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# WESTERN WATER LAW & POLICY REPORTER™

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## WESTERN 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The Trump administration has rescinded a Biden-era Bureau of Land Management rule that had formalized conservation as part of public-land management across the West.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)

# DATA CENTERS AND WATER USE: THE NEXT ALLOCATION DEBATE IN THE COLORADO RIVER BASIN?

For decades, the Colorado River Basin has been defined by competition among agricultural users, municipalities, environmental interests, and metropolitan populations. As basin states continue to confront water scarcity and competing demands, a new category of water user has started to attract attention: large-scale data centers. Driven by artificial intelligence and expanding digital infrastructure, data center development has skyrocketed across the western United States. Public attention gravitates to the volume of water that these centers use; however, the more significant question may be whether data centers will become the next major competitor for increasingly scarce resources. Although data centers are a new category of water user, the controversy represents a familiar challenge: determining how limited supply should be allocated among competing demands.

## Data Centers as a New Water User

Unlike other commercial developments, data centers require extensive cooling systems to prevent technology from overheating. Water may be circulated through cooling towers, evaporative cooling systems, or heat-exchange equipment, depending on the facility's design. Many facilities do not acquire large-scale private water rights, rather water is supplied through municipal agreements, water districts, or other utility providers that also serve individuals in the community. This is important because much of the current debate is not centered around the fact that these centers use copious amounts of water, it is the fact that local governments are making a conscious decision to allocate scarce utilities to these centers at the expense of the local communities.

## Allocation, Not Consumption

For over a century western water law has addressed the same basic question: who receives water when demand exceeds supply? Although the users have changed, the underlying issue remains consistent. Agriculture, municipalities, recreation, industrial facilities, and many more have all competed for finite water in the Colorado River Basin. Data centers may represent the newest entrant into this competition.

This distinction is important because the mere fact that these centers consume water does not necessarily make it controversial. Nearly every major economic activity in the West depends on water consumption. Golf courses, ski resorts, and other industrial operations all rely on significant amounts of water, and debates surrounding these uses often focus on whether the allocation reflects appropriate public priorities. When water supplies are finite, allocating water to one use necessarily means prioritizing that use over another.

If a municipality possesses enough legal water rights or reservoir storage to supply a data center, the controversy is not that the water is unavailable. Rather, issues have arisen when community members disagree with how the municipality is allocating the water to a data center instead of some alternative use. In many western communities, water acquired through agricultural transfers or long-term planning efforts may ultimately be committed to new development, including data centers. The resulting dispute becomes primarily about competing visions for the community's future.

## The Public Benefit Question

The legal debate focuses on the issue of allocation; however, public opposition transforms the issue into what the community receives in return for the water being committed to a different use. Historically, western communities have often evaluated water-intensive development based not only on water demand, but also on the benefits those uses provide. Agricultural water supports food production and rural economies. Municipal growth creates housing and commercial opportunities. Recreational amenities such as golf courses, parks, and ski resorts generate tourism revenue while providing job services and experiences that residents can directly enjoy.

Data centers create different policy implications. Although data centers can represent billions of dollars in investment, many of these facilities employ relatively few people once construction is complete. Unlike typical residential developments or commercial districts, data centers operate behind closed doors and provide limited interaction with the surround-

ing community. As a result, critics often question whether the economic benefits generated by data centers justify the long-term commitment of scarce water resources. Residents may ask why water should be allocated to a facility that employs a relatively small workforce when the same supply could potentially support housing, local businesses, recreational amenities, or future municipal needs. Supporters of data-center development offer a different perspective. They point to significant tax revenue, infrastructure investment, technological innovation, and the growing importance of digital services within the modern economy. From this viewpoint, data centers constitute critical infrastructure whose value extends far beyond local employment figures.

Ultimately, the disagreement illustrates that allocation decisions are rarely based solely on legal availability. They also reflect community opinions regarding economic priorities, public value, and the types of development that local governments choose to encourage. In that context, the debate over data centers is as much of a policy discussion as it is a water management discussion.

### The Wonder Valley Controversy

Many of these issues are highlighted in the recent development of the Wonder Valley Project in Utah. Backed by Kevin O'Leary, the project attracted significant attention since the proposed water use was initially around 13,000 acre-feet per year. Questions regarding long-term water availability arose, especially since Utah is already a water-constrained region. Like many modern developments, the debate extended beyond mere water consumption. The proposal has become a focal point for broader discussions about resource allocation and the future direction of development in regions in or near the Colorado River Basin. The project received significant backlash, with some community members questioning whether state and local officials appropriately weighed the public interest.

Wonder Valley demonstrates that future disputes involving data centers are unlikely to be resolved through engineering calculations alone. Questions regarding water availability will remain important, but so too will questions regarding economic priorities, community values, and public acceptance. This project serves as a useful case study for the broader debates likely to emerge throughout the Colorado River Basin as data center development continues to expand.

### Implications for the Colorado River Basin

Large-scale data centers are not the largest water consumer in the Colorado River Basin. Even the Wonder Valley Project's initial proposal of 13,000 acre-feet per year is only equivalent to approximately 4,00 acres of irrigated cropland. However, proposals for more of these projects raise important questions about future allocation decisions. As artificial intelligence and digital infrastructure continue to grow, western communities will face increased pressure to dedicate water resources to data center development. Communities will have to independently weigh the benefits of these proposals and determine whether it is in their best interest to allocate future water use to data centers at the expense of other water uses within that community.

As basin states continue to confront drought, population growth, and interstate negotiations regarding the future of the Colorado River, competition is unlikely to diminish. Data centers may well become another significant participant in the allocation debates that have existed for generations. Whether communities ultimately embrace or resist these developments will depend on many economic and social factors that will shape long-term resource planning for much of the West.

