Volume 36, Number 10
July 2026

CALIFORNIA WATER™
LAW & POLICY Reporter

CONTENTS

CALIFORNIA WATER NEWS

Trump Administration Rescinds Biden-Era Public Lands Protections across the West 219

Property Owners Protest in Paso Robles: Groundwater Authority's Second Shot to Pass Groundwater Management Fee 221

LEGISLATIVE DEVELOPMENTS

Rising Concerns over Potential Data Center Developments and Effects on State Water Supplies—California Senate Bills 886 and 887 223

REGULATORY DEVELOPMENTS

California Department of Water Resources Releases "A New Vision for San Joaquin Valley," Addressing Long-Term Water Management in the Valley 225

Santa Ana Regional Water Quality Control Board Issues Tentative Watershed-Wide MS4 Permit for Orange, Riverside, and San Bernadino Counties . . . 226

State Water Resources Control Board Hearings Office Receives Public Comments on Draft Order in Sites Reservoir Proceeding 228

LAWSUITS FILED OR PENDING

Members of California State Employment Union File Lawsuit, Claims State "Return-To-Office" Mandate Is Subject to CEQA Review 230

RECENT FEDERAL DECISIONS

Circuit Court of Appeals:
Ninth Circuit Clarifies EPA Discretion in Regulating decaBDE 232
Alaska Community Action on Toxics v. U.S. Environmental Protection Agency, 175 F.4th 1169 (9th Cir. 2026).

Continued on next page

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Standing before Substance: D.C. Circuit Dismisses PFAS Citizen Suit against EPA 233
Public Employees for Environmental Responsibility, et al. v. Zeldin, et al., ___F.4th___, Case No. 24-5294 (D.C. Cir. May 1, 2026).

RECENT CALIFORNIA DECISIONS

***District Court of Appeal*:**
Substance over Formality in Proposition 65 Notice Compliance—First District Court Finds Substantial Compliance Sufficient 236
Toxin Working Group Inc. v. Best Naturals, Inc., ___Cal.App.5th___, Case No. A170985 (1st Dist. May 22, 2026).

Fourth District Court Holds the California Public Records Act, Statutory Timeframe for Making Records "Promptly Available" Is Flexible and Context-Specific 238
Voice of San Diego v. San Diego Unified School District, ___Cal.App.5th___, Case No. D084327 (4th Dist. May 11, 2026).

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CALIFORNIA WATER NEWS

TRUMP ADMINISTRATION RESCINDS BIDEN-ERA PUBLIC LANDS PROTECTIONS ACROSS THE WEST

The Trump administration has rescinded a Biden-era Bureau of Land Management (BLM) rule that had formalized conservation as part of public-land management across the West. The change removes a national framework for restoration, mitigation, and landscape-health planning, while leaving future site-specific decisions to existing land-use planning, permitting, and review processes.

Background

The Public Lands Rule, officially the Conservation and Landscape Health Rule, was finalized in May 2024 and became effective on June 10, 2024. Adopted under the Federal Land Policy and Management Act's multiple-use and sustained-yield framework, it directed the BLM to protect intact landscapes, restore degraded habitat, and rely on science and data in decisions for BLM-managed lands.

What the Rule Changed

The 2024 rule clarified that conservation could be treated as a use under the Federal Land Policy and Management Act's multiple-use and sustained-yield framework. In practical terms, conservation became an affirmative management objective that could be considered alongside grazing, mining, energy development, recreation, and timber management.

The rule also applied land-health standards beyond grazing, created restoration and mitigation leases, and revised procedures for Areas of Critical Environmental Concern, or ACECs. Those changes were intended to give the BLM consistent tools for identifying intact landscapes, addressing degraded lands, and considering ecological conditions during planning. The agency described the rule as promoting ecosystem resilience without displacing the broader multiple-use mandate.

Under the leasing provisions, eligible entities could seek restoration or mitigation leases to improve degraded land or offset impacts from other authorized uses. The rule stated that those leases would not override valid existing rights or authorizations, including grazing, mining, and oil and gas leasing. For supporters, that structure created a clearer path for restoration work. For opponents, it raised concern that conservation leases could restrict other uses or add permitting uncertainty.

The Rollback

The BLM proposed rescinding the rule on September 11, 2025, opening a 60-day public comment period that ended November 10, 2025. The final rescission was published May 12, 2026, and became effective June 11, 2026. In the final rule, the BLM said it received 138,161 comment letter submissions from both sides.

In explaining the rollback, the agency said the 2024 rule "inappropriately elevated conservation" as a discrete use of public lands and created planning and permitting burdens. The rescission eliminated restoration and mitigation leases, removed land-health provisions outside the grazing context, and restored ACEC regulations to their pre-2024 approach. The BLM also said existing authorities, including land-use planning, project-level environmental review, and partnership programs, remain available to address restoration and environmental impacts.

The Department of the Interior described the move as a return to "balanced, multiple-use management," arguing that the Biden-era rule could limit grazing, energy development, recreation, timber management, and other uses. That framing places the recission within a broader policy preference for local decision-making, energy access, and reduced regulatory burdens.

California and Western Lands

The BLM manages about 245 million acres of public land, mostly in the western United States. In California, the agency oversees about 15 million acres of public lands, approximately 15% of the state's land mass, plus 47 million acres of subsurface mineral

estate. Because the BLM's California holdings span deserts, rangelands, forests, high mountains, and coastal areas, statewide effects are likely to vary by region and resource decision.

These California lands support renewable energy, mining, grazing, timber harvesting, recreation, cultural resources, and conservation. Although the rollback is often discussed as a forest or land-protection issue, it applies specifically to BLM-managed public lands, not every federal forest or protected area. National forests are generally managed by the U.S. Forest Service, while national parks and wildlife refuges operate under other frameworks.

The rescission does not automatically approve drilling, logging, mining, or development on any particular parcel. Instead, it changes the rulebook the BLM uses when weighing conservation, restoration, and development interests in future planning and project reviews. The final rule notes that practical effects will depend on future management decisions rather than on the rescission alone.

Supporters and Critics

Supporters of the rollback argue that the 2024 rule exceeded the BLM's authority and risked restricting economic uses of public lands. In the final rule, the agency said rescission is expected to indirectly benefit businesses involved in ranching, energy production, energy transmission, and natural resource extraction. Industry and agricultural groups also argued that the Biden rule placed too much weight on non-development uses and could complicate access for energy, minerals, grazing, and recreation.

Critics argue that the rollback weakens safeguards for habitat, clean water, climate resilience, cultural resources, and long-term restoration. Conservation groups generally supported the 2024 rule because it placed conservation on more equal footing with industrial uses and gave the BLM a formal mechanism for restoration leases. They contend that removing those tools may make it harder for the agency to address drought, wildfire risk, habitat fragmentation, and other landscape-scale pressures.

What Happens Next?

Future impacts will depend on how BLM field offices and state offices apply land-use plans, resource management plans, and project-level environmental reviews. Proposals for mining, logging, energy development, grazing, recreation, transmission lines, or restoration projects may still require separate review under federal planning and environmental laws. The rescission does not end environmental review, but it removes a national policy that had instructed the BLM to consider conservation, landscape intactness, and restoration as affirmative management tools.

In California, the most important developments may occur through revisions to resource management plans, responses to new project applications, and decisions about ACECs or other sensitive landscapes. Local governments, tribes, conservation organizations, ranchers, energy developers, recreation users, and nearby communities are likely to continue participating in those processes. The practical effect of the rollback will be measured less by the rule's publication date than by how future decisions balance development, access, restoration, and long-term resource protection.

