Volume 36, Number 11
August/September 2026

# CALIFORNIA WATER™ LAW & POLICY Reporter

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Subscription Rate: 1 year (11 issues) $1025.00. Price subject to change without notice. Circulation and Subscription Offices: Argent Communications Group; P.O. Box 201, Galena, IL 61036-0201; 530-852-7222 or 1-800-419-2741. Argent Communications Group is a division of Argent & Schuster, Inc., a California corporation: President/CEO, Gala Argent; Vice-President and Secretary, Robert M. Schuster, Esq.

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## CALIFORNIA WATER NEWS

# DATA CENTER MORATORIA PROGRESS ACROSS THE NATION AND BECOME POLITICAL FODDER FOR MIDTERM ELECTION CAMPAIGNS

We previously addressed in the May 2026 issue of the *California Land Use Law & Policy Reporter* the fledgling efforts in California and across the country to oppose the development of new data centers. Since then, the movement has become the defining issue in midterm election races across the country.

Many data center opponents express concern with the impacts data centers can have on the surrounding community. Some of these impacts pertain to utility strain (water and electricity), environmental impacts stemming from utility usage, as well as noise and air quality impacts from the use of diesel generators during power outages, and few community benefits (e.g. permanent jobs, sales tax revenue, etc.) despite the size of the facilities.

While mostly addressing what would traditionally fall within the land use spectrum, water usage for these centers is present and an important factor in analyzing their presence across the state.

### Data Center Development Moratoria Become Political

Since our May 2026 issue, the following California counties (governing the unincorporated areas) and cities have adopted data center moratoria:

- County of Imperial (temporary—struck down, *see below*);
- County of Tulare (to October 2026);
- City of Baldwin Park (to March 2027);
- City of Coachella (permanent);
- City of El Monte (to March 2027);
- City of Imperial (expired July 2026);
- City of Indio (to October 2026);
- City of Montebello (expired March 2026);
- City of Monterey Park (permanent);
- City of Patterson (to July 2027);

While California has not adopted a statewide ban, New York State has adopted a temporary one-year moratorium, with other states considering similar restrictions.

Data center concerns have come to the fore in the Texas races for governor and U.S. Senate. The Democratic nominees running for governor and Senate in Texas have called for regulations to protect communities and end public incentives for data centers. The issue has become so salient in Texas that incumbent Republican Governor Greg Abbott (running for re-election) paused statewide the processing of new data center permits until state regulators have an opportunity to audit each project and for the state to develop guidelines. Questions over data center development have also seeped into races in Florida, Michigan, Ohio, Pennsylvania, and Wisconsin. At least 16 municipalities across the nation will consider data center regulation ballot measures by the end of the year.

### Urgency Ordinance

#### Government Code 65858

Generally, Government Code section 65858 allows a locality to adopt an "urgency" ordinance to "protect the public safety, health, and welfare" from uses "that may be in conflict with a contemplated general plan, specific plan, or zoning proposal" that the locality is considering. A legislative body cannot adopt an urgency ordinance unless it can make findings that "there is a current and immediate threat to the public health, safety, or welfare," and that the approval of entitlements for the use in question would constitute such a threat. (Gov. Code, § 65858(c).)

Urgency ordinances are always temporary and expire after 45 days from adoption. Some of the moratoria adopted by various California municipalities are or began as urgency ordinances, with some cities subsequently adopting longer-term ordinances.

#### Imperial County's Moratorium Ruled Unlawful

In an August 21, 2026, tentative decision by Imperial County Superior Court Judge Jeffrey B. Jones (*Imperial Valley Computer Manufacturing, LLC v. County of Imperial, et al.*, Case No. ECU004800), the court

found that the county's urgency ordinances failed to meet state law requirements.

Judge Jones in Imperial County concluded that the county's urgency ordinance failed to make the necessary findings that data centers posed a current and immediate threat to public health, safety, or welfare. The court explained that the ordinance must establish a causal connection between approving the projects and the claimed threats.

While the court accepted the findings contained in a second urgency ordinance adopted by the County, it still found that the ordinance failed to establish the connection between data center uses and the specific threats to health, safety, or welfare. Data centers' incompatibility with proposed regulations is not enough to establish such a threat.

While Judge Jones ordered the county to stop enforcing the moratorium, the court did not rule on whether the county must process the petitioner's project or even which ordinances would apply to the petitioner's project, which would otherwise be the largest data center in the state.

### Conclusion and Implications

The data center backlash, which has united interest and community groups from across the political spectrum, apparently caught major tech companies off guard. Tech companies including Amazon and Anthropic, and Northern California utility Pacific Gas & Electric have spent millions of dollars lobbying the California Legislature during this year's session. Though, admittedly, these expenditures are not itemized per proposed legislation, the scope of lobbying included at least some bills pertaining to data center regulation.

In any case, land use and California Environmental Quality Act practitioners represent data center developers should be aware of the political challenges they face when evaluating sites. Project proponents should prepare for a vocal and well-funded opposition, especially when the application status approaches the environmental review stage. Finally, these projects should expect to provide significant community benefits (e.g. workforce commitments, infrastructure investments, etc.) to assuage community concerns. Practitioners representing municipalities considering data center bans, should ensure that urgency ordinances make the requisite findings that link the proposed uses to specific health and safety threats. (Braeden Mansouri)

## REGULATORY DEVELOPMENTS

# U.S. BUREAU OF RECLAMATION RELEASES FINAL ENVIRONMENTAL IMPACT STATEMENT DETAILING OPERATIONAL GUIDELINES AND STRATEGIES FOR LAKE POWELL AND LAKE MEAD

On July 31, 2026, the U.S. Bureau of Reclamation (Reclamation), in conjunction with the Secretary of the Interior (Secretary), released a Final Environmental Impact Statement (EIS) analyzing various decision-making frameworks and their impacts on the management of Lake Powell and Lake Mead and the greater Colorado River Basin (collectively referred to as the Basin). The Final EIS outlines Reclamation's preferred alternative that will guide the management of the Basin beginning October 1, 2026, along with several other decision-making frameworks that were considered but not adopted. On August 21, 2026, the Department of the Interior issued a Record of Decision adopting the preferred alternative's Decision Framework and, pursuant to that framework, issued the first set of operating guidelines, which govern operating years 2027 and 2028.

### Factual Background

The Basin supplies water for roughly 40 million people and approximately 5.5 million acres of agricultural land across seven states in the western United States, 30 Tribal Nations, and Mexico. For the past 26 years, the Basin has experienced severe drought conditions resulting in low runoff and reservoir levels. Notably, the combined contents of Lake Powell and Lake Mead have reached lows unseen since Lake Powell began filling in 1963. Consequently, Reclamation has taken unprecedented measures to combat the drought that included the release of up to an additional one million acre-feet of water from Flaming Gorge Reservoir and a reduction in releases from Lake Powell to the Lower Basin. However, these novel actions have been insufficient to halt the Basin's declining hydrologic conditions.

In 2022, the Department of the Interior (Department), along with Reclamation, began engaging the public in an effort to develop new operating guidelines, working extensively with the Basin States, Basin Tribes, and other interested parties affected by the Basin's management. Despite the engagement, the Department and Reclamation were unable to develop consensus-based, long-term operational guidelines for the Basin.