### Conclusion and Implications

Data center development represents a new category of water users, but the underlying challenge is familiar. For more than a century, western water law has been tasked with allocating finite resources among competing uses. Large-scale data centers introduce a new stakeholder in an already crowded field.

The controversy surrounding a project like Wonder Valley demonstrates that future disputes are likely to focus as much on public policy as on real legal issues. Questions regarding economic value, community benefit, and local preference will accompany discussions of water availability. As data centers are proposed across the Colorado River Basin, the debate will be less about technology itself, but rather how western communities choose to allocate their most limited resource.

(Jack Pevny, John Sittler)

# WASHINGTON STATE WATER LAW: A FAMILY FARM, 30,000 CLAIMANTS, AND A QUESTION OF WHAT "HELP" REALLY MEANS —A SURVEY FOR WATER LAW PRACTITIONERS, SUMMER 2026

As the State Supreme Court heads to summer recess, the past year in Washington water law has been quieter on the appellate docket than most, but practitioners should not mistake silence for stillness. A nine-year dispute over Odessa aquifer pumping rights is now before the Washington Supreme Court on a question that could reset enforcement practice in Washington. Across the Cascades in Whatcom County, the state's largest water rights adjudication ever is grinding toward a 2027 filing deadline—with more than 20,000 landowners still in motion. And a growing caseload before the Pollution Control Hearings Board (PCHB) suggests the next appellate cycle will be anything but quiet.

## The Current Landscape

Three developments define the current landscape: *Fode* may determine how much practical assistance Ecology must provide before penalizing water users; the *WRIA 1/Nooksack* adjudication is moving thousands of claimants toward a 2027 filing deadline; and the PCHB's pending water docket signals that enforcement, permitting, and priority disputes are likely to keep feeding the appellate pipeline.

## The Central Case: *Fode v. Department of Ecology*

### The Enforcement Issue

The case most likely to reshape Washington enforcement practice began on a family potato farm east of Moses Lake. Ron and Robin Fodé have farmed in Grant County since the 1980s. Around 2017, when Ron Fodé learned that the leased parcels he had been irrigating lacked adequate water rights, he did what a reasonable operator would do: he asked the Department of Ecology for help finding a lawful path forward. Instead, Ecology initiated an enforcement action. Ecology issued penalties, treating each irrigation event on each parcel as a separate violation under RCW 90.03.600—a "per-parcel, per-day" approach that quickly pyramided fines. By the time the case reached Division III of the Court of Appeals, the family estimated that legal fees and penalties would approach $1,000,000.

### The Technical Assistance Question

The Court of Appeals, in an *unpublished* opinion filed December 18, 2025, affirmed the PCHB's amended decision on all central points. The court held that Ecology did not exceed its statutory authority by treating separate parcels as separate violations. On the technical assistance issue, it held that Ecology satisfied its statutory duty by offering a *warning*—a reading of the statute that the NFIB Small Business Legal Center and Pacific Legal Foundation both argued in amicus briefs was flatly wrong.

The statute at issue—RCW 90.03.605(1)(b)—is clear: before imposing penalties, Ecology:

> . . .shall offer information and technical assistance to the person in writing identifying one or more means to accomplish the person's purposes within the framework of the law.

Pacific Legal Foundation argued that a warning telling a farmer what he cannot do is categorically different from the assistance the Legislature required—identifying for him what he can do. NFIB pressed the same point: when the express purpose is irrigation, Ecology's statutory duty is to help find water, not to hand a farmer a cease-and-desist letter and call it assistance.

### The Rulemaking Issue

The Washington Supreme Court granted review on June 3, 2026, and has calendared the case for oral argument on October 1, 2026. Two independent questions will be before the court. First: what prerequisites must be met for penalties under RCW 90.03.605 for "technical assistance"—and does a written warning satisfy that requirement? Second: can Ecology enforce an internal, informal seasonal-transfer deadline—which effectively closes off one compliance pathway—without going through APA notice-and-comment rulemaking?

This second question carries potentially broader consequences. If the court holds that unpublished internal agency deadlines cannot be enforced against water users as binding policy, the implications extend well beyond irrigation enforcement to every compliance program in which Ecology uses informal guidance as a de facto rule.

### The *Nooksack*: Washington's Largest Active Adjudication

While *Fode* moves toward an argument, the Whatcom County Superior Court is managing a water rights proceeding on a different scale entirely. On May 1, 2024, Ecology filed a general adjudication covering all of *WRIA 1*—the Nooksack Basin, which encompasses the Nooksack River watershed and adjacent drainages, including Bellingham Bay, Lake Whatcom, Drayton Harbor, and the Sumas River. It is the largest general adjudication in Washington to date.

Ecology began mailing certified-mail claim packets in March 2025, notifying approximately 22,000 property owners, businesses, and tribal water users who draw from wells or surface diversions in the basin. The court entered Case Management Order No. 1 in November 2025. In March 2026, Whatcom County Superior Court Judge David Freeman extended the claim-filing deadline from the original May 1, 2026, to June 1, 2027—a 13-month extension intended to allow Ecology to reach water users who could not be located by mail, including those with historic, pre-permit rights or undocumented addresses. As of the end of May 2026, only about 3,000 claims had been filed out of roughly 22,000 notified parties, a considerable number of which will likely file multiple claims. The low early return rate suggests that the period running into fall 2026 and through 2027 will be an active time for the court.

All substantive issues in the case remain stayed pending completion of the claims phase. There will be many substantive issues that will need to be considered in this case, many of which may manifest into appellate review, making it a long-horizon matter to track.

