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WWL

WESTERN WATER NEWS

INVASIVE GOLDEN MUSSELS ARE FOUND IN MULTIPLE CALIFORNIA RESERVOIRS

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

The Mussels Are Found in Multiple California Reservoirs

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

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

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

Potential Impacts from the Golden Mussel

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

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

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

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

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

Efforts to Prevent Spread

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

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

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

Inspections and quarantine: Launch sites for reservoirs, such as Lake Berryessa, have implemented inspection programs and may require a 30-day quar-

antine or decontamination for watercraft coming from the Delta.

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

Conclusion and Implications

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

NEVADA BOOSTS PRIVATE-PUBLIC WATER TECHNOLOGY INNOVATION WITH $1.8M INVESTMENT IN WATERSTART PROGRAM

A new infusion of state and federal support may help Nevada advance water technology innovation, impacting water utilities and economic development in the state.

Background

In May 2025, the Nevada Governor's Office of Economic Development (GOED) announced a $1.8 million investment in WaterStart, a nonprofit group focused on testing and supporting implementation of water-related technologies across utility and industry settings. WaterStart was co-founded by the Desert Research Institute (DRI) and GOED to support economic development through water innovation and to accelerate commercial adoption of promising solutions in a region heavily impacted by water scarcity.

WaterStart

Over the past decade, WaterStart built a platform for deploying new water technologies in partnership with public agencies, utilities, and industrial operators. The organization reports that it has completed 51 pilot projects involving pressure management, water treatment, leak detection, and monitoring systems, at a total investment of $4.6 million. Nearly three-quarters of these pilot projects have resulted in permanent adoption by end users—an adoption rate that appears to reflect the program's emphasis on practical and scalable solutions. WaterStart's model connects global technology developers with real-world water challenges, offering a pathway from laboratory testing to field implementation through pilot funding, technology recruiting, stakeholder matchmaking, and outcome tracking.

GOED Funding

Additional GOED funding should enhance WaterStart's capacity to identify new technologies and deliver them to end users. GOED's key goals include expanding Nevada's role in applied water technology development, strengthening regional coordination, and reducing barriers for public and private water operators who wish to test emerging systems. The investment also ties directly into Nevada's participation in the National Science Foundation's "Futures Engine" initiative for the Southwest, a large regional effort focused on technological innovation related to water, air quality, and energy. As part of that network, WaterStart seeks to translate new research and technologies into working systems that meet the region's growing water demands.

Funding for this new investment comes from both federal and state sources, including GOED's Nevada Knowledge Fund, in addition to state grants of federal allocations under the American Rescue Plan Act.

Impacts for Utilities and Partners

Public utilities such as the Southern Nevada Water Authority (SNWA) have already collaborated with WaterStart to field-test water technologies. Examples

of these pilot tests include water treatment technologies, pressure-sensing infrastructure, real-time water quality platforms.

The most recent investment in WaterStart is aimed at broadening access for other utilities that may lack resources to test new technologies independently. With GOED support, WaterStart offers a shared platform that minimizes financial risk and reduces the timeline from pilot to full-scale deployment.

State Economic Opportunity

Beyond improving water system security, reliability, and performance, GOED views WaterStart as aligned with Nevada's economic goals. Hosting pilots and scaling technologies locally allows the state to support water technology innovation while keeping jobs and investment in the region. The initiative is designed to strengthen links between public research institutions, utilities, and private-sector technology partners, creating new commercialization opportunities in the state. GOED officials described the investment as part of a strategy to strengthen economic growth in the Southwest.

Challenges and Considerations

Although additional funding for WaterStart may be helpful, adoption of new water technologies may still face challenges. Among others, these challenges are:

- Substantial additional capital is required to expand projects from pilot to full-scale deployment.

- Processes for public procurement may be slow to integrate new vendors, systems, and technologies, particularly in the risk-averse utility sector.

- Supporting long-term operation of new systems and technologies may require additional and continuing workforce training.