Conclusion and Implications

The rollback represents a major change in the federal government's approach to Western public lands. Its practical effect will likely unfold over time, as individual land-use plans and permits determine whether development, conservation, or restoration priorities take precedence in particular places. For California and other western states, the central issue is not whether all BLM lands are suddenly open to development, but whether future decisions will give conservation the same structured role that the 2024 rule attempted to provide.
(Brent McManigal, Darien Key)

PROPERTY OWNERS PROTEST IN PASO ROBLES: GROUNDWATER AUTHORITY'S SECOND SHOT TO PASS GROUNDWATER MANAGEMENT FEE

After property owners defeated an attempt by the Paso Robles Area Groundwater Authority (PRAGA) to impose a property-related groundwater extraction fee back in August 2025, PRAGA pursued a different approach: it imposed a fee through Proposition 26 (Prop 26).

Background

The California Legislature passed the Sustainable Groundwater Management Act (SGMA) in 2014. SGMA requires local Groundwater Sustainability Agencies (GSAs) to be formed in medium- and high-priority basins to address groundwater overdraft and other "undesirable results." Compliance with SGMA involves significant costs: developing a Groundwater Sustainability Plan (GSP), preparing annual reports, participating in an evaluation of the GSP every five years, monitoring groundwater supplies in the basin, and tracking groundwater use through either metering program, reporting requirements, or other methods (commonly including the use of satellite data and evapotranspiration estimates). GSAs may also undertake projects and management actions to improve the groundwater situation in their basin, which involves additional costs.

Because the Paso Robles Subbasin has been designated a high priority basin in critical overdraft, the member agencies that make up PRAGA undertook the task of complying with SGMA in the basin. They later formed PRAGA as a Joint Powers Authority to efficiently administer the GSP for the entire basin. PRAGA's budget for the 2026-2027 fiscal year is around $1.1 million. In its Rate Study for the 2026-2027 fee imposed under Prop 26, PRAGA calculated the projected groundwater use in the basin for the year to be 50,363 acre-feet and proposed to charge a fee of $22.90 per acre-foot to cover its budget and maintain compliance with SGMA. Failure to maintain compliance with SGMA would result in the basin being placed in "probation" by the State Water Resources Control Board (SWRCB), which would mean local groundwater pumpers would have to pay pumping fees directly to the SWRCB, which are higher than PRAGA's proposed fee. As well, money paid to the State Water Board would not return to help local groundwater management activities or programs, while a local groundwater fee would directly support continued operations and sustainability initiatives in the basin.

Groundwater management in the Paso Basin has previously relied heavily on state grants. Amidst recent state budget cuts, PRAGA had to seek other options to continue funding its management of the basin. In August 2025, PRAGA tried to pass a groundwater management fee under Proposition 218, but the fee faced majority opposition from voters and ultimately failed. In response, PRAGA released a report in May 2026 explaining its plan to impose this new fee under Prop 26 instead.

Passing the Fee Through Prop. 26

Prop 26 was a voter initiative that closed what were perceived as "loopholes" in the better-known Proposition 218 (Prop 218). Prop 26 defines any exaction of money by a government agency as a "tax" requiring voter approval unless it is either an assessment under Prop 218, a property-related fee under Prop 218, or within one of the categories of non-tax fee set forth in Prop 26. PRAGA's Rate Study detailed how the fee satisfies all the elements required to be a non-tax fee under Prop 26.

Groundwater pumpers will pay in proportion to their use and only to cover PRAGA's operating expenses. The report studied domestic groundwater pumpers, cattle ranchers, public water systems, and commercial operations, finding that none of these increase program costs because they consume only a negligible amount of groundwater. PRAGA also exempted domestic, *de minimis* extractors from paying the fee. So, most of PRAGA's financial burden will fall on Paso's agricultural industry, which used approximately 93 percent of all groundwater extracted in 2025 and is anticipated to use 95.8 percent in 2026.

PRAGA provided opportunities for groundwater extractors to review and formally appeal the findings in the report until June 8, 2026. They received mostly criticism about the amounts in the anticipated budget

and the accuracy of the evapotranspiration data used to calculate consumptive use for each property. After considering the public feedback and the Rate Study, on May 27, 2026, the PRAGA board unanimously approved the adoption of the new fee.

Conclusion and Implications

Implementation of SGMA has already imposed significant costs on groundwater users. The public agencies charged with implementing the statute have sometimes faced significant public backlash when creating fee structures to distribute those costs, but the alternative, a state-supervised probation, would in most cases be a more costly alternative.

PRAGA is an instructive example. The voters rejected the Prop 218 proposal made by PRAGA in 2025, which would have imposed higher rates but also would have included funding for projects to improve the water supply situation of the basin. PRAGA has now pursued a regulatory fee instead, which is a lower fee but serves purely to comply with the regulatory mandates of SGMA. The fate of other projects and management actions in the basin is uncertain, and it remains to be seen whether the basin can be adequately managed without funding those additional projects. Inaction can be as expensive as action in the long run.
(Franchesca Yonan, Brett Stroud)

Editor's Note: The authors' law firm serves as General Counsel to two of the member agencies of PRAGA.

LEGISLATIVE DEVELOPMENTS

RISING CONCERNS OVER POTENTIAL DATA CENTER DEVELOPMENTS AND EFFECTS ON STATE WATER SUPPLIES—CALIFORNIA SENATE BILLS 886 AND 887

Data centers are a growing concern for California's water supplies because of their potential to consume large volumes of water for their operations, which may impact other needs throughout the state and, further, place a burden on ratepayers. These concerns have prompted response from both state lawmakers, and local governments. At the local level, Monterey Park became the first city in the country to ban data centers in its jurisdiction, and the Coachella City Council recently approved a moratorium on the building of new data centers after extensive public opposition to a potential project. At the state level, California State Senator Steve Padilla introduced two bills : Senate Bill 886 and Senate Bill 887.

Background

As demand for data centers has increased, so has concern to the potential negative impacts these projects may create, specifically on California's water supplies. This concern has resulted in several actions across the state, including local efforts to preempt the construction of data centers, as was seen in the Monterey Park ban and, the Coachella City Council efforts to stall potential construction so that the City may be afforded more time to consider, and mitigate, any potential, detrimental effects on water supplies.

At the state level, several legislative efforts have been put forth including bills which would require annual water use and reporting as a condition of receiving necessary operating permits, special rate utility structures, as well as energy efficiency and reporting measures. Of those measures, Senator Steve Padilla introduced two bills: SB 886 and SB 887, which intend to implement measures aimed at offsetting the negative impacts of data centers.

SB 886 would compel the CPUC to impose a tariff on data centers that would offset utility rate increases, with an exception for data centers that transition from fossil fuels to renewable energy. SB 887 would prevent data centers from receiving certain California Environmental Quality Act (CEQA) exceptions, including CEQA's ministerial exception which would allow those data centers circumvent Program Environmental Impact Reports The bill would also allow for streamlining of other, certain CEQA requirements.

