

GROUNDWATER EXEMPTIONS FURTHER LIMITED BY WASHINGTON STATE DEPARTMENT OF ECOLOGY

In recent administrative actions, the Washington State Department of Ecology (Ecology) has stated that use of the permit exemption for domestic purposes is limited by the definition of water use for "municipal water supply purposes." In 2024, Ecology issued an administrative order to the owners of a 22 lot subdivision to cease and desist from construction of water wells because it determined the new use falls within the definition of water used for "municipal water supply purposes" and was not eligible for the exemption from permitting under RCW 90.44.050. *In re Matter of Compliance by Richard Underwood,* Administrative Order Docket #DE23269 (Sept. 18, 2024). The Order was subsequently appealed. *Richard and Leslie Underwood v. State of Washington Dep't of Ecology,* PCHB No. 24-065 (Notice of Appeal, Oct. 14, 2024). The parties quickly settled the action, and Ecology issued a white paper entitled Emerging Issue: Municipal Water Law and Permit-Exempt Wells (Washington Dept. of Ecology, Mar. 2025), *available online at:* https://apps.ecology.wa.gov/publications/SummaryPages/2511008.html. The Emerging Issue document provided Ecology's new interpretation of the scope of the permit exempt use of groundwater.

Background

In Washington, some uses of groundwater are exempt from the requirement to obtain a state issued permit. The so-called "permit exemption" for groundwater use dates back to the adoption of the groundwater code in 1945. RCW 90.44.050. Under RCW 90.44.050, a water right permit is not required for certain groundwater uses, including " . . . for the watering of a lawn or noncommercial garden not exceeding one-half acre in area, or for single or group domestic uses in an amount not exceeding five thousand gallons a day. . . ." RCW 90.44.050. The Washington Supreme Court held that the permit exemption only allows for one permit exempt withdrawal "whether the water will be used for single or group domestic uses." *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 4, 43 P.3d. 4, 6 (2002). Use of the permit exemption for groundwater typically occurs outside of the service area of municipal water systems.

In 2003, the Washington State Legislature adopted the so-called Municipal Water Law, which in part, adopted a definition of the term "municipal water supply purposes" as water systems with 15 or more residential service connections or serving 25 or more people for at least 60 days per year. RCW 90.30.015.

Ecology's Interpretation of State Law

Ecology's recent interpretation considered these two statutes—RCW 90.44.050 and 90.03.015(4)—together, concluding that if a water system is owned by a purveyor which meets the definition of a municipal water supplier, that those entities may not rely on the permit exemption for single or group domestic uses, even if total use is under 5,000 gallons per day. In so doing, Ecology is reading the definitions of "single or group domestic uses" and "municipal water supply purposes" as mutually exclusive definitions. Ecology's interpretation also encourages local permitting authorities to "plan their projects so that they do not require Ecology review of a water system plan." Ecology further stated that subdivisions may still rely on the permit exemption when "all of these conditions are met": (1) the total quantity of domestic use does not exceed 5,000 gallons per day on peak use days; (2) the total amount of irrigated acreage (for all homes combined) does not exceed one-half acre; and (3) no single water system will serve 15 or more residences, or be used for residential use by a non-residential population of 25 people for more than 60 days per year. Ecology's Emerging Issue document request all three conditions to be met, even though the statute defines the limitation for use of irrigation separately than the limitation for use of "single or group domestic uses."

Interpretative or Policy Statement—Not a Rule

Ecology's Emerging Issue document was not adopted through formal rulemaking procedures under the Washington State Administrative Procedures Act (APA). Chapter 34.05 RCW. Under Washington's APA, Ecology's interpretation is not a rule because it was not adopted in accordance with rule-making statutory procedures. Rather, it is better categorized as an interpretative or policy statement under RCW

