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LEGISLATIVE DEVELOPMENTS

AB 2218, A BILL TO PROMOTE TRIBAL CONSULTATION AND ADDRESS INEQUITIES IN ACCESS TO WATER, MOVES TO THE GOVERNOR'S DESK FOR SIGNATURE

Assembly Bill 2218, authored by Assemblymember Ash Kalra, passed both houses of the California Legislature in August 2026 and was presented to the Governor on September 3, 2026. If signed by the Governor, the bill will take effect on January 1, 2027.

AB 2218 would codify aspects of existing executive orders and state policies concerning California Native American tribes. Most significantly, it would establish a state policy to recognize and address historic inequities in tribes' access to and control over water. Specified state agencies, including the State Water Resources Control Board (State Water Board), regional water quality control boards (regional boards), the California Natural Resources Agency, the Delta Stewardship Council, and the Office of Land Use and Climate Innovation, would be required to implement that policy when adopting or revising relevant policies, regulations, permits, and grant criteria. The bill would strengthen tribal participation in state water decisions but would not itself create, quantify, reprioritize, or invalidate any water right or give tribes veto authority over agency actions.

Background

AB 2218 builds on several existing state policies, including Executive Order B-10-11 issued by Governor Brown in 2011, Executive Order N-15-19 issued by Governor Newsom in 2019, and Resolution No. 2021-0050 adopted by the State Water Board in 2021, all of which directly address a history of inequity, as well as Native American tribal communities' lack of access and control over water, while emphasizing policies and practices that affirm a commitment to improving communication, working relationships, consultation, and co-management practices with Native American tribes. The bill therefore seeks to incorporate elements of those policies into state law while preserving existing substantive water-rights rules. During the legislative process, the bill's original, broader language concerning compensation and legal recognition of rights was narrowed to emphasize financial assistance, protection of beneficial uses, tribal consultation, Indigenous knowledge, and mediation within existing agency authority.

The bill would add Government Code Section 187, which would require state government to support California Native Americans in maintaining cultural and linguistic traditions, practicing ecosystem stewardship, and engaging in good-faith government-to-government consultation concerning policies that may affect tribal communities. The bill would also add Water Code Section 106.2, establishing a state policy to recognize and address inequities in tribes' access to and control over water caused by state-sanctioned acts of termination, removal, and assimilation. The bill identifies four principal means of advancing that policy: 1) providing financial assistance; 2) protecting tribal beneficial uses; 3) consulting with tribes concerning water projects, plans, and policies; and 4) incorporating Indigenous knowledge into ecosystem restoration and protection.

Covered state agencies would be required to implement the policy when revising, adopting, or establishing policies, regulations, permits, or grant criteria to address identified inequities. They would also be required to identify and offer financial assistance to California Native American tribes, subject to existing legal and program requirements. However, the bill does not itself appropriate funding or guarantee that any tribe will receive a particular grant.

AB 2218 would also amend Water Code Section 1051. When the State Water Board investigates the validity of a claimed riparian or appropriative water right, the Board would be required, upon request, to consult with a California Native American tribe whose ancestral territory includes the water body at issue. This consultation requirement would not alter the substantive legal standards governing the validity or priority of the claimed water right.

Finally, the bill would establish a mediation process for disputes between a tribe and a covered state agency concerning implementation of the new policy.

Before the disputed agency action could be challenged in court, the matter would have to be referred to the Governor's Office of Tribal Affairs (Office of Tribal Affairs). The disputed agency action would be stayed during mediation. If the parties failed to reach a mutually agreeable resolution within the statutory time periods, the Office of Tribal Affairs would issue a letter documenting exhaustion of administrative remedies. A tribe could withdraw earlier if it believed the agency was not negotiating in good faith.

AB 2218 is intended to supplement, rather than replace, existing tribal-consultation requirements. Existing requirements, including California Environmental Quality Act consultation concerning tribal cultural resources, local planning consultation requirements, State Water Board and regional board consultation policies, agency-specific requirements, and applicable executive orders, would continue to apply.

Analysis

Because AB 2218 imposes additional consultation requirements on covered state agencies, ensuring consultation takes place and that protection and promotion of Native American tribes' access and control over water is prioritized, agencies likely would need to expand their administrative records to document tribal outreach, the Indigenous knowledge considered, identified inequities, available financial assistance, and reasons for the ultimate decision.

Furthermore, while the bill does not expressly create a private cause of action, the bill would impose several requirements on agencies that could support a petition for writ of mandate alleging that an agency failed to adhere to the requirements of the law. Therefore, agencies would need to be deliberate in their implementation of this policy when considering new regulations, permits, or similar actions to ensure that those actions comply with the terms of the new law.

The mediation provision may be the bill's most consequential procedural requirement. Because the disputed agency action must be stayed during mediation and for an additional period if the parties do not reach an agreement, the process could temporarily suspend a permit, regulation, grant decision, policy, or other state action. This could delay projects or regulatory decisions involving nontribal public agencies and private parties, even though those entities are not directly subject to AB 2218.

Further, while the bill requires consultation and mediation, the language does not expressly require tribal consent or give a tribe veto authority over a state permit, regulation, water project, or water-right determination. If mediation is unsuccessful, the Office of Tribal Affairs would issue an exhaustion letter, after which the agency or tribe could pursue any available judicial or administrative remedies.

Conclusion and Implications

AB 2218 has the potential to change how certain state agencies make and document decisions affecting tribal water interests, rather than changing the substantive ownership or priority of California water rights. If enacted, state agencies would need to develop procedures for consultation, financial assistance, administrative documentation, and mediation. Local water districts and other project proponents would not be directly regulated but should anticipate earlier tribal engagement, potentially broader state-agency review, additional permit or grant conditions, and possible delays when a covered state action becomes subject to mediation.
(Miles Krieger)

GOVERNOR SIGNS SUITE OF BILLS ON DATA CENTERS AND WATER USE

On September 21, 2026, the Governor signed seven bills creating the "most comprehensive data center laws in the nation." (Office of the Governor, Press Release, https://www.gov.ca.gov/2026/09/21/governor-newsom-signs-most-comprehensive-data-center-laws-in-the-nation-providing-communities-more-control-on-water-electricity-and-land-use/.) Four relate to electricity usage and electricity rates. Two relate directly to the use of water by data centers—AB 2469 and AB 2619. And one addresses the use of California Environmental Quality Act (CEQA) exemptions for data center projects—SB 887.

Background

Large-scale "data centers," computing facilities essential to the training and operation of generative "artificial intelligence," are being constructed across the nation. These resource-intense facilities use vast amounts of electrical power and require significant water for cooling. Data center projects are being planned for construction in areas of California that have limited water supplies due to climate change and natural scarcity. Recent policy research reports have criticized the lack of publicly accessible environmental planning information on cooling systems or the water used for most of the data centers. The newly enacted legislation includes provisions intended to address that issue.

AB2469

One of the bills that addresses water usage by data centers, AB2469 (Papan), expressly prohibits a city or county from approving a license, permit, or equivalent instrument that would lead to a data center's construction or expansion of its maximum peak water use unless certain conditions are met. The conditions include the application providing a water supply assessment, a water scarcity plan, projected water use and water efficiency measures; disclosures about the estimated workforce needs of the project, and a commitment to:

> . . . assume responsibility for the full cost of any required water conveyance, treatment or storage, or distribution infrastructure improvements necessary to serve the project, as determined by the applicable water supplier.