Conclusion and Implications

Nevada's investment in WaterStart is a strategic effort to combine innovation with economic development. By backing a platform that connects real-world needs with practical solutions, the state is attempting to strengthen its infrastructure, promote innovation, and drive economic growth. Funding for programs like WaterStart are an opportunity for private-public partnerships to transform promising ideas into large-scale solutions with positive impacts for water security and sustainable growth. For more information, *see:* https://waterstart.com/our-story
(Evan Klouse, Micheline Fairbank)

LEGISLATIVE DEVELOPMENTS

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

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

Background

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

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

Changes to the California Water Plan under SB 72

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

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

As for other changes, Section 10004.5 now prescribes regional analysis, peer-reviewed science, and cost-benefit evaluation to guide how local agencies prioritize infrastructure and funding. (Wat. Code § 10004.5.) Under the prior framework, the CWP prioritized data collection and descriptions of water conditions to inform broad, statewide policy recom-

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

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

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

Conclusion and Implications

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

REGULATORY DEVELOPMENTS

EPA RELEASES PLANNING TOOLS FOR WATER SYSTEMS TO ADDRESS CYBERSECURITY ATTACKS

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

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

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

Background

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

EPA's Develops Resources to Address Cyberthreats

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

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

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

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

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

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

Jessica Kramer Confirmed as EPA Assistant Administrator for Water

In related news, EPA has announced that Jessica

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

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

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

Conclusion and Implications

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

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

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

Background

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

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

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

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

The State Wildlife Action Plan

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

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

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

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

Conclusion and Implication

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

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

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

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

Background

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

Addressing Land Subsidence

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

Minimum Thresholds

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

Groundwater Level SMC

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

best practice to minimize uncertainly due to complex subsurface geology.

Enhanced Monitoring

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

Technical Issues and Challenges in Subsidence Management and Proactive Measures

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

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

Legal Issues, Damage of Subsidence and Interference with Property Rights

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

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

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

Conclusion and Implications

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

"UNPRECEDENTED" YAKIMA BASIN CURTAILMENT SHUTS OFF MOST SURFACE DIVERSIONS—WHAT IT MEANS, HOW WE GOT HERE, AND WHAT COMES NEXT

On October 1, the Washington Department of Ecology (Ecology) announced an "unprecedented halt to surface water use" across the Yakima River Basin in Central Washington from October 6 through October 31, citing a third consecutive drought year, record-low reservoir storage, and the exhaustion of federally stored water. The agency warned that the restriction could impact more than 1,500 water-right holders and would require local communities to limit residential watering. Ecology said only the basin's most senior rights could access the limited flows remaining after storage releases stopped.

Two days later, Ecology issued individualized curtailment orders based on the Yakima Adjudication's Final Decree (2019), instructing holders of rights subordinate to 1855 to cease diverting surface water for the rest of October. The orders clarified that once U.S. Bureau of Reclamation reservoir releases ended, natural flows would not meet the basin's oldest irrigation rights—those associated with the Yakama Nation's 1855 Treaty—or the minimum target flows for fish. The practical result was the near-total shutdown of nearly all surface water diversions basin-wide, late in the irrigation season, but with real effects on perennial crops, municipal systems, and industrial users.

How We Got Here: A Century of Storage, a Half-Century of Law

The Yakima Project—one of Reclamation's earliest—has supported the valley's agricultural economy for over a century through a system of six reservoirs and five major irrigation divisions. In drier years, "proratable" project supplies (generally junior to 1905) are scaled back, while older, "non-proratable" rights (including early canals and reserved rights) are prioritized. This pro-rata framework, documented in mid-20th-century decrees and operational plans, serves as the basin's drought strategy.

The long-running *Ecology v. Acquavella* adjudication (filed 1977) culminated in a Final Decree entered May 9, 2019, and affirmed (with limited modifications) by the Washington Supreme Court in 2021. The decree established the relative priority of all surface water rights, cementing "first in time, first in right" as the basin's governing rule and providing the legal framework for curtailments when water supply drops.

Layered onto this is the Yakama Nation's senior reserved right to water associated with the 1855 Treaty, delivered in large part through the Wapato Irrigation Project on reservation lands. In early October 2025, storage depletion meant flows could no longer meet even that oldest irrigation right without shutting off junior users—hence Ecology's orders targeting all rights junior to 1855.

2025's Water Math: The Bottom Fell Out in October

As reported in the September Edition, water supplies started weak and continued to weaken throughout the season. By mid-October, the Yakima Project's daily operations sheet told the story at a glance: the five big storage reservoirs were scraping bottom—Cle Elum at ~4 percent, Keechelus ~6 percent, Rimrock ~11 percent, Bumping ~15 percent, Kachess ~9 percent—as releases tapered off and the basin pivoted to natural flow only, ultimately requiring the Bureau of Reclamation to announce an unprecedented early season shutdown.

