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WESTERN WATER NEWS

COLORADO RIVER WATER CONSERVATION DISTRICT ENCOUNTERS FINANCIAL, LEGAL HURDLES IN LANDMARK WATER RIGHTS PURCHASE

The Colorado River Water Conservation District (River District) continues to navigate obstacles as it works to complete a first-of-its-kind water rights purchase on Colorado's western slope. If the River District can complete the purchase and navigate legal hurdles, these water rights will directly affect the water rights future not only on the western slope, but throughout Colorado.

Background

The River District entered into a contract with Xcel Energy in December 2023 to purchase the Shoshone Generating Station senior water rights for $98.5 million. *See, Colorado River Water Conservation District Completes Landmark Purchase of Large-Scale Water Rights*, 28 W. Water L. & P'lcy Rptr. 75 (Feb. 2024). The Shoshone Generating Station is a hydroelectric plant on the Colorado River just east of the town of Glenwood Springs. Xcel Energy is the current owner and operator of the plant, which has been in operation for more than 100 years and currently provides power for 15,000 users in the Colorado and Roaring Fork River valleys. The Shoshone water rights are some of the oldest rights directly on the Colorado River and therefore the owner of those rights often controls water rights administration in western Colorado through the annual "Shoshone call."

The purchase contract specifically includes both a 1905 water right for 1,250 cubic feet per second (c.f.s.) and a 1956 water right for 158 c.f.s. These rights are critical to western slope water administration because they are non-consumptive, meaning that use of the water rights does not diminish the river except in the small reach between the intake and outlet of the plant. Thus, upstream development is curtailed and downstream water rights and river habitat are protected because of the requirement for that amount of water to always flow through Glenwood Canyon and reach the Shoshone Generating Plant. The River District and its many western slope allies therefore greatly value the Shoshone water rights and their positive downstream effects on western Colorado's riparian environment and water rights, including agricultural, industrial, and recreational uses. The River District is concerned that if Xcel were to shutter the Shoshone Generating Station or sell the water rights to Front Range entities, it would have negative repercussions, both environmental and economic, throughout western Colorado. Because Xcel has no current plans to shut down the plant, the December 2023 purchase contract arrived at a unique solution: the River District will purchase the water rights and then permanently lease them back to Xcel for use in the Shoshone Generating Station for as long as the station is operational.

The $98.5 million price tag far exceeds the limited resources of the River District, a quasi-governmental organization created to protect the Colorado River and its tributaries in western Colorado. Thus, the River District plans to use a variety of funding sources including its own funds, money from a coalition of local governments and water entities, and grants from the state and federal governments.

Colorado Water Conservation Board Hearing

The December 2023 purchase contract requires the River District to obtain an instream flow agreement with the Colorado Water Conservation Board (CWCB) that would allow the Shoshone water rights to be used for instream flow purposes (*i.e.*, protection of the natural environment) during times when the plant is not operating. In addition to that CWCB approval, the purchase contract contemplates a final water court case where the River District would obtain a change decree to allow the water rights to be used for instream flow purposes in perpetuity. This piece is critical to the overall plan as the water rights are currently only decreed for power, mining, milling, and manufacturing purposes, among others that

would be of no use to the River District. The CWCB began its decision-making process on May 21, 2025. The administrative process included a 20-day deadline for interested parties to submit notice that they plan to contest the proceedings.

Four Front Range entities recently submitted the required notice and requested a hearing before the CWCB to allow them to fully state their objections to the River District purchase. Aurora Water, Denver Water, Colorado Springs Utilities, and Northern Water represent the lion's share of water providers on Colorado's densely populated Front Range, collectively serving more than 3 million customers. However, owing to the Rocky Mountains and other geologic quirks, the vast majority of Colorado's water supply occurs on the western slope, forcing Front Range water providers to use "transbasin diversions," typically from the Colorado River or its tributaries through large scale projects such as the Moffat Tunnel or the Fry-Ark Project.

The Front Range water providers have stated that while they don't necessarily oppose the sale and transfer to the River District, they are concerned with the quantification of the water rights and how the Shoshone water rights will be used in an instream flow capacity. Specifically, according to letters from the providers and a report by Water Education Colorado, Aurora believes that the River District's estimate of historic use may be more than 300,000 acre-feet too high. *Front Range water providers request state hearing to air concerns about Western Slope water rights deal*, Shannon Mullane (June 26, 2025). Northern Water raised concerns over its water rights in Green Mountain Reservoir, which incidentally is also used to deliver water to the western slope and protect Colorado River riparian habitat. Colorado Springs Utilities and Denver Water offered more vague concerns about their ability to serve their growing populations in the future.