The last requirement is expressly made severable in the event it is found to be unconstitutional. The bill is also declared to address a "matter of statewide concern" rather than a "municipal affair" and thus to apply to charter cities as well as general law cities.

AB2619

AB2619 (Papan) requires the owner or operator of a data center to provide to its water supplier an estimate of expected water use, anticipated source of water, and projected water use volume for the maximum day, maximum month, and average year. This must be done before applying to a city or county for an initial business license, permit, or equivalent instrument. When applying to a city or county, that same information must be reported on the application as well. For renewals, the data center's annual water use for the preceding calendar year, including total water and direct water use, must be disclosed. The bill also requires urban water suppliers to account for the "unconstrained demand" of data centers and other large water users.

SB887

Another bill affecting data center projects and relevant to water use is SB887 (Padilla), which prohibits the use of categorical exemptions for data center projects under the California Environmental Quality Act. This bill authorizes the Governor to certify data center projects that meet certain conditions as environmental leadership development projects, which receive expedited judicial review under CEQA. It requires the Office of Land Use and Climate Innovation, working with other state agencies if needed, to develop uniform statewide standards.

Conclusion and Implications

These bills provide a starting point for assessing the water supply impacts of data center construction and development. Water supply is a critical public policy issue in California due to scarcity, variable hydrology, and a wide range of competing uses. Prior to this legislation, significant projects creating new demand for this scarce resource were being proposed without adequate attention to the water supply implications. By requiring this reporting and assessment, and by not permitting the projects to avoid CEQA review, the Legislature has taken a first step toward remedying that situation.
(Sumeet Rai, Brett Stroud)

REGULATORY DEVELOPMENTS

AHO ISSUES REVISED DRAFT DECISION FOR SITES RESERVOIR: CONDITIONAL APPROVAL TIED TO THE 2026 BAY-DELTA PLAN

On September 3, 2026, the State Water Resources Control Board's (SWRCB) Administrative Hearings Office (AHO) released a revised draft decision (Decision 1653) and draft water right permit (Permit 21487) for the proposed Sites Reservoir Project (Sites/Project). The revised drafts would allow the Sites Project Authority (Authority) to divert up to 986,000 acre-feet per year (AFY) from the Sacramento River, subject to terms that tie diversions to the SWRCB's forthcoming Bay-Delta Plan update. On September 18, 2026, the Authority stated that it "can see a path forward" for the Project under the revised permit. The Authority identified three key improvements:

> (1) the Project is now treated like other new water rights under the anticipated Bay-Delta Plan updates rather than facing disproportionate requirements;
>
> (2) adjusted diversion criteria balance competing beneficial uses while maintaining fish and wildlife protections; and
>
> (3) Funks and Stone Corral Creeks remain available for continued consideration as additional sources. Written comments are due October 5, 2026, and the SWRCB will consider adopting the decision and permit at its November 4, 2026 public meeting.

Background

Sites is a proposed 1.5-million-acre-foot off-stream storage reservoir near Maxwell, in Colusa and Glenn Counties. The Project would capture water from the Sacramento River when flows are relatively high and store it for later delivery to farms, cities, and the environment.

The Authority filed its water right application in May 2022. In California, appropriative water rights are ranked by priority date under the principle of "first in time, first in right": when supplies are short, holders with earlier priority dates divert before those with later dates. The permit's priority date is May 11, 2022, the date the Authority filed its application, which makes it junior to existing senior rights. The Authority had sought a much earlier date, September 30, 1977, by petitioning for assignment of a State-filed application; the revised draft denies that request, as discussed below.

The Authority seeks to appropriate up to 1,500,000 AFY, but the revised permit authorizes 986,000 AFY from the Sacramento River. The AHO's hearings addressed water availability, impacts to senior water rights, fish and wildlife protection, water quality, Tribal interests, and the public interest. The AHO released a draft decision on March 20, 2026, held a supplemental hearing on July 24, 2026, on technical information the Authority submitted with its comments, and released the revised drafts on September 3, 2026. Separately, the SWRCB issued a Clean Water Act water quality certification for the Project on September 10, 2026.

Substantive Changes

The revised drafts retain the core disposition of the March 2026 drafts: conditional approval of Sacramento River diversions of up to 986,000 AFY within a November 1 to June 14 season, denial of the petition for assignment of State-filed Application 25517, and denial without prejudice of the petitions for release from priority. They also modify several permit terms, most significantly by splitting the application and aligning the permit with the SWRCB's final draft Bay-Delta Plan.

Creek Diversions Deferred

Application 33534 is bifurcated into Application 33534A (Sacramento River), which the revised draft conditionally approves, and Application 33534B (Funks and Stone Corral Creeks), which remains pending for further hearing on water availability. Because creek water is not yet authorized for appro-

priation, the Authority must install outlet works at Golden Gate and Sites Dams and operate the reservoir to release creek inflows within a reasonable time, without injuring other users or unreasonably affecting fish and wildlife (Terms 19 and 20). The Deputy Director may modify these requirements if the Authority later obtains a creek permit.

Conditional Approval of 986,000 AFY from the Sacramento River

The permit authorizes up to 986,000 AFY by storage between November 1 and June 14, at maximum diversion rates of 2,120 cubic feet per second (cfs) at Red Bluff and 2,070 cfs at Hamilton City (combined 4,190 cfs). The AHO found that unappropriated water is available at times during that season, generally in relatively high flow conditions. The 986,000 AFY figure matches the annual limit in the Authority's 2024 incidental take permit (ITP) from the California Department of Fish and Wildlife (CDFW).

Assignment Petition and Priority Releases Denied

The revised draft would deny the Authority's petition for assignment of State-filed Application 25517 (priority date September 30, 1977) and its petitions for release from priority of other State-filed applications. State-filed applications reserve water for future development; the SWRCB may assign them or release their priority under Water Code Section 10504, but only if doing so does not conflict with water quality objectives. The revised draft finds that the Authority did not make that showing because Project operations are likely to cause or contribute to exceedances of methylmercury objectives in receiving waters. It also finds, independently, that assignment is not in the public interest: given the subordination agreements and operating terms the Authority proposed, a 1977 priority date would offer the Project no practical benefit and would complicate administration of water right priorities. The release petitions are denied without prejudice.

Fishery Protections Beyond the 2024 ITP

The permit requires compliance with the 2024 ITP (Term 22) and adds several requirements in Term 23. The ITP's flow-dependent diversion criteria at Red Bluff, which apply March 1 to June 14, also apply January 1 to February 28. Diversions are prohibited during the first seven days of qualifying pulse flow events at Bend Bridge from March 1 to May 31. From December 1 to February 28, diversions may not occur if flow at Wilkins Slough is below, or would fall below, 14,125 cfs. Term 23(d) allows the SWRCB Executive Director to amend these requirements at the Authority's request based on new information, after public notice, Tribal comment, and consultation with CDFW, if the amended term will prevent unreasonable effects on fish and wildlife. Term 23(e) requires analysis of impacts to fall-run and late-fall-run Chinook salmon.

Permit Aligned with the 2026 Bay-Delta Plan

The revised permit removes the March draft's interim flow proxies and ties diversions to the Bay-Delta Plan update. Term 29 prohibits diversions whenever the Plan's numeric Sacramento River inflow, Sacramento River and Delta salinity, or Delta outflow objectives are not being met. Term 30 prohibits any diversions until the SWRCB implements regulatory actions carrying out the 2026 Bay-Delta Plan's Delta outflow requirements applicable to the permit. The Plan is itself still a final draft; the SWRCB will consider it at its October 28–29, 2026 public meeting.