Senate Bill 887—Utility Rates

The proposed tariff in SB 887 is narrowly tailored to apply to data centers and prevent utility rate increases on other customers. However, the proposed bill's effectiveness might be limited. The bill would coerce the CPUC to issue a tariff to on "large load customer[s]," which the proposed bills defines as "customer[s] connecting transmission-level electricity service with an estimated peak demand of at least 75 megawatts." Furthermore, the bill would require large load customers to pay for utility infrastructure upgrades necessary to connect their facilities to the grid. However, the CPUC does not regulate publicly-owned utilities, such as the Los Angeles Department of Water and Power, so the tariff would only apply to investor-owned utility companies like Southern California Edison. While the proposed bill encourages publicly-owned utilities to adopt a similar tariff, many publicly-owned electric utility customers in the state would not necessarily benefit.

The exception to the proposed tariff in SB 887 might incentivize existing data centers to switch from fossil fuels to renewable energy by exempting new energy loads resulting from would be large load customers transitioning to renewable energy from the tariff. However, it is unclear from the statutory language what circumstances might actually trigger the exception, and it is unclear how effective the exception would actually be in incentivizing data centers to transition to renewable energy.

Senate Bill 886—CEQA

SB 886 would likely be effective in preventing public agencies and developers from utilizing CEQA's

ministerial project exception to bypass Environmental Impact Reports (EIRs). The proposed statute's explicit statement that the ministerial exception "does not apply to a project proposed to be carried out or approved by a public agency for the development and operation of a data center" clearly exempts data centers from the ministerial exception. Furthermore, the proposed statute's definition of the data center is broad.

Conclusion and Implications

Monterey Park's adoption of a data center ban is a major development because it is the first time a city has banned data centers in response to the concern of its residents. From a legal perspective, this ban could lead to other municipalities imposing similar bans, which could lead to litigation brought against those municipalities.

Data centers will continue to fuel public discourse, and create legal and legislative response, in the future. As demonstrated by SB 886, SB 887, the efforts of Monterey Park and the Coachella City Council, public officials are already taking legal steps to respond to Californian's concerns about the impacts of data centers on the environment and the state's water supplies. As the concerns, and efforts to regulate, continue to evolve, the state will likely see several more legislative proposals, and local actions, in the future, all of which will shape the way in which these data centers are permitted to develop in the state. For more information on Senate Bill 886, *see:* https://legiscan.com/CA/text/SB886/id/3311066?__cf_chl_f_tk=vIiULocNIBwYLJti0NiYqVeiLoHqYT4fuvLxsrbphi0-1782921794-1.0.1.1-avHn_nV.ay4BYC3ldVvVh-4vuzBZBAopPcQOsAYvDxLE. For more information on Senate Bill 887, *see:* https://legiscan.com/CA/bill/SB887/2025.

(Stephanie Cook, Miles Krieger)

REGULATORY DEVELOPMENTS

CALIFORNIA DEPARTMENT OF WATER RESOURCES RELEASES "A NEW VISION FOR SAN JOAQUIN VALLEY," ADDRESSING LONG-TERM WATER MANAGEMENT IN THE VALLEY

On May 1, 2026, the California Department of Water Resources (DWR) released "A Vision for San Joaquin Valley," a planning document addressing long-term water management concerns facing San Joaquin Valley. The document outlines the state's broader strategy for responding to ongoing groundwater depletion, infrastructure limitations, and future water supply uncertainty as California continues to implement the Sustainable Groundwater Management Act (SGMA). Specifically, the planning document focuses on the need for improved groundwater recharge, infrastructure modernization, and long-term adaptation to reduced water availability throughout one of California's most agriculturally significant regions.

Factual Background

The San Joaquin Valley is central to California's agriculture and is responsible for producing a substantial portion of the country's fruit, vegetable, and nut supply. For decades, agricultural production within the region has depended heavily on groundwater pumping, particularly during drought periods or years where surface water deliveries have been reduced. Over time, continued groundwater extraction has resulted in declining groundwater levels throughout several basins, land subsidence, and damage to important water conveyance systems that move water throughout the state.

In response to these longstanding concerns, California enacted SGMA in 2014, requiring local groundwater sustainability agencies to develop groundwater sustainability plans aimed at eliminating long-term overdraft conditions. While implementation of SGMA has largely been left to local agencies, compliance has created significant challenges in portions of the San Joaquin Valley where agricultural operations have historically depended on groundwater supplies to maintain production levels.

Against this backdrop, DWR's recently released planning document attempts to establish a long-term strategy for addressing future water supply limitations while balancing continued agricultural use, environmental concerns, and infrastructure needs within the region.

DWR's Proposed Approach

A significant issue throughout DWR's planning document concerns the future of irrigated agricultural land in portions of the San Joaquin Valley. DWR acknowledges that as SGMA implementation progresses and groundwater pumping becomes more restricted, certain agricultural lands may no longer have sufficient water available to continue operating at existing levels. Although the planning document does not expressly state that widespread farmland retirement will occur, the document recognizes that reduced irrigation capacity will likely require changes in how certain lands are used moving forward.

The planning document also places substantial emphasis on expanding groundwater recharge infrastructure. During wet years, California frequently experiences significant stormwater runoff that is not effectively captured for long-term storage. DWR proposes expanding infrastructure capable of redirecting excess surface water into underground aquifers to improve groundwater storage and help offset future pumping reductions associated with SGMA requirements.

Additionally, concerns regarding California's water conveyance infrastructure persist. Years of groundwater overdraft have contributed to land subsidence in portions of the San Joaquin Valley, damaging canal systems and other infrastructure responsible for transporting water throughout the region. If subsidence continues at the rate observed over the last ten years, the infrastructural damage may impact water supplies and reduce conveyance capacity throughout the state. DWR notes that continued infrastructure investment will remain necessary as California works to improve long-term water reliability.

DWR also notes that future solutions will require more than simply finding additional water sources.

Current discussions focus on improving groundwater recharge, capturing floodwater when available, and expanding underground water storage capacity. At the same time, state officials recognize that some agricultural land may eventually need to be taken out of production because future water supplies may not be enough to support irrigation demands. These concerns reflect a broader shift in California water policy, with regulators placing greater emphasis on sustainability and long-term management rather than maximizing water use under previous regulatory approaches

A significant reason for this decline is that groundwater has been pumped for many years at rates faster than it can naturally replenish, specifically during drought periods when surface water deliveries are reduced. As a result, farmers have become dependent on groundwater, further straining already depleted aquifers. State regulators have recognized that this pattern is not sustainable long term, which has led to increased focus on groundwater recharge projects and efforts to better manage limited water resources moving forward. While agriculture has long depended on reliable irrigation in the region, changing water conditions suggest that those practices may need to adapt for the future. Accordingly, the state may continue looking for ways to balance agricultural needs with long-term water availability.

Conclusion and Implications

DWR's Vision for the San Joaquin Valley reflects California's trend toward long-term water management planning which is focused less on expanding water supply and instead emphasizes adapting existing water use practices to increasingly limited resources. Although the planning document itself does not create immediate regulatory changes, it makes clear that compliance with SGMA will likely require substantial adjustments for agricultural users operating throughout the San Joaquin Valley.

California may continue moving toward greater statewide coordination as groundwater management challenges become more pronounced. For agricultural producers and local water agencies, long-term planning decisions will increasingly be shaped by groundwater sustainability requirements, infrastructure constraints, and the broader reality that existing water use practices may no longer be sustainable in certain portions of the state. The Vision for the San Joaquin Valley is available for public comment until July 21, 2026, and DWR plans to release a final version of the document in August of 2026 after reviewing and considering the comments received. For more information, *see:* https://water.ca.gov/News/Blog/2026/May-2026/DWR-Unveils-New-Vision-to-Strengthen-Water-Management-and-Climate-Resilience-in-San-Joaquin-Valley.