Immediate Impacts

Irrigators

For districts and growers reliant on project water, the October shutoff came after a season of deficit deliveries and ad hoc scheduling to protect high-value perennials. Many had already fallowed annual acreage, deficit-irrigated fruit blocks, or leaned on pumping where hydrologically and legally permissible.

Municipal Suppliers

The curtailment was a first for several of the affected municipal water suppliers. The affected cities responded by switching to groundwater were those sources were available and calling for the customers, the end users, to practice voluntary water savings, including avoiding outdoor irrigation. Ecology's release anticipated potential residential watering restrictions, suggesting utilities might need demand-reduction measures. The curtailment order itself linked curtailment to the priority date (junior to 1855), not to the use category, leaving municipal suppliers with unclear guidance.

Yakama Nation and Fishery Advocates

For Tribal and environmental follows, the October curtailment was the logical endpoint of the priority system, not a policy choice—storage was empty and natural flows could not satisfy the 1855 irrigation right or ecological targets. For salmonids already stressed by multi-year low flows and warm temperatures, protecting remnant fall baseflows was framed as a legal and biological necessity.

State and Federal Managers

Ecology and Reclamation defended the actions as required by the decree and consistent with basin operations under drought. They pointed to persistent storage deficits, degraded precipitation indices, and the need to "protect water for fish and senior water rights" as the reason curtailment could not be more narrowly tailored.

Legal Framing: Priority, Not Policy Preference

The key point of October 2025 is not a new regulatory approach but the implementation of priority administration across an entire basin. The Final Decree mandates that senior water rights are satisfied first before junior rights receive water; when storage runs out and natural flows cannot meet the 1855 right, curtailing junior rights becomes necessary, not optional. Ecology's order explicitly states that authority is derived from the decree and the state's water code, with appeal rights directed to the Pollution Control Hearings Board—aligning with standard adjudication procedures.

That framing matters for potential challenges. Disputes are likely to focus on: (1) the factual predicates—were Parker gage targets and storage conditions as represented?—and (2) the scope and communication of the restriction—did the state overstate a "total halt" when, strictly speaking, 1855 and other very senior rights remained legally available?

The Road Ahead: Winter 2025–26 and Structural Questions

Short-term recovery depends on snowpack. After three dry winters, reservoirs require above-normal snowfall to refill significantly; otherwise, 2026 will start with another deficit and early-season rationing.

Longer-term, 2025 is likely to accelerate several trends: (1) Reliability premium for seniority—this season clearly showed the risk gap between pre-1905/non-proratable and project-proratable supplies. Expect ongoing demand (and rising prices) for senior water where transferable, along with more protective contract terms for juniors; (2) Market and transfer activity—intra- and inter-district transfers, temporary "water banking," and efficiency-for-water exchanges—tools already used under YBIP—will gain renewed focus as growers hedge against multi-year droughts; (3) Municipal drought management—cities experiencing late-season curtailment messages will likely establish tiered drought ordinances, specify essential water uses, and invest in diversified strategies to diminish reliance on decree-driven shutdowns in the fall as seen in other regions; (4) Fish and flow objectives—October showed how quickly instream targets can clash with human use when storage is empty. Expect ongoing efforts to expand habitat and flow flexibility projects under the Integrated Plan, even as partners debate which investments truly improve drought-year reliability.

Conclusion and Implications

The Yakima Basin did not discover a new doctrine in 2025; it reaffirmed how absolute the old one is when reservoirs go dry. Priority prevailed, storage ended, and the pool of junior users expanded. Whether 2026 repeats the lesson depends on snowpack—and on how quickly the basin can turn a decade of collaborative planning into solid reliability under a drier climate regime.
(Jamie Morin)

PENALTIES & SANCTIONS

RECENT INVESTIGATIONS, SETTLEMENTS, PENALTIES, SANCTIONS AND EPA NEWS

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.