### The PCHB Docket: 14 Pending Water Matters

Beyond *Fode* and *WRIA 1*, the Pollution Control Hearings Board currently has 14 pending water resource matters, representing appeals of Ecology enforcement actions, permit decisions, and orders. That caseload is notable because PCHB decisions on water rights are the principal first-level review mechanism before Washington appellate courts reach these questions. That docket functions as a bridge between the two headline matters: it shows that while Fode is the immediate Supreme Court vehicle and WRIA 1 is the long-horizon structural proceeding, water disputes continue to develop through routine administrative appeals that may become the next wave of appellate law.

### Conclusion and Implications

Over the next 18 months, Washington water law will proceed along two tracks. On one track, the Supreme Court's *Fode* decision will define the enforceable content of Ecology's pre-penalty duty—and potentially curtail the agency's ability to enforce informal administrative policies as binding rules. On the other hand, the *WRIA 1* adjudication will move toward a hard deadline in a basin where water scarcity and tribal senior rights create conditions for priority-based curtailment that does not yet exist in most of the state.

Coverage reflects developments through June 2026. Case No. 1050411, *Fode v. Department of Ecology*, is pending before the Washington Supreme Court with oral argument scheduled for October 1, 2026. (Jamie Morin)

## 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)

## SUMMARY OF WATER BILLS PENDING IN THE OREGON LEGISLATURE

The Oregon Legislature is considering several bills that address the management of water resources in the state. What follow is a summary of select natural resource related bills under consideration. As this article went publication, action on these bills may have changed.

### Background

Governor Tina Kotek has been vocal about the need to address groundwater: in particular overdrawn water basins and related issue of groundwater contamination that certain basins are experience. Governor Kotek has also expressed the need for wildfire funding and energy demands causes by technology's seeming proliferation of data centers.

The Oregon Department of Environmental Quality recently released a study showing the problem of groundwater nitrate contamination in Morrow and Umatilla counties. Among the entities contributing to the contamination is the Port of Morrow, which was recently in an order from Kotek to violate its wastewater reuse permit and spread more nitrate contaminated water across more farm fields above the contaminated aquifer.

### Relevant Bills at the Oregon Legislature

#### Senate Bill 427

The bill prohibits certain changes related to water that will reduce the flow of streams and prohibits certain proposed changes related to the appropriation or use of water that will result in the diminishment of streamflow. According to Oregon Water Partnership:

> Most of Oregon's streams are over-appropriated in summer, and groundwater aquifers are showing signs of overuse across the state (see maps below). This means that many new water demands are being supplied by modifying existing water rights. Water right holders can apply to the Oregon Water Resources Department to change that water right (a process called a "transfer") so that it can serve a new type of use, extract from a new point, or move to a new

> place of use. But while existing laws for issuance of new water rights don't allow approval if it would harm imperiled fish, water right changes get a pass—an outdated loophole in Oregon'swater laws lets these changes happen without looking at environmental impact. For the 97% of Oregon stream miles that lack instream water rights, there is currently no mechanism to safeguard instream values from harmful impacts of certain water right changes—even if a fish-bearing stream would be dewatered. https://oregonwaterpartnership.org/wp-content/uploads/2025/02/SB-427-Safeguarding-Steamflows-in-Water-Rights-Transfers-Fact-Sheet.pdf.

SB 427 will protect Oregon's streams and the public benefits they provide by establishing a new "no diminishment of streamflow" standard in the state's process for reviewing applications for water right changes. This is a narrow fix to a growing statewide problem affecting streamflows that are needed for fish, wildlife, water quality, recreation, scenic, and cultural values. (Ibid)

For more information on SB 427 and for the full text of the bill, see: https://olis.oregonlegislature.gov/liz/2025R1/Downloads/MeasureDocument/SB427.

### Senate Bill 1153

SB 1153 Directs the Water Resources Department to consider whether certain water right transfers will result in a loss of in-stream habitat for sensitive, threatened or endangered aquatic species in stream reaches not protected by an existing water right or contribute to water quality impairment in water quality limited streams.

It allows for authorities to make water transfers conditional on instream improvements to minimize impacts to species and brings tribes into the process. https://www.centraloregondaily.com/news/regional/oregon-2025-water-policy-reform-bills-tracker/article_a16b401f-13f4-4909-b84d-3f59238e4b79.html.

For more information and for the full text of the bill, see: https://olis.oregonlegislature.gov/liz/2025R1/Measures/Overview/SB1153.

### Senate Bill 1154

SB 1154 would address state agency authority to intervene in the state's contaminated groundwater areas and establish thresholds for contaminants. https://www.centraloregondaily.com/news/regional/oregon-2025-water-policy-reform-bills-tracker/article_a16b401f-13f4-4909-b84d-3f59238e4b79.html

SB 1154 modifies provisions of law related to declarations of ground water quality concern areas and ground water quality management areas. It directs the Governor to appoint an agency to lead an interagency team in ground water quality concern areas and ground water quality management areas. It also directs the Department of Environmental Quality, the State Department of Agriculture, the Water Resources Department and the Oregon Health Authority [and the Department of Land Conservation and Development] to take specified actions in ground water quality concern areas and ground water quality management areas.

For more information and read the full text of the bill, *see:* https://olis.oregonlegislature.gov/liz/2025R1/Measures/Overview/SB1154.

### House Bill 3116

HB 3116 gives money to the state Water Resources Department to use and distribute for place-based water planning. The bill appropriates moneys from the General Fund to the Water Resources Department for place-based water planning. The bill also limits expenditures by the department for grants to implement water resources plans.

For more information and for the full text of the bill, *see:* https://olis.oregonlegislature.gov/liz/2025R1/Measures/Overview/HB3116.

### House Bill 2169

HB 2169 sets state policy on water reuse and tells the state Department of Environmental Quality to make a water reuse team. The bill also establishes state policy on water reuse.

For more information and for the full text of the bill, *see:* https://olis.oregonlegislature.gov/liz/2025R1/Measures/Overview/HB2169.