The Department published a draft EIS in January 2026 because new management operations and guidelines must be in place by October 1, 2026. The draft EIS did not identify a preferred alternative; the preferred alternative later analyzed in the Final EIS fell within the range of alternatives the draft EIS had considered. During this time, the Department and Reclamation continued to engage in negotiations with entities operating in the Basin in hopes of reaching a consensus. Ultimately, consensus was not reached, and the Department was required to complete the National Environmental Policy Act (NEPA) process to have new management solutions ready for the October 1 deadline.

### Reclamation's Preferred Alternative

Broadly, the Secretary and Reclamation analyzed a range of management strategies and the tradeoffs associated with selecting a particular approach. Reclamation and the Secretary identified as their preferred alternative an adaptive decision framework that will allow the Department to develop and maintain consensus-based guidelines for operating years 2027 through 2036.

The Final EIS analyzed several management strategies: the No Action Alternative, the Basic Coordination Alternative, the Enhanced Coordination Alternative, the Maximum Operational Flexibility Alternative, the Supply Driven Alternative, and the Preferred Alternative. The Department selected its preferred alternative as the decision-making framework to guide the management of the Basin for the next decade. The decision-making framework of the preferred alternative establishes operational principles, key thresholds and ranges for operational elements, and a process that would govern the de-

velopment and issuance of operating guidelines that would be implemented in two-year intervals unless a consensus-based agreement provides for a longer duration. The preferred alternative did not establish specific operating guidelines for managing the Basin; rather, it provides a structure within which operating guidelines can be developed, reviewed, and implemented through 2036.

Operating principles for the Department's preferred alternative center on several management priorities, including the following: operations should be responsive to hydrology, critical federal infrastructure must be protected through practical and deliberate operations, operating guidelines should implement the Long Range Operating Criteria while also providing direction to address extraordinary circumstances, and operating guidelines should prioritize consensus-based recommendations.

The Department concluded that no singular decision-making framework could maximize the protection of critical water level elevations, minimize reduction in water deliveries, and maximize hydropower generation all at once. However, the Department found that its preferred alternative appropriately balances tradeoffs across key metrics and provides protection under hydrologic conditions drier than those of the current drought. Additionally, the Department concluded that the preferred alternative protects critical infrastructure and maintains a moderate balance of performance among reservoir elevations, shortages, and Glen Canyon Dam releases, even in the driest hydrologic conditions.

Overall, the Department's position is that the preferred alternative appropriately balances inherent system tradeoffs and constitutes a practical approach to "robust protection of critical infrastructure while considering adverse impacts to water users and avoiding unnecessary impacts to other resources."

### Conclusion and Implications

The Department and Reclamation's selection of the preferred alternative signals a continued emphasis on the creation and implementation of consensus-based management strategies to combat the drought in the Basin. While the framework does not itself prescribe long-term operating guidelines, the preferred alternative makes clear that the Department and Reclamation are focused on creating a flexible decision-making framework that may accommodate any future consensus-based agreements.

The flexibility afforded by this framework may allow management decisions to better balance the differing needs of those who use and rely on the Basin. However, the lack of consensus highlights the difficulty surrounding the Basin's management over the past several decades. Despite a concerted effort from all parties, a long-term consensus on Basin-wide water management strategies has yet to be reached, meaning the solutions discussed in the Final EIS are meant to function in the interim. Without a long-term agreement, management of the Basin may remain unsettled, potentially affecting those who rely on finalized guidelines and key metrics in the Basin's management. For more information, see: https://www.usbr.gov/ColoradoRiverBasin/post2026/final-eis/index.html. The Record of Decision and the 2027–2028 Operating Guidelines are available at: https://www.usbr.gov/ColoradoRiverBasin/post2026/decision-doc/index.html.
(David Boyer)

## STATE WATER RESOURCES CONTROL BOARD MOVES TOWARD CALIFORNIA'S FIRST SGMA INTERIM PLAN AS COURTS DEFINE THE LIMITS OF PROBATIONARY AUTHORITY

Three developments over the summer of 2026 have clarified the state's expanding role under the Sustainable Groundwater Management Act (SGMA) and the courts' treatment of challenges to local and state groundwater-management decisions. Together, the developments mark a transition from plan review and probationary oversight toward direct state intervention, fee enforcement, and more defined limits on judicial reexamination of technical groundwater determinations.

In July 2026, State Water Resources Control Board (Water Board or Board) staff told Tule Subbasin water managers to expect a pumping moratorium along a corridor of the Friant-Kern Canal as early as April 2027—the opening phase of what would be the first interim plan adopted under SGMA. In August, a

Kings County Superior Court judge cleared the way for the Board to begin invoicing most Tulare Lake Subbasin pumpers for probationary extraction fees, while enjoining enforcement as to two Groundwater Sustainability Agencies (GSAs) whose "good actor" exclusion requests the Water Board had denied. And on July 30, the Third District Court of Appeal held that the primary jurisdiction doctrine bars a reverse validation action that would have a trial court redo the Department of Water Resources' (DWR) technical evaluation of a Groundwater Sustainability Plan (GSP).

## Background

SGMA (Water Code § 10720 et seq.) requires local agencies in high- and medium-priority basins to form GSAs and to adopt GSPs that avoid six enumerated undesirable results, including chronic lowering of groundwater levels, land subsidence, and depletion of interconnected surface water. Critically overdrafted basins must achieve sustainability by 2040.

Where DWR determines a GSP is inadequate, primary regulatory oversight shifts to the State Water Board. Under Water Code § 10735.2, the Water Board may designate a basin probationary, which triggers extraction reporting and filing fees. Section 10735.2(e) permits the Board to exclude from probationary status a portion of a basin managed by a GSA that is operating consistently with SGMA—the so-called "good actor" provision. If the deficiencies that produced the designation are not corrected within the period specified by the Water Board (one year for the Tule Subbasin), § 10735.8 authorizes the Board, after notice and hearing, to adopt an interim plan. It is at that stage that the state itself may impose extraction restrictions.

DWR has referred seven San Joaquin Valley subbasins to the Board since 2023: Tulare Lake, Tule, Kaweah, Kern County, Delta-Mendota, Chowchilla, and Pleasant Valley. Two were designated probationary in 2024, Tulare Lake in April and Tule in September. The Kern County Subbasin was returned to DWR oversight in September 2025 after the Board found its revised plans substantially, though not entirely, corrected earlier deficiencies.

## The Tule Subbasin and the First Interim Plan

On July 16, 2026, Board staff met with Tule Subbasin water managers to lay out the interim plan process. The presentation left little ambiguity about direction. Phase I would target subsidence damage to the Friant-Kern Canal, with growers farming within roughly two miles of the canal in southern Tulare County directed to prepare for a pumping moratorium. Staff put the cost of canal damage above $797 million.

The schedule presented was substantially accelerated from what managers had previously been told. A public draft of the Phase I plan would issue in January 2027, notices to pumpers in February, and a final version in March, with Board consideration expected at an April 2027 meeting. Phase II would extend pumping reductions across the subbasin to protect critical infrastructure and domestic wells. The draft would also raise the extraction fee from $20 to $35 per acre-foot.

Practitioners should note the conditional character of the timeline. Staff indicated the process could be overtaken if subbasin GSAs produce an acceptable groundwater management plan first. Local agencies are attempting exactly that. The subbasin's original six GSAs have since divided into twelve; eleven of the twelve have signed on to a unified plan effort, all twelve have joined a subsidence study defining where and why sinking is occurring, and managers report more than 50 technical and policy meetings since April. A rewritten GSP is targeted for June 2027. Negotiations with Friant Water Authority over canal protection continue and may themselves produce a reduced pumping zone on either side of the canal.