Oct. 30, 2025—Upon completion of a 100-day review of all existing Minute 328 infrastructure projects, U.S. Environmental Protection Agency (EPA) is announcing an additional nine months have been slashed from construction timelines for projects aimed at mitigating the impacts of raw sewage flowing across the southern border from Mexico into the United States. This 100-day review was completed by a binational working group established in the historic July Memorandum of Understanding (MOU) signed by EPA Administrator Lee Zeldin and Mexico's Secretary of Environment and Natural Resources (SEMARNAT) Alicia Bárcena Ibarra in Mexico City, Mexico. In addition to the nine-month reduction, this review also found that every project is on track to meet previously negotiated deadlines which were accelerated in the MOU, affirming that progress continues to be made across the board.

Since signing the MOU in July, the Trump administration and its Mexican partners have been able to slash roughly 12 years of construction time across all projects.

Section 5 of the MOU required both nations to evaluate and pressure-test all project schedules to ensure completion on the shortest possible timelines. The binational working group, consisting of leaders from EPA, the U.S. International Boundary and Water Commission (USIBWC), and Mexican counterparts cut:

- Six months off work being done on the Tijuana River Gates to replace over 23,000 feet of deteriorating concrete wastewater pipes that are currently leaking untreated sewage directly into the Alamar and Tijuana Rivers; and
- Three months off the rehabilitation schedule of Pump Station 1 (PB-1) to provide critical backup pumping capacity and redundancy to prevent future sewage spills into the Tijuana River when primary pumps fail.

Minute 328 was a binational agreement signed between the U.S. and Mexico by the IBWC International Boundary and Water Commission (IBWC) in 2022. The Minute did not go far enough to achieve the 100 percent solution San Diego area residents. Cutting time off existing Minute 328 projects was one of the Trump EPA's primary goals with this summer's MOU.

The MOU established a framework for permanent resolution through three critical priorities:

- Securing Mexico's Financial Commitments
- Accelerating Project Timelines
- Adding Other Necessary Projects that Factor in Future Population Growth in the Tijuana River Valley

Administrator Zeldin made it clear when he signed this agreement that the only way to achieve this desired end goal is to have a plan that takes into account all three of these key pillars. Sacrificing one of them would mean the "100 percent" solution would not be reached.

In August, EPA and IBWC announced the completion of a 10 million gallon per day (mgd) expansion of the South Bay International Wastewater Treatment Plant (SBIWTP), which will significantly reduce wastewater flowing into the Tijuana River and help eliminate foul smells that have long plagued San Diego area residents. This project was initially projected to take two years, but the Trump administration completed it in 100 days.

The EPA is also planning on further increasing SBIWTP's treatment capacity to 50 mgd or more by

December 31, 2027, as outlined in the MOU. This target date is roughly 3.5 years ahead of its previously scheduled completion date.

Next steps in implementing the MOU include releasing a joint public update and signing a new treaty "Minute" by the end of 2025. Minute negotiations are ongoing and progressing since the July MOU signing.

Please see the full Memorandum of Understanding for more information.

Oct. 22, 2025—The U.S. Environmental Protection Agency has finalized the Interim Record of Decision (IROD) for the Tinkham Garage Superfund Site in Londonderry, New Hampshire. The IROD finalizes EPA's preferred alternative to extend the existing municipal water line into certain target neighborhoods where groundwater is used as a drinking water source. This plan also covers connections of homes affected or potentially affected by the site-related contaminants of concern that were not previously connected to the existing water line.

In 2018, the presence of 1,4-dioxane and per- and polyfluoroalkyl substances (PFAS) were identified in groundwater at the site and in groundwater and water supply wells downgradient from the site at levels that present an unacceptable current and future risk to human health and the environment. Groundwater is used as drinking water downgradient of the site and monitoring has continued since 2018. Households with detections above federal and/or state standards have been offered bottled water by the Responsible Parties or by the EPA as a temporary mitigation measure.

The selection of a different, documented remedial alternative represents a fundamental change to the selected remedy, as specified in the IROD. A final decision was made after consideration of public comments.

Copies of the IROD and Administrative Record can be found at: www.epa.gov/superfund/tinkham.

Located in Londonderry, New Hampshire, the roughly 375-acre Tinkham Garage Superfund Site is comprised of residential, commercial, and undeveloped conservation land. In addition to the 13-unit Woodland Village Condominium complex (formerly the Londonderry Green Apartments), there are single family homes along Mercury and McAllister Drives to the north, along Gilcreast Road and the Boston/Charleston/Albany neighborhood to the northeast, and the Ross/Tokanel neighborhood to the east and southeast.