(Kevin Harris, Nicole Gendusa, David Boyer)

SANTA ANA REGIONAL WATER QUALITY CONTROL BOARD ISSUES TENTATIVE WATERSHED-WIDE MS4 PERMIT FOR ORANGE, RIVERSIDE, AND SAN BERNADINO COUNTIES

On May 5, 2026, the Santa Ana Regional Water Quality Control Board (Regional Board) issued a tentative watershed-wide Municipal Separate Storm Sewer System (MS4) permit covering Orange County, Riverside County, and San Bernadino County. The permit would consolidate stormwater regulation across Santa Ana River watershed under a single regional framework. The proposal raises questions regarding whether California regulators are moving toward basin-wide stormwater permitting as a means of improving regulatory consistency, watershed management, and permit administration.

Factual Background

The federal Clean Water Act (33 U.S.C. § 1251 *et seq.*) requires municipalities that operate MS4s to obtain permits governing stormwater discharges. In California, these permits are typically issued by Regional Water Quality Control Boards pursuant to the federal Clean Water Act, National Pollutant Discharge Elimination System (NPDES) program, and many MS4 permits have been issued on a countywide or jurisdictional basis.

The Santa Ana River watershed spans portions of Orange, Riverside, and San Bernadino counties.

Because stormwater discharges occurring in one jurisdiction may affect downstream water quality, regulators have increasingly emphasized watershed-based planning and management strategies.

The tentative permit would establish a unified regulatory framework applicable across the watershed. According to the Regional Board, the permit seeks to improve coordination among permittees, promote consistent compliance requirements, and better address watershed-wide water quality objectives.

Regionalization of Stormwater Regulation

The watershed-wide MS4 permit reflects a broader trend toward regionalized stormwater management. Rather than regulating stormwater solely through local or county-specific permits, watershed-based permits recognize that water quality impacts frequently cross jurisdictional boundaries.

It is worth noting that the watershed-wide permit does not continue the existing permit structure by the Regional Board. Rather than renewing separate permits for Orange, Riverside, and San Bernadino counties, the Regional Board has proposed a single permit covering the entire watershed. Such decision suggests growing interest in regulating stormwater systems based more on the watershed itself than on separate local jurisdictions.

Regional permitting may provide several benefits. First, it can promote consistency in regulation among municipalities within the same watershed, which is expected to result in overall cost savings for permittees. Second, it may improve coordination of monitoring, reporting, and implementation efforts. Third, a watershed-wide approach may better align stormwater regulation of California's river basins.

At the same time, regional permits may present challenges for permittees. Municipal agencies may face new compliance obligations, increased coordination requirements, and implementation responsibilities that differ from those imposed under prior permits. Stakeholders may also raise concerns regarding governance, cost allocation, and the extent to which local conditions are adequately addressed within a regional framework.

Another important consideration is the practical impact this permit may have on local municipalities responsible for compliance. Because the proposed permit would apply across multiple jurisdictions, cities and counties may need to coordinate more closely when implementing monitoring programs, reporting requirements, and pollution prevention efforts. Although this regional approach may improve consistency, it may also require local agencies to adjust existing compliance practices that were previously handled on an individual basis.

Conclusion and Implications

The Regional Water Control Board's Municipal Separate Storm Sewer System permit signals a continuing shift toward basin-scale stormwater regulation in California. By regulating discharges across an entire watershed, the permit reflects a growing emphasis on integrated water quality management and regional coordination.

At minimum, the proposal shows that regulators are open to moving away from permit structures that currently govern stormwater regulation within the region. Whether similar permitting approaches begin appearing in other parts of California may help determine whether broader challenges in stormwater regulation are beginning to develop statewide.

The proposed permit also represents an effort by regulators to test whether a consolidated permit structure produces different compliance outcomes than prior regulatory approaches. Because the Santa Ana watershed operated under separate permit for decades, adoption of a single regional permit may provide regulators with an opportunity to evaluate whether basin-wide oversight leads to more effective long-term water quality management.

If adopted and successfully implemented, the permit could serve as a model for future watershed-wide stormwater permits throughout the state. Other Regional Boards may look to the Santa Ana approach when considering how to address water quality challenges that extend beyond municipal boundaries, potentially accelerating California's movement toward basin-based stormwater regulation. The comment period ended on June 19, 2026. The Santa Ana Regional Water Quality Control Board will hold a public hearing on July 24, 2026, where it will consider adoption of the proposed permit. For more information, *see:* https://www.waterboards.ca.gov/santaana/water_issues/programs/stormwater/regional_ms4_permit.html.

(Kevin Harris, Nicole Gendusa, David Boyer)

STATE WATER RESOURCES CONTROL BOARD HEARINGS OFFICE RECEIVES PUBLIC COMMENTS ON DRAFT ORDER IN SITES RESERVOIR PROCEEDING

On March 20, 2026, the Administrative Hearings Office (AHO) of the State Water Resources Control Board (Water Board/SWRCB) released a Draft Order conditionally approving the water rights application filed by the Sites Project Authority (Authority) for the Sites Reservoir Project (Sites Project). The Draft Order sparked controversy and prompted a slew of public comments on the additional conditions the AHO proposed to impose on the Sites Project.

Background

Originally proposed in the 1950s, the Sites Project is a proposed off-stream reservoir in the Sacramento Valley, which would be used to store water diverted from several small creeks in the area and also to manage existing water supplies from the State Water Project (SWP) and federal Central Valley Project (CVP). The Authority began taking meaningful steps towards the development of the project in 2010 and now estimates that the project will be fully operational by 2034. Constructing and operating the project will require several regulatory permits, which the Authority has been actively pursuing. Most important among those is a water rights permit the Authority has requested from the SWRCB. The SWRCB assigned the Authority's petition for a water rights permit to its AHO, which conducts administrative hearings for the SWRCB and prepares proposed orders for review and adoption by the Water Board. (Wat. Code, § 1114, subd. (c).) The Draft Order would give the project significantly less diversion capacity than it requested, bringing total diversions down from the proposed 1,500,000 AFY to 986,000 AFY. The public comments raised broad concerns, with much of the controversy centered on whether the project can proceed effectively under the proposed conditions and how the Project will balance environmental concerns with other public benefits. The Authority provided its own comments on the Draft Order on May 22, and many groups have already expressed support.

Comments Supporting the Project

The public is expressing overwhelming support for Sites. Among the many criticisms of the draft permit, many supporters argue that the AHO's restrictions on the project's capacity are not justified by the evidence in the record. They accuse the AHO of implicitly assuming that stricter flow requirements will automatically provide increased environmental protection. Supporters largely cite Permit terms 23, 29, 30, and 31, arguing that they effectively eliminate Sites' ability to redivert water to further generalized, unquantified environmental benefits. The Permit also prohibits Sites from diverting water from Funks and Stone Corral Creeks. Supporters of the Project argue that the record shows water can be diverted from those creeks without harming downstream users. Supporters similarly argue that terms 29 and 30 effectively make Sites singularly responsible for the entire watershed's compliance with the Bay-Delta Plan.

Supporters of the project claim the AHO's proposed permit terms fail to use the "best available science." For example, the AHO heard project opponents' testimony that even a 1.2-inch drop in water levels could injure water rights holders along the South Delta. Supporters acknowledge that while the AHO correctly determined that the model the protestants used to reach this conclusion was flawed, the Draft Order nonetheless assumed that Sites would cause water levels to decrease by more than 1.2 inches—without citing any evidence. Supporters claim that the AHO's improper assessment resulted from the conclusion that DSM2 modeling is unreliable, which supporters argue is contrary to previous Water Board decisions.