## Tulare Lake Subbasin: Kings County Farm Bureau Litigation

The Tulare Lake Subbasin has followed a different path through the courts. The Kings County Farm Bureau (Farm Bureau) sued the Board in 2024 following the April 2024 probationary designation, obtained a preliminary injunction halting probationary measures, saw that injunction reversed by the Fifth District Court of Appeal in October 2025, and had review denied by the California Supreme Court in early 2026.

On remand, the Farm Bureau sought a second preliminary injunction. In a ruling issued in mid-August 2026, Kings County Superior Court Judge Shane Burns granted it in part and denied it in part. The court found the Farm Bureau likely to succeed on its claim that the Board erred in 2024 by failing

to consider excluding Tri-County Water Authority and Southwest Kings GSA under the good actor provision, and barred enforcement of probationary measures, including fees within those two agencies pending final resolution. The Board had denied those requests on the ground that no comprehensive plan existed for the subbasin as a whole.

As to the remainder of the subbasin, the court denied relief, resting on California's "pay first, litigate later" rule requiring payment of contested fees and taxes while their legality is adjudicated. The practical consequence is that the Board may now invoice most Tulare Lake pumpers at $20 per acre-foot, excepting those extracting 20 acre-feet or less per year, whom the Board excluded from probationary reporting and fees by resolution in April 2026. A hearing on the merits is set for October 6, 2026.

### *AquAlliance v. Vina Groundwater Sustainability Agency*

In *AquAlliance v. Vina Groundwater Sustainability Agency*, ___Cal.App.5th___, Case No. C102382 (July 30, 2026), the Third District addressed the scope of judicial review of GSPs. https://www4.courts.ca.gov/opinions/documents/C102382.PDF.

AquAlliance, the California Water Impact Network, and the California Sportfishing Protection Alliance filed a reverse validation action in Butte County Superior Court in February 2022 challenging the GSP adopted in December 2021 by the Vina GSA and Rock Creek Reclamation District. DWR approved the plan in July 2023, accompanied by a staff report and six corrective actions. The trial court then dismissed, and plaintiffs appealed; the agencies cross-appealed the earlier ruling permitting non-agency parties to bring the action.

On standing, the court sided with plaintiffs, finding nothing in the validation statutes limiting reverse validation actions to public agencies. On the merits, it affirmed dismissal under the primary jurisdiction doctrine, reasoning that the plaintiffs' action and DWR's statutory evaluation posed the identical question: whether the plan would achieve the basin's sustainability goal. The court held the Legislature committed that scientific and technical judgment to the Department. The court also invoked statewide uniformity, observing that independent county-by-county technical reviews would produce inconsistent application of a single statute.

The court stated it was not foreclosing later judicial review of DWR's own work; the defect was that the action sought "to supplant the Department's evaluation." Nor did the court decide how challenges to plan components unrelated to the core sustainability determination, or actions joining other legal theories, should be treated. Acting Presiding Justice Robie authored the opinion, joined by Justices Krause and Mesiwala.

### Conclusion and Implications

Taken together, these developments narrow the paths available to those seeking to contest pumping restrictions.

*AquAlliance* substantially forecloses one route. Plaintiffs retain standing to bring reverse validation actions, but a challenge framed as a technical attack on whether a DWR-approved plan will achieve sustainability now faces dismissal under primary jurisdiction.

The Kings County ruling directs that the good actor provision remains viable, and the court's finding of likely success on that claim has implications extending beyond the two agencies enjoined. But the pay-first rule means the Board's revenue mechanism will proceed regardless.

The Tule Subbasin process appears to be where the statute's ultimate authority may be tested. An interim plan is the only mechanism by which the state directly restricts extraction under SGMA, and a moratorium in a corridor planted in permanent crops will present takings, water rights, and Proposition 218 questions that no prior SGMA proceeding has squarely raised. The Board has both adopted an accelerated schedule and stated that local action can still displace state action.
(David Boyer)

# STATE WATER RESOURCES CONTROL BOARD TO CONSIDER $50,000 TO $250,000 FEE FOR "GOOD ACTOR" FEE EXCLUSION REQUESTS

In September 2026, the State Water Resources Control Board (State Water Board) will consider adopting a new fee under the Sustainable Groundwater Management Act (SGMA). The fee would apply to Groundwater Sustainability Agencies (GSAs) in probationary groundwater basins that ask the State Water Board to consider whether their updated plan adequately manages their portion of the basin and, therefore, whether their landowners should be exempted from probationary fees.

## Background: Probation and Exclusion Requests

Under SGMA, when the State Water Board designates a groundwater basin as "probationary," all groundwater pumpers in the basin become subject to registration and reporting requirements as well as a volumetric fee on groundwater pumping—intended to fund the cost of the State Water Board's administration of the probationary basin. In addition, the State Water Board can prepare an interim plan to manage the basin until GSAs establish adequate plans.

However, the State Water Board has the authority to exempt pumpers from these requirements and fees if their extractions "are subject to a local plan or program that adequately manages groundwater within the portion of the basin to which that plan or program applies." (Wat. Code, § 10735.2, subd. (c)(1).) Some colloquially refer to this as the "good actor" or "good guy" exemption or exclusion. Many GSAs in the two probationary basins have indicated that they believe modifications made to their plans since the probationary hearing justify their receiving this exemption and have requested that the State Water Board reconsider granting those exemptions.

## Proposed Fee Structure

The State Water Board staff has proposed that the board impose an application fee for seeking a "good actor" exemption. Several GSAs in the probationary basins have made multiple applications in the past, and State Water Board staff says reviewing those requests is very time-consuming. Therefore, they have proposed a fee that would range from $50,000 to $250,000 for each application, depending on the "groundwater usage tier" of the GSA. The proposal has been discussed at workshops and stakeholder meetings, and it is currently expected to go before the State Water Board for potential adoption on September 15, 2026.

GSA managers in the probationary basins argue that the fee creates the wrong incentives by continuing to penalize landowners in GSAs that are doing the necessary work to manage their portion of the basin. They have also raised questions about the other SGMA fees imposed by the State Water Board and how those funds are being used.

## Conclusion and Implications

Joaquin Esquivel, the chairman of the State Water Board, has previously commented at a public meeting that the pursuit of the "good actor" exemption is often a "distraction" from the goal of improving GSPs and getting out of probation. However, as the State Water Board staff prepare interim plans for the probationary basins, many GSAs are likely to want their exemption request considered if they believe that they have made the necessary changes to their plan—even if the other GSAs in the basin have not. If the State Water Board adopts this fee, it will certainly affect the cost-benefit analysis of an application. But it might not actually deter GSAs from applying.

*Editors Note: The author represents clients in both of the current probationary basins, including a GSA in the Tulare Lake Subbasin and a water district in the Tule Subbasin.*
(Brett Stroud)

## RECENT FEDERAL DECISIONS

# SCOPING DOES NOT EQUAL WAIVER: NINTH CIRCUIT REVIVES HFRA CHALLENGE

*Alliance for the Wild Rockies v. Higgins*,
___F.4th___, Case No. 24-1500 (9th Cir. July 16, 2026).

In *Alliance for the Wild Rockies v. Higgins* the United States Court of Appeals for the Ninth Circuit issued a published opinion on July 16, 2026, reversing summary judgment for the United States Forest Service (Forest Service) and remanding. The case concerns the decision to treat the Hanna Flats Good Neighbor Authority Project in the Idaho Panhandle National Forests as a collaborative restoration project categorically excluded from full National Environmental Policy Act (NEPA) review under the Healthy Forest Restoration Act (HFRA or Act). The appellate issue was whether Alliance forfeited its challenge by failing to argue during HFRA scoping that the project fell outside the statutorily defined wildland-urban interface. The majority held that no statute or regulation-imposed issue exhaustion and declined to create such a requirement for this process and claim.