Oct. 15, 2025—After leading cleanup efforts for almost two months, U.S. Environmental Protection Agency is entering into a consent order with Smitty's Supply, Inc. to assume responsibility for the cleanup of the facility damaged by a fire on August 22 and to pay certain response costs incurred by the United States. EPA is also issuing a Pollution Removal Funding Authorization (PRFA) to the state of Louisiana to continue cleanup efforts of the Tangipahoa River and nearby ponds under EPA oversight.

EPA and the Louisiana Department of Environmental Quality (LDEQ) have worked collaboratively from the outset of the incident to ensure a coordinated and effective response. When Smitty's Supply withdrew from response operations due to financial limitations, both agencies recognized that EPA was best positioned to assume the lead role, given its access to Clean Water Act and CERCLA funding as well as its federal response capabilities. EPA took over the lead for the response on August 24. In that time, EPA and supporting agencies have successfully recovered more than 11 million gallons of liquid waste and removed more than 7 million gallons of liquid wastes from the Tangipahoa River and nearby ponds, laid more than 22,400 feet of containment boom to prevent the spread of oil or other contaminants along the Tangipahoa River, and interacted with more than 2,200 residents to ensure the community's concerns were heard and addressed.

Under the consent order with Smitty's Supply, which goes into effect today, the company has agreed to perform on-site work to prevent further release off-site, remove and properly dispose of all material contaminated with hazardous substances, and properly manage all tanks, drums, totes, containers, and product containing hazardous substances not impacted by the August 22, 2025, incident.

Under the PRFA, EPA, through the U.S. Coast Guard's National Pollution Funds Center, will administer funds from the Oil Spill Liability Trust Fund to reimburse the State of Louisiana for costs incurred for the continued cleanup of the ponds and the Tangipahoa River impacted by the Smitty's Supply fire. LDEQ will serve as the state on-scene coordinator (SOSC), working under EPA as the federal on-scene coordinator (FOSC). Additionally, through the

Governor's declared emergency, Tangipahoa Parish Government will serve as the local on-scene coordinator (LOSC). Tangipahoa Parish falls under the Louisiana Home Rule Charter. Under the Home Rule Charter, the local government has broad authority to exercise powers that are not explicitly denied to it by the state. All work required in the consent order will be completed under EPA's close oversight.

The consent order includes specific cleanup requirements and accountability measures. Within 30 days of completing the work, Smitty's must submit a final report for EPA's review and approval. If EPA determines that Smitty's Supply is not meeting, or is unable to meet, cleanup requirements, EPA will reassume control of cleanup operations.

EPA will continue to provide information, and support to the community through its community involvement activities at the site including updates on the cleanup work performed by the company.

On August 22, 2025, the Louisiana State Police notified EPA of an explosion and fire involving above-ground storage tanks at the Smitty's Supply Inc. facility in Roseland, Tangipahoa Parish, Louisiana. Local authorities activated a one-mile evacuation radius, which was reduced to the area closest to the incident.

Oct. 3, 2025—The U.S. Environmental Protection Agency (EPA) has finalized its cleanup plan to address contaminated groundwater at the Fulton Avenue Superfund site in Garden City Park on Long Island, New York. The final plan, formally known as a Record of Decision, calls for measuring contamination levels through long-term monitoring and restrictions on groundwater use to ensure residents are not exposed to groundwater contamination.

The final cleanup plan will address groundwater contamination caused by past industrial activity at the site, including the presence of hazardous chemicals such as trichloroethylene (TCE) and tetrachloroethylene (PCE).

EPA's final cleanup plan includes:

- Installing two new monitoring wells to better track the contamination.

- Long-term monitoring to confirm that contamination levels are decreasing as a result of natural processes.

- Restrictions on the use of certain groundwater and the prevention of activities that could expose people to contamination, such as installing private wells.

This plan finalizes EPA's 2015 interim cleanup approach that addressed PCE contamination and expands it to also address TCE contamination. EPA studied the nature and extent of the groundwater contamination, evaluated alternatives including actively treating the groundwater, and considered public comments. EPA has determined that the plan being finalized today provides the best balance of environmental protection and other criteria used by EPA to evaluate all Superfund cleanup plans.

EPA finalized the cleanup plan after a 30-day public comment period and a public meeting on July 24, 2025, in Garden City Park, where residents shared feedback and recommendations.