### House Bill 3544

HB 3544 establishes a "uniform process" for hearing contested water rights cases. It would encourage parties in contested water rights matter to reach voluntary agreements and drecrease a currently large "backlog of contested cases, currently at more than

200, at the Water Resources Department." https://www.centraloregondaily.com/news/regional/oregon-2025-water-policy-reform-bills-tracker/article_a16b401f-13f4-4909-b84d-3f59238e4b79.html.

The full bill text is available online at: https://olis.oregonlegislature.gov/liz/2025R1/Measures/Overview/HB3544.

## Conclusion and Implications

Oregon is addressing several water-related concerns including water rights and water quality. Many of the bills have been primarily sponsored by Representatives Ken Helm, (D-Beaverton) and Mark Owens (R-Crane) demonstrating that, in the current national environment of cross-party deadlock, cooperation and coordination can and does take place.
(Robert Schuster)

## 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)

## NEVADA DIVISION OF WATER RESOURCES RELEASES MIDDLE HUMBOLDT RIVER BASIN GROUNDWATER MODEL

The Nevada Division of Water Resources (Division) recently announced the release of *Nevada Water Resources Bulletin No. 51: Evaluation of Stream Capture Related to Groundwater Pumping, Middle Humboldt River Basin, Nevada*. The report was prepared by the U.S. Geological Survey and also published as *USGS Professional Paper 1906*.

The publication is part of Nevada's broader effort to update and modernize the scientific understanding of water resources in the Humboldt River Region. With the release of the Middle Humboldt River Basin model (Model), the Division now has an integrated scientific foundation spanning the Upper, Middle, and Lower Humboldt River Basins.

The Humboldt River system has long been significant to Nevada water users, particularly agricultural and rural communities in northern Nevada. The interaction between groundwater pumping and surface water flows is a continuing management issue in the basin and is central to future planning and administration of groundwater use and impacts to the Humboldt River.

### The Middle Humboldt Model

The Bulletin No. 51 presents a comprehensive numerical groundwater-flow model for the Middle Humboldt River Basin. The model was developed to

improve understanding of how groundwater pumping affects the hydrology of the Humboldt River and its tributaries within the modeled area.

According to the Division, the report provides a technical evaluation of groundwater–surface water interactions across the basin. The evaluation includes historical conditions, current stresses, and long-term responses under continued pumping.

A central focus of the report is stream capture related to groundwater pumping. In practical terms, the model is intended to help evaluate whether, where, and over what timeframes pumping within the modeled area may reduce streamflow or affect tributary systems connected to the Humboldt River.

### Conjunctive Management Significance

The Division characterized the release of the Model as an important step toward supporting conjunctive-management planning. Conjunctive management generally requires water administrators to evaluate surface water and groundwater as connected parts of the same hydrologic system, rather than as isolated sources of supply.

For Nevada water administration, this Model may provide an important technical tool combined with the Upper and Lower Basin models for assessing future groundwater pumping impacts, stream depletion, and basin-wide water availability. Although the Model does not itself determine legal rights, it may inform the factual record used in future water-resource decisions.

The Model may also assist stakeholders in understanding the timing and magnitude of potential hydrologic responses. This is particularly important in systems where the impacts of groundwater pumping on surface water may occur over extended periods and may vary depending on location, geology, pumping rates, and hydrologic conditions.

### Ongoing Refinement

The Division emphasized that the Model will be updated over time as new data become available. The report also identifies areas where further refinement and additional work would strengthen the analysis.

That caveat is important. Groundwater-flow models are decision-support tools, not static conclusions. Their usefulness depends on data quality, calibration, assumptions, peer review, and continued refinement. The Division's statement that it remains committed to a transparent and collaborative review process with stakeholders will likely be important as the model is considered in future planning and administrative contexts.

### Conclusion and Implications

The release of the Middle Humboldt River Basin model is significant for both technical and policy reasons. Technically, it completes another major component of Nevada's scientific framework for evaluating the Humboldt River system. As a policy matter, it provides the Division and stakeholders with a more complete basis for discussing conjunctive management strategies and methodologies in one of the state's most important river basins.

The model may become a key reference point in future discussions involving groundwater pumping, surface-water impacts, and long-term basin management. Its release also reflects a broader trend across the West: as water supplies face increasing stress, states are relying more heavily on numerical models to evaluate connected groundwater and surface-water systems.

For water users, the model should be viewed as both an opportunity and a caution. It offers a more detailed tool for understanding hydrologic impacts, but its use in future management decisions will depend on how the Division applies it, how stakeholders engage with it, and how the Model is refined over time.

In sum, the Middle Humboldt model represents an important addition to Nevada's water-resource planning tools. Its long-term importance will likely turn on whether it is used as part of a transparent, data-driven, and collaborative process for managing the Humboldt River system.
(Micheline Nadeau Fairbank)

## EPA NEWS & SANCTIONS

# RECENT EPA NEWS, INVESTIGATIONS AND SANCTIONS

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

**July 1, 2026—**The U.S. Environmental Protection Agency (EPA) is releasing draft guidance to help wastewater utilities, landowners, and the public reduce risk from PFOA and PFOS in biosolids. This effort is part of EPA's comprehensive, lifecycle-based strategy to address PFAS and Make America Healthy Again.

EPA is taking a radically transparent approach by ensuring robust input is gathered to inform next steps. EPA will solicit comment on the draft guidance for 60 days following publication in the Federal Register. Once the notice is published, comments can be submitted using Docket ID No. EPA-HQ-OW-2026-2509. The notice will contain additional information on how to submit a comment.

EPA has gathered feedback from a wide range of stakeholders on this topic and recognizes the complexity associated with biosolids contaminated with PFOA and PFOS.