Coordination with the Healthy Rivers and Landscapes Program

Term 31 prohibits diversions on any day that flows provided by the Sacramento River Mainstem Healthy Rivers and Landscapes (HRL) parties are contributing to Delta outflow, as determined under the Plan's accounting provisions. The prohibition does not apply (1) on days a high-flow off-ramp threshold is exceeded, if the Plan is revised to include one, or (2) if the SWRCB approves adding the permit to the Plan's voluntary agreement pathway and the approved proposal includes provisions, developed in coordination with HRL parties, ensuring that Project diversions do not diminish the benefits of the HRL parties' commitments.

Delta Protections

Diversions are prohibited when the Delta is in balaced conditions (Term 15) and when satisfying in-basin entitlements requires the Central Valley Project or State Water Project to release supplemental

project water (Term 28, Standard Permit Term 91). Rediversion at the Delta export facilities is limited to July 1 through November 30 (Term 45), requires that the Plan's numeric salinity, Rio Vista flow, base Delta outflow, and interior Delta flow objectives be met (Term 46), and requires an updated Water Level Response Plan approved by the Executive Director (Term 49).

Water Quality Portfolio, Methylmercury, and Temperature

Term 34 requires a Water Quality Portfolio, approved by the SWRCB before any diversion, that consolidates the permit's harmful algal bloom, methylmercury, and temperature requirements (Terms 35 through 43). The Authority must consult with the Central Valley Regional Water Quality Control Board (Regional Board), CDFW, and interested Tribes before submitting the Portfolio and each update, which is due at least every five years. Absent an approved algal bloom strategy, no water may be released when cyanobacteria or cyanotoxin levels exceed state Caution Levels (Term 37); absent an approved temperature strategy, releases through the Colusa Basin Drain must be cooler than the Sacramento River or below 68 degrees Fahrenheit (Term 42). Term 38 requires a Methylmercury Mitigation Plan developed with the Regional Board, the Office of Environmental Health Hazard Assessment, and the SWRCB, and Term 39 requires releases to meet its implementation target.

Groundwater Monitoring and Tribal Consultation

Before diverting, the Authority must obtain Deputy Director approval of a groundwater monitoring program that identifies monitoring locations, sampling frequencies, and thresholds triggering analysis of whether diversions are injuring groundwater right holders (Term 52). The Authority must consult with any California Native American Tribe holding groundwater rights that may be affected and, at the Tribe's request, address ownership of monitoring wells, access to trust lands, custody of data generated on Tribal lands, sampling protocols, and confidentiality. The SWRCB also reserves authority to modify the permit, after notice and hearing, if diversions threaten injury to groundwater right holders in subbasins downstream of the points of diversion.

Purposes and Places of Use

"Water quality" is added as a purpose of use (Term 3), and the Delta is authorized as a place of use for water quality and fish and wildlife purposes (Term 4). The Yolo Bypass is no longer a place of use for fish and wildlife enhancement, consistent with the Authority's April 2026 statement that Yolo Bypass ecosystem flows are no longer an intended element of Project operations. The permit continues to accommodate Water Storage Investment Program ecosystem-benefit areas and refuge deliveries.

Conclusion and Implications

Because the permit contains no interim Delta outflow requirement, it prohibits diversions until the Bay-Delta Plan is implemented, in order to prevent unreasonable impacts from Project diversions on fisheries and other public trust resources. Commenters should note the sequencing: written comments on the revised drafts are due October 5, 2026; the SWRCB considers the Bay-Delta Plan on October 28–29; and it considers the Sites decision on November 4. The Plan is not yet adopted, and the U.S. Bureau of Reclamation and Westlands Water District have threatened to withdraw from the HRL Program over its final draft, a dispute that could affect how Terms 30 and 31 operate. Under the bifurcation, the AHO will also hold additional hearing days on water availability in the creeks.

Reactions have diverged. The Authority urges the AHO and the SWRCB to preserve the revisions and has advanced its "benefits and obligations" period, a step toward extending commitment contracts to participants, while San Francisco Baykeeper has criticized the revisions as substantially weakening protections for native species and water quality. If the SWRCB adopts the permit, a challenge from either side is possible. It would begin with a petition for reconsideration, followed by a petition for writ of mandate (Water Code Sections 1122 and 1126), and could focus on whether the conditions are supported by substantial evidence or conform to applicable law. The final terms will determine the Project's technical and financial viability and will signal how the state balances competing water demands and resource protection values for agricultural users, environmental organizations, and Tribal interests.
(David Cameron, David Boyer)

WESTLANDS AND RECLAMATION THREATEN TO EXIT HEALTHY RIVERS AND LANDSCAPES PROGRAM OVER SWRCB'S FINAL DRAFT BAY-DELTA PLAN

Westlands Water District (Westlands) and the U.S. Bureau of Reclamation (Reclamation) have each threatened to withdraw from the Healthy Rivers and Landscapes (HRL) Program unless the State Water Resources Control Board (SWRCB) revises its August 19, 2026 final draft update to the Bay-Delta Water Quality Control Plan (Bay-Delta Plan). Both contend that the final draft abandons commitments made in the March 2022 Memorandum of Understanding (MOU) underlying the HRL Program. The State Water Contractors have raised concerns but have not threatened to leave. The SWRCB says it remains committed to the HRL Program and will consider adopting the Bay-Delta Plan at its October 28–29, 2026 public meeting.

Background

The HRL Program, formerly known as the Voluntary Agreements, grew out of the MOU that state, federal, and local agencies and public water agencies signed in March 2022. Participating water agencies would fund habitat restoration and contribute additional flows to the Bay-Delta in exchange for less restrictive limits on diversions for farms and cities. Signatories include Westlands, the State Water Contractors, and Reclamation. The parties estimated the cost of the program's initial eight-year term at approximately $2.9 billion, funded by fees that water agencies assess on themselves and by state and federal contributions.

The SWRCB was not a signatory to the MOU and is not bound by its terms. To give the HRL Program legal effect, the SWRCB incorporated it into the Bay-Delta Plan update. The final draft would implement the Bay-Delta Plan through a voluntary agreement pathway for HRL participants and a flow-based regulatory pathway for all other water right holders. Written comments on the final draft closed on September 18, 2026.

Objections to the Final Draft

Westlands announced on September 4, 2026 that it "will not continue" in the HRL Program under the final draft, which it says keeps the HRL name while abandoning the 2022 commitments. Westlands states that the SWRCB rejected, rather than meaningfully addressed, its comments on prior drafts. Westlands contends that the final draft:

> (1) relies on a narrative objective in place of the agreed numeric flow objective, which does not commit to a specific volume of water;
>
> (2) applies curtailment provisions to HRL parties in non-emergency circumstances, undermining supply certainty; and
>
> (3) allows the SWRCB Executive Director to modify the performance and outcomes of HRL proposals, greatly expanding the limited role the MOU contemplated for the SWRCB.

In Westlands' view, the program becomes more regulatory than cooperative.

Reclamation's September 4, 2026 letter to the SWRCB states that the final draft "does not honor" the MOU. Reclamation asserts that the final draft unilaterally redefines the baseline for additive flows and outflows, requires additional Central Valley Project (CVP) and State Water Project export reductions of 125,000 acre-feet in dry and below-normal years and 175,000 acre-feet in above-normal years, and sets a regulatory default of 55 percent of unimpaired flow. Reclamation also contends that the final draft directly regulates federal reservoirs through carryover storage targets and Executive Director approval of temperature management strategies, and that state law cannot impose such "gatekeeping approval" on federal operations. Like Westlands, Reclamation objects to the centralization of decision-making authority in the Executive Director. If the SWRCB proceeds, Reclamation states that it will cease further participation and funding under the HRL Program and pursue other measures, including reviewing older water right permit conditions and, where warranted, reinitiating Endangered Species Act consultation.