Sept. 30, 2025—The U.S. Environmental Protection Agency announced $48 million in disaster relief supplemental funding to support water systems in southeastern states impacted by Hurricane Helene.

"These funds are on their way to communities working hard to rebuild and harden water systems damaged and, in some cases, wiped out by Hurricane Helene," said EPA Deputy Regional Administrator Jeaneanne Gettle. "These funds, combined with funds already allocated, will allow communities to continue recovering from such a catastrophic weather event."

North Carolina ($21 million), Florida ($17 million), Georgia ($6 million), South Carolina ($2 million) and Tennessee ($2 million) received funds.

These funds are part of $60 million nationally allocated through the American Relief Act of 2025 for projects necessary for preventing, limiting or mitigating an emergency situation.

In addition, EPA allocated almost $3 billion earlier this year through the Clean Water State Revolving Fund (CWSRF) and Drinking Water State Revolving Fund (DWSRF) programs to repair and upgrade drinking water and wastewater systems to better withstand future natural disasters.

On September 26, 2024, Hurricane Helene made landfall as a Category 4 major hurricane in northwestern Florida, causing catastrophic flooding in five EPA Southeast Region states as well as Virginia. Federal Major Disaster Declarations covered

parts of Florida, Georgia, North Carolina, South Carolina, Tennessee and Virginia.

Sept. 30, 2025—The U.S. Environmental Protection Agency has finalized its plan to clean up contaminated groundwater associated with the Former Manufacturing Plant area of the Sherwin-Williams/Hilliards Creek Superfund Site in Gibbsboro, Camden County, New Jersey. The decision marks the next step in EPA's comprehensive effort to clean up the site, and protect human health, building on a soil cleanup that is already underway. Previous operations at the former paint manufacturing plant area contaminated the groundwater with lead, arsenic, polychlorinated biphenyls (PCBs) and other hazardous materials.

The cleanup plan, formally known as a Record of Decision, calls for injecting organic materials and nutrients underground to stimulate naturally occurring bacteria that break down harmful chemicals in groundwater over time. EPA will also work with the State of New Jersey so that groundwater use is restricted until it meets standards and will conduct regular testing to monitor progress and ensure water quality improves.

This action complements EPA's 2020 soil cleanup plan, which is currently underway. That work involves removing contaminated soil and recovering trapped liquid chemicals, reducing the amount of pollution reaching the groundwater and supporting the long-term success of the groundwater remedy.

EPA finalized the groundwater plan after a 30-day public comment period and a public meeting on August 7, 2025, at the Gibbsboro Senior Center, where residents shared feedback and recommendations.

The final cleanup plan, EPA's response to public comments and additional background materials will be available on the Sherwin-Williams/Hilliards Creek Superfund Site profile page.
(Robert Schuster)

LAWSUITS FILED OR PENDING

THE COLUMBIA RIVER SYSTEM SALMON RECOVERY LITIGATION TREADMILL RESTARTS

On October 14, 2025, and as expected, the National Wildlife Federation (NWF) and the State of Oregon filed motions for preliminary injunction and supporting memoranda effectively ending the stay of the litigation achieved during the latter portion of the Biden administration and Presidential Memorandum dated September 27, 2023—Restoring Healthy and Abundant Salmon, Steelhead, and Other Native Fish Populations in the Columbia River Basin (Memorandum). The ongoing litigation (*National Wildlife Federation, et al. v. National Marine Fisheries Service, et al.*; Case No. 3:01-cv-640-SI) asserts ongoing violations of the federal Endangered Species Act (ESA) against the U.S Army Corps of Engineers (Corps) and the Bureau of Reclamation (Reclamation) related to the agencies' joint operations of the Columbia River System Operations (CSRO) dams.

Background

President Trump rescinded the Memorandum via his own Presidential Memorandum on June 12, 2025:

> I hereby revoke the Presidential Memorandum of September 27, 2023 [entitled "(Restoring Healthy and Abundant Salmon, Steelhead, and Other Native Fish Populations in the Columbia River Basin"]. 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*, Case 3:01-cv-640-SI (D. Or.), Dkt. 2450-1 (MOU).

Upon release, it was only a matter of time before the CSRO plaintiffs renewed their litigation concerning the agencies' CSRO plan under *the 2020 Biological Opinion for Continued Operation and Maintenance of the Columbia River System* issued by the National Marine Fisheries Service (NMFS).