## Background

### The Project and the Administrative Record

Beginning in 2016, the Forest Service developed the Hanna Flats Project with state participants, landowners, and conservation groups to address insect or disease infestation, hazardous fuels, and wildfire risk. The agency issued a Scoping Notice seeking public feedback and stating that the project area lay entirely within the wildland-urban interface defined by Bonner County. The notice also indicated that the agency might use HFRA's categorical exclusion from NEPA review.

Alliance submitted extensive comments but did not contend that the project fell outside HFRA's wildland-urban-interface definition. The Forest Service later issued a Decision Memo invoking 16 U.S.C. § 6591b(a) and concluding that the project satisfied the categorical exclusion. Alliance sued to enjoin the project.

### A Protracted Procedural History

The litigation produced multiple District Court rulings and earlier Ninth Circuit appeals. The first federal District Court found that the Forest Service had not shown the project fell within the statutory interface and remanded without vacatur. The agency then issued a Supplemental Decision Memo, prompting a second action and a preliminary injunction.

In *Alliance for the Wild Rockies v. Petrick*, 68 F.4th 475 (9th Cir. 2023), the Ninth Circuit held that Alliance's comments had not alerted the Forest Service to the specific interface objection. It nevertheless remanded for the District Court to decide whether comments were legally required to preserve the issue. The prior panel also held that HFRA's statutory definition, not Bonner County's broader definition, controlled. After remand, the Forest Service withdrew the supplemental memorandum and reinstated its initial Decision Memo. The District Court then deemed the objection forfeited and granted summary judgment for the Forest Service.

## The Ninth Circuit's Decision

### No Statutory or Regulatory Exhaustion Requirement

The Ninth Circuit distinguished exhaustion of administrative remedies from issue exhaustion, also known as administrative waiver. Issue exhaustion requires a party to present a specific contention to the agency before seeking judicial review. Although Congress required administrative review and issue exhaustion for many HFRA projects, it excluded collaborative restoration projects from that review process. The Forest Service conceded that no other statute or regulation required issue exhaustion here.

The majority therefore asked whether to impose exhaustion judicially. That inquiry depends on both

the characteristics of the administrative process and the nature of the claim. The court concluded that HFRA scoping resembled the informal, non-notice-and-comment process addressed in *Alaska Survival v. Surface Transportation Board*, 705 F.3d 1073 (9th Cir. 2013), rather than formal notice-and-comment rulemaking.

### Why HFRA Scoping Did Not Support Waiver

The court characterized scoping as an early, open, collaborative process used to obtain feedback while a project remains under development. HFRA did not require interested parties to comment, prescribe formal procedural guardrails, require briefs, or notify participants that failing to raise an issue would bar later judicial review. The Forest Service's notice and cover letter invited feedback but did not state that comments were required to preserve claims. Because participants were not responsible for developing legal issues adversarially, the majority found little justification for judicially imposed issue exhaustion.

The court also distinguished NEPA alternatives claims governed by *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council and Department of Transportation v. Public Citizen*. Those decisions require commenters to identify alternatives or concerns that an agency cannot reasonably evaluate unless presented. Alliance instead alleged that the Forest Service exceeded its statutory authority by applying the wrong legal definition. The agency had an independent obligation to apply HFRA correctly, and the Scoping Notice did not clearly disclose that Bonner County's definition would supply the legal basis for the exemption.

### The Dissent and the Limits of the Holding

Judge Ryan D. Nelson dissented. He viewed administrative waiver as the general rule in informal rulemaking and concluded that Alliance had ample notice and opportunity to challenge the exemption. In his view, the majority improperly imported an adversariness analysis from Social Security adjudications into rulemaking and created uncertainty for agencies and reviewing courts.

The majority did not reach the exemption's merits. It reversed only the forfeiture ruling and remanded for the District Court to apply HFRA's statutory definition under the APA's arbitrary-and-capricious standard.

### Conclusion and Implications

For California practitioners, *Higgins* is controlling Ninth Circuit authority in federal administrative litigation and is directly relevant to Forest Service projects within California. The decision limits judicially imposed issue exhaustion where scoping is informal and non-adversarial, no statute or regulation requires preservation, and the claim concerns statutory compliance rather than information or alternatives commenters were expected to supply.

The decision does not eliminate preservation requirements generally. Issue exhaustion remains significant in formal notice-and-comment proceedings, administrative processes with express objection rules, and NEPA claims involving alternatives or factual concerns never presented to the agency. Project opponents should continue to raise all reasonably apparent objections during scoping to build the record and avoid waiver disputes. Agencies should identify the legal definitions and statutory predicates supporting categorical exclusions and state clearly when failure to comment may affect later review. *Higgins* provides a narrower path around forfeiture, but it does not replace careful administrative participation. The court's published opinion is available here: https://cdn.ca9.uscourts.gov/datastore/opinions/2026/07/16/24-1500.pdf.

(Darien Key)

# FEDERAL DISTRICT COURT DENIES PRELIMINARY INJUNCTION OVER SHASTA DAM OPERATIONS, UPHOLDING U.S. BUREAU OF RECLAMATION'S WATER PLAN

*San Francisco Baykeeper v. U.S. Bureau of Reclamation*, ___F.Supp.4th___, Case No. 2:26-cv-00671-JLT-EPG (E.D. Cal. Aug. 3, 2026).

The U.S. District Court for the Eastern District of California denied three environmental organizations' request for a preliminary injunction requiring the U.S. Bureau of Reclamation (Reclamation) to modify its 2026 operations of Shasta Dam and Reservoir. The court classified the requested relief as a mandatory injunction and concluded that the plaintiffs failed to satisfy the heightened standard applicable to such relief.

## Background

On March 2, 2026, San Francisco Baykeeper, the Center for Biological Diversity, and Friends of the River filed suit against Reclamation, the National Marine Fisheries Service, and several federal officials. The broader lawsuit alleges that the federal defendants violated the federal Endangered Species Act and Administrative Procedure Act in connection with Reclamation's operation of the Central Valley Project. Among other allegations, the plaintiffs contend that Reclamation failed to comply with protective measures and incidental-take limits established by the National Marine Fisheries Service's (NMFS's) 2024 Biological Opinion (BiOp) for winter-run chinook salmon, Central Valley steelhead, and North American green sturgeon.

The preliminary-injunction motion addressed a narrower issue: Reclamation's operation of Shasta Dam and Reservoir during the summer and early fall of 2026. Keswick Dam prevents winter-run chinook salmon from reaching their historic upstream spawning habitat. Consequently, the survival of eggs deposited downstream depends substantially on Reclamation's release of sufficiently cold water from Shasta Reservoir. The 2024 BiOp established a "Shasta Framework" for managing water temperature and reservoir storage while accounting for fish protection, water-delivery obligations, flood control, and other authorized project purposes.

In the framework, Reclamation designated 2026 as a "Bin 2A" year based on projected end-of-April and end-of-September reservoir storage. The plaintiffs argued that the high end-of-April storage level required Reclamation to treat 2026 as a more protective Bin 1 year and preserve at least 2.4 million acre-feet of water through September unless achieving that target was impossible. Reclamation responded that the framework uses both April storage and projected September storage to make the initial classification and that the forecasts therefore supported its Bin 2A designation.