The State Water Contractors have been more measured. They state that the final draft lacks meaningful voluntary implementation, resembles the HRL

Program without its substance, and does not explain how the HRL Program and a regulatory alternative would operate in parallel; managing a weekly regulatory program while the rest of the watershed operates under the HRL Program would be an "insurmountable challenge."

Conclusion and Implications

The loss of Westlands and Reclamation would significantly weaken the HRL Program, which was built on voluntary participation by water, state, and federal agencies. Reclamation operates the CVP, and Westlands is the largest irrigation district in the Central Valley. If the HRL Program collapsed, the flow-based regulatory pathway would be the alternative for water right holders that no longer participate, and Reclamation's position that state law cannot condition CVP operations on SWRCB approval sets up a potential federal–state conflict if the SWRCB adopts the final draft without revision.

Timing is tight. Written comments are closed, but interested persons may offer oral comments at the October 28–29, 2026 meeting, and the SWRCB may revise the final draft before adopting it. Press reports note, however, that a significant rewrite could require further environmental review and public comment, making adoption before the current administration ends in January 2027 less likely. The outcome will also affect other proceedings: the Administrative Hearings Office's revised draft permit for the Sites Reservoir Project, for example, conditions diversions on implementation of the 2026 Bay-Delta Plan and on coordination with HRL parties.
(David Cameron, David Boyer)

RECENT FEDERAL DECISIONS

THE NINTH CIRCUIT AFFIRMS EXEMPTION OF CENTRAL VALLEY PROJECT CONTRACT CONVERSION FROM CONTRACT-SPECIFIC ENVIRONMENTAL REVIEWS

Center for Biological Diversity v. U.S. Bureau of Reclamation, ___ F.4th ___, Case No. 25-5137 (9th Cir. Aug. 17, 2026).

In *Center for Biological Diversity v. Bureau of Reclamation*, the U.S. Court of Appeals for the Ninth Circuit affirmed the district court's entry of summary judgment in favor of the U.S. Bureau of Reclamation (Reclamation) and dozens of California water districts. The appellate panel held that § 4011(a) of the Water Infrastructure Improvements for the Nation (WIIN) Act imposes a mandatory, nondiscretionary duty on Reclamation to convert long-term water service contracts into permanent repayment contracts upon a contractor's request. Because the statute restricts Reclamation's discretion solely to payment structure adjustments and explicitly bars the modification of other contractual rights, the court concluded that Reclamation was not required to conduct contract-specific environmental reviews under the National Environmental Policy Act (NEPA) or formal consultations under § 7(a)(2) of the Endangered Species Act (ESA) prior to executing the conversions.

Background

The Central Valley Project (CVP) is an extensive federal water management system of reservoirs, dams, canals, and power plants operated by the Bureau of Reclamation to transport water from Northern California to agricultural, municipal, and industrial users in Central and Southern California. While the project provides critical water supplies and hydroelectric power, its water diversions significantly impact native fish habitats and aquatic ecosystems in the Sacramento-San Joaquin Bay-Delta.

Historically, federal reclamation law governed water deliveries through two primary methods under the Reclamation Project Act of 1939. There are repayment contracts under § 9(d) and water service contracts under § 9(e). Similar to a mortgage, contractors repay project construction costs over a fixed period and hold perpetual rights to water deliveries thereafter, subject only to ongoing operation and maintenance costs. Water service contracts, on the other hand, are similar to a lease, where contractors pay annual rates for water over a fixed term of years, requiring periodic renewals.

Following the enactment of the Central Valley Project Improvement Act (CVPIA) in 1992, Reclamation established a "two-track" environmental compliance framework. Under this system, the agency conducts programmatic NEPA reviews and ESA consultations for overall, long-term CVP operations while executing discrete, contract-specific NEPA reviews and ESA consultations whenever individual long-term water service contracts are renewed.

In 2016, Congress enacted the WIIN Act to address severe drought conditions in California. Section 4011(a) introduced a mechanism allowing water service contractors to repay their allocated construction costs—either in a lump sum or within three years—and convert their expiring water service contracts into permanent repayment contracts. Prepayment revenues were statutorily designated to fund new federal water storage projects.

Between 2020 and 2021, Reclamation converted 67 CVP water service contracts into permanent repayment contracts under § 4011(a) without performing contract-specific NEPA environmental impact statements or ESA § 7 consultations. Plaintiffs—the Center for Biological Diversity, Restore the Delta, and Planning and Conservation League—filed suit under the Administrative Procedure Act (APA), arguing that converting these contracts to perpetual duration locks in massive water diversions that threaten endangered fish species in the Bay-Delta. The U.S. District Court for the Eastern District of California granted summary judgment for Reclamation and intervening water districts, ruling that contract con-

version is a mandatory act lacking agency discretion. The plaintiffs appealed to the Ninth Circuit.

Analysis

Circuit Judge Gabriel P. Sanchez, writing for a unanimous panel joined by Circuit Judges Kim McLane Wardlaw and Daniel A. Bress, affirmed the district court's ruling based on statutory construction, Supreme Court precedent regarding agency discretion, and the scope of the WIIN Act's savings clauses.

Under Supreme Court precedent, NEPA environmental reviews apply only to "major federal actions" where an agency possesses discretion to consider environmental factors. Similarly, ESA § 7(a)(2) consultation requirements apply only to actions over which an agency retains "some discretion to take action for the benefit of a protected species."

The Ninth Circuit held that § 4011(a) of the WIIN Act strips Reclamation of discretion regarding environmental review during conversions through two interconnected provisions: (1) Section 4011(a)(1) specifies that upon request of the contractor, the Secretary of the Interior "shall convert any water service contract" to allow for prepayment under mutually agreeable terms and conditions. The use of the mandatory term "shall" creates an imperative statutory command; (2) Section 4011(a)(4)(C) restricts negotiations by explicitly mandating that converted contracts "shall not modify other water service, repayment, exchange and transfer contractual rights between the water users' association, and the Bureau of Reclamation."

Putting these provisions together, the court held that while Reclamation has authority to negotiate financial terms related to prepayment, § 4011(a)(4)(C) explicitly prohibits the agency from altering non-financial contractual terms—such as water delivery volumes or operational timing—to mitigate environmental harms. Because the Reclamation lacks statutory authority to alter non-payment terms, contract conversions are nondiscretionary acts exempt from contract-specific NEPA review and ESA consultations.

The Ninth Circuit rejected three principal arguments advanced by the plaintiffs. First, plaintiffs argued that the statutory phrase "mutually agreeable terms and conditions" in § 4011(a)(1) grants the Reclamation negotiation discretion similar to contract renewals under the Reclamation Act. The court distinguished this case from NRDC v. Houston, noting that the renewal statute in Houston contained no prohibition against altering water volumes. Here, however, § 4011(a)(4)(C) of the WIIN Act contains an express "shall not modify" constraint on non-payment rights. Next, the court rejected the plaintiffs' claim that "other contractual rights" referred only to separate third-party contracts, holding that the plain language prohibits modifying non-financial rights within the subject contract being converted. Lastly, plaintiffs pointed to administrative contract edits—such as removing fixed-term renewal clauses—as evidence of agency discretion. The court clarified that these updates are administrative and merely reflected the standard transition from a fixed-term lease structure to a perpetual repayment structure.