After reviewing extensive public input, EPA determined that the previous administration's Draft Risk Assessment relied on assumptions too disconnected from real-world conditions to give Americans clear, actionable information. The agency received comments that flagged that there are risks at trace concentrations near the limit of detection, levels lower than those already found in everyday soil and household products. They also commented that the assessment relied on a simplified, straight-line risk calculation that independent scientists have questioned. Commenters underscored the assessment leaned on data from atypical, industrially contaminated sites while overlooking newer research from communities where ordinary household biosolids have been safely land-applied for decades.

EPA will now issue guidance to transparently gather important feedback and chart a path forward that helps protect Americans from exposure to PFOA and PFOS in biosolids. There is real concern from farmers and ranchers who want to ensure their land is as healthy and productive as possible. At the same time, wastewater systems need a path forward for managing sewage sludge and biosolids from the communities they serve. In keeping with common best practices, EPA's draft guidance recognizes the importance of reusing biosolids through land-application. It also provides commonsense recommendations for how to reduce risk by avoiding land application of biosolids near waterways and on lands where children play, and also by avoiding using biosolids as fertilizer of crops that have higher risk of human exposure.

When domestic sewage from households and businesses is sent to wastewater treatment plants (WWTPs), the liquids are separated from the solids, producing a nutrient-rich product known as "sewage sludge." In some instances, industrial wastewater is also conveyed to a WWTP and combined with domestic sewage. The terms "biosolids" and "sewage sludge" are often used interchangeably by the public; however, EPA typically uses the term "biosolids" to mean sewage sludge that is intended to be applied as a soil amendment or fertilizer and that has been treated to meet the requirements in EPA's federal Clean Water Act (CWA) regulations.

Under existing federal regulations, biosolids can be applied to agricultural lands, forests, tree farms, golf courses, turf farms, and other types of land. Biosolids can also be bagged and sold at stores to the public, generally to be used on lawns or in home gardens. Biosolids generally are not used on specialty crops, such as fresh produce, and generally are used on crops where edible parts are not in contact with the soil. Some states, Tribes, or counties also have additional rules around the use of sewage sludge and biosolids.

PFOA and PFOS are two chemicals in the larger class of PFAS. PFOA and PFOS persist in the environment for long periods of time and have been linked to a variety of significant adverse human

health effects. Domestic production and import of PFOA has been phased out in the United States by the companies participating in the 2010/2015 PFOA Stewardship Program. However, quantities of PFOA may be produced, imported, and used by companies not participating in the PFOA Stewardship Program and some uses of PFOS may be ongoing. While statewide surveys have found that PFOA and PFOS have been detected at varying levels in sewage sludge, it is important to note that not all sewage sludge has been found to have detectable or elevated levels of PFOA or PFOS.

**June 29, 2026—**The U.S. Environmental Protection Agency (EPA) announced the approval of a comprehensive plan to address groundwater contamination at the BASF North Works site in Wyandotte, Michigan, preventing heavy metals, PFAS, and other harmful chemicals from entering the Detroit River.

The facility occupies about 230 acres along the Detroit River and has been used for various industrial operations since the 1800s. It is currently used to manufacture chemicals and other products. Prior investigations by the EPA and the Michigan Department of Environment, Great Lakes, and Energy identified contaminants in groundwater surrounding the site that includes heavy metals, volatile organic compounds, semi-volatile organic compounds, and PFAS.

This milestone finalizes the design for a multi-component system to prevent contaminated groundwater flow, authorizing construction to begin in early 2027. The remedy will include:

Perimeter barriers to limit groundwater movement across the site boundary and into the Detroit River.

A groundwater collection and extraction system to capture contaminated groundwater.

An on-site water treatment facility to treat collected groundwater.

EPA, EGLE and BASF worked closely together on this final plan, referred to as the "100% basis of design." It was developed in a series of phased workplans and includes the detailed engineering drawings, specifications, and construction plans necessary to implement the cleanup.

**June 29, 2026—**The U.S. Environmental Protection Agency (EPA) announced it will be waiving fees for small communities who apply for Water Infrastructure Finance and Innovation Act (WIFIA) loans in fiscal years 2026 and 2027. By waiving the WIFIA Application and Credit Processing Fees, small communities can save almost $200,000 when applying for a WIFIA loan, clearing a notable barrier to accessing funding to improve water infrastructure through this successful program.

The WIFIA program charges fees to loan applicants to reimburse the federal government for costs incurred with processing and underwriting WIFIA loans. These costs can be financed by the WIFIA loan as eligible project costs. The $25,000 WIFIA Application Fee for small communities and separate Credit Processing Fee—currently averaging approximately $156,000 per loan—can be significant barriers for small communities seeking to access WIFIA financing. EPA will be waiving the Application Fee for small communities with populations of 25,000 or fewer. The agency will also waive the Credit Processing Fee for communities in Fiscal Years 2026 and 2027, subject to WIFIA's program requirements and available administrative funds.

The WIFIA program currently has approximately $11 billion in flexible financing available to support water infrastructure projects across the country, including in small and rural communities where WIFIA can finance up to 80 percent of project costs. EPA is currently accepting letters of interest.

Established by the Water Infrastructure Finance and Innovation Act of 2014, the program is a federal loan program administered by EPA. The WIFIA program aims to accelerate investment in the nation's water infrastructure by providing long-term, low-cost supplemental credit assistance for regionally and nationally significant projects. The WIFIA program has an active pipeline of pending applications for projects that will result in billions of dollars in water infrastructure investment and thousands of jobs.

**June 24, 2026—**The Justice Department, Environmental Protection Agency (EPA), and West Virginia Department of Environmental Protection (WV DEP) announced a multi-state settlement with The Chemours Company under the federal Clean Water Act, Resource Conservation and Recovery Act, Toxic Substance Control Act, and West Virginia Water

Pollution Control Act. The settlement covers four Chemours facilities—located in West Virginia, North Carolina, and New Jersey—that use or produce PFAS (per- and polyfluoroalkyl substances), which are synthetic "forever chemicals" used to make products resistant to water, grease, and stains. Chemours also manufactures PFAS for various industrial and military applications, including those where substitutes are not readily available. This is the first comprehensive settlement by the federal government to resolve enforcement claims over pollution by a manufacturer of forever chemicals.