The CWCB unanimously granted the four Front Range entities' request for hearing on July 1. The hearing will be held during the previously scheduled CWCB board meeting on September 16-18. The CWCB only has until September 18 to make its decision on whether to approve the new instream flow use of the Shoshone rights. It is unknown if the CWCB will, or even is legally allowed to, extend that deadline, which falls on the last day of its September board meeting. The hearing is sure to be contentious as the River District believes that the Front Range entities are asking the CWCB to encroach on the water court's jurisdiction, while the Front Range entities want to be able to voice their concerns early in the process, including examination of the River District's historic use estimates.

Funding Challenges

In addition to the legal hurdles with the CWCB hearing and eventual water court change case, the River District must also resolve several funding issues in its efforts to close on the $98.5 million purchase. In January, the River District received a $40 million grant from the U.S. Bureau of Reclamation as part of a larger $152 million allocation to water projects in the Colorado River basin. That grant increased the total funding to $96 million, only $3 million short of the purchase price. However, President Donald Trump took office only three days later and immediately paused the spending, which is currently still in limbo. Without that grant from the federal government, the largest single contributor to the purchase, the River District will be forced to increase fundraising efforts from other sources to replace that shortfall.

Colorado's two Democratic senators, Michael Bennett and John Hickenlooper, have long supported the project and opposed the Trump administration's federal spending cuts. Representative Jeff Hurd, whose district includes the Shoshone Generating Plant and much of the western Colorado River basin, supports President Trump's federal spending freeze, but recently spoke out in support of the federal grant and asked the Bureau of Reclamation to release the funds to allow the River District's purchase to proceed.

Conclusion and Implications

The CWCB's September hearing may have significant ramifications in the ongoing saga of the River District purchase. Although the CWCB is expected to approve some portion of the requested instream flow right, the extent to which the CWCB sides with either the River District's or Front Range entities' historic use calculations could later influence the sure-to-be-controversial water court case. The hearing may also offer a blueprint, essentially a "trial" run of the eventual water court case in which the various parties will be able to test out their arguments and examine each side's engineering reports. Even if the

River District is successful at the CWCB hearing, the entire project may still hinge on the $40 million federal government grant.

At the heart of these concerns is a centuries-old fight in Colorado water law: how much water can and should the densely populated Front Range be able to divert from the more rural western slope? This is a loaded question that frequently evokes an emotional response between the two often disparate halves of the state. However, the reality is that Colorado's population map does not align with its water supplies and thus some level of transbasin diversion is necessary to support the state's ever-growing population and economic output on the Front Range.

The twists and turns of this ongoing process illustrate the increasing scarcity of water supplies and the lengths parties will go to acquire new rights and defend existing rights. Regardless of the eventual outcome, this saga will no doubt have long-lasting ramifications throughout the state, and perhaps the entire Colorado River basin.
(John Sittler)

IDAHO WATER USERS REACT TO PRESIDENT TRUMP'S PRESIDENTIAL MEMORANDUM: 'STOPPING RADICAL ENVIRONMENTALISM TO GENERATE POWER FOR THE COLUMBIA RIVER BASIN'

President Trump has issued a Presidential Memorandum unwinding the Biden administration's Presidential Memorandum of September 27, 2023 (Restoring Healthy and Abundant Salmon, Steelhead, and Other Native Fish Populations in the Columbia River Basin), leading to the federal commitments settlement in principal known as the Resilient Columbia Basin Agreement in the Endangered Species Act (ESA)-related anadromous fish litigation long-pending in U.S. District Court for the District of Oregon. The Agreement was crafted with an eye to supporting the breaching of the four Lower Snake River Dams—Lower Granite, Little Goose, Lower Monumental, and Ice Harbor dams (LSRD). Water users throughout the region, including Idaho, opposed the Agreement despite the litigation stay it spawned.

Background—The Agreement and State Reactions

Idaho (and Regional) Opposition to the Resilient Columbia Basin Agreement

In December 2023, the executive branch of the United States signed a Memorandum of Understanding (effectively, the Agreement) with the States of Oregon and Washington, various regional native American tribes, and environmental non-governmental entity (NGO) plaintiffs initiating what could become up to a ten-year stay in the decades-long CSRO litigation over the perpetuation and recovery of ESA-listed salmonid species in the Pacific Northwest. Hailed as the product of meaningful regional stakeholder negotiations, the Agreement largely takes aim at the continuing existence of the LSRD.

However, stakeholders reliant on the LSRD asserted that they were deprived of meaningful opportunity to participate in the negotiations, if allowed to participate at all. Members of Congress were equally concerned because the Agreement issued absent Congressional input or oversight despite containing various federal obligations, including the proposed expenditure of over $1 billion in funding for fish and habitat restoration in the Columbia River Basin and the funding and completion of several studies exploring the replacement of LSRD-related benefits (*e.g.*, hydropower generation, transportation, and water supply) so that the LSRD may be breached in the future. The Biden administration, through the Agreement, seemingly wrote a check and consented to a plan of action that the administration, in and of itself, could not do. The Agreement had been roundly panned by the Idaho executive branch and Idaho Congressional members since its inception.