These objections stem from a greater concern that the AHO's Draft Order would use the Sites Project permit as a means to further regulate the SWP and CVP. Supporters point to language in the draft stating that Sites will be an extension of the SWP and CVP, the ambiguity in whether term 29 imposes restrictions on the SWP and CVP, and the term 44 requirement that Sites not accept diversions from the SWP or CVP if they do not comply with draft terms 45-50 as evidence that this is the draft's intent.

Other commenters expressed doubts about the long-term viability of the Sites Project under the proposed terms. In short, the supporters of the Project agree with the AHO that the SWRCB should grant

a permit, but they believe it should do so with fewer restrictions and different terms than those in the Draft Order.

Comments Opposing the Project

Other commenters argue the SWRCB should deny the permit outright, arguing either that the permit incorrectly places too much weight on water supply considerations and largely ignores the resulting environmental effects, or that the project is infeasible and will be ineffective. As an alternative to denial of the application, some Project opponents presented arguments in support of the conditions in the Draft Order and proposed additional requirements, including additional bypass requirements to support fish populations and habitat, as well as increases to Net Delta Outflow requirements.

Project opponents also argue that the Water Board should require more consultation with local tribes concerning tribal resources and environmental issues. Some comments from project opponents also requested further conditions to mitigate alleged environmental harms arising from construction, notably including a proposal to require net-zero carbon emissions from the construction process.

Supplemental Hearing

On May 26, 2026, the AHO gave notice of a supplemental hearing to take place beginning on July 24, 2026. The purpose of the hearing would be to consider admitting some of the technical information provided by the Authority in its comment letter into the administrative record. However, the AHO expressly stated it would not be considering evidence submitted by potential Sites Project participants who are not parties to the proceeding. After conducting that supplemental hearing, the AHO anticipates releasing a revised draft order in early September, and the SWRCB would take up the proposed order at a meeting in November.

Conclusion and Implications

Supporters of the Sites Project already seem to doubt its viability under the current Draft Order. The proposed restrictions on diversions could undermine the project's intended benefits so much that proceeding with the project becomes infeasible. Opponents of the project, by contrast, want the Water Board to go even further in restricting the project, which would almost certainly scuttle the whole project. The Sites Project is of enormous consequence to the state's water future. Governor Newsom's Water Supply Strategy calls for expanding water storage capacity by four million acre-feet (https://resources.ca.gov/-/media/CNRA-Website/Files/Initiatives/Water-Resilience/CA-Water-Supply-Strategy.pdf), and the Sites Project is the most significant effort to develop above-ground storage capacity. And the updated California Water Plan, currently in preparation by the Department of Water Resources, is legislatively mandated to include development of 9 million acre-feet of additional water supply. (https://water.ca.gov/Programs/California-Water-Plan.) It is difficult to see how either of those goals can be achieved if major projects like the Sites Project are rendered impossible.
(Jacob Hazen, Brett Stroud)

Editor's Note: The authors' law firm serves as General Counsel to the Sites Project Authority.

LAWSUITS FILED OR PENDING

MEMBERS OF CALIFORNIA STATE EMPLOYMENT UNION FILE LAWSUIT, CLAIMS STATE "RETURN-TO-OFFICE" MANDATE IS SUBJECT TO CEQA REVIEW

As the California Secretary of State's office evaluates the signatures gathered for the most expansive California Environmental Quality Act (CEQA) reform measure that may appear on the November ballot, one of the most novel (if not bizarre) CEQA litigation threats ever issued was lodged against the Newsom Administration. [*California Attorneys, Administrative Law Judges and Hearing Officers in State Employment v. California Environmental Protection Agency*, Case No. 26CV192463 (Alameda County Superior Court)]

CEQA's extremely low threshold for challenging (what are often) development projects incentivizes project opponents to use the environmental statute to slow, stop, or to extract benefits from a project. Generally, these lawsuits can increase a project's overall costs.

The Return to Office Mandate

On March 3, 2025, Governor Gavin Newsom issued an executive order requiring all state agencies and departments to return to office at least four days per week by July 1, 2025, reversing the state's major telework policy dating back to the early days of the COVID-19 pandemic. The Governor's rationale includes, increasing accountability, improving government services, and revitalizing downtown cores—especially that of the City of Sacramento. The mandate reflects the tension between workers and supervisors across the broader workforce.

In a separate lawsuit, a union representing state engineers initially sued the Newsom Administration, alleging that the order violated state labor law by failing to confer with the union with respect to the mandate's impacts. That union withdrew its lawsuit after the state agreed to postpone the implementation for one year. Now that the one-year extension is set to expire on July 1, state worker unions are again threatening to challenge the implementation of the office mandate.

Threatened Litigation

In one of the most unique applications of CEQA, California Attorneys, Administrative Law Judges and Hearing Officers in State Employment (CASE) representing approximately 90,000 legal workers, including attorneys, administrative law judges, and hearing officers, is challenging the mandate, claiming that the mandate is a "project" subject to CEQA review. Generally, CEQA only applies to discretionary "projects" approved by public agencies because such agencies would have authority over how such "projects" would be implemented and how the project could be revised to reduce environmental impacts.

CASE claims that the state agencies must comply with CEQA's public notice, hearings, analysis of environmental impacts—particularly impacting traffic, air pollution, and greenhouse gas emissions. The lawsuit, which the union filed in Alameda County Superior Court, alleged that the mandate will result in a significant environmental impact, citing a State Auditor report that found the state to have saved nearly 50 million commuting miles and avoided 18,000 metric tons of carbon dioxide in the month of December 2023 alone. Thus, the policy could arguably result

Is the Mandate a "Project"?

At the core of CEQA is the question of whether an activity is a "project" subject to environmental review. Section 15378(a) of the CEQA Guidelines defines a "project" as "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." Section 15378(a) provides several examples of what could constitute a "project," including "public works construction and related activities," "clearing or grading of land," and "improvements to existing public structures." However, Subdivision (b) of that same section expressly states that a "Project does not include" "administrative or maintenance activities,

such as . . . personnel-related actions [and] general policy . . . ." Thus, the CEQA Guidelines clearly exempts from a project definition, personnel-related actions—the exact type of action that the mandate addresses.

While the return to office policy does not result in a direct physical impact to the environment, CASE's lawsuit is emblematic of the widespread attempt to expand CEQA's applicability to any activity a special interest group finds offensive.

Other State Defenses

In addition to the exemption from the definition of a "project," the state may try to assert the "Common Sense Exemption" contained in Section 15061(b)(3) of the CEQA Guidelines. This applies where "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." While administrative policies generally qualify for this exemption, it also requires the finding of "certainty" that there is "no possibility" that an activity will have a significant effect on the environment. CASE can easily point to the impacts to transportation and greenhouse gas emissions that the State Auditor found to be caused by office commuters.

The state may also invoke the "ministerial" activity exemption. As explained previously, CEQA only applies to discretionary projects and exempts ministerial activities. The state could argue that the mandate is a ministerial decision and that state agencies have no discretion in implementing the requirement. This would tie in with the definition of a "project" and whether the mandate constitutes as "project" for the purposes of CEQA.

Conclusion and Implications

While CASE's lawsuit is unlikely to prevail, the case may not be subject to an immediate dismissal. The petitioner's arguments, at least on their face, appear similar to those in *Make UC a Good Neighbor v. UC Regents* (2024), in which lower courts concluded that social noise from students constituted a significant environmental impact.