Ongoing Litigation

Preliminary Injunction Points and Federal Defendants' Stay Request

As part of the broader litigation asserting Corps and Reclamation violations under the ESA, NWF and the state of Oregon seek preliminary injunctions altering current CSRO operations for the (purported) benefit of the ESA-listed stocks in the interim. Broadly speaking, the motions seek expanded spill operations (timed releases of flow augmentation water during salmon migration periods) and decreased reservoir pool elevations (in theory reducing slack-water conditions, but reducing hydropower generation potential and irrigation water storage supplies) system-wide (dams located on the mainstem Columbia River and Lower Snake River). The motions also request immediate repairs and maintenance to existing fish passage infrastructure located at the system dams, and the imposition of other "emergency conservation measures" (actions to reduce smolt predation by certain bird species and non-native fish, increased steelhead kelt reconditioning efforts, and increased genetic support efforts).

In light of the federal government shut down, the federal defendants (including NMFS, the Corps, and Reclamation) filed a motion to stay the litigation at least for the duration of the shutdown. On October 14, 2025, District Judge Simon denied the stay request and set additional briefing deadline spanning October 15, 2025, to January 29, 2026, for all parties supporting and opposing the preliminary injunction motions.

NWF, the states of Oregon and Washington, and the Nez Perce Tribe opposed the stay request. They argued that the court's current briefing schedule needs to remain in place so that the Court can determine

what forms of injunctive relief, if any, need be imposed before the upcoming 2026 smolt migration season. They also pointed out that courts routinely compel continued federal employee work schedules where necessary during government shutdowns.

The federal defendants cited litigation hardship amid the shutdown and further questioned the alleged emergency-nature of the preliminary injunction motions. On the emergency/irreparable harm points, the federal defendants pointed out that the litigation plaintiffs did not pursue emergency relief measures during the last five years since the case was filed, nor more immediately on the heels of President Trump's June 12, 2025, Presidential Memorandum.

Conclusion and Implications

Ultimately, U.S. District Court Judge Simon denied the federal defendants' stay request due to the "potential harm to the endangered species and the need to timely evaluate whether any injunctive relief is warranted before the 2026 spring migration outweigh[ing] the harm to federal employees being required to work during [the government shutdown]," particularly where those employees would be paid retroactively once funding is restored.

While none of the foregoing comes as a surprise to Idaho water users, the need to monitor, remain vigilant, and participate as necessary continues. (Andrew J. Waldera)

JUDICIAL DEVELOPMENTS

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

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

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

Background

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

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

The Clean Water Act and Irrigation Flows Exemption

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

The Ninth Circuit's Decision

The Meaning of "Entirely"

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

Legislative Intent and Practical Considerations

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

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

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

Analysis of the Four Alleged Pollution Sources

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

Conclusion and Implications

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

UTAH SUPREME COURT DENIES UTAH-COLORADO WATER PIPELINE

Water Horse Resources, LLC v. Wilhelmsen, 2025 UT 43.

The Utah Supreme Court recently upheld the Utah State Engineer's denial of an application that proposed to divert water from the Green River in Utah for delivery to municipalities in Colorado. The decision affirms both the possibility of interstate water projects under the Upper Colorado River Basin Compact, and the member state's sovereignty to regulate water use within their boundaries.

Background

The pipeline at issue in this case is the latest iteration of a decades-long idea to bring additional water to Colorado's Front Range. See Proposed Utah-Colorado pipeline project revived under new terms, *West. Water L. & P'lcy Rptr.* (March 2019). The proposal calls for a 300-mile pipeline to carry 76 c.f.s., up to 55,000 acre-feet per year, from the Green River below Flaming Gorge, across Wyoming, and then south along Colorado's water-needy Front Range. The project, at the time of the application to the Utah Division of Water Resources in 2019, was expected to cost approximately $1 billion in construction alone. Aaron Million, the project's proponent, noted that the project had evolved into a clean energy solution in addition to the water deliveries. The pipeline would drop almost ¾ of a mile onto the Front Range, allowing the installation of hydropower facilities capable of generating at least 60 megawatt hours per year.