In December 2023, Idaho Governor Little and Lieutenant Governor Bedke, among others in the Pacific Northwest, found that the settlement negotiation process lacked meaningful stakeholder participation and was ignorant of the practical impacts/costs to Idaho should the dams be breached in the future. While acknowledging the importance of anadromous fish recovery, Governor Little and Lieutenant Gov-

ernor Bedke questioned the settlement agreement's motives and ability to deliver. Citing an estimated 8,000 MW projected power production shortfall in the region over the next decade, breaching the LSRD would only put the region farther behind the power production curve and worsen the electricity importation costs that the region (including Idahoans) already shoulders during peak demand periods. And, breaching the LSRD would compound the problem via the removal of a reliable source of "green" energy (produced absent use of fossil fuels). Breaching the SRD would also impose significant commodity transportation cost increases on the region, and Idaho in particular. Barging from the Port of Lewiston would effectively end and need be replaced by far more costly overland routes (rail and highway), the existing infrastructure of which cannot accommodate the additional traffic in its existing condition.

In January 2024, Idaho Representative Russ Fulcher joined Representatives Dan Newhouse (Washington State), Cathy McMorris Rogers (Washington State), Lori Chavez-DeRemer (Oregon), and Cliff Benz (Oregon) in introducing the Defending Against Manipulative Negotiations Act (DAMN Act) on January 24, 2024, in response to the Agreement. The DAMN Act was introduced in an attempt to prohibit the use of federal funds to: (a) study LSRD benefits replacement alternatives, or take any action ultimately leading to the modification or removal of the LSRD; and (b) support or implement the Initiative as detailed in the Agreement.

Idaho Senators Risch and Crapo likewise took a dim view of the Agreement. The senators pointed to unbalanced stakeholder participation in Agreement negotiations, regional electrical power generation instability threats, and regional barging/transportation corridor concerns. At the sunset of the Biden administration, the senators compared the robust underpinnings of the 2020 CRSO Final EIS (costing approximately $55 Million to conduct and including over 450,000 public comments) to the current reopening effort based largely on the "backroom" Agreement built upon "predetermined political outcomes."

Trump's Memorandum

On June 12, 2025, President Trump issued his Memorandum, "Stopping Radical Environmentalism to Generate Power for the Columbia River Basin:

> It is essential to protect Americans' ability to take full advantage of our vast natural resources to ensure human flourishing across our country. My Administration is committed to protecting the American people from radical green agenda policies that make their lives more expensive, and to maximizing the beneficial uses of our existing energy infrastructure and natural resources to generate energy and lower the cost of living.
>
> To prevent these harmful impacts, I hereby revoke the Presidential Memorandum of September 27, 2023. Further, within 15 days of the date of this memorandum, the Secretary of Energy, the Secretary of the Interior, the Secretary of Commerce, and the Assistant Secretary of the Army for Civil Works under the direction of the Secretary of the Army (heads of departments) shall take all appropriate steps to withdraw from the Memorandum of Understanding filed on December 14, 2023, in the Columbia River System litigation, *National Wildlife Federation v. National Marine Fisheries Service*, 3:01-cv-640-SI (D. Or.), Dkt. 2450-1 (MOU).

Via the Memorandum, President Trump rescinded the Agreement and directed the Secretaries of Energy, Interior, Commerce, and the Assistant Secretary of the Army for Civil Works under the direction of the Secretary of the Army, to take all necessary steps: (a) withdrawing the agencies from the Agreement; and (b) rescinding the pending Notice of Intent to Prepare a Supplemental Environmental Impact Statement (SEIS) for the Columbia River System Operations published in the Federal Register on December 18, 2024. President Trump's chief criticism of the Agreement was its elevation of questionable species conservation efforts at the expense of 3,000 MW of lost hydropower generation and other demonstrable economic benefits of the LSRD.

The Memorandum further required the agencies to, within 30 days: (a) provide a list of all actions taken to date consistent with the since-rescinded Agreement; (b) provide a status report of all Federal commitments made under the Agreement; (c) outline steps that can be taken to rescind or recoup any federal funds obligated to implementation of the Agreement; and (d) identify the steps necessary to completely withdraw from the Agreement.