While the *UC Regents* case was ultimately mooted by legislation expressly exempting human-caused noise from CEQA analysis requirements, the return-to-office mandate may also be mooted. Assemblymember Lee has introduced AB 1729, which would encourage state agencies to continue to offer remote work as an option for state employees. The complaint is available here: https://calattorneys.org/wp-content/uploads/2026/06/2026.06.05-Writ-Petition-CASE-Return-to-Office.pdf.

On June 29, 2026, as this article was nearing publication the Alameda County Superior Court, issued an order denying the ex parte application for stay of the return to office order. *See:* https://drive.google.com/file/d/1WFVSO2yRBn_ckflbBtZvZUUodsT4ntVS/view. The letter of intent to sue by CASE is available online at: https://calattorneys.org/wp-content/uploads/2026/05/CASE-CEQA-Exhaustion-Letter-Caltrans.pdf.

(Braeden Mansouri)

RECENT FEDERAL DECISIONS

NINTH CIRCUIT CLARIFIES EPA DISCRETION IN REGULATING DECABDE

Alaska Community Action on Toxics v. U.S. Environmental Protection Agency, 175 F.4th 1169 (9th Cir. 2026).

In May 2026, the Ninth Circuit Court of Appeals issued a ruling interpreting the Toxic Substances Control Act, specifically addressing the Environmental Protection Agency's obligations under the 2016 amendments to regulate certain chemicals. More specifically, the court directed the EPA must revisit its decision to not further regulate exposure to a toxic fire retardant which, when recycled, has the propensity to end up in wastewater or fertilizer.

Background

Decabromodiphenyl Ether, or decaBDE, is a known toxic chemical that is used as a flame retardant in many consumer products In 2016, Congress amended TSCA and required the EPA to develop risk management rules addressing exposure to certain chemicals, deemed to be persistent, bioaccumulative, and toxic chemicals, and this included decaBDE. More specifically, Congress directed the EPA to take expedited action to propose rules regulating these chemicals and further required the agency to finalize proposed rules within eighteen months of the initial proposal.

Congress further amended the TSCA to require the EPA to address the risks associated with the implicated chemicals and "reduce exposure to [implicated] substance[s] to the extent practicable."

The EPA proposed rules regulating decaBDE pursuant to Congress's directive in 2021. The proposed rules regulated the chemical through prohibition of decaBDE's manufacture, processing and distribution of decaBDE and articles or products containing it, but the rules were not all encompassing. Importantly, the 2021 rules did not regulate the disposal of decaBDE, which can potentially create harmful effects to water quality as the chemical is poorly soluble in water, and highly persistent. Thus, it can absorb into other matter and sediment, and enter groundwater, or other waterways, creating the potential for harm to aquatic ecosystems, and drinking-water sources. The EPA's lack of inclusion of rules regulating disposal prompted public response and opposition from environmental groups, including Alaska Community Action on Toxics, which filed petition for review by the Ninth Circuit, which culminated in the May ruling, remanding the EPA's rule, without vacating it, and holding the EPA's decision to not regulate disposal pathways as not supported by substantial evidence. This rule currently remains in effect as the EPA conducts further rulemaking in accordance with the court's ruling.

The Ninth Circuit's Decision

TSCA requires courts to invalidate an EPA rule if it "is not supported by substantial evidence in the rulemaking record taken as a whole." Pursuant to Congress's mandate, the Ninth Circuit employed the substantial evidence standard in reviewing the 2024 rules.

The court analyzed four specific areas in which the EPA declined to address the regulation of decaBDE, and found that the EPA failed to provide substantial evidence to support the agency's conclusion that those areas did not require regulation, in accordance with TSCA 2016 updates.

First, the court addressed EPA's decision to not regulate decaBDE in recycled materials, concluding that the decision was beyond the scope of the EPA's authority under the TSCA. The EPA argued regulating decaBDE in recyclables was not necessary because it would hinder its efforts to promote recycling and be cost prohibitive considering its conclusion that low levels of decaBDE are present in recyclables. However, the court held the EPA lacked discretion to decline to regulate decaBDE because Congress already determined that decaBDE required certain regulation. Notwithstanding the court's holding above, EPA's decision was also not supported by substantial evidence because 1) the studies cited to support the agency's decision did not sufficiently address decaBDE in recyclables; and 2) agency failed to consider alterna-

tives to completely banning recyclables containing decaBDE. Finally, the court acknowledged the EPA's policy of promoting recycling, but held that it was not grounds to ignore Congress' mandate to regulate the chemical.

Next, the Ninth Circuit found that the EPA's decision to not further regulate decaBDEs in waste disposal was, also, not supported by substantial evidence. The EPA argued that, because the Resource Conservation and Recovery Act already regulated decaBDEs in waste disposal to the extent practicable, further regulation was not required. However, the court held that the EPA cannot escape its duty to regulate decaBDEs by relying on another preexisting statute because Congress intended for the statutes to work in tandem with one another. Furthermore, the court found that the EPA failed to address any gaps between the regulatory schemes, and, thus, the agency's decision to not further regulate decaBDEs in waste disposal was not supported by substantial evidence

EPA's Decision Not to Regulate DecaBDE

The court then addressed that the EPA's decision to not regulate decaBDEs in wastewater, finding that this decision was, also, not supported by substantial evidence. The EPA argued that regulating decaBDEs in wastewater would be impracticable because its own data showed no releases of deaBDEs in wastewater and it would be exceedingly difficult for wastewater dischargers to determine whether a rule applied to them. However, the court held that the EPA's rationale was not supported by substantial evidence because the EPA failed to consider evidence of both decaBDEs being discharged in wastewater and available technology that reduces concentration of the chemical in wastewater.

The court further found that that the EPA had neither the discretion nor substantial evidence to support its decision to not regulate decaBDEs in sewage sludge. The EPA argued that regulating decaBDEs in sewage sludge was not necessary because it would be impracticable to require dischargers to monitor and remove the chemical when so little of it is present in the sewage sludge. The court rejected this argument, holding that that EPA's decision to not regulate decaBDEs in sewage sludge was beyond the agency's power to create proper regulations to regulate the chemical.

Finally, the court found that the EPA lacked discretion to regulate decaBDEs in stages. Precedent holds that EPA can regulate in stages, but Congress must explicitly or implicitly permit the agency to do so, and the court concluded that TSCA neither expressly permits nor suggests that the EPA can regulate decaBDEs in stages, and thus the agency's decision was improper.

Conclusion and Implications

The Ninth Circuit remanded the EPA's rule reconsideration consistent with the court's opinion. The opinion provides important guidance regarding the discretion afforded to the EPA when the agency considers rules and regulations surrounding decaBDEs. More broadly, the opinion clarifies that the EPA's power to regulate in stages is statute dependent; that is, the EPA can only regulate in stages when a statute explicitly or implicitly permits the agency to do so. The court's opinion is available at: https://cdn.ca9.uscourts.gov/datastore/opinions/2026/05/13/21-70670.pdf.

(Stephanie Cook, Miles Krieger)

STANDING BEFORE SUBSTANCE: D.C. CIRCUIT DISMISSES PFAS CITIZEN SUIT AGAINST EPA

Public Employees for Environmental Responsibility, et al. v. Zeldin, et al., ___F.4th___, Case No. 24-5294 (D.C. Cir. May 1, 2026).