Under the agreement, Chemours will pay a civil penalty of $22.5 million for alleged violations and conduct a multi-year, $90 million program to mitigate PFAS discharges. Chemours will also install PFAS pollution controls for surface water discharges and air emissions at its facility in West Virginia, at an estimated cost of $60 million, supply clean drinking water for more than a decade to communities that surround its facilities in West Virginia and New Jersey at an estimated cost of $280 million, and evaluate options and implement corresponding controls to reduce releases of PFAS and other toxic chemicals from its facility in North Carolina. Combined, the cost of the penalty and injunctive relief programs are estimated to exceed $450 million. The settlement allows Chemours to continue manufacturing PFAS for critical commercial and military applications while preventing future contamination and protecting communities from that contamination.

The complaint alleges that three of the facilities that Chemours operates in West Virginia, North Carolina, and New Jersey discharged PFAS into the Ohio River, Cape Fear River, and Delaware River, in violation of permits required by the Clean Water Act and the West Virginia Water Pollution Control Act. Also, Chemours was allegedly not complying with legal requirements under the Toxic Substances Control Act at all four facilities. These alleged violations continued for over a decade. The facilities were previously owned for many decades by DuPont, and today's settlement does not resolve DuPont's liability for forever chemicals.

As a result of the alleged violations, people living around these facilities were exposed to illegal PFAS. PFAS are widely used and found around the world, with scientific studies showing that exposure to some PFAS in the environment may be linked to harmful health effects in humans and animals.

To remedy the alleged violations, the consent decree calls for 14 specified projects to reduce PFAS in wastewater, stormwater, and groundwater from the West Virginia plant, such as treatment systems using granulated activated carbon. And for people drinking water near the plants in West Virginia and New Jersey, Chemours will test the drinking water and provide treated or alternative clean water. Also, Chemours will be required to control releases of the chemical compound GenX—used to aid in making plastics called fluoropolymers—from each facility at an efficiency of at least 99 percent. Additionally, Chemours will implement controls at its North Carolina facility to mitigate releases of PFAS and other toxics based on recommendations from a third-party engineering firm. These programs will last for 15 years.

Chemours will also implement enhanced Leak Detection and Repair programs to reduce emissions of PFAS. Finally, Chemours must certify compliance with respect to its storage of hazardous waste.

**June 18, 2026—**The U.S. Environmental Protection Agency (EPA) announced a settlement with Union Pacific Railroad Company for violations of the Toxic Substances Control Act (TSCA) involving the improper disposal of polychlorinated biphenyl (PCB) waste from a cleanup at its Oakland, California property. Under the settlement, Union Pacific Railroad Company certified that they are now in compliance with TSCA regulations and agreed to pay a penalty of $155,234.

EPA found that, after the Railroad removed PCB-contaminated soil from its Oakland property under the supervision of the California Department of Toxic Substances Control, the Railroad then:

Improperly disposed of 334 tons of PCB cleanup waste in 2022 at a landfill not authorized to accept this waste;

Failed to properly document the PCB-contaminated waste and notify the receiving landfill of the waste's content; and

Failed to properly document the disposal of an additional 205 tons of the PCB-contaminated waste at an approved facility.

PCBs are man-made organic chemicals that were manufactured in the United States from 1929 until 1979, when their manufacture was banned due to their toxicity to human health and the environment. PCBs persist in the environment, bioaccumulate in plants and animals, and can enter the human body through the food chain.

Under the federal TSCA law, PCB-containing waste must be properly identified and documented before disposal at facilities equipped to receive the waste. This protects communities and avoids the risk of contaminating the environment. Approved landfills have the engineering controls and operating practices needed to prevent PCB migration to soil, groundwater, and air.

**June 17, 2026—**The U.S. Environmental Protection Agency (EPA) announced the availability of $25.5 million in grant funding for technical assistance providers to help small, rural, and Tribal communities address wastewater infrastructure challenges to protect human health and comply with the federal Clean Water Act. The work performed under this grant program will advance the Trump EPA's Real Water Technical Assistance (RealWaterTA) initiative launched earlier this year to align all technical assistance for wastewater systems with tried-and-true services, such as engineering and design expertise, operational support, workforce development, and financial management. EPA is accepting applications from water technical assistance providers until August 14.

The goals of RealWaterTA focus on human health and compliance with the Safe Drinking Water Act and Clean Water Act. It also prioritizes accountability for technical assistance providers and real-world results. This initiative is benefiting Americans nationwide, especially in Tribal communities and rural areas where small systems face unique financial and operational challenges, including aging infrastructure, workforce shortages, increasing costs, and declining rate bases. EPA's grant funding will be used to assess communities' most pressing challenges, including supporting water quality compliance issues; providing training on water infrastructure and management best practices; helping communities navigate the federal funding application process, and investing in reliable infrastructure solutions.

The Rural, Small, and Tribal Technical Assistance providers help these communities access resources to support infrastructure improvements. These providers also support rural, small, and Tribal wastewater treatment systems – centralized and decentralized – to build technical, managerial, and financial capacity to operate their systems and maintain compliance.

EPA is accepting applications until August 14, 2026.

The Rural, Small and Tribal Clean Water Technical Assistance Grant Program was established by the America's Water Infrastructure Act of 2018. One of EPA's Real Water Technical Assistance initiatives, the program aims to provide technical assistance to improve small wastewater system operations and management practices, making them more sustainable and resilient, and supporting EPA's mission to protect public health and the environment. To date, the program has awarded over $102 million. (Robert Schuster)

## 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 alternatives 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, Inhance Technologies LLC, 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)

## THE NINTH CIRCUIT'S LATEST KLAMATH PROJECT DECISION—IDAHO WATER USERS TAKE NOTE

*Yurok Tribe v. Klamath Water Users Association*,
___F.4th___, Case No. 23-15499 (9th Cir. June 17, 2026).