34.05.010. *See* RCW 34.05.570(2)(c); *see also City of Tacoma v. Dep't of Ecology*, 3 Wn.3d 633, 646, 555 P.3d 390, 397 (2024). Interpretive or policy statements may be used by agencies to "advise the public of [their] current opinions, approaches, and likely courses of action," but such statements are meant to be "advisory only." RCW 34.05.230(1). Interpretive rules are "afforded no deference other than the power of persuasion." *Ass'n of Washington Bus. v. State of Washington, Dep't of Revenue*, 155 Wn.2d 430, 447, 120 P.3d 46, 54 (2005). Reviewing courts will instead evaluate the "accuracy and logic" of an agency's interpretive rule, as well as the legislative intent of the statute, to determine what level of deference—if any—to apply. *Id*; *see also Port of Tacoma v. Sacks*, 19 Wn.App.2d. 295, 304, 495 P.3d. 866, 870 (2021); Washington Administrative Law Practice Manual §7.02. Washington courts have applied similar principles of statutory interpretation in determining the appropriate level of deference for agency interpretations. *Port of Tacoma*, 19 Wn.App.2d at 304. This analysis may include consideration of the timing of the agency's interpretive statement in relation to the enactment of the underlying statute. For example, in *West Virginia v. EPA*, the US Supreme Court considered the 25-year delay between Congress's 1990 revisions to the Clean Air Act as weighing against the EPA's later reliance on a specific section of the Act to implement the 2015 Clean Power Plan. *W. Virginia v. Envtl. Prot. Agency*, 597 U.S. 697, 733-34 (2022). The Court found the EPA's interpretation conflicted with the legislative intent of the Clean Air Act, in part, due to this lapse in timing. *Id.*

Conclusion and Implications

Ecology's recent administrative actions limit the use of the groundwater permit exemption based on its new interpretation of the impacts of the 22 year-old Municipal Water Law. Ecology's Emerging Issue encourages project proponents to plan their projects to avoid its review. The APA allows agencies to develop interpretative statements for the public; however, it is very likely that additional clarification is needed by Ecology or the courts to clarify the scope of the groundwater permit exemption based on a plan reading of the statute and the legislative intent of amendments to the Water Code. The use of the permit exemption is critical to many new housing projects, similar to the issue considered in *Underwood*, and therefore it is likely that there will be more questions about the use of the permit exemption in the future. (Lauren Block, Jessica Kuchan)

PENALTIES & SANCTIONS

RECENT EPA NEWS, INVESTIGATIONS, SETTLEMENTS, PENALTIES AND SANCTIONS

Editor's Note: Complaints and indictments discussed below are merely allegations unless or until they are proven in a court of law of competent jurisdiction. All accused are presumed innocent until convicted or judged liable. Most settlements are subject to a public comment period.

Apr. 29, 2025—The U.S. Environmental Protection Agency (EPA) announced $49 million in funding to technical assistance providers to help communities address wastewater challenges through the Rural, Small and Tribal Clean Water Technical Assistance Grant Program.

This funding will be for projects helping hundreds of communities with wastewater infrastructure and Clean Water Act compliance projects advancing the agency's Powering the Great American Comeback initiative by ensuring that all Americans can rely on clean air, land and water.

EPA anticipates awarding federal grants to these recipients after legal and administrative requirements are satisfied:

- National Rural Water Association;
- Rural Community Assistance Partnership;
- Southwest Environmental Finance Center-New Mexico;
- Alaska Municipal League;
- NEIWPCC (New England Interstate Water Pollution Control Commission)
- Pacific International Center for High Technology Research.

Many rural, small, and tribal systems face unique financial and operational challenges, including aging infrastructure, workforce shortages, increasing costs, and declining rate bases. The technical assistance providers receiving EPA's grant funding will help address the most pressing water challenges in communities, provide training on water infrastructure and management best practices, and help communities navigate the application process for federal and state water infrastructure financing and strategically invest in reliable infrastructure solutions.

Apr. 23, 2025—U.S. Environmental Protection Agency (EPA) Senior Advisor Jessica Kramer recognized 38 water infrastructure projects for excellence and innovation. These projects were funded by the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) programs that have provided a foundation of federal investment in water infrastructure for decades. The SRF programs directly support EPA's Powering the Great American Comeback Initiative, which emphasizes the need for clean air, land, and water for every American and the importance of cooperative federalism.

These projects were recognized as part of EPA's AQUARIUS and PISCES national recognition programs at the at the 2025 Council of Infrastructure Financing Authorities (CIFA) Summit on Water Infrastructure.