Conclusion and Implications

Though the outcome of the Trump Memorandum will almost certainly be reinitiation of the litigation previously stayed, regional stakeholders are amenable to that result given the flawed process that led to the Agreement in the first place. President Trump's Memorandum: "Stopping Radical Environmentalism to Generate Power for the Columbia River Basin" is available here: https://www.whitehouse.gov/presidential-actions/2025/06/stopping-radical-environmentalism-to-generate-power-for-the-columbia-river-basin/ (Andrew J. Waldera)

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

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

Background

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

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

Co-Managing Colorado River Water Resources

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

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

The study's authors contend more coordination is needed, including federal oversight and collective research into the consequences of groundwater deple-

tion like risks to food production, human and environmental health, economic stability, and climate resilience. They consider the inclusion of groundwater planning in the ongoing interstate Basin discussions to be a "national imperative."

This message coincides with the prospect of federal intervention into the ongoing Colorado River operation negotiations, by executive or legislative action. At a June 2025 conference, a senior adviser to Interior Secretary Doug Burgum commented that should the Basin states fail to reach an agreement on post-2026 operations, the Secretary is prepared to step into his role as "watermaster" over the Lower Basin states. The watermaster position has its origins in a 1928 law that gives the Secretary authority to apportion water–both surpluses and shortages—in California, Arizona, and Nevada. The adviser also opined that legislative changes to the collection of laws and regulations that govern the Basin could be warranted.

Conclusion and Implications

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

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

LEGISLATIVE DEVELOPMENTS

CALIFORNIA SENATE BILL 72 AND THE ECONOMICS OF WATER SUPPLY PLANNING IN CALIFORNIA

California faces significant long-term water supply challenges, driven by factors such as climate change, regulatory changes, environmental demands, and reductions in water from the Colorado River. The California Water Plan is the State's plan for the orderly and coordinated control, protection, conservation, development, and use of the water resources of the state. The California Department of Water Resources (DWR) is required to update the Plan every five years, and to include a discussion of various strategies in the plan update, including, but not limited to, strategies relating to the development of new water storage facilities, water conservation, water recycling, desalination, conjunctive use, and water transfers, that may be pursued in order to meet the future needs of the state.

However, a new economic analysis by researchers Jay Lund (UC Davis), Josué Medellín-Azuara (UC Merced), and Alvar Escriva-Bou (UC Davis) quantifies the potential economic consequences of inaction. The study, *Inaction's Economic Cost for California's Water Supply Challenges*, estimates that the state could lose up to 9 million acre-feet of water annually by 2050—equivalent to one or two Lake Shastas. This loss would be enough water to serve up to 9 million households and could result in economic damages between $3.4 billion and $14.5 billion per year.

The research identifies four primary drivers of anticipated water loss: limitations on groundwater extraction due to the Sustainable Groundwater Management Act (SGMA), declining snowpack from climate change, increased environmental water needs, and reduced allocations from the Colorado River. The projected impacts include the fallowing of up to 3 million acres of farmland, the loss of 67,000 jobs, and substantial disruptions to California's agricultural and rural communities.

Senate Bill 72, authored by Senator Anna Caballero, is a legislative response to these growing concerns. The bill seeks to establish a statewide water supply target and directs the Department of Water Resources (DWR) to develop 9 million acre-feet of new water supply by 2040. It also proposes revisions to the California Water Plan, expanding stakeholder involvement to include tribes, labor, and environmental justice interests. As part of the 2033 update to the plan, SB 72 would require the department to set an interim planning target for 2050 and evaluate strategies such as stormwater capture, water recycling, desalination, and expanded storage.

Senate Bill 72

The new economic study by Lund and his colleagues provides an empirical foundation for understanding the potential costs of failing to adapt California's water infrastructure and management policies. Their findings indicate that absent coordinated state action, the state's economy and agricultural output may face significant contraction. While past water strategies have emphasized conservation, the researchers conclude that conservation alone will not be sufficient to address projected deficits. Instead, the study emphasizes the need for comprehensive investment in both traditional and emerging water supply technologies.

Senate Bill 72 attempts to operationalize this vision. The bill builds upon the existing California Water Plan and requires the DWR to consider all beneficial uses of water, including urban, agricultural, and environmental needs, while also ensuring access to safe drinking water. The bill also introduces a cost-benefit framework for evaluating projects that could help meet the state's supply targets. Moreover, it mandates updating the California Water Plan with a planning framework that includes measurable outcomes and long-term supply targets. For instance, SB 72 would amend Water Code section 10004.6 to provide as follows:

As part of the 2033 update to The California Water Plan, the department shall update the required planning target pursuant to subdivision (f) for 2050. Subsequent updates of the plan shall include a range

of water supply targets that consider future scenarios with a 50-year planning horizon at a watershed scale. The target shall consider the identified and future water needs for a sustainable urban sector, agricultural sector, and environment, recognize the impacts of climate change on the state's water resources, ensure safe drinking water for all Californians, and reflect statewide, regional, and local planning efforts. In establishing the long-term supply target, the department shall analyze current and future water needs trends, including identifying additional water necessary to sustain public trust resources.