Public Employees for Environmental Responsibility and Center for Environmental Health v. Lee M. Zeldin, as Administrator of the United States Environmental Protection Agency, and Environmental Protection Agency, Intervenor was decided by the U.S. Court of Appeals for the District of Columbia Circuit on appeal from the federal District Court for the District of Columbia. The case arose from a Toxic

Substances Control Act citizen suit by Public Employees for Environmental Responsibility and Center for Environmental Health against the U.S. Environmental Protection Agency (EPA). The organizations alleged that EPA had failed to address risks from perfluorooctanoic acid, a PFAS compound allegedly formed during the fluorination of plastic containers, including containers processed by Inhance Technologies LLC.

Background

The complaint asserted two nondiscretionary EPA duties. First, plaintiffs invoked the Toxic Substances Control Act (TSCA) section 4(f), which requires EPA, after receiving information indicating that a chemical may present a significant risk of serious or widespread harm, to initiate applicable action within 180 days or publish a finding that the risk is not unreasonable. Plaintiffs alleged that EPA possessed sufficient information by March 29, 2023, including data concerning perfluorooctanoic acid's (PFOA) toxicity and alleged presence in fluorinated containers, and therefore had to take substantive regulatory action.

Second, plaintiffs invoked TSCA section 7(a)(2), arguing that EPA had to bring an enforcement action to abate an imminent hazard posed by PFOA allegedly generated by Inhance's fluorination process. Before suit, plaintiffs and others petitioned EPA to initiate TSCA section 6 rulemaking. EPA granted the petition in July 2024 and later sought comment on PFAS formation during fluorination, container uses, alternatives, and possible regulatory measures.

Procedural History

Plaintiffs filed suit under TSCA section 20 in July 2024, after EPA granted the rulemaking petition but before the public comment notice issued. EPA moved to dismiss for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1). The district court granted the motion.

As to section 4(f), the district court assumed for purposes of the motion that EPA had a nondiscretionary duty to act by a specified date but held that EPA's request for comment satisfied any such duty because it began the information-gathering process for potential regulation. The court therefore treated the section 4(f) claim as moot. As to section 7, the court questioned whether the provision imposed a nondiscretionary duty and held, in any event, that no such duty had arisen because EPA had not proposed a section 6 rule and declined to make it immediately effective.

The D.C. Circuit's Decision

The D.C. Circuit affirmed, but not on the District Court's statutory grounds. The panel held that the plaintiffs had not plausibly established associational standing. Because Article III standing is jurisdictional, that failure required dismissal regardless of whether the district court correctly resolved the section 4(f) mootness issue or the section 7 nondiscretionary duty issue.

The holding was procedural but dispositive. The court did not decide whether EPA's request for comment satisfied section 4(f), whether section 7(a)(2) creates a citizen-suit-enforceable nondiscretionary duty, or whether the alleged PFOA risks required further EPA action.

The Standing Analysis

PEER and CEH did not claim injury to the organizations themselves. Instead, they relied on associational standing. Under *Hunt v. Washington State Apple Advertising Commission*, an organization asserting associational standing must show that its members would have standing in their own right, the interests asserted are germane to the organization's purpose, and neither the claim nor requested relief requires individual member participation. The D.C. Circuit emphasized a threshold requirement implicit in *Hunt*: the organization must have members, or equivalent affiliates, whose interests it represents.

Plaintiffs conceded they were not traditional membership organizations. They argued instead that they were the functional equivalent of such organizations because of their relationships with board members, supporters, and staff. The court rejected that showing on the record before it. It declined to consider standing declarations submitted for the first time on appeal. It found the supporters theory insufficient because plaintiffs did not explain how supporters exercised the roles, responsibilities, or influence characteristic of members. It found the board theory inadequately developed.

The employee theory received the court's closest attention. Plaintiffs argued that staff could function as members because employees influenced the organizations through their responsibilities. The

court rejected that theory. It reasoned that employees are the means by which an organization acts, not the constituency whose interests define the organization's mission. Employee influence derived from job duties is not member-driven control. Treating staff as members would collapse the distinction between representative and represented that associational standing requires.

Conclusion and Implications

For California practitioners, the decision is significant despite arising in the D.C. Circuit because PFAS regulation, TSCA citizen suits, and challenges to EPA action turn on federal standing principles. California advocacy organizations that are not formal membership entities should evaluate standing before filing, identify affected individuals with concrete injuries, and plead facts showing that those individuals are members or true member equivalents. General references to supporters, staff, or aligned constituencies may not suffice.

Defense counsel for regulated businesses, including companies involved with packaging, containers, or PFAS-related processes, should consider early standing challenges where nonprofit plaintiffs rely on representational standing without a clear membership structure. At the same time, the case does not approve or reject EPA's PFAS response, and it does not resolve the merits of TSCA section 4(f) or section 7 claims. Its practical lesson is narrower but important: in environmental litigation, jurisdictional architecture can be outcome determinative, and the standing record must be built in the district court. The court's opinion is available online at: https://www.leagle.com/decision/infco20260501305.
(Darien Key, Derek Hoffman)

RECENT CALIFORNIA DECISIONS

SUBSTANCE OVER FORMALITY IN PROPOSITION 65 NOTICE COMPLIANCE—FIRST DISTRICT COURT FINDS SUBSTANTIAL COMPLIANCE SUFFICIENT

Toxin Working Group Inc. v. Best Naturals, Inc.,
___Cal.App.5th___, Case No. A170985 (1st Dist. May 22, 2026).

In *Chemical Toxin Working Group Inc. v. Best Naturals, Inc.*, the California Court of Appeal for the First Judicial District addressed whether a Proposition 65 pre-suit notice must strictly comply with regulatory contact-information requirements. The court concluded that substantial compliance was sufficient and reversed a judgment entered for the defendants.

Background

Chemical Toxin Working Group Inc., (dba Healthy Living Foundation), filed suit against dietary supplement companies alleging violations of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986. The trial court granted defendants' motion for judgment on the pleadings, finding the plaintiff's pre-suit notice defective because it did not strictly identify the name, address, and telephone number of a responsible individual within the noticing entity.

Proposition 65's Notice Framework

Proposition 65 permits private parties to bring enforcement actions in the public interest, but only after satisfying statutory notice requirements. Before filing suit, a private enforcer must give notice of the alleged violation to the alleged violator, the Attorney General, and appropriate local public prosecutors, and then wait at least 60 days.

The governing regulation further specifies the content required in the notice. Most notably, the notice must identify the alleged violator, the approximate time period of the alleged violation, the listed chemical involved, and "the name, address, and telephone number of the noticing individual or a responsible individual within the noticing entity and the name of the entity." The purpose of this notice procedure is to give alleged violators and public enforcement agencies enough information to evaluate the claim, decide whether to investigate, and potentially resolve the matter prior to litigation.

The Dispute as to Notice

The plaintiff's notice was sent on law firm letterhead by counsel representing Healthy Living Foundation and directed communications regarding the notice to the law firm. It identified the plaintiff's chief officer in a description of Healthy Living Foundation. Defendants argued that this notice failed to comply with the regulation because it did not provide the address nor telephone number of a responsible individual within the noticing entity itself. They contended that the regulation at issue required strict compliance, and that because the notice directed communications to counsel rather than an internal individual at Healthy Living Foundation, the action could therefore not procced.

The trial court agreed with Defendant's stance, concluding that although the notice listed Healthy Living Foundation's chief officer, it did not state that he was the responsible individual within the organization, and it relied instead on counsel's contact information, and entered judgment for defendants on such basis.