EPA's AQUARIUS program celebrates DWSRF projects that are innovative, sustainable, and protect public health. Sixteen projects carried out by state or local governments and drinking water utilities were recognized by the 2025 AQUARIUS program, including these exceptional projects:

- Excellence in Innovative Financing: Merrimack Village District, New Hampshire—Wells 2, 3, 7, 8 PFAS and Iron/Manganese Treatment
- Excellence in System Partnerships: Stanislaus Regional Water Authority, California— Regional Surface Water Supply Project
- Excellence in Community Engagement: Bloom-

field Township, New Jersey—Lead Service Replacement Phases

•Excellence in Environmental and Public Health Protection: City of Pineville, Missouri — Water Improvement Projects

•Excellence in Creative Solutions: Ellinger Sewer and Water Supply Corporation, Texas — Water Plant Improvements Project

EPA's George F. Ames Performance and Innovation in the SRF Creating Environmental Success (PISCES) program celebrates innovation demonstrated by CWSRF programs and assistance recipients. Twenty-two projects carried out by state or local governments, public utilities, and private entities were recognized by the 2025 PISCES program, including the following exceptional projects:

•Excellence in Innovative Financing: Chemung County Sewer District, New York—Chemung County Wastewater Treatment Plant Consolidation

Excellence in System Partnerships (2 exceptional projects in this category):

•Town of Ardmore Water Works and Sewer Board, Alabama—Ardmore Wastewater Treatment Plant Renovations

•Springdale Water and Sewer Commission, Arkansas—Bethel Heights Wastewater Regionalization with Springdale

•Excellence in Community Engagement: Prince George's County, Maryland—Urban Stormwater Retrofit Public Private Partnership

•Excellence in Environmental and Public Health Protection: Marquette County Solid Waste Management Authority, Michigan—Marquette County Landfill Leachate Treatment System

•Excellence in Creative Solutions: Malcom "Jamie" Jameison, landowner — Berkeley Plantation Living Shoreline, in Virginia

The State Revolving Fund programs are EPA-state partnerships that provide communities with a permanent, independent source of low-cost financing for a wide range of water quality and drinking water infrastructure projects. EPA's SRFs have provided more than $244 billion in financial assistance to more than 50,000 water quality infrastructure projects and 21,000 drinking water projects across the country.

Apr. 8, 2025—The U.S. Environmental Protection Agency started cleaning up soil and sediment contaminated with polychlorinated biphenyls - or PCBs - along the Kalamazoo River near the Trowbridge Dam in Allegan, Michigan.

Under EPA oversight, responsible party NCR Voyix is working with Michigan Department of Natural Resources and Michigan Department of Environment, Great Lakes and Energy on the multi-year cleanup to prevent future contamination and erosion and improve water quality and fish health in the Kalamazoo River. The Trowbridge Dam cleanup is part of the larger Kalamazoo River Superfund Site.

A dredging barge will pump sediments for processing at a newly constructed area off 108th Avenue downstream of the 26th Street bridge. NCR Voyix will build a temporary structure onsite to manage river levels until the cleanup is expected to be finished in three years (see figures 1 and 2). EPA will conduct air and water monitoring around the site perimeter during the cleanup.

Certain access points near boat launches are restricted. EPA advises residents to adhere to signs and buoys placed along the river to restrict access (see figure 3). To enter and exit the river, residents should use upstream access areas.

Apr. 7, 2025—At an event in Salt Lake City, Utah, with U.S. Health and Human Services (HHS) Secretary Robert F. Kennedy Jr., U.S. Environmental Protection Agency (EPA) Administrator Lee Zeldin announced the agency's decision to expeditiously review new scientific information on potential health risks of fluoride in drinking water.

This renewed scientific evaluation is an essential step that will inform agency decisions on the standard for fluoride under the Safe Drinking Water Act. This action aligns closely with EPA's core mission of protecting human health and the environment, while working cooperatively with our federal, state, and lo-

cal partners to ensure all Americans can rely on clean and safe water.

The National Toxicology Program released a report in August 2024 concluding with "moderate confidence" that fluoride exposure above 1.5 milligrams per liter is associated with lower IQ in children. The report also concluded that more research is needed to better understand if there are health risks associated with exposure to lower fluoride concentrations.

EPA is committing to conduct a thorough review of these findings and additional peer reviewed studies to prepare an updated health effects assessment for fluoride that will inform any potential revisions to EPA's fluoride drinking water standard.

EPA's review is being done in coordination with Secretary Kennedy and HHS. The agency's actions advance the goals of the Trump administration's Make America Healthy Again Commission, which EPA is an integral member of.