The Ninth Circuit further concluded that omitting contract-specific reviews does not violate the WIIN Act's savings clauses. Specifically, CVPIA § 3404(c) requires environmental review for contract renewals. The court noted that reclamation law historically distinguishes contract renewals from conversions. Furthermore, CVPIA review rules apply to 25-year renewed terms, not perpetual repayment contracts under the WIIN Act. As for the ESA savings clauses, the court reasoned that preserving the general applicability of the ESA to CVP operations does not create a consultation requirement where the agency lacks such discretion. As for Reclamation Law Savings Clause § 4011(d)(4), the Circuit court found that preserving existing contractor obligations under reclamation law does not impose independent environmental review duties on Reclamation.

Conclusion and Implications

This Ninth Circuit decision establishes a firm precedent regarding mandatory statutory duties under federal reclamation statutes. By confirming that § 4011(a) conversion is a non-discretionary conversion of financial terms only, the court provided legal certainty for the 67 converted water service contracts and other pending applications for conversion.

Crucially, the ruling delineates the boundaries of environmental compliance for federal water infrastructure. While individual water contract conversions are exempt from environmental review due to the absence of agency discretion in the statute, the panel emphasized that water deliveries under the converted contracts remain fully bound by the envi-

ronmental impact statements governing the overall operations of the CVP. The decision can be found here: https://www.courthousenews.com/wp-content/uploads/2026/08/center-for-biological-diversity-v-bureau-of-reclamation-ninth-circuit-order.pdf. **(Miles Krieger)**

NINTH CIRCUIT ORDERS NEW TRIAL AFTER *SACKETT* REOPENS CLEAN WATER ACT COVERAGE OF TEMESCAL CREEK

Inland Empire Waterkeeper v. Corona Clay Co.,
___ F.4th ___, Case Nos. 24-6090, 24-6199 (9th Cir. Aug. 5, 2026), amended (Sept. 3, 2026).

In *Inland Empire Waterkeeper v. Corona Clay Co.*, the Ninth Circuit held that whether Temescal Creek is a "water of the United States" (WOTUS) concerns the merits of a Clean Water Act (Act) claim, not federal subject-matter jurisdiction. However, because *Sackett v. EPA* changed the governing standard after the trial, the court remanded for further proceedings on whether the creek falls within the Act's coverage. *Inland Empire Waterkeeper v. Corona Clay Co.*, Nos. 24-6090, 24-6199, slip op. at 5-7 (9th Cir. Sept. 3, 2026).

Background

Corona Clay Company (Corona) operates a clay-recycling facility near Temescal Creek in Corona, California. Inland Empire Waterkeeper and Orange County Coastkeeper sued under the Clean Water Act, alleging violations of California's Industrial General Permit involving stormwater controls, pollution-prevention planning, monitoring, and reporting. The case had already been tried and appealed once. In the first appeal, the Ninth Circuit ordered further proceedings after *County of Maui v. Hawaii Wildlife Fund* changed the law governing indirect discharges. *County of Maui v. Hawaii Wildlife Fund*, 590 U.S. 165 (2020).

Permit Violations and the Second Trial

Corona obtained coverage under California's statewide Industrial General Permit in 2014. The permit required Corona to use best available technology and best conventional pollutant-control technology, prepare and implement a stormwater pollution prevention plan, monitor its facility, and submit reports. California regulators issued several notices of violation between 2015 and 2017 but did not bring an enforcement action. At the first trial, the jury found for Corona. The Ninth Circuit later vacated that result in part because the jury had been instructed that the waterkeeper organizations could establish monitoring and reporting violations only by proving an ongoing or likely recurring discharge violation. The court held that the procedural permit claims did not depend on such proof.

On remand, the parties tried the remaining claims. Corona stipulated that the Santa Ana River is traditionally navigable, that Temescal Creek is a tributary of the Santa Ana River, and that Temescal Creek is WOTUS. That stipulation followed the previously controlling Ninth Circuit precedent from *United States v. Moses*, 496 F.3d 984 (9th Cir. 2007), which treated a seasonally intermittent tributary that ultimately emptied into a covered river as WOTUS, even if it is dry much of the year. *United States v. Moses*, 496 F.3d 984, 989, 991 (9th Cir. 2007). Because Temescal Creek flows into the Santa Ana River when it flows, the Ninth Circuit later concluded that, before *Sackett*, Corona would have had no viable basis to dispute its status. The jury was instructed accordingly. It found 12,541 Clean Water Act violations, including failures to implement required stormwater controls, maintain a compliant stormwater pollution prevention plan, and meet monitoring and reporting obligations. The district court imposed more than $1.8 million in penalties.

Sackett and Corona's Post-Trial Motions

About six months after the jury verdict, the Supreme Court decided *Sackett v. EPA*, 598 U.S. 651 (2023). *Sackett* rejected the "significant nexus" ap-

proach that decided many Clean Water Act coverage disputes and adopted a narrower test. Under that test, WOTUS include only "relatively permanent," standing, or continuously flowing bodies of water ordinarily described as streams, rivers, lakes, or oceans. *Sackett v. EPA*, 598 U.S. 651, 671, 679-80 (2023). Corona argued that Temescal Creek did not meet the new standard. It first moved to dismiss for lack of subject-matter jurisdiction and then sought a new trial under Federal Rule of Civil Procedure 59. The district court denied both motions. It concluded that Corona had not disputed Temescal Creek's status during either trial and that a new trial was not warranted on an issue that had not been litigated.

The Jurisdictional Question

The Ninth Circuit agreed with the district court that Temescal Creek's status did not affect the court's subject-matter jurisdiction. The Clean Water Act's citizen-suit provision authorizes district courts to hear claims alleging violations of an effluent standard, limitation, or permit condition. Whether the plaintiff can prove that the alleged conduct involved federally covered waters is a merits question.

The court relied on the statutory text and its earlier decision in *San Francisco Baykeeper v. Cargill Salt Division*, 481 F.3d 700 (9th Cir. 2007). In Clean Water Act cases, "jurisdiction" often is just the scope of federal authority over a waterbody. That use of the term does not make the presence of WOTUS a prerequisite to a federal court's power to hear a citizen suit. *San Francisco Baykeeper v. Cargill Salt Div.*, 481 F.3d 700, 709 n.9 (9th Cir. 2007). Corona therefore could not obtain dismissal on the theory that the district court lacked subject-matter jurisdiction. The district court had authority over the action even if Corona could later establish that Temescal Creek falls outside the Act's substantive coverage.

Rule 59 Relief

The Ninth Circuit reached a different result on Corona's request for post-trial relief. Parties generally may not wait until after judgment to raise an issue they did not litigate. The court recognized, however, that relief may be appropriate where an intervening decision makes a "previously foreclosed and bypassed issue viable," substantially departs from prior law, and is raised at the "earliest procedural opportunity" while the court retains jurisdiction. Before *Sackett*, Ninth Circuit precedent treated a seasonally intermittent tributary that ultimately flowed into a covered river as WOTUS. Because Temescal Creek flows into the Santa Ana River when it flows, the court concluded that, under the law that previously governed the second trial, a challenge to the creek's federal status would have been for nothing.