The plaintiffs sued Reclamation under sections 7 and 9 of the Endangered Species Act and the Administrative Procedure Act, alleging that Reclamation was operating outside the 2024 biological opinion's Shasta Framework. The plaintiffs then sought emergency relief requiring Reclamation to reduce releases from Shasta Reservoir, prepare a new operating plan, and operate consistently with the plaintiffs' interpretation of the Bin 1 requirements. The court denied the plaintiffs' request for a temporary restraining order on July 9, 2026, and subsequently denied their motion for a preliminary injunction.

## The District Court's Ruling

Although the order is not a final ruling on the merits, it indicates that the court views Reclamation's interpretation of the Shasta Framework as better supported by the governing documents. The court expressly stated that the plaintiffs did not appear likely to succeed on the claim advanced in the motion and failed to make the stronger showing required for a mandatory injunction.

In its ruling, the District Court first rejected the plaintiffs' argument that the requested injunction would merely preserve the status quo. The proposed relief would have required Reclamation to conduct new modeling, prepare and implement a new temperature-management plan, and materially change its reservoir operations. Because the requested order would compel affirmative action, the court treated it as a mandatory injunction. The plaintiffs therefore

had to demonstrate that the law and facts clearly favored their position, not merely that they were likely to prevail.

Second, the court found Reclamation's interpretation of the 2024 BiOp more persuasive. Although language in Table 25 of the BiOp supported the plaintiffs' position, the court concluded that the underlying Proposed Action, decision tree, and operational modeling supported using both projected April and September storage to determine the applicable Bin. The court suggested that Table 25 may have inaccurately summarized the end-of-April storage ranges described in the Proposed Action. The court used the interpretive framework from *Kisor v. Wilkie* as guidance but did not ultimately rely on agency deference. The Court directly addressed the interpretations of the BiOp, and underlying data to support and, in doing so, made clear that the decision was not based on any level of agency-deference but, instead, based on a finding that Reclamation's position was more factually supported and, therefore, did not assess questions of deference.

### Conclusion and Implications

The ruling leaves Reclamation's 2026 Shasta operations unchanged by the requested federal injunction. It does not, however, finally approve those operations or resolve the plaintiffs' broader allegations concerning incidental take, reinitiation of ESA consultation, or the validity and application of the 2024 BiOp.

Legally, the decision underscores the high threshold plaintiffs face when seeking mandatory injunction against federal agency operations, particularly when relying on narrow claims regarding BiOp framework, and addresses the importance of a fact-based assessment, while declining to address to questions of agency deference. The court's order is available here: https://www.courthousenews.com/wp-content/uploads/2026/08/baykeeper-injuction-denied-ruling.pdf. (Stephanie Cook, Miles Krieger)

## RECENT CALIFORNIA DECISIONS

# PUBLIC LAND, CANCELED SHARES: FIRST DISTRICT COURT UPHOLDS MUTUAL WATER COMPANY STOCK RULE

*City of Clearlake v. Highlands Mutual Water Company*, ___Cal.App.5th___, Case No. A172743 (1st Dist. July 7, 2026).

The First District California Court of Appeal has upheld a statutory rule that requires mutual water companies to cancel "appurtenant" shares held by public entities. The court rejected a constitutional challenge by the City of Clearlake (City). This decision clarifies that public ownership of land served by a mutual water company does not necessarily carry continued shareholder rights, even where the public entity many continue receiving water at shareholder rates.

### Background

In *City of Clearlake v. Highlands Mutual Water Company*, the California Court of Appeal, First Appellate District, issued its decision on July 7, 2026. The court reversed a Lake County Superior Court order granting the City of Clearlake (City) a preliminary injunction that required Highlands Mutual Water Company (Highlands) to reissue shares canceled under Corporations Code Section 14300, subdivision (a). The Court of Appeal held that the statute, which requires cancellation of appurtenant mutual water company shares held by public entities, does not violate article XVI, Section 17 of the California Constitution.

The City initially sued over an allegedly invalid board election and Highlands's refusal to permit inspection of corporate records. After the trial court invalidated the election, Highlands canceled shares appurtenant to property owned by governmental agencies, including the City's shares. Highlands cited Section 14300 and stated that it would continue selling water to the City at shareholder rates. The City sought interim relief, contending that cancellation impaired its shareholder rights and conflicted with the Constitution.

### Mutual Water Companies and Section 14300

A mutual water company distributes water only to shareholders, whose shares represent proportional rights to available water. Appurtenant shares are attached to specific land, pass automatically with the land, and may be used only for that land's benefit. Non-appurtenant shares are personal property comparable to ordinary corporate stock.

Section 14300 continues a statutory framework dating to 1935. It requires the secretary of a qualifying mutual water company to cancel appurtenant shares held by the state, school districts, and other public agencies. The company may nevertheless sell water to those entities at the same rates charged to shareholders. The court treated the cancellation duty as mandatory and self-executing.

### At the Trial Court

Article XVI, Section 17 generally prohibits public entities from holding private corporate stock, but permits them to acquire and hold stock in a mutual water company when held for the purpose of furnishing water for public, municipal, or governmental purposes. The City argued that using water on municipal property, including a community splash pad, brought its shares within that exception.

The trial court agreed and found Section 14300 unconstitutional as applied. It ordered Highlands to reissue the shares, reasoning that the City was likely to prevail on the constitutional question. On appeal, the constitutional ruling was reviewed de novo. The appellate court also examined whether the trial court had properly applied the two preliminary injunction factors: likelihood of success and relative interim harm.

## The Court of Appeal's Decision

### Interpreting the Constitutional Exception

The Court of Appeal held that Section 17 can reasonably be read to protect stock ownership when a public entity acts as a water purveyor, rather than when it merely consumes water on its own land. The phrase "furnishing a supply of water," the court reasoned, ordinarily implies affirmative action to provide, distribute, or deliver water. Under that construction, the exception applies when a public agency secures water and distributes it throughout the territory it serves for public purposes.

Appurtenant shares operate differently. A public entity acquires them automatically with the land, and the associated water may be used only for the parcel's benefit. In that setting, the public entity is a consumer, while the mutual water company furnishes the water. Even when a parcel contains a public facility, the public entity furnishes the facility or municipal service, not the water itself.

The court also relied on constitutional history and rules favoring harmonization. Earlier constitutional provisions expressly protected stock ownership incident to land ownership when the electorate intended to include appurtenant shares. Comparable language was omitted from the provision that became Section 17. The statutory cancellation rule also predates the current constitutional language. Because voters are presumed aware of existing law, the court found it reasonable to conclude that Section 17 and Section 14300 were intended to operate together.

The court acknowledged that the City's interpretation was linguistically possible. That was insufficient to invalidate the statute. Legislation is presumed constitutional and may be struck down only when a conflict is clear and unquestionable. Because Highlands's interpretation was possible, practical, and consistent with the historical framework, the City did not carry its burden.

### Delegation Challenge and Disposition

The City separately argued that Section 14300 violated article XI, Section 11 by delegating to a private company authority to interfere with municipal property. The court rejected that claim. Public ownership of private stock implicates a statewide constitutional policy, not a purely local concern. Further, the company secretary exercises no policy discretion because the statute requires cancellation of all qualifying shares.

The court reversed the preliminary injunction and remanded for further proceedings. It did not direct judgment for Highlands on the remaining action. The trial court must reconsider preliminary relief under the correct constitutional analysis and evaluate both likelihood of success and the parties' relative interim harms.