Supporters of the bill, including water agencies, counties, and business coalitions, argue that it will bring necessary structure and coordination to long-term planning. They view SB 72 as an essential tool to align local and regional efforts with statewide objectives, citing the urgency of addressing water security in the face of intensifying climate and economic pressures.

Critics, however, raise concerns about the bill's focus on quantitative water supply targets. A coalition of environmental groups argue that the bill prioritizes supply augmentation without equivalent attention to environmental flows or demand reduction. They also contend that the bill could undercut the role of the State Water Resources Control Board and may conflict with existing policies such as the Delta Reform Act. Others, such as the Mono Lake Committee, express concerns about the affordability of high-cost infrastructure solutions and question whether the bill adequately defines "water needs" in a policy context.

Conclusion and Implications

The economic research and SB 72 together underscore the high stakes of California's water future. While the economic modeling emphasizes the risks of continued inaction, the legislation proposes a framework for proactive planning. Importantly, the study is largely from an economics standpoint and does not necessarily address some of the environmental concerns with establishing a statewide water supply target, as envisioned in SB 72. Whether SB 72 will ultimately be enacted remains uncertain; a similar version of the bill passed the Legislature last year but was vetoed by Governor Newsom due to budget concerns.

If adopted, SB 72 could help establish a long-term planning mechanism for addressing California's projected water shortfall, potentially reshaping how the state evaluates, finances, and implements water supply projects. However, the debate surrounding the bill illustrates the complexity of balancing economic, environmental, and governance considerations in water policy. As the state moves toward the 2033 update of the California Water Plan, SB 72 could serve as a test case for whether California is prepared to undergo significant structural reforms as an attempt for long-term water reliability for all its communities. The economic study available at: https://www.cawaterforall.com/inactions-economic-cost-for-ca-water-supply-challenges

Senate Bill 72 available at: https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202520260SB72

(Miles Krieger, Steve Anderson)

REGULATORY DEVELOPMENTS

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

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

Background

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

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

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

The Process

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

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

The Proposed Rule

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

This summer, EPA intends to take the next step to advance this action by proposing to extend compliance deadlines for many of the zero-discharge requirements in the 2024 Rule and the deadline for facilities to decide whether to submit a Notice of Planned

Participation. EPA also intends to explore other flexibilities to promote reliable and affordable power generation.

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

EPA Administrator Lee Zeldin Chimes In

EPA Administrator Zeldin was quoted as saying:

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

Conclusion and Implications

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

KAWEAH SUBBASIN REVISES GROUNDWATER MANAGEMENT PLANS TO AVOID STATE WATER BOARD ENFORCEMENT UNDER THE CALIFORNIA SGMA

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

Background

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

Under SGMA, the Department of Water Resources first reviews GSPs as to whether they are complete or incomplete. If a GSP is deemed incomplete, for instance because it is missing required components under SGMA or because DWR determines the GSP will not achieve the sustainability goals of SGMA, DWR will typically return the GSP for further revision and resubmission. If, however, a GSP fails to meet the sustainability objectives of SGMA, DDWR will deem the GSP "inadequate." An inadequate designation results in a jurisdictional shift from DWR to the State Water Board. SGMA provides that, "in those circumstances where a local groundwater management agency is not managing its groundwater sustainably, the State needs to protect the resource until it is determined that a local groundwater management agency can sustainably manage the groundwater basin or subbasin." (Wat. Code, § 10735 et seq.) To ensure SGMA is implemented successfully, the State Water Board may temporarily intervene in groundwater management after DWR determines that proposed management of a groundwater basin is inadequate due to deficiencies in the GSP(s) for the basin.

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

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

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

The Chowchilla Subbasin

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

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

Conclusion and Implications

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

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

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

PENALTIES & SANCTIONS

RECENT 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.

July 1, 2025—The U.S. Environmental Protection Agency (EPA) invites public input on implementation challenges associated with Clean Water Act (CWA) Section 401. The agency will use input received to determine next steps to address identified areas of regulatory uncertainty or implementation challenges regarding the scope of certification.

Once the notice is published in the Federal Register, the public will have 30 days to provide input on implementation challenges and regulatory uncertainty related to the 2023 rule. EPA will host two virtual listening sessions for the public. Information on the Federal Register notice, listening session dates, times, and registration instructions, and how to provide written input will be made available at a later date on EPA's CWA-401 website.

The agency first announced this effort in its May 21 memorandum, clarifying the specific and limited role that state and Tribes play in the federal licensing and permitting process under CWA Section 401. Recently, questions have been raised about potential applications of the 2023 Rule's scope of certification.

CWA Section 401 protects water quality by giving states and authorized Tribes the authority to grant, deny, or waive certification of proposed federal licenses or permits that may discharge into waters of the United States.