The court also distinguished Corona's factual admissions from its legal concession. Corona remained bound by its admissions concerning Temescal Creek's connection to the Santa Ana River. Its admission that the creek was WOTUS, however, rested on the legal framework that was previously in force pre-*Sackett*. Corona had not admitted the facts needed to establish relative permanence post-*Sackett* and had disputed that Temescal Creek was a permanent, long-standing water feature.

Remand and Scope of Further Proceedings

The Ninth Circuit reversed the denial of Rule 59 relief and remanded for further proceedings on whether Temescal Creek satisfies the Sackett standard. It did not decide that the creek falls outside Clean Water Act coverage. Rather, it concluded that the existing record did not permit the appellate court to resolve that fact-dependent question in the first instance. The district court may limit the remand to the water-status issue. Because the coverage determination could affect liability, the Ninth Circuit never reached Corona's separate challenge to the penalty award.

Conclusion and Implications

The decision allows a party to revisit an unlitigated issue after a substantial change in Clean Water Act law, but only in limited circumstances. The intervening authority must materially alter the governing rule, and the party must raise the issue at "the earliest opportunity." For California water agencies, permittees, landowners, and citizen-suit plaintiffs, this could mean that the status of intermittent streams and washes could be subject to challenge and may require a developed factual record post-*Sackett*, even where tributary status had previously been treated as sufficient under then-current law.
(Ian Kavanaugh)

RECENT CALIFORNIA DECISIONS

CALIFORNIA COURT OF APPEAL DEFERS SGMA SUSTAINABILITY CHALLENGES TO DWR REVIEW

AquAlliance et al. v. Vina Groundwater Sustainability Agency et al., ___ Cal.App.5th ___, Case No. C102382 (3rd Dist. July 30, 2026).

Background

AquAlliance et al. v. Vina Groundwater Sustainability Agency et al., is a certified-for-publication decision addressing the relationship between judicial validation proceedings and the Department of Water Resources' (Department) review of groundwater sustainability plans under the Sustainable Groundwater Management Act (SGMA). The Court of Appeal affirmed the Butte County Superior Court's dismissal of a reverse validation action challenging the Vina Basin groundwater sustainability plan after the Department approved that plan.

The Vina Groundwater Sustainability Agency and Rock Creek Reclamation District adopted their groundwater sustainability plan in December 2021 and submitted it to the Department in January 2022. AquAlliance, California Water Impact Network, and California Sportfishing Protection Alliance then filed a complaint in validation, alleging that the plan would not achieve sustainable groundwater management. Their allegations addressed the plan's groundwater-level thresholds, protection of interconnected surface waters, land-subsidence standards, and treatment of data gaps. While the action was pending, the Department approved the plan in July 2023, finding it likely to achieve the basin's sustainability goal, subject to six corrective actions.

SGMA's Administrative Review Structure

The decision begins with SGMA's comprehensive framework for local groundwater management and state oversight. SGMA requires groundwater sustainability agencies in medium- and high-priority basins to develop and implement plans designed to achieve sustainable groundwater management. A sustainability plan must include measurable objectives, minimum thresholds, and a planning and implementation horizon, among other statutory and regulatory requirements.

The Department must evaluate a submitted plan within two years and periodically review it thereafter. Its review determines whether the plan conforms to statutory content requirements and is likely to achieve the basin's sustainability goal. The Department's regulations provide detailed criteria for the review, including whether technical conclusions are scientifically reasonable and whether projects and management actions are feasible. If a plan is inadequate or is not being implemented in a manner likely to meet the sustainability goal, the State Water Resources Control Board may intervene through SGMA's probationary-basin and interim-plan processes.

Reverse Validation Actions Are Available

The agencies argued that Water Code Section 10726.6 permits only a groundwater sustainability agency to bring a validation action concerning its own plan. The Court of Appeal rejected that argument. Although the statute expressly provides that an agency may file an action to determine a plan's validity, it incorporates the general validation procedures in Code of Civil Procedure Section 860 et seq. Those procedures include Code of Civil Procedure Section 863, which permits an interested person to bring a reverse validation action if the agency does not initiate one.

The court reasoned that the Legislature knows how to preclude reverse validation actions when it intends to do so, but did not include restrictive language in Section 10726.6. Accordingly, interested parties may invoke the validation statutes to challenge a groundwater sustainability plan. The court therefore affirmed the trial court's order overruling the agencies' demurrer, even though it ultimately sustained the dismissal of the plaintiffs' action on another ground.

Primary Jurisdiction Governed the Sustainability Claims

The central issue was whether the Department's approval rendered the reverse validation action moot. The appellate court concluded that the trial court's deference to the Department was proper, but characterized the governing doctrine as primary jurisdiction rather than mootness or judicial abstention.

Primary jurisdiction applies when a claim is initially cognizable in court but requires resolution of issues committed by statute to an administrative agency's specialized competence. The doctrine ordinarily permits a court to stay an action pending agency review and, if the agency's determination resolves the dispute, to dismiss the action. A decision to apply the doctrine is reviewed for abuse of discretion.
Here, the court found complete overlap between the plaintiffs' claims and the Department's statutory task. The complaint alleged that the plan would fail to achieve sustainable groundwater management and the sustainability goal within the statutory time horizon. The Department was specifically required to evaluate whether the plan was likely to achieve that same goal. The plaintiffs also relied on the Department's own plan-evaluation regulations, further confirming that their claims sought the same assessment entrusted to the Department.

Technical Expertise and Regulatory Uniformity

The court emphasized that SGMA establishes a pervasive and self-contained administrative system. The statute assigns the Department responsibility for initial and ongoing plan evaluations, requires it to promulgate implementing regulations, and coordinates that review with potential State Water Resources Control Board intervention. This structure reflected a legislative choice to rely principally on technical and administrative review while preserving a gradual escalation of state oversight where local management proves inadequate.

The sustainability determination also requires technical judgments concerning groundwater conditions, overdraft, monitoring, thresholds, and the likelihood that management actions will succeed. The Department is institutionally suited to apply its regulations and scientific expertise to those issues. Allowing trial courts to independently conduct the same evaluations could produce inconsistent determinations within a basin and divergent standards among basins. Deference to the Department, the court explained, promotes both judicial efficiency and uniform statewide application of SGMA.

Conclusions and Implications

The decision preserves an interested party's ability to bring a reverse validation action under Water Code Section 10726.6, but limits the practical use of that procedure where the claim asks a court to duplicate the Department's sustainability evaluation. When the Department has completed the same evaluation and its determination resolves the pleaded controversy, primary jurisdiction may support dismissal.

The court was careful to define the decision's boundaries. It did not foreclose judicial review of the Department's own evaluation. Nor did it decide whether a validation action raising claims unrelated to the core sustainability evaluation, or a mixed action combining sustainability challenges with nonadministrative or common-law claims, should be stayed or dismissed. For California practitioners, the principal lesson is that challenges to a plan's technical sustainability determinations should account for the Department's review process, the available route for judicial review of that agency decision, and the possibility that a parallel validation action will be deferred until administrative review is complete.
(Darien Key)

FOURTH DISTRICT COURT REQUIRES DEEPER CEQA REVIEW OF WATER SUPPLY AND SALTON SEA AIR IMPACTS FOR IMPERIAL COUNTY LITHIUM PROJECT

Comite Civico del Valle v. County of Imperial,
___Cal.App.5th___, Case No. D085747 (4th Dist. Aug. 11, 2026).