## Conclusion and Implications

The decision provides significant guidance for public agencies and mutual water companies involved in land transactions. A public entity acquiring land with appurtenant shares should not assume it will retain voting, inspection, governance, or other shareholder rights. Section 14300 requires cancellation, although the public entity may continue purchasing water at shareholder rates.

Transaction counsel should determine whether shares are appurtenant, whether the company's governing documents and recorded instruments satisfy Section 14300, and whether the agency's water need is parcel-specific or part of a broader public water-supply function. The distinction is material because Section 17 may still allow a public entity acting as a water purveyor to hold non-appurtenant shares. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/A172743.PDF. (Darien Key, Derek Hoffman)

# THIRD DISTRICT COURT LIMITS SCOPE OF REGULATORY FEES UNDER SGMA TO OWNERS AND OPERATORS OF GROUNDWATER WELLS

*Garst v. Tehama County Flood Control and Water Conservation District*, 121 Cal.App.5th 507 (3rd Dist. 2026).

In Garst v. Tehama County Flood Control and Water Conservation District, the Third District Court of Appeal reviewed a 29-cent-per-acre fee imposed on all land in Tehama County to fund the costs of groundwater management planning under the Sustainable Groundwater Management Act (SGMA). The Court of Appeal held that the authority of a Groundwater Sustainability Agency (GSA) to impose such regulatory fees was limited to owners and operators of groundwater wells, both on statutory and on constitutional grounds.

## Background

The California Legislature enacted SGMA in 2014 with the goal of sustainably managing California's groundwater resources by 2040. The statute provides for local public agencies to become or to form GSAs to manage all or part of a groundwater basin. GSAs are required to prepare a Groundwater Sustainability Plan (GSP), a planning document that compiles and analyzes data regarding the groundwater resources it is managing, sets objectives and thresholds for avoiding what SGMA calls "undesirable results," and sets out a plan for projects and management actions to make the basin sustainable by 2040.

To fund these activities, SGMA provides GSAs with several statutory tools for imposing fees, and it also allows them to use their existing authorities as public agencies to collect funds for SGMA purposes. One of statutory authorities granted by SGMA is Water Code Section 10730, which allows a GSA to impose:

> …fees, including, but not limited to, permit fees and fees on groundwater extraction or other regulated activity, to fund the costs of a groundwater sustainability program, including, but not limited to, preparation, adoption, and amendment of a groundwater sustainability plan, and investigations, inspections, compliance assistance, enforcement, and program administration, including a prudent reserve.

The other primary funding authority for GSAs, Water Code Section 10730.2, allows GSAs to impose "fees on the extraction of groundwater" provided they do so under the procedures set forth in Article 13D, Section 6 of the California Constitution (Prop 218). Fees under Water Code Section 10730, by contrast, have often been imposed without following those procedures, with the GSA arguing they are non-tax fees under Article 13C, Section 1 (Prop 26).

The Tehama County Flood Control and Water Conservation District (District) serves as a GSA in 11 different groundwater subbasins, which collectively underlie the County of Tehama. In order to fund its activities as a GSA, the District required all groundwater wells to be registered with the District and imposed an annual charge of $0.29 on each acre of land in the County, collected on the ad valorem tax roll with ordinary property taxes, to fund that registration program.

David Garst, a landowner, brought this action contesting the registration charge's validity, arguing it violated SGMA and Prop 26. He prevailed in the trial court, and the District appealed. The Court of Appeal upheld the judgment invalidating the registration charge on both statutory and constitutional grounds.

## The Court's Decision

### Statutory Interpretation of Water Code Section 10730

The court held that Section 10730 must be read in the context of the surrounding sections. Most importantly, Section 10730.6 provides that groundwater fees imposed under SGMA are "due and payable to the groundwater sustainability agency by each owner or operator on a day established by the groundwater sustainability agency." Reading this text in conjunction with Section 10730, the court concluded that groundwater fees under SGMA may only be imposed on "owners" or "operators" of groundwater wells.

However, the court acknowledged that the District had other statutory authority to impose fees. Therefore, assuming for the sake of argument that the District was authorized to impose the fee under one of those authorities, it proceeded to consider the constitutionality of the fee.

### Constitutional Interpretation of Proposition 26

Proposition 26 provides that all exactions of money by local government agencies are "taxes" subject to the 2/3 vote requirements of Prop 13 unless they fall into one of seven exceptions. The District asserted that its per-acre charge qualified for the "regulatory fee" exception under Prop 26, which permits

> …[a] charge imposed for the reasonable regulatory costs to a local government for issuing licenses and permits, performing investigations, inspections, and audits, enforcing agricultural marketing orders, and the administrative enforcement and adjudication thereof.

The court reviewed the pre-Prop 26 case law that was implicitly incorporated into Prop 26 by the voters and concluded that the premise of a regulatory fee is to shift the cost of a regulatory program from the general public to those engaged in the regulated activity. Therefore, a per-acre fee, which imposes the costs on landowners whether or not they engage in the regulated activity of groundwater pumping could not be characterized as a regulatory fee.

### Conclusion and Implications

The *Garst* decision is relevant to future SGMA fee litigation in several ways. Beyond the core holdings discussed in this article, it also discussed issues regarding the statute of limitations and the prerequisites for refund claims. But it is most significant in those GSAs that have adopted per-acre charges to fund SGMA compliance. Some GSAs may have made that choice because they lacked the data to impose a charge only on well owners, and some may have done so for other policy reasons. For instance, all lands within a basin theoretically have a right to some portion of the groundwater supply, even if they are not presently operating a well. Garst seems to foreclose many of those approaches, at least within the regulatory-fee framework. It remains to be seen, in future cases, whether other theories could authorize per-acre charges under Prop 26. The court's opinion is available online here: https://www4.courts.ca.gov/opinions/documents/C103356.PDF.
(Brett Stroud)

## BUILDER'S REMEDY MEETS ITS MATCH IN THE COASTAL ACT—SECOND DISTRICT COURT ADDRESSES HOW THE BUILDER'S REMEDY INTERACTS WITH COASTAL REGULATION

*New Commune DTLA LLC v. City of Redondo Beach*,
___Cal.App.5th___, Case No. B337897 (2nd Dist. July 30, 2026).

On July 30, 2026, the Second District Court of Appeal published its decision in *New Commune DTLA LLC v. City of Redondo Beach*, the first published appellate decision to squarely address how the builder's remedy provisions of the Housing Accountability Act (HAA), Gov. Code § 65589.5, interact with the requirements of the Coastal Act and a Coastal Commission–certified Local Coastal Program (LCP). While many housing law cases over the last few years have underscored the supremacy of state housing laws over contradictory local laws, the New Commune case asked a court to address a more complex situation. As the opening of the opinion notes, the case involves a clash of "two statutory schemes that promote state policies over the interests of local governments." The Court of Appeal's holding signaled that while the Builder's Remedy may triumph over local land use regulations, it cannot be used to evade land use regulations enacted under a state law scheme.

## Background

New Commune DTLA, LLC applied to the City of Redondo Beach for permits to build a 30-unit condominium project, including six affordable units, on a parcel within the City's coastal zone. The City lacked an HCD-certified housing element at the time the application was submitted, which the parties agreed triggered the HAA's builder's remedy provisions. However, the City's LCP, certified by the Coastal Commission, designated the parcel only for public access uses, coastal-recreational facilities, and boating- and fishing-related services; residential uses were not permitted. After HCD later certified the City's housing element, the City notified the developer it would not process the application without an application for an LCP amendment because it proposed uses not permitted under the LCP. The developer petitioned for a writ of mandate to compel approval, citing the Builder's Remedy limitations on the power of cities to deny housing projects that fail to comply with local land use regulations. The Los Angeles Superior Court denied the petition, and the Court of Appeal affirmed.