Fluoride is an element that may be found naturally in sources of drinking water, such as ground water. Fluoride has been added to drinking water by drinking water systems to improve dental health. Under the Safe Drinking Water Act, EPA sets standards that limit the amount of potentially harmful substances in drinking water provided by public water systems. The current standard is 4.0 milligrams of fluoride per liter and was last evaluated by the Agency in July 2024, prior to the latest scientific review by the National Toxicology Program that concluded with "moderate confidence" that levels above 1.5 milligrams per liter result in negative outcomes for children.

Mar. 31, 2025—The Environmental Protection Agency (EPA) announced a newly scheduled public hearing for an updated draft of the general permit for all small and regulated "Municipal Separate Storm Sewer Systems" (MS4s) located in Mass. The draft permit was initially place on public notice last November. This affects more than 260 municipalities in the Commonwealth, all of which were already covered under the previous Massachusetts Small MS4 General Permit that EPA issued in 2016.

The updated draft of this existing general permit continues to require MS4s to develop, implement, and enforce a "Stormwater Management Program" designed to control the discharge of pollutants from stormwater to water bodies to the maximum extent practicable, protect water quality, and satisfy appropriate requirements of the federal Clean Water Act.

EPA encourages and will accept written comments from the public on the Draft Permit during the notice period which ends May 21, 2025. The Draft Permit and associated documents are available at https://www.epa.gov/npdes-permits/massachusetts-small-ms4-general-permit.

In addition, EPA will hold a virtual hearing for the Draft Permit on May 7, 2025 at 7pm. The registration for the virtual public hearing can be found at https://www.epa.gov/npdes-permits/massachusetts-small-ms4-general-permit#2024draftmams4gp.

Rainwater that falls on hard surfaces such as parking lots, roadways, and roofs can pick up pollutants that are then carried into local waterways via the storm drains, pipes, and ditches that make up municipal storm sewer systems. Stormwater runoff flows over these hard surfaces directly into storm drains so there is no opportunity for soil and plants to absorb the rainwater and filter out pollutants.

Pollutants lead to water quality issues (such as growth of harmful algae and bacteria and accumulation of trash, oil and grease, and metals) that can make waters unsafe for swimming and boating and can harm aquatic life.

The requirements in the Draft Permit largely follow or build on the requirements of the currently effective 2016 MA MS4 Permit. It also includes new requirements to expand public engagement, develop street design standards that feature nature-based solutions, develop an integrated system to track MS4 assets and maintenance, begin implementing plans developed under the 2016 Permit to install controls to treat stormwater runoff on permittee-owned property, and begin upgrading catch basins to better control solids in stormwater runoff.

The Draft Permit requires municipal permittees that discharge to nutrient-impaired waterbodies to begin installing stormwater treatment based on the Source Identification Reports developed under the 2016 Permit. Finally, the Draft Permit proposes a new requirement for permittees discharging to waterbodies in the Mystic River watershed to reduce the phosphorus load in stormwater discharges from hard surfaces by 20 precent within six years.
(Robert Schuster)

JUDICIAL DEVELOPMENTS

FEDERAL CIRCUIT FINDS NMFS' REQUIREMENT FOR INCREASED WATER TO BYPASS DAM DIVERSION TO PROTECT SPECIES DIDN'T CONSTITUTE A "RIPE" TAKING

United Water Conservation District v. United States, ___F.4th___, Case No. 2023-1602 (Fed. Cir. Apr. 2, 2025).

In *United Water Conservation District v. United States* the Federal Circuit Court of Appeals analyzed a claim challenging the effect of a letter from the National Marine Fisheries Service's Office of Legal Enforcement noting a significant issue with ongoing take of endangered fish species and demanding operations consistent with a previous Biological Opinion was a claim for a regulatory taking, which was unripe because the plaintiff had not applied for an incidental-take permit. United Water Conservation District filed the suit for alleged taking under the Fifth Amendment claiming the National Marine Fisheries Service's (NMFS) requirement to increase the amount of water bypassing its diversion dam to protected endangered species of trout resulted in a loss of water the United could otherwise be used for beneficial purposes

Background

United Water Conservation District, the holder of a right to divert 144,630 acre-feet of water from the Santa Clara River, received a letter from NMFS' Office of Legal Enforcement notifying it that a significant issue regarding the ongoing take of the endangered Southern California steelhead trout existed at United's Freeman Diversion dam, and demanding that United commit to implementing interim operating measures consistent with the reasonable and prudent alternatives contained in a 2008 Biological Opinion. According to United, compliance with this demand requires an increase in bypass flow, either to remain in the river or be diverted to a fish ladder. It alleged that compliance with the Biological Opinion caused United to lose 49,800 acre-feet it otherwise would have been permitted to divert.