In *Comite Civico del Valle v. County of Imperia*l, the Fourth District Court of Appeal held that Imperial County's (County) Environmental Impact Report (EIR) for a geothermal power and lithium extraction project near the Salton Sea did not adequately address long-term water availability, water-shortage mitigation, and related air-quality impacts. The Court of Appeal affirmed in part, reversed in part, and remanded for a limited writ of mandate requiring compliance with the California Environmental Quality Act (CEQA).

On September 2, 2026, the court certified the opinion for partial publication, excluding its discussions of cumulative water impacts, tribal consultation, and cumulative project impacts from publication.

Background

The project, developed by Controlled Thermal Resources (US), Inc. and related entities, would use geothermal brine to generate electricity and extract lithium and other minerals. It would require approximately 6,500 acre-feet of raw water annually from the Imperial Irrigation District (IID). Comite Civico del Valle and Earthworks challenged the County's certification of the EIR and project approvals. The trial court denied their petition for writ of mandate.

The Court of Appeal's Decision

CEQA Review and the Water-Supply Record

The court applied familiar CEQA principles: judicial review examines whether the agency prejudicially abused its discretion by failing to proceed as required by law or by making a determination unsupported by substantial evidence. Although courts defer to supported factual determinations, CEQA's procedural and informational requirements are enforced independently.

The court treated the project as having a 50-year life because the respondents so represented on appeal, despite repeated inconsistencies in the EIR, water supply assessment, findings, and mitigation documents that described a 30-year term. That distinction was material. The final water supply assessment could support, at most, a conclusion that IID might supply water for approximately 30 years, subject to important assumptions, including IID's receipt of its full Colorado River entitlement.

IID had advised that the water contemplated under its Interim Water Supply Policy was not a presently available reserve. Rather, water for new nonagricultural users would need to be created through future conservation, contracted for, and funded. IID also stated that its assessment template did not extend to a 50-year analysis and that it could not assure a 50-year supply.

Long-Term Water Availability

Relying on Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, the court explained that CEQA does not require an EIR to identify a guaranteed water source. It does, however, require an adequate discussion of water sources that are reasonably likely to become available. An EIR cannot rest on speculative supplies or unrealistic allocations sometimes described as "paper water."

The court found no substantial evidence that IID could supply the project for its asserted 50-year life. The record did not identify alternative supplies for the remaining years, feasible independent conservation or augmentation projects, or the environmental consequences of using replacement supplies. In an area with scarce and contested water resources, the deficiencies deprived decisionmakers and the public of information necessary to evaluate the project's water demands.

Inadequate Water-Shortage Mitigation

The court also held that mitigation measure UTIL-1 inadequately addressed foreseeable reductions in IID's Colorado River supply. The original measure merely required the applicant to work with IID if a governmental agency reduced water availability. A late revision added potential operational responses: using groundwater, temporarily using recycled drain water, and reducing production rates.

Those possibilities did not satisfy CEQA. The prospect of mandated Colorado River reductions was foreseeable, particularly because IID had identified the risk and the mitigation measure was specifically intended to address it. The EIR was therefore required to analyze potentially significant environmental effects caused by its proposed mitigation, including effects from groundwater pumping and diversion of drain water.

The court further found insufficient evidence that the listed measures were feasible. The record described underlying groundwater as poor quality and unsuitable for ordinary uses, contained no evidence that drain water could be used or that IID would authorize access to it, and did not explain how reduced production would be operationally or economically feasible. The EIR's conclusion that a reduced project size was infeasible also conflicted with the suggestion that reduced production could address a material water reduction.

Salton Sea Air-Quality Effects

The EIR also failed to analyze a probable air-quality consequence of supplying the project with conserved agricultural water. Agricultural runoff contributes to inflows to the Salton Sea. Reduced inflows can expose additional playa, which can increase dust emissions and associated air-quality concerns in nearby communities.

IID had directly warned that the project would create a net reduction in drainage flows to the Salton Sea and that the issue warranted evaluation and mitigation. The court concluded that the County's characterization of the impact as theoretical lacked substantial evidence. Because the project would use water conserved from agricultural or other existing uses without returning that water to IID drains, reduced drainage flows and related playa exposure were reasonably foreseeable consequences.

The County's conclusory assertion that the developer would work with IID did not constitute the good-faith, reasoned response to significant comments CEQA requires. Nor did IID's 2009 negative declaration for the Interim Water Supply Policy eliminate the need for project-specific review. That document expressly left environmental review of future water-use projects to the County.

Conclusion and Implications

The opinion is significant because it distinguishes the statutory 20-year focus of a water supply assessment from CEQA's broader obligation to disclose reasonably foreseeable impacts over the project's full operational life. A lead agency may not use the statutory assessment period as a substitute for analysis of acknowledged longer-term uncertainty.

Comite Civico del Valle reinforces that CEQA review of water-intensive development must address the project actually approved, including its full represented duration. For projects depending on conservation-generated supplies, agencies should distinguish between allocated water, potentially conserved water, and water that remains subject to future contracts, funding, approvals, and environmental review.

The published portions of the decision also underscore that water-shortage mitigation must be supported by evidence of feasibility and accompanied by appropriate analysis of its own environmental effects. Where project water use may reduce Salton Sea inflows or affect other sensitive hydrologic systems, lead agencies should directly address agency comments and evaluate linked air-quality consequences rather than defer analysis through generalized commitments to future coordination. The court's partially published opinion is available here: https://www4.courts.ca.gov/opinions/documents/D085747.PDF.

(Darien Key)

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

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

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

Background

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

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

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

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

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

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

The Court's Decision

Statutory Interpretation of Water Code Section 10730

The court held that Section 10730 must be read in the context of the surrounding sections. Most importantly, Section 10730.6 provides that groundwater fees imposed under SGMA are "due and payable to the groundwater sustainability agency by each owner or operator on a day established by the groundwater

sustainability agency." Reading this text in conjunction with Section 10730, the court concluded that groundwater fees under SGMA may only be imposed on "owners" or "operators" of groundwater wells.

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

Constitutional Interpretation of Prop 26

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

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

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

Conclusion and Implications

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

FIRST DISTRICT COURT FINDS COUNTY INVOKING PUBLIC TRUST DOCTRINE FOR WELL PERMITTING ORDINANCE AMENDMENTS FAILED TO ANALYZE THE ORDINANCE UNDER CEQA

Russian Riverkeeper v. County of Sonoma,
122 Cal.App.5th 382 (1st Dist. 2026).

On August 4, 2026, the Court of Appeal for the First District decided *Russian Riverkeeper v. County of Sonoma*, which evaluated the County of Sonoma's (County) approval of a new ordinance regulating its groundwater permitting process. The case evaluated the state's "public trust doctrine" in regulating groundwater wells, as well as the exemptions sought by the County from the California Environmental Quality Act (CEQA) for the ordinance.

Background

The County relies on more than 45,000 water wells to supply water for agriculture, residential, commercial, and industrial uses in the County's unincorporated areas. As a result, this requires the County to regulate groundwater wells under a County ordinance, under which the County issued permits on a largely ministerial basis.

Following separate litigation, the County commenced the process for updating its ordinance regulating groundwater wells. After several working group meetings and expert feedback, the County Board of Supervisors considered a draft ordinance that created two categories of groundwater well permit applications: discretionary applications and ministerial applications. Applications that the County considered to be not subject to the "discretionary public trust limitation" would be subject to ministerial review. The ordinance created additional classes of wells exempt from discretionary public trust review (i.e., subject to ministerial approval) because they posed a "low potential for impacts to public trust resources." The County adopted the ordinance without evaluating it under CEQA, concluding that the ordinance was exempt pursuant to the Class 7 and 8 categorical exemptions, as well as the common-sense exemption.