## The Court of Appeal's Decision

The Court of Appeal noted that HAA specifies circumstances under which a city may deny a Builder's Remedy project. One of these circumstances, under Gov. Code § 65589.5, subd. (d)(3), is when (1) denial is required to comply with a specific state law, and (2) no feasible method exists to comply with that law short of denial. The court held the City satisfied both prongs.

On the first prong, the court explained that a certified LCP under the Coastal Act "embodies policies that are 'not solely a matter of local law but embody state policy.'" (Opn. at p. 6). In particular, the court notes that the Coastal Act requires formal amendment of an LCP, including Coastal Commission review, for any action that authorizes a use of land that is not permitted or conditionally permitted in the LCP. Accordingly, the court determined that the City was required to deny the project under the Coastal Act absent an LCP amendment. The court distinguished the project's non-conformity with LCP use provisions from a hypothetical project's non-conformity with development standards under an LCP—leaving open the possibility that the Builder's Remedy could operate to authorize projects that comply with use restrictions under an LCP, but fail to conform with more traditional development standards, such as heights or setbacks.

On the second prong, because the developer never sought an LCP amendment, the court reasoned that denial was the only legally feasible option. (Opn. at p. 8.) The court also invoked the HAA's own savings clause, quoting it for the proposition that nothing in the statute "shall be construed to relieve" a local government of its obligations under the Coastal Act. (Gov. Code, § 65589.5, subd. (e); Opn. at p. 8.)

## Conclusion and Implications

The result in *New Commune* is notable when set against the last decade's housing-streamlining case law, in which California courts have generally read the HAA's pro-housing provisions expansively against local discretion. *New Commune* signals that courts may be hesitant to extend that same expansive reading where doing so would reach into a competing statewide regulatory scheme administered by a separate agency. The opinion acknowledges the "friction in this conclusion," especially given the HAA's goal of providing affordable housing, but ultimately the court was not comfortable with an interpretation that would effectively strip the Coastal Commission of the power to review and approve LCP land use changes provided under state statute. (Opn. at p. 8.)

That said, *New Commune* is likely not the last word on this issue. The Court of Appeal was not asked to decide whether the HAA could override the Coastal Act on more sympathetic facts, for instance, a project proposed on a residentially designated parcel that deviates from technical development standards, which the court itself flagged as potentially distinguishable. For now, *New Commune* stands as the most significant rebuke that a court has provided to the Builder's Remedy, demonstrating that while it may be a powerful tool in an applicant's arsenal, it has its limits. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/B337897.PDF.

(Niran Somasundaram)

# SECOND DISTRICT COURT FINDS COUNTY "DECLINED TO ACT" UNDER THE COASTAL ACT GIVING THE COASTAL COMMISSION INDEPENDENT ENFORCEMENT JURISDICTION

*Sable Offshore Corp., et al., v. California Coastal Commission*, ___Cal.App.5th___, Case No. B347601 (2nd Dist. June 17,2026).

On June 17, 2026, the California Court of Appeal, Second Appellate District affirmed a preliminary injunction enforcing a California Coastal Commission (Commission) cease and desist order against Sable Offshore Corp. (Sable) and Pacific Pipeline Company (Pacific). The legal dispute centered on whether the Commission possessed statutory authority under the Public Resources Code section 30810 to intervene when Santa Barbara County returned pipeline clearance applications without taking formal action, claiming the proposed repair work was covered by existing 1986 permits. The appellate court held that a local government's explicit refusal to process or act upon permit applications constitutes "declining to act" under the Coastal Act, thereby triggering the Commission's independent enforcement jurisdiction. The decision clarifies the scope of state regulatory authority over coastal infrastructure, establishing that local determinations to forego new permit reviews do not preempt state-level enforcement actions intended to prevent potential environmental harm and distinguishing between local "action" and "decision."

## Background

The litigation in Sable Offshore Corp. arises from infrastructure originally approved in 1986 under the California Coastal Act. In 1986, Santa Barbara County issued multiple Coastal Development Permits (CDPs) authorizing the construction of the Las Flores Pipelines within the coastal zone. Construction of the onshore crude oil pipelines was completed in 1990, and the system was operational until it shutdown following the 2015 Refugio Beach oil spill.

In 2024, Sable and Pacific acquired the Last Flores Pipelines and conducted maintenance and repair activities across 121 designated anomaly sites in unincorporated Santa Barbara County. On September 27, 2024, after requesting that Santa Barbara take enforcement action, the Commission issued a notice of violation directing Sable to cease unpermitted maintenance work. This was followed on November 12, 2024, by an Executive Director cease and desist order issued pursuant to Public Resources Code section 30809, which ordered Sable to submit a complete CDP application to the County for both prospective and post development.

In late 2024, Sable submitted zoning clearance applications to Santa Barbara County. On February 12, 2025, the County notified Sable that it would return the applications without taking action, determining that the repair work was already authorized by the original 1986 CDPs. The Commission subsequently issued a second executive cease and desist order on February 18, 2025, prompting Sable to file a verified complaint for declaratory and injunctive relief. On April 10, 2025, the Commission formally issued a statutory cease and desist order under Public Resources Code section 30810, alongside a restoration order and administrative penalties. Following observed construction activities, the Commission filed a cross-complaint and sought injunctive relief, culminating in a June 10, 2025, trial court order granting a preliminary injunction against Sable, which Sable appealed

## Issues on Appeal

The primary legal issue was whether the Commission possessed statutory jurisdiction under Public Resources Code section 30810, subdivision (a)(2), to issue a cease and desist order enforcing local coastal program requirements. Under section 30810, the Commission is authorized to issue enforcement orders if a local government "declines to act, or does not take action in a timely manner, regarding an alleged violation which could cause significant damage to coastal resources." Sable argued that the Commission lacked jurisdiction because Santa Barbara County had taken affirmative action by reviewing the 1986 permits and formally deciding that no new CDPs were required.

### The Court of Appeal's Decision

The Court of Appeal rejected Sable's construction of the statute, holding that equating a local government's decision to forego permit action with "taking action" would render section 30810 self-negating. The court noted that the statutory interpretation requires harmonizing the provision of the Coastal Act to effectuate legislative intent, which mandates liberal construction to protect coastal resources. The court noted that Santa Barbara County expressly communicated to both Sable the Commission that it was returning the applications without taking action on a permit or development application. By deliberately choosing not to intiate permit proceedings or enforcement mechanisms, the County "declined to act," thereby satisfying the statutory prerequisite for Commission intervention.

The court further reviewed the 1993 legislative amendments to section 30810, noting that the Legislature intentionally expanded the Commission's enforcement authority to allow state intervention when local agencies fail or refuse to address chronic or potential costal violations. The majority distinguished the California Supreme Court's decision in Shear Development Co., LLC v. California Coastal Commission, explaining that Shear addressed appellate jurisdiction over permit decisions under section 30603, not section 30810, which governs independent state enforcement action.

The court also addressed procedural, equitable, and due process arguments, finding that 30803 mandates the issuance of a preliminary injunction after a prima facie showing of a Coastal Act violation and finding that the trial court provided sufficient opportunity for briefing.