June 27, 2025—The U.S. Environmental Protection Agency is establishing a temperature Total Maximum Daily Load for waters in the Umpqua River Basin. A TMDL is the calculation of the maximum amount of a pollutant (i.e., pollution budget) allowed to enter a waterbody so that the waterbody will meet water quality standards for that particular pollutant over time.

Temperature influences critical biological processes for aquatic life such as, survival, growth, reproduction, and behavior. Elevated water temperatures are detrimental to aquatic life particularly salmonid fishes. This TMDL will aim to restore water quality conditions and protect aquatic life by determining the allowable amount of heat from sources in the watershed.

EPA is developing these TMDLs to fulfill a court ordered requirement. The U.S. District Court, District of Oregon ordered the Oregon Department of Environmental Quality and the EPA to establish new temperature TMDLs because of a change in the applicable water quality criteria. This Umpqua River Basin Temperature TMDLs replaces the 2006 Umpqua Basin Temperature TMDLs.

EPA held a public comment period from October 9 - November 25, 2024. EPA's response to public comments will be published online with the final TMDL documents.

June 24, 2025—The U.S. Environmental Protection Agency announced a settlement with Ecolab Inc. for alleged Resource Conservation and Recovery Act (RCRA) violations at the company's facility at 3000 Channahon Road, Joliet, Illinois. Ecolab has addressed the alleged violations and will pay a $423,308.60 penalty.

"The first pillar of EPA's Powering the Great American Comeback initiative is clean air, land and water for every American," said EPA Region 5 Administrator Anne Vogel. She further stated that: "EPA is devoted to protecting communities like Joliet from the threats posed by improper and unregulated hazardous waste storage."

Ecolab sells programs, products, equipment and services to help clean and treat wastewater. The company has failed to comply with certain RCRA regulations during its business operations, including the failure to:

•Obtain a permit, or interim status, for hazardous waste storage.

•Comply with hazardous waste storage tank requirements.

•Comply with container management requirements.

•Comply with contingency plan requirements.

•Maintain documentation for waste determinations and training.

Ecolab has certified its return to compliance with RCRA regulations. RCRA is the nation's primary law governing the management of solid and hazardous waste to protect human health and the environment.

June 18, 2025—The U.S. Environmental Protection Agency (EPA) has initiated an Administrative Order on Consent with Radius Recycling Inc. in response to Clean Water Act violations at the company's metal recycling facility in Oakland, California. The order targets the plant's discharge of pollutants into the Oakland Inner Harbor and San Francisco Bay in violation of the facility's permit under the Clean Water Act.

"This order requires Radius Recycling to improve the quality of water discharges leaving the facility, which will help reduce the flow of pollutants into San Francisco Bay," said EPA Pacific Southwest Region Director for Enforcement and Compliance Assurance Amy Miller. She went on to state: "In addition, this agreement will improve the general cleanliness of the site and address local community health and safety concerns."

Wastewater discharge from the Radius Recycling facility exceeded National Pollutant Discharge Elimination System (NPDES) permit limitations for zinc, copper and acute water toxicity. To correct those exceedances, Radius will install a new granular activated carbon treatment unit capable of reducing metals below effluent limitations. Radius will also develop and implement a Water Pollution Prevention Plan that increases inspections of the site and strengthens cleaning and maintenance measures.

San Francisco Bay is a critical resource for 7.5 million people living in the Bay Area. The Bay is known to have elevated levels of metals which cause harm to wildlife, bioaccumulate in fish which are consumed by residents, and may pose additional risk to human health.

In January 2025, EPA signed a memorandum of understanding with Radius Recycling, the California Environmental Protection Agency (CalEPA), other state regulators, and a community organization to address the impacts of the company's metal shredding operation on the West Oakland community. That MOU marked a new collaborative approach by government agencies, industry and communities to solving health and safety concerns.
(Robert Schuster)

LAWSUITS FILED OR PENDING

ARIZONA LAWSUIT CLAIMS GROUNDWATER WITHDRAWALS INFRINGE FEDERAL RESERVED WATER RIGHTS AND CALLS FOR REEVALUATION OF WATER REPORTS COMPLAINT

Last month, the Center of Biological Diversity (Center) filed a lawsuit against the Arizona Department of Water Resources (ADWR) and ADWR's Director, demanding review of 100-year water supply adequacy designations. The Center claims the designations are no longer adequate because groundwater pumping is infringing upon federal reserved water rights. [*The Center for Biological Diversity v. Arizona Department of Water Resources*, Maricopa County Superior Court Case No. CV2025-021564 (*filed* June 19, 2025).]

Background

When Congress established the San Pedro Riparian National Conservation Area (SPRNCA) in 1988, Congress delegated SPRNCA's management to the Secretary of the Interior. *Silver v. Pueblo Del Sol Water Co.*, 244 Ariz. 553, 556 (2018). Congress created a federal reserved water right to fulfill SPRNCA's conservation purpose and ordered the Secretary of the Interior to file a claim to quantify this right in a stream adjudication. *Id.* Despite this, the right remained unquantified for decades and water rights could be given to developers.