The plaintiffs filed suit, claiming that the County adopted the ordinance lacking evidence in support of the public trust and that the adoption of the ordinance violated CEQA.

The Public Trust Doctrine

The State of California has long recognized a "public trust doctrine," under which it holds that the state owns public trust resources as a trustee for public purposes and has an obligation to regulate the use of those lands for the general benefit of the community. It essentially imposes an affirmative duty on the state to protect the people's common resources. Whereas the state is generally recognized as the "sovereign . . . primarily responsible for administration of the trust," a county is recognized as a subdivision of the state and shares responsibility for administering the public trust.

The Court of Appeal's Decision

In *Russian Riverkeeper*, the Court of Appeal rejected the County's argument that the County did not share in the state's public trust duties. To the contrary, the court explained that there are "circumstances in which [the public trust] affirmative duty also belongs to other state agencies." (Citing *Planning & Conservation League v. Department of Water Resources*, 98 Cal. App.5th 726, 769 (2024).) Duty under the public trust doctrine "is triggered" when the county takes an action that impacts public trust uses. Consequently, the County's regulation of well permits carried "an affirmative duty" to take the public trust into account.

Despite that finding, the court recognized that, when carrying out the public trust doctrine, the state recognizes that counties may consider conflicting policy considerations. Considering the efforts put into Sonoma County's ordinance here, the court could not find that the County's ordinance amendments were arbitrary, capricious, or lacking in evidentiary support. The County spent extensive resources evaluating the technical aspects of the ordinance.

CEQA

Among its other contentions, the plaintiffs here alleged that the County violated CEQA by erroneously invoking several exemptions when approving the ordinance. Generally, CEQA establishes a comprehensive scheme to provide protection to the environment.

The first step in a CEQA analysis is to determine whether an activity is subject to CEQA in the first place—in other words, determining whether the proposed activity is a "project" as defined under CEQA. After determining that an activity is a "project," the lead agency may evaluate the applicability of any exemptions from CEQA. The burden of demonstrating applicability of a CEQA exemption lies with the agency invoking the exemption.

CEQA creates classes of projects that the state has generally determined to be exempt from the statute (i.e. the "categorical exemptions"). Applicable to the ordinance here, the County claimed that the ordinance amendment was exempt under the Class 7 and Class 8 categorical exemptions. The Class 7 exemption applies to "actions taken by regulatory agencies as authorized by state law or local ordinance to assure the maintenance, restoration, or enhancement of a natural resource where the regulatory process involves procedures for protection of the environment." (14 Cal. Code Regs. § 15307.) The Class 8 exemption applies to "actions taken by regulatory agencies, as authorized by state or local ordinance, to assure the maintenance, restoration, enhancement, or protection of the environment where the regulatory process involves procedures for protection of the environment." (*Id.*, § 15308.)

The Court of Appeal concluded that the County failed to support the conclusion with the requisite substantial evidence. Sonoma merely "anticipated"

FINAL PHASE CONCLUDES IN THIRTEEN-YEAR BATTLE OVER GROUNDWATER PUMPING RIGHTS IN PASO ROBLES

Steinbeck Vineyards #1, LLC, et al. v. County of San Luis Obispo, et al.,
Case No. 2014-1-CV-265039 (Santa Clara County Super. Ct. Sept. 24, 2026).

On September 24, 2026, the trial court issued the final judgment in *Steinbeck Vineyards #1, LLC, et al. v. County of San Luis Obispo, et al.*, Santa Clara Superior Court Case No. 2014-1-CV-265039 ("Steinbeck"), ending a complex groundwater litigation spanning nearly thirteen years and involving six trial phases.

Background

The *Steinbeck* case followed an emergency ordinance adopted by the San Luis Obispo County (County) Board of Supervisors that limited landowners' groundwater extractions to a fixed amount. In response, in 2013, the plaintiffs, who are groundwater users in the area, commenced a quiet title action against the County and the other three municipal providers in the basin (Paso Robles, Atascadero, and Templeton). They sought an order confirming their overlying groundwater rights and determining all claims adverse to those rights.

Phases of the Litigation

Phase 1 addressed the plaintiffs' initial burden of establishing a prima facie case for quiet title. The court determined that the plaintiffs had met that burden, shifting the burden to the Defendants to establish their affirmative defenses.

The principal issue in Phase 2 was whether the proposed Atascadero Basin Area (the "Atascadero Area") constituted a separate groundwater supply from the Paso Robles Basin and therefore should be treated as a separate and legally distinct groundwater basin. At trial, Atascadero and Templeton argued that the Atascadero Area was hydrologically distinct from the Paso Robles Basin. They contended that bedrock offset by the Rinconada Fault formed a barrier that prevented significant groundwater flow from the Atascadero Area into the remainder of the Paso Robles Formation. According to the evidence presented by Atascadero and Templeton, bedrock formed a barrier to groundwater flow along approximately 85% of the northern and eastern boundary of the Atascadero Area. Some hydrologic connection existed between the two areas along the northernmost approximately 15% of the boundary. The trial evidence included estimates that approximately 400 to 600 acre-feet of percolating groundwater flowed annually from the Atascadero Area into the remainder of the Paso Robles Basin. The court concluded that the subsurface flow was sufficient to find that the Atascadero Area was not a separate and distinct basin for purposes of the quiet title action.

Phase 3 addressed the boundary of the groundwater basin at issue, which included the Paso Robles Area Subbasin and the Atascadero Area Subbasin.

Phase 4 was a jury trial that determined that the county and the cities of Paso Robles, San Miguel, and Templeton had established prescriptive groundwater rights during the 1981–1990 period.

In Phase 5, the court quantified those rights.
Phase 6, the final phase, concerned affirmative defenses asserted by the Defendants based on "pueblo rights." Pueblos, under Spanish and Mexican law, had a prior and paramount right to the use of the waters flowing through the city, superior to all riparian and appropriative rights, to the extent the city or its inhabitants require the use of the water. California law recognizes those rights and a city that is the successor of a pueblo may assert them. The parties submitted extensive expert reports on the pueblo rights claims. Following the exchange of expert reports, the Defendants elected not to pursue these defenses.
The trial court's judgment, dated September 24, 2026, incorporates all of the prior statements of decision.

Conclusion and Implications

The *Steinbeck* case has the distinction of being perhaps the last groundwater adjudication filed before the passage of the Sustainable Groundwater Management Act ("SGMA") and its statutory adjudication procedure. Unlike statutory adjudications, quiet title actions do not necessarily resolve all issues concerning groundwater rights. Not all users in the basin were parties to this litigation, and the litigation did not

address the issue of allocating groundwater between different overliers, which is often the primary concern in a groundwater adjudication.

The history of the case has lessons and implications for future adjudications under SGMA. For example, the court's decision to include two separate SGMA "subbasins" as one interconnected groundwater supply has echoes in the later Oxnard–Pleasant Valley (OPV) adjudication still ongoing in Ventura County. Such boundary disputes have long been an essential part of groundwater adjudications, and Steinbeck and OPV suggest that they will continue to be.

But this case also illustrates the logistical difficulties of non-statutory adjudications. Despite not involving all parties in the basin, and despite not addressing the correlative allocation of water between overliers (usually the principal issue in an adjudication), the case lasted almost thirteen years. However frustrating the travails of a statutory adjudication might be, early indications are that they are at least more efficient than that.
(Anthony Leonis, Brett Stroud)

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