### The Dissent

Associate Justice Yegan dissented, arguing that the Commission lacked jurisdiction because Santa Barbara County had in fact acted through its interpretation of the perpetual maintenance provisions of the comprehensive 1986 CDP. The dissent argued that the original 1986 permit contemplated ongoing repairs for the operational life of the pipeline, and that the County's formal determination of permit compliance did not constitute a declination to act.

### Conclusion and Implications

The Second District Court of Appeal's decision reinforces the primacy of state regulatory authority under the California Coastal Act. By holding that the local government's refusal to process permit applications constitutes "declining to act," the ruling establishes that local determinations of permit exemption cannot be used to insulate development activities from state-level enforcement. The decision confirms that the Coastal Commission retains direct statutory authority under section 30810 to independently evaluate alleged unpermitted development and issue binding enforcement orders whenever local jurisdictions elect not to exercise regulatory oversight.

For infrastructure owners and operators within California's coastal zone, the decision highlights the necessity of obtaining explicit regulatory consensus from state authorities, rather than relying solely on local agency interpretations of historical permits. The ruling further confirms that mandatory statutory injunctions under section 30803 bypass traditional equitable balancing tests, prioritizing prima facie statutory compliance. Ultimately, the opinion strengthens the Coastal Commission's enforcement mechanisms, ensuring that state environmental policies prevail over local administrative passive decisions when it comes to protecting coastal resources. The court's opinion can be found here: https://www4.courts.ca.gov/opinions/documents/B347601.PDF.
(Miles Krieger)

# FIRST DISTRICT COURT RULES CALIFORNIA'S VALIDATION LAW IS MANDATORY AND JURISDICTIONAL IN REVERSE VALIDATION ACTIONS

*Toy v. City & County of San Francisco*,
___Cal.App.5th___, Case No. A173560 (1st Dist. July 24, 2026, *modified*, Aug. 19, 2026).

On appeal to the First District Court, plaintiffs argued that the city had waived the validation requirements by litigating the case and that their action was timely. The court held that the validation statutes were mandatory and jurisdictional for challenges to water rates, and plaintiffs' failure to comply with statutory procedures (paraphrase more?).

## Background

In *Toy v. City & County of San Francisco*, the City of San Francisco (City) adopted a resolution in May 2023 increasing water rates for the period July 1, 2023 through June 30, 2026. Before adopting the resolution, the San Francisco Public Utility Commission sent notices to all retail water ratepayers providing the information necessary to understand the rates as required by Proposition 218, and included notice to ratepayers that they would have 120 days to file any legal challenge to the proposed water rates under the applicable reverse validation procedures.

Plaintiffs Jennifer Toy, et al. had filed an action in May 2022 challenging a 2018 water rate resolution, contending that the resolution included costs for hydrant water flows and infrastructure in the rates in violation of Proposition 218. Among other things, Proposition 218 added Article 13D to the California Constitution, which imposes procedural and substantive limitations on a local agency's ability to extend, impose, or increase property-based taxes and fees. Article 13D, § 6(b)(3), for example, prohibits imposition of a fee or charge unless the amount of the fee or charge is proportional to the service attributable to the parcel.

The City adopted the May 2023 resolution while the Toy action was pending.

Plaintiffs Rose Aquilina, et al. filed an action in October 2023 contending that the City, through the May 2023 resolution, violated Article 13D of the California Constitution (Proposition 218) by imposing water rates and charges for water service that exceed the cost of service.

### At the Superior Court

The Superior Court consolidated the Toy and Aquilina actions.

The City defended the Aquilina action for 14 months without asserting that the action was procedurally improper. In November 2024 the City moved for judgment on the pleadings in that action alleging that the complaint was untimely under Cal. Gov't Code § 53759, and failed to comply with the validation procedures. The Superior Court granted that motion without leave to amend. It held the validation statutes applied, that such statutes are mandatory and jurisdictional, and that plaintiffs failed to comply with the statutes in two respects, including that their lawsuit was time-barred.

## The Court of Appeal's Decision

Plaintiffs appealed, arguing that the City waived the validation law defense, and that their action was timely. The Court of Appeal held that the validation law was mandatory and jurisdictional, and that plaintiffs' failure to comply with that law was fatal to their claim. Compliance with the reverse validation procedural requirements is a prerequisite for the court's jurisdiction, not the subject of an affirmative defense to be proven by the agency. Contrasting forfeiture, which is the failure to assert a right in a timely fashion, with waiver, which is the intentional relinquishment or abandonment of a known right, the court ruled that waiver of the reverse validation procedural prerequisite would require a showing of intent to abandon, which plaintiffs did not present. The court did not address the timeliness issue.

### Validation Law

An action under the validation statutes permits a public agency to obtain a judgment upholding its handling of an agency matter. In 1961 the Legislature replaced the patchwork of provisions governing validation proceedings with a general validation

procedure. This procedure, codified as Code of Civil Procedure §§ 860 through 870, does not, in itself, authorize any validation actions; rather, it establishes a uniform system that other statutory schemes (here Cal. Gov't Code § 53759) must activate by reference.

Not all validation actions are brought by the promulgating agency. Code of Civil Procedure § 863 authorizes private parties to bring validation actions, and the private party is often seeking to invalidate the agency action in question. Actions brought by private parties under § 863 are sometimes called reverse validation actions.

A validation action is "a proceeding in rem," in which the judgment binds all persons and entities having an interest in the subject agency matter. When the validation statutes apply, they supersede other mechanisms by which an interested private party might seek to challenge the same agency action.

Validation law has long referred to Code of Civil Procedure § 860 et seq., a reference expressly confirmed in § 53759(b), that "Any action under this section ... shall be brought pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure, except that the time limits of subdivision (a) [of § 53759] shall apply ...." This means, among other things, that the plaintiffs here were required to file an in rem action timely and promptly provide service of a summons with specified contents directed to both the City and by publication to "all persons interested in the matter," consistent with the statutory requirements (see Code. Civ. Proc. §§ 860–863). Publication is the primary means of notice in a validation case.

Plaintiffs did not seek approval of the form or method of service of any summons, and did not provide service by publication of any summons on all interested individuals. The summons that plaintiffs served only on the City did not meet the requirements for a reverse validation summons, which must be: (1) in the prescribed form, (2) directed to all persons interested in the matter and to the public agency, and (3) published for the period and in the manner required by statute.

Failure to publish a summons in accordance with the statutory requirements deprives the court of jurisdiction over "all interested parties," which deprives the court of the power to rule on the matter. A plaintiff's compliance with the reverse validation procedural requirements is a prerequisite for the court's jurisdiction. Failure to comply with those requirements is not an affirmative defense to be proven by the agency.

Code of Civil Procedure § 473(a)(1) permits a court:

> …in furtherance of justice, and on any terms as may be proper, [to] allow a party to amend any pleading or proceeding by adding or striking out the name of any party, or by correcting a mistake in the name of a party, or a mistake in any other respect; and may, upon like terms, enlarge the time for answer or demurrer. The court may likewise, in its discretion, after notice to the adverse party, allow, upon any terms as may be just, an amendment to any pleading or proceeding in other particulars; and may upon like terms allow an answer to be made after the time limited by this code.

Plaintiffs did not move for relief under § 473.

### Conclusion and Implications

The Court of Appeal concluded that the validation law is mandatory and jurisdictional, and affirmed dismissal of the cases for failure to comply. A copy of the court's opinion and modified opinion is available at https://www4.courts.ca.gov/opinions/documents/A173560M.PDF.

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