Physical Taking Versus Regulatory Taking

The Fifth Amendment provides that private property shall not "be taken for public use, without just compensation." To establish a taking under the Fifth Amendment, a party must prove that it had a cognizable property interest at the time of the alleged taking and that "the government's action amounted to a compensable taking of that interest."

A taking under the Fifth Amendment can either be physical or regulatory in nature. A physical taking is the "paradigmatic taking" and occurs by "a direct government appropriation or [a] physical invasion of private property." A "[g]overnment action that physically appropriates property is no less a physical taking because it arises from a regulation."

A regulatory taking differs from a physical taking in that, instead of asking "whether the government has physically taken property for itself or someone else—by whatever means," the question is whether the government "has instead restricted a property owner's ability to use his own property." A regulatory taking claim:

> . . .is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue.

At the Court of Federal Claims

United is a water conservation district created pursuant to California law to serve as the water management agency for the Santa Clara River and the Oxnard coastal plain.

United sued the United States for a taking under the Fifth Amendment. United characterized the Government's action as a physical taking and contended that its claim was ripe. The United States insisted that United's claim was for a regulatory taking and was not ripe because United had not applied for an incidental-take permit under Section 10 of the Endangered Species Act.

The Court of Federal Claims found that United's claim was an unripe claim for a regulatory taking, because United had not exhausted its administrative remedies. It distinguished caselaw on which United relied because in the cited decisions the water right holder was required to return water it already had diverted, whereas in United's situation the water was bypassed rather than diverted into United's canal. The court dismissed the complaint for lack of subject matter jurisdiction.

The Federal Circuit's Decision

The Federal Circuit ruled that the reasonable and prudent alternatives under the 2008 Biological Opinion operate as regulatory restrictions on the use of a natural resource and do not constitute a physical taking. A regulatory taking claim like United's is not ripe until the right holder obtains a final agency action. United had not been denied an incidental-take permit under Section 10 of the ESA, and therefore it did not plead a ripe regulatory taking claim. The Court of Appeals held that the Court of Federal Claims properly dismissed United's complaint for lack of subject matter jurisdiction.

Conclusion and Implications

In the end, the Court of Appeals found that since a regulatory takings claim is not ripe until the rights holder obtains a final agency action—having yet to have denied an incidental take permit under Section 10 of the Endangered Species Act—"United had therefore not pleaded a ripe takings claim," and that the District Court properly dismissed its complaint for lack of subject matter jurisdiction.

The court's opinion filed April 2, 2025, is available online here: https://www.cafc.uscourts.gov/opinions-orders/23-1602.OPINION.4-2-2025_2492406.pdf
(Larry J. Caster, Austin Cho)

CALIFORNIA COURT OF APPEAL UPHOLDS SANTA CLARA GROUNDWATER CHARGES UNDER PROPOSITION 26

Great Oaks Water Company v. Santa Clara Valley Water District, ___Cal.App.5th___, Case No. H050939 (6th Dist. Feb. 28, 2025, *published* Mar. 28, 2025).

In *Great Oaks Water Company v. Santa Clara Valley Water District* the California Court of Appeal, Sixth District, affirmed a trial court decision upholding the legality of groundwater pumping charges levied by the Santa Clara Valley Water District (District) against Great Oaks Water Company (Great Oaks), a non-agricultural water user and private retailer. The dispute centered on whether the District's charges violated constitutional requirements under Proposition 26 by imposing taxes without voter approval.

Background

Proposition 26, passed in 2010, requires that any levy, charge, or exaction by a local government must be approved by voters unless it qualifies under certain exceptions, including charges for specific benefits, privileges, or services provided directly to the payor. Great Oaks alleged the charges were unlawful taxes because they exceeded the cost of the services rendered and lacked a fair relationship between the fees charged and benefits received. The Court of Appeal disagreed, siding with the District on all major points.