On June 17, 2026, the United States Court of Appeals for the Ninth Circuit issued its most recent decision regarding the U.S. Bureau of Reclamation's (BOR) operations of the Klamath Project in *Yurok Tribe v. Klamath Water Users Association*. Water users (the Klamath Irrigation District and the Klamath Water Users Association) continued their challenge against BOR retention and releases of Project storage water supplies for downstream Endangered Species Act (ESA)-related purposes (chiefly salmon habitat maintenance purposes which, in turn, also address tribal treaty-based fishing rights-related claims). Idaho water users keep close watch on Klamath Project issues and decisions because of federal storage water contract interpretation and application implications that could spread to other federal storage projects, including those in Idaho. The Idaho Water Users Association participated in the appeal as an amicus party.

### Storage and Release of Irrigation Water for Irrigation

The primary question raised in the latest water user appeal was whether the storage and release of irrigation water for irrigation purposes under the users' federal storage contracts were non-discretionary acts exempt from application of the ESA. In addition, and in the alternative, the water users also argued that the retention and release of contracted storage water for ESA purposes amounted to a judicial taking of the users' water rights and that the federal district court lacked jurisdiction to decide the matter because water rights adjudication and administration are matters of state (here Oregon), not federal, law.

Water users in the Klamath Project are caught in a fisheries-related vice. The Project's main storage reservoir, Upper Klamath Lake, contains two species of ESA-listed sucker fish. The Klamath River downstream of the lake provides critical habitat for ESA-listed salmonids that are further subject to tribal subsistence fishing treaty rights/obligations. Layered somewhere in between the sucker fish minimum pool elevations required in the lake under the ESA and storage water release for downstream ESA purposes resides the irrigation storage water supply.

### The Ninth Circuit's Decision

In, perhaps, overly simplistic terms, the water users argued that the storage and release of irrigation water beneficially used under their federal storage water contracts which gave rise to perfected federal storage water rights under Oregon law, constitute non-discretionary acts binding on the BOR that are immune from ESA application. After reaffirming that the ESA applies to BOR operation of the Klamath Project, the Ninth Circuit rejected the notion that the water users' storage water contracts create non-discretionary obligations immune from ESA considerations. The Court of Appeals did so largely based on language in the pertinent contracts comprising a "shortage clause"—insulating the BOR from liability and providing that the irrigation districts are not entitled to water delivery because of failed repayment obligations (which are not applicable in this case), or for "other reasons," including "droughts" or "other reasons."

The court then coupled the broad "other reasons" contractual language with the 1973 iteration of ESA Section 7's language as it evolved from its 1966 and 1969 predecessor language. Prior to 1973, predecessor language qualified the obligation of federal agencies to seek to preserve listed species only where "practicable" and "consistent with" an agency's "primary purposes." Come 1973, however, Section 7(a)(2) of the Act required (and still requires) all federal agencies to engage in consultation to:

> . . .insure that any action authorized, funded, or carried out by such agency . . . is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species. 16 U.S.C. § 1536(a)(2).

Ultimately, this legislative history led the United States Supreme Court decades ago to conclude that the ESA was enacted "to halt and reverse the trend toward species extinction, whatever the cost." *Tennessee Valley Authority v. Hill*, 437 U.S. 153, 184 (1978).

The Ninth Circuit concluded that the water users' federal storage water contracts by their plain language did not guarantee the delivery of any specific quantity of water, that delivery could be halted for "other reasons," and that "other reasons" includes application of the ESA to the Klamath Project for a variety of reasons. At bottom, the BOR necessarily had (and has) the obligation *and* the discretion to determine the availability of Klamath Project water for water users, and that discretion to determine availability extends not only to physical/weather-related reasons (drought and low flows), but also "legal unavailability" (e.g., mandates of valid post-contract legislation such as the ESA).

The court then disposed of the water users' judicial takings and jurisdiction arguments on the grounds that nothing in the federal storage water contracts or the use of Project water for ESA purposes constituted an adjudication or reapportionment of state law-based water rights (i.e., property rights).

### Conclusion and Implications

The storage-based water rights remain in place without diminishment. The water users' interests in those federal water rights are contractual, and the storage contracts are beholden to BOR water availability discretion and application of the ESA regard-

ing ongoing Project operations. Consequently, there was no property "takings" or preemption of Oregon water law. The Ninth Circuit's opinion is available online at: https://cdn.ca9.uscourts.gov/datastore/opinions/2026/06/17/23-15521.pdf.
(Andrew J. Waldera)

## RECENT STATE DECISIONS

# VALIDATION, PROPOSITION 218, AND FINALITY: CALIFORNIA COURT OF APPEAL'S DECISION IN *HILLER V. MARIN MUNICIPAL WATER DISTRICT*

*Hiller v. Marin Municipal Water District*,
___Cal.App.5th___, Case No. A171271 (1st Dist. June 2, 2026).

In *Hiller v. Marin Municipal Water District* (*Hiller)* (June 2, 2026), the California Court of Appeal for the First Judicial District addressed a question of growing importance in California water law: how Proposition 218's substantive protections interact with the procedural finality imposed by validation statutes. The court affirmed dismissal of a ratepayer's challenge to a municipal water district's rates based on a prior validation judgment, holding that such judgments bar subsequent litigation—even constitutional claims—if not timely raised within the validation process.