The Court of Appeal's Decision

Plaintiff appealed, and the Court of Appeal reversed the decision of the trial court. The Court of Appeal framed the issue as whether the statutory and regulatory notice requirements could be satisfied by substantial compliance, and whether the plaintiff's notice met that standard, and found the answer to be yes to both.

In doing so, the court adopted the reasoning of *Environmental Health Advocates, Inc. v. Pancho Villa's*

Inc., a recent Court of Appeal decision involving a similar Proposition 65 notice issue. [https://law.justia.com/cases/california/court-of-appeal/2026/d084705.html?__cf_chl_f_tk=NhD1SjCCf134ndVwd7CVx-9LJozl1M0js3u7mnXXjFTY-1782843869-1.0.1.1-f8kim5rck7okhBV9ymWVWRGwaup8oMxkMGNpkW-W1jkY].

In *Pancho Villa's*, the notice also identified outside counsel as the contact, and the Court of Appeal held that substantial compliance applied and was satisfied. The court in *Best Naturals* found that reasoning persuasive and applied it to the case before it.

The court also noted another recent decision in *The Chemical Toxin Group v. Kroger Company*, which reached the same conclusion where the pre-suit notice identified an attorney at the law firm representing the noticing party as the contact person. [https://www4.courts.ca.gov/opinions/documents/B341662.PDF].

With *Best Naturals*, the court observed, California appellate decisions had consistently rejected the argument that such notices fail merely on the basis that they identify counsel as the point of contact.

The Purpose of Notice

The court's reasoning strongly considered the role of attorneys in Proposition 65 matters. While acknowledging that earlier Proposition 65 cases had been critical of certain attorney driven settlements, the court nonetheless found the defendant's argument that strict adherence would promote direct communication and avoid driving up needless attorney's fees unpersuasive, particularly because there was nothing in the record to indicate that attorneys were misusing the notice process in the case at issue.

The court emphasized that identifying counsel as the point of contact does not undermine the purpose underlying the notice requirement. Proposition 65 notices and certificates of merit often involve highly complex issues, including exposure analysis and consultation with experts, as a result of which counsel is often best positioned to communicate with alleged violators and public enforcers. The court also noted in its substantial compliance analysis that the same notice had been sent to the Attorney General and to local prosecutors, none of whom objected that notice was inadequate.The Court of Appeal reversed the judgment and remanded the case with directions to vacate the order granting defendants' motion for judgment on the pleadings and enter a new order denying the motion. The plaintiff was awarded its costs on appeal.

Conclusion and Implications

Best Naturals informs Proposition 65 litigants that substantial compliance is the standard for pre-suit notice compliance. Notices still must be drafted carefully and private enforcers should still make every effort to provide the information the regulation requires, but the court makes clear that the notice will not fail simply because it directs communications to counsel. Ultimately, what is important is that notice substantially serves the statutory and regulatory purposes of informing alleged violators and public prosecutors of the claim. The decision makes procedural challenges to Proposition 65 notices more difficult for defendants where the alleged defect does not appear to impair evaluation, investigation, or potential resolution of the alleged violation. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/A170985.PDF.

(Carson Trigueiro, Derek Hoffman)

FOURTH DISTRICT COURT HOLDS THE CALIFORNIA PUBLIC RECORDS ACT, STATUTORY TIMEFRAME FOR MAKING RECORDS "PROMPTLY AVAILABLE" IS FLEXIBLE AND CONTEXT-SPECIFIC

Voice of San Diego v. San Diego Unified School District,
___Cal.App.5th___, Case No. D084327 (4th Dist. May 11, 2026).

In *Voice of San Diego v. San Diego Unified School District*, the Fourth District Court of Appeal held that the California Public Records Act (CPRA) (Gov. Code, § 7920.000 et seq.) does not establish a precise deadline for agencies to produce records in response to a CPRA request. The court concluded that the statutory requirement to make records "promptly available" is inherently flexible and that, therefore, the appropriate timeframe for compliance depends on the circumstances of the request.

Background

The CPRA establishes a process for the public to obtain information from state and local agencies. After receiving a CPRA request, an agency must determine (generally within ten days, or up to 24 days in "unusual circumstances") whether the request seeks disclosable records in the agency's possession and notify the requester of that determination. If the request seeks disclosable records, Government Code section 7922.530, subdivision (a), requires the agency to make the records "promptly available."

Plaintiff Voice of San Diego (Voice), a local online news organization, brought a taxpayer action against the San Diego Unified School District (District) to enjoin the District from using public funds to implement allegedly unlawful CPRA practices. Specifically, Voice argued that the District routinely violated the CPRA's requirement to make records "promptly available" by allegedly delaying the production of public records pertaining to dozens of CPRA requests submitted by Voice from 2015 to 2020. The trial court rejected Voice's interpretation of the CPRA, and found the evidence did not prove the District engages in any unlawfulpractice of delaying or withholding public records. Because the court had previously adjudicated all other causes of action in favor of the District, it entered final judgment denying the petition for writ of mandate.

The Court of Appeal's Decision

The Court of Appeal affirmed the Superior Court decision, concluding that Voice was not entitled to relief on its taxpayer cause of action because the District's record production practices did not violate the CPRA. In the published portion of its opinion, the court concluded that the CPRA's requirement for agencies to make responsive records "promptly available" establishes a "deliberately flexible" timeframe, rather than a precise deadline.

The court was unpersuaded by Voice's reliance on *Citizens for Responsibility and Ethics in Washington v. Federal Election Commission*, 711 F.3d 180 (D.C. Cir. 2013) (*Citizens*), a case involving the federal Freedom of Information Act (FOIA). For purposes of complying with FOIA, the *Citizens* court suggested that making records "promptly" available "typically would mean within days or a few weeks …, not months or years." The Fourth District Court, however, dismissed this language from *Citizens* as an unhelpful, out-of-context dictum.

Citing the dictionary definition of "prompt," the court interpreted section 7922.530, subdivision (a), to require responding agencies "to produce records quickly and without delay *as the occasion demands*." Under this interpretation, an agency's promptness depends on various factors, including the scope and complexity of the CPRA request, the resources available to the responding agency, and any potential external circumstances beyond the agency's control.

In an unpublished portion of the opinion, the court reviewed the trial court's factual findings and concluded that, under the circumstances, Voice failed to demonstrate that the District's conduct violated the CPRA.

In the end, the Court of Appeal held as follows:

> The CPRA does not precisely define the timeframe for the actual production of requested records, and we cannot graft a "within days or a

few weeks" requirement onto section 7922.530, subdivision (a). Whether an agency has promptly produced records is to be determined case by-case considering the scope and burden imposed on the particular agency by the particular request. We further conclude substantial evidence supports the trial court's factual findings that the District did not maintain an unlawful practice of violating the CPRA. Because there is no basis for a taxpayer action where the challenged governmental conduct is legal, the trial court properly denied the petition for writ of mandate.

Conclusion and Implications

Whether an agency has complied with its duty to make records "promptly available" is a fact-intensive inquiry requiring a case-by-case determination. While there are many relevant factors that a court may consider in this analysis, the opinion cautions against accepting "'any and every reason' an agency proffers as a sufficient basis to find prompt disclosure." Reviewing courts must remain mindful of the "constitutional imperative that public access to government records is a fundamental right of citizenship." The court's opinion, certified for *partial* publication is available at: https://www4.courts.ca.gov/opinions/documents/D084327.PDF.
(Louisa I. Rogers, Blaine Dyas)

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