Proposition 26 defines a "tax" broadly but enumerates specific exceptions that, if satisfied, allow charges to be imposed without voter approval. The two most relevant exceptions are: Charges imposed for a specific benefit conferred or privilege granted directly to the payor; and charges imposed for a specific government service or product provided directly to the payor.

To qualify under these exceptions, the charge must not exceed the reasonable cost of the governmental activity, and its allocation must bear a fair or reasonable relationship to the benefits received or burdens imposed by the payor.

The Court of Appeal's Decision

In applying this framework, the appellate court conducted an "aggregate cost inquiry" and an "allocation inquiry," as prescribed by the California Supreme Court in *San Buenaventura I* (2017). These inquiries evaluate, respectively, whether the total charges exceed the cost of the governmental activity and whether the method of allocating costs is reasonably

related to the payor's impact on or benefit from that activity.

The Court of Appeal upheld the trial court's conclusion that the relevant "governmental activity" was the District's entire water utility program, not merely isolated groundwater pumping operations. The rationale was grounded in the District's "conjunctive use" policy—a coordinated approach integrating groundwater, surface water, imported water, and recycled water to maximize regional water supply reliability.

Great Oaks had argued for a narrower definition, claiming that only direct groundwater services should be considered. The court rejected this argument, noting that the District's management of alternative water sources, like treated or imported water, supports groundwater sustainability and indirectly benefits all groundwater users by preventing overdraft and enhancing recharge capacity.

Zone-By-Zone and Year-by-Year Comparisions

Using zone-by-zone and year-by-year comparisons, the court found that the charges did not exceed the cost of the overall water utility program. This approach was deemed appropriate under Proposition 26 and consistent with longstanding utility fee jurisprudence.

Reasonable Relationship and Allocation of Costs

In evaluating the method by which costs were allocated, the court found that the District grouped similarly situated users (such as non-agricultural groundwater pumpers) and applied volumetric charges based on water usage. The court held this allocation method bore a reasonable relationship to the benefits conferred, citing evidence that increased usage directly correlates with increased benefits from the District's services.

Additionally, the court accepted the District's use of revenue from non-user sources, like ad valorem taxes and interest, to offset costs before calculating rates. This pooling of revenue was deemed consistent with the District's policies and did not invalidate the fairness of the allocation.

Great Oaks contended that the District improperly used groundwater charge revenues to subsidize alternative water sources not accessible to all payors. However, the Court upheld the use of "conjunctive use" adjustments, which reallocate some of the costs of treated or recycled water to groundwater users on the basis that these programs collectively benefit groundwater sustainability.

The Agricultural Discount and Use of Property Tax Revenue

Another issue was the District's provision of steeply discounted groundwater rates to agricultural users, funded via an "Open Space Credit" using ad valorem property tax revenues. Great Oaks argued that this practice violated both the District's enabling statute and the California Constitution.

The Court of Appeal rejected this argument, affirming the trial court's finding that the Open Space Credit was funded exclusively through non-rate revenues (*e.g.*, property taxes levied by Santa Clara County) and not by charges collected from non-agricultural users like Great Oaks. Consequently, the court concluded that the subsidy did not constitute an improper tax or violate statutory limitations.

Conclusion and Implications

This decision marks a significant affirmation of the scope and flexibility afforded to local water agencies under Proposition 26, particularly in applying cost-based fees for complex, integrated water management systems. The ruling reinforces the principle that charges can validly fund broad utility programs when grounded in well-documented cost analysis and reasonable allocation methodologies.

For water agencies, this decision underscores the importance of maintaining detailed financial and programmatic records that demonstrate the relationship between charges and services. For ratepayers, particularly commercial or non-agricultural users, the case illustrates the legal thresholds for challenging such charges under California's tax-limiting provisions.

The case also clarifies that subsidized rates for agricultural users, when funded from external sources like property taxes, are not constitutionally suspect so long as they are not cross-subsidized by charges imposed on other users. As climate pressures and water supply challenges grow, such legal clarity will be essential for the continued functioning of regional water management frameworks. The court's opinion, filed February 28, 2025 and published on March 28, 2025, is available online at: https://www4.courts.ca.gov/opinions/documents/H050939.PDF
(Darien Key)

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