The case arises at the intersection of two dominant frameworks governing water rates: (1) Proposition 218's requirement that property-related fees be proportional and cost-based, and (2) the validation statutes, as expanded by Government Code section 53759, which impose strict procedural limits on challenges to those rates.

Although *Hiller* does not advance new doctrine on the substantive legality of water rates, it is highly consequential in practice. It confirms that agencies can use validation procedures to secure near-conclusive immunity from later challenges, thereby reshaping how—and when—Proposition 218 disputes must be litigated.

### Background—Proposition 218 and the Litigation

Since its adoption in 1996, Proposition 218 (Cal. Const., art. XIII D, § 6) has generated extensive litigation over water pricing, particularly regarding whether tiered or conservation-oriented rates reflect the true cost of service. Courts have emphasized that water rates must be proportionate and cannot exceed the cost of providing service, though they allow flexibility in cost allocation methodologies.

Against this backdrop, public agencies have increasingly turned to validation actions as a strategic tool. Validation proceedings—traditionally used for bonds and public financing—allow an agency to obtain a binding judgment confirming the legality of its actions, with a short statute of limitations and broad preclusive effect. Government Code section 53759, enacted by Senate Bill 323 (2021), explicitly extends this mechanism to water and sewer charges.

On May 16, 2023, the Marin Municipal Water District (MMWD) adopted Ordinance No. 464, establishing water rates for a four-year period. The district undertook a cost-of-service analysis and complied with Proposition 218's procedural requirements, including mailed notice and a public hearing.

The ordinance relied on a "base/extra capacity" model to allocate costs among customers, reflecting both fixed system costs and demand-based usage patterns. The structure also incorporated tiered pricing, a common but frequently litigated feature in California water rate design.

Before adoption, Plaintiff Tove Hiller submitted to MMWD objections on behalf of herself and similarly situated ratepayers, asserting that the proposed rates violated Proposition 218 by exceeding cost of service and improperly allocating costs among users.

Following adoption, MMWD filed a validation action to confirm the legality of its rates. The complaint detailed the methodology used to calculate rates, including reliance on financial data, historical usage, and projected system costs. MMWD thereafter obtained a final judgment validating the ordinance.

Despite the validation judgment, Hiller filed a petition for writ of mandate challenging the rates on constitutional and statutory grounds. She argued that: (1) the rates violated Proposition 218; (2) the use of validation statutes improperly insulated the rates from

judicial review; and (3) her due process rights were violated because she did not receive personal notice of the validation proceeding.

The trial court sustained MMWD's demurrer without leave to amend, concluding that the claims were barred by the prior validation judgment.

## The Court of Appeal's Decision

On May 13, the First Appellate District Court of Appeal issued an opinion affirming the trial court's decision and clarifying the relationship between validation statutes and Proposition 218 challenges. Initially the decision was unpublished, but upon requests by the MMWD and by the Association of California Water Agencies (ACWA), the court on June 2, 2026, issued an order granting publication.

### Validation Judgments Have Broad Preclusive Effect

The court held that the prior validation judgment barred Hiller's claims in their entirety. Under the validation statutes, a final judgment is binding as to all matters that were or could have been litigated in the proceeding. The court emphasized that Government Code section 53759 brings water rates squarely within the validation framework. Accordingly, any challenge to a water rate ordinance—including constitutional challenges—must be brought within the validation action or is forfeited. This holding reinforces the principle that validation is not merely a procedural option but an exclusive path for judicial review when invoked.

### Proposition 218 Does Not Displace Validation Procedures

Hiller argued that allowing validation judgments to foreclose later challenges undermines Proposition 218's voter-enacted protections. The court rejected this argument, finding no inherent conflict between the two regimes, explaining that Proposition 218 governs substantive requirements and procedural steps for adopting rates, while validation statutes govern judicial review. By channeling all challenges into a single proceeding, validation promotes efficiency, finality, and orderly adjudication. Consequently, in the context of a validation action, Proposition 218 rights remain intact, but they must be asserted within the procedural confines established by the legislature.

### Due Process Does Not Require Individualized Notice

The court also rejected Hiller's due process argument, noting that validation statutes require publication notice rather than individualized service, reflecting their in-rem nature. Thus, such notice satisfies due process because proceedings affect a broad class of persons with shared interests and provide a reasonable opportunity to be heard. This aspect of the decision confirms longstanding precedent allowing constructive notice in validation actions, even where significant property interests are at stake.

### Implicit Endorsement of SB 323's Policy Objectives

Although not framed in explicit policy terms, the court's reasoning aligns with the legislative intent behind SB 323: reducing uncertainty and litigation risk for public agencies setting water and sewer rates. By upholding the statute's application, the court effectively validates the Legislature's effort to streamline and limit post-adoption challenges.

## Conclusion and Implications

*Hiller* is a procedural watershed decision, even if it is not a substantive one. The case confirms that validation actions are now a primary tool for water agencies. By promptly filing a validation action after adopting rates, an agency can: (1) shorten the statute of limitations for challenges; (2) consolidate all potential claims into a single proceeding; and (3) achieve finality once judgment is entered.

For challengers, *Hiller* significantly raises the stakes of timing. Ratepayers and public interest litigants must: (1) monitor agency actions closely; (2) recognize when a validation action has been filed; and (3) assert all claims—procedural and substantive—within that proceeding. Failure to do so will likely bar any subsequent challenge.

From the perspective of water agencies, the decision provides a clear path to achieving litigation certainty and protecting rate structures from prolonged attack. This certainty is particularly valuable in an era of increasing infrastructure costs, climate variability, and regulatory complexity.

The decision in *Hiller* appears to be emblematic of a broader shift in California water law toward procedural efficiency and fiscal certainty. It does not

change the rules governing what rates are legal, but it significantly narrows the window in which those rules can be enforced. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/A171271.PDF.
(David Boyer)

*Western Water Law & Policy Reporter*
Argent Communications Group
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