Water Horse's application drew significant opposition, and the Utah State Engineer denied the application in 2020 on two principal grounds: First, the Engineer found that the project failed to comply with Utah's export statute, Utah Code §§ 73-31-101–109. The export statute requires applicants proposing to divert water from Utah to another state to demonstrate that the water "can be transported, measured, delivered, and beneficially used in the recipient state." Second, the Engineer disagreed with Water Horse's assertion that there was "reason to believe" the water could be beneficially used in Colorado. At the time of the application, and still the case, Colorado water courts had not approved the project, granted decrees for use of the water in Colorado, or agreed that Colorado would account for these diversions under the Upper Basin Contract between Colorado, Utah, New Mexico, and Wyoming.

Water Horse appealed the Engineer's denial to the District Court, which granted the Engineer's motion for summary judgement on the above grounds. In the

alternative, the District Court held that Colorado was an indispensable party such that Water Horse's failure to join the state would be a fatal defect to its case. Water Horse then appealed to the Utah Supreme Court.

The Utah Supreme Court's Decision

Much of the Supreme Court's decision focused on the "Law of the River," broadly defined as the layered legal structure governing allocation of water throughout the Colorado River Basin. Most important to the decision is the Upper Colorado River Basin Compact, ratified by Congress in 1949, which allots specific percentages of Colorado River Basin water to the four Upper Basin states. The Upper Basin Contract also provides that:

> . . .[n]o State shall deny the right of another signatory State, any person, or entity of any signatory State to acquire rights to the use of water…for consumptive use in a lower signatory State, when such use is within the apportionment to such lower State. Art. IX(a).

However, the Compact further states that it does not interfere with each state's rights to regulation the "appropriation, use, and control of water" within its boundaries. Art. XV(b). The Engineer's opinion, upheld by the district court, was that Utah's export statute properly regulates Utah's waters in accordance with this authority.

The Supreme Court agreed, finding no preemption of the export statute under the Upper Basin Compact. The Court noted that the Upper Basin Compact lacks explicit preemption language and in fact explicitly grants the member states the right to control the appropriation of waters within each state. Article IX(a)'s grant of the "right" to acquire water, the Supreme Court held, only guarantees the opportunity to seek water from another state, not the absolute right to divert and use that water. Utah exercises that authority through its export statute which allows for interstate diversion if the applicant satisfies the various statutory requirements.

After concluding that the export statute was a proper use of Utah's authority under the Upper Basin Compact, the Court examined the merits of Water Horse's claims. As discussed above, the export statute requires the applicant to prove that the water can be beneficially used in the recipient state. The export statute does not explicitly provide a standard of review for this claim, although Water Horse, the Engineer, and the Court all agreed that the "reason to believe" standard from Utah's general appropriation statute was appropriate. Thus, Water Horse's burden was to prove that there was "reason to believe" that the exported water "can be beneficially used" in Colorado. Water Horse had not filed any water court applications in Colorado, obtained permits, decrees, or other approvals, or received confirmation that the interstate diversions would be accounted for under Colorado's apportionment under the Upper Basin Compact. The Court therefore agreed with the Engineer and District Court in concluding that Water Horse had not shown the water would be beneficially used in Colorado. Water Horse had previously argued that it must first obtain the Utah approvals before applying for the corresponding Colorado approvals. The Court rejected this argument as inconsistent with "statutory sequencing," finding that the beneficial use requirement of the export statute is a prerequisite to approval, not something that Water Horse could shore up after obtaining its Utah rights. Thus, the Court affirmed the District Court holding. Because the Supreme Court reached resolution on the above claims, it did not address the District Court's contention that Colorado was an indispensable party.

Conclusion and Implications

The Utah Supreme Court's decision, in its own words, is "straightforward." The Court affirmed state sovereignty within the framework of the Upper Basin Compact. Interstate water projects are possible under the Upper Basin Compact, but proposals must meet all requirements of the exporting, and likely receiving, state's statutory regime. In Utah, this means the applicant must have a clear plan for beneficial use within the receiving state, consisting of at least state-level water court and Compact-allotment approvals. Specifically, regarding the Water Horse proposal, this likely means parallel applications in each state.

If the warming and aridification trends continue across the Upper Basin, these types of interstate transfers will likely become more appealing to water users in search of supplemental water supplies. This decision confirms that such projects are possible,

but each applicant must strictly adhere to the statutory framework in each state to obtain approval of the project. The Utah Supreme Court's opinion is available online at: https://legacy.utcourts.gov/opinions/supopin/Water%20Horse%20v.%20Wilhelmsen20251017.pdf
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