In a lawsuit challenging a 2013 adequate water supply designation by ADWR, the Bureau of Land Management argued that Pueblo Del Sol Water Company's (Pueblo) application did not meet requirements under Arizona Revised Statutes § 45-108. *Id.* Pueblo sought the designation to supply water to a proposed development in Cochise County, approximately five miles from the San Pedro River.

The Superior Court vacated ADWR's conclusion that Pueblo's water supply was legally available because it reasoned ADWR was required to consider legal claims that could affect availability of water supply, like SPRNCA's unquantified federal water right, which it had not. *Id.* The court of appeals vacated the Superior Court's decision and remanded the matter to ADWR, concluding ADWR must use its expertise to consider the impact of the adjudication's eventual determination and how the water right could affect Pueblo's water supply under the physical availability regulation, instead.

In 2018, the Arizona Supreme Court determined ADWR is not required to consider unquantified federal reserved rights while determining whether a developer has adequate water supply. *Id.* at 566. The Court stated the physical availability analysis is not a mechanism for contemplating legal disputes among groundwater users. *Id.* at 559. Statutory interpretation, and case law also disfavored consideration of unquantified federal reserved water rights in the legal availability analysis. *Id.* at 562. Thus, the approval of Pueblo's application was affirmed. *Id.* at 566.

Questions resurfaced after the Maricopa Superior Court quantified SPRNCA's federal reserved right on August 25, 2023. Complaint, *The Ctr. for Biological Diversity v. Kathleen Hobbs*, Maricopa County Superior Court Case No. CV2024-022053 (filed August 15, 2024), at 2, available at https://www.courthousenews.com/wp-content/uploads/2024/08/center-for-biological-diversity-v-katie-hobbs-complaint.pdf. In 2024, The Center called for ADWR to review the 100-year designation of adequate water supply ("Designation") issued to Pueblo for a 7,000 unit development in the Sierra Vista Subwatershed of the Upper San Pedro River Basin (Subwatershed). *Id.* at 1-2. The Center's arguments rested on ADWR's former acknowledgement that once federally reserved water rights were quantified, and if Pueblo's groundwater pumping infringed on those rights, ADWR would be obligated to consider this in its legal availability determination. *Id.* at 9-10. Due to a hydrologic connection between the groundwater aquifer in the Subwatershed and SPRNCA, the Center alleged pumping created a cone of depression, intercepting water discharged into the San Pedro River. *Id.* at 14.

On October 31, 2024, the parties settled as ADWR agreed to review the Designation to recommend whether it should be modified or revoked.

While this agreement permitted the review of a water-supply designation of one of the local subdivisions in Cochise County, the Center now seeks new evaluations of water supply designations for 55 Fort Huachuca/Sierra Vista-area subdivisions.

At the Superior Court

The Center claims ADWR has failed to maintain annual records of water supply adequacy determinations issued in the Upper San Pedro River Basin ("Basin") between November 18, 1988 and September 12, 2006 (Water Reports). Complaint, *The Ctr. for Biological Diversity v. Ariz. Dep't of Water Resources*, Maricopa County Superior Court Case No. CV2025-021564 (filed June 19, 2025), at 1-2. Based on the regulations in effect when the Water Reports were issued, the Center argues ADWR's Director has a duty to determine on-going compliance to physical and legal availability requirements. *Id.* Under the 2006 Administrative Code, legal availability of surface water could be demonstrated with evidence the applicant had a certificated water right, decreed water right, or pre-1919 claim for the proposed source. The Center also references *Silver v. Pueblo Del Sol Water Co.* to conclude legal availability also requires an applicant to have the legal authority to withdraw and use ground water without infringing upon a quantified federal reserved right. *Id.* at 6.

The Center alleges current and future groundwater withdrawals in the Basin are diverting San Pedro's River subflow, to which SPRNCA is entitled. *Id.* Since the Superior Court granted SPRNA a federal reserved water right, the Center believes this diversion necessitates a review of the Water Reports.

On December 12, 2024, the Superior Court issued "Order Clarifying the August 24, 2023, Order Quantifying Federal Reserved Water Rights for San Pedro Riparian National Conservation Area." *Id.* at 9. The order set forth the right to instream flows at three San Pedro USFS steam gages and the Babomari river within SPRNCA and provided mandatory monthly and annual stream flows *Id.* at 10. Mandatory groundwater elevations at nine monitoring wells within SPRNCA were previously listed in the August 25, 2023, order. *Id.* Referencing 2024 monitoring data, the Center reports two gages have dropped below the minimum decreed amounts. For example, the decree stated the Tombstone gage should not drop below 5,948 acre-feet per year (AF/Y), but the annual stream flow was 5400.8 AF/Y. *Id.* The complaint also notes four wells have dropped below minimum decreed levels, and three other wells are close to violations in 2025. Like the 2024 lawsuit, the Center alleges withdrawals of the water supply that provided the basis of the adequacy determinations in the Water Reports are creating cones of depression diverting the San Pedro River's subflow. *Id.* at 12. The Center asserts since groundwater pumping captures appropriable surface water and infringes on SPRNCA's quantified water rights, such groundwater is no longer legally and/or physically available and Water Reports must be reevaluated. *Id.* at 13.

The lawsuit requests the court to issue an order requiring the Director to annually update records of each Water Report to determine compliance with physical and legal availability requirements. *Id.* at 22. Additionally, the Center wants the Director to determine whether any water, that was the original basis of adequacy determination in the Water Reports, was appropriable surface water that cannot be withdrawn without infringing on SPRNA's quantified reserved water rights. *Id.* Alternatively, a declaration is sought that states any withdrawal of appropriable surface water relied on in a Water Report that infringes on the SPRNCA's water rights is not legally, nor physically, available. *Id.*

Conclusion and Implications

Future holdings regarding this lawsuit will permit the courts to clarify the implications of quantified federal rights on Arizona's water management regime. Further, the lawsuit demonstrates how outcomes in stream adjudications implicate new obligations of ADWR and the Director. For a copy of the complaint, *See:* https://biologicaldiversity.org/programs/public_lands/rivers/pdfs/San-Pedro-Water-Rights-ADWR-Complaint-06192025.pdf
(Miles Krieger)

JUDICIAL DEVELOPMENTS

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

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

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

Background

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

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

The Supreme Court's Decision

NEPA's Procedural Nature Reaffirmed

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

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

Clarifying the Scope of Environmental Effects

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

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

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

The Court stated:

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

Deference to Agency Discretion

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

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

Impacts on Environmental Litigation and Project Development

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

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

In the end, the Court stated:

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

Conclusion and Implications

The U.S. Supreme Court's decision in *Seven County Infrastructure Coalition v. Eagle County* marks a significant narrowing of NEPA's reach, reining in decades of expansive interpretations from lower courts. Agencies must still conduct thorough envi-

ronmental analyses of the projects they propose or approve, but they are not required to account for remote, speculative, or tangential effects over which they have no control.

For practitioners, this decision underscores the importance of tailoring NEPA compliance to the specific project under review and clearly delineating the boundaries of responsibility. Agencies should document why certain environmental effects are excluded from analysis and support such decisions with citations to regulatory authority, or the lack thereof.

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

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

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

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

Background

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

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

The Clean Water Act

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

The Ninth Circuit's Decision

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

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

to the EPA for reconsideration or a more complete explanation.

At issue were ELGs for sectors such as petroleum refining, organic and inorganic chemical manufacturing, fertilizer and pesticide production, plastics molding and forming, and nonferrous metals manufacturing. The court held that the EPA's rationale for excluding these categories from further review was inadequately supported, particularly because it failed to evaluate three key factors: (1) recent advancements in technology; (2) pretreatment standards for indirect dischargers; and (3) unregulated but harmful pollutants.

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

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

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

"Category Ranking Analysis"

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

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

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

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

Conclusion and Implications

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

This decision carries broad implications. First, it opens the door for renewed scrutiny of ELGs across numerous industrial sectors, especially those discharging persistent toxic pollutants or relying on outdated controls. Second, it strengthens the role of environmental advocacy groups in compelling agency accountability through litigation. And third,

it reinforces the Clean Water Act's original vision: that pollution limits must evolve alongside scientific understanding and technological innovation.

The Ninth Circuit remanded the case to EPA for further proceedings, as the EPA must either provide a clearer explanation of its decision or reconsider its decision. The court's decision gives the agency 45 days to seek further review. Either path will demand significant administrative resources and may provoke further legal challenges from both environmental and industry stakeholders. Although the EPA is already deep into the process of finalizing its 16th Effluent Guidelines Program Plan, the agency has not proposed updates to the disputed ELGs in its current draft. Preliminary Plan 16, released in December 2024, was open for public comment until mid-January 2025, and now appears close to completion. Given how far along the process is, the EPA may choose to address the Ninth Circuit's remand outside of the current planning cycle—either through a standalone action or by incorporating changes into the upcoming Program Plan 17. Should the EPA go with substantial ELG modifications, industries may be subject to much different discharge requirements and should therefore be on alert. The court's opinion in *Waterkeeper Alliance v. EPA* decision is available here: https://storymaps.arcgis.com/stories/79d51b5579ef4b0493b3c8471443bba4

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