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WWL

WESTERN WATER NEWS

WESTLANDS WATER DISTRICT AND THE U.S. BUREAU OF RECLAMATION THREATEN TO EXIT HEALTHY RIVERS AND LANDSCAPES PROGRAM OVER THE CALIFORNIA STATE WATER BOARD'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)

CONTINUED DROUGHT LEADS TO UNPRECEDENTED WATER ADMINISTRATION IN WESTERN COLORADO

For more than 50 years water right users in western Colorado have relied on releases from Green Mountain Reservoir. In 2026, for the first time almost 50 years, the reservoir's Historic Users Pool (HUP) did not fill, resulting in administration and curtailment of water rights, many for the first time. The consequences of a potentially unreliable Green Mountain Reservoir have already impacted western Colorado water rights, but future operations and how users will deal with those shortages are still unknown.

Background

Green Mountain Reservoir is located on the Blue River, approximately 17 miles downstream from Silverthorne, Colorado. The reservoir, completed in 1943, was first authorized by Congress in 1937 through Senate Document No. 80. That document also helped to create the Colorado-Big Thompson Project (C-BT) which uses transmountain diversions to supply water to users on Colorado's Front Range. The initial bargain was straightforward: The C-BT Project would divert water from the Colorado River's headwaters across the Continental Divide, and in exchange Western Slope water users would be protected through a dedicated storage pool in Green Mountain Reservoir.

Green Mountain operations are also governed by the 1955 Blue River Decree, a series of stipulations that resolved decades of litigation between Front Range cities and the federal government. Briefly, although the cities' water rights are junior to Green Mountain, the Blue River Decree allowed the cities to divert out-of-priority prior to the filling of Green Mountain, provided it was "reasonably probable" that Green Mountain would fill. If the cities' diversions would not adversely affect Green Mountain's fill or Green Mountain's SD-80 functions, they could divert their transbasin Blue River rights out-of-priority. A later 1996 stipulation confirms that, as long as there was at least 66,000 acre-feet in the HUP, Cameo would not directly call out the HUP beneficiaries. Finally in 2013, the various parties with interests in Green Mountain Reservoir adopted the Green Mountain Reservoir Administrative Protocol, which the Colorado Supreme Court upheld in 2024. See 28 W. Water L. & P'lcy Rptr. 229 (July 2024).

Severe drought in 1977 led to the creation of the Historic Users Pool which is 66,000 acre-feet of water set aside annually for Western Slope beneficial use. In practice, the HUP operates by filling and releasing water such that all domestic and irrigation water rights in use prior to October 15, 1977, may continue diverting during the annual Cameo Call on the Colorado River near Grand Junction. Many of these water rights have solely relied on HUP protection for continued diversion throughout the summer months.

2026 Operations and Administration

The winter of 2025-26 resulted in the lowest snowpack on record, with lower snow totals than the winter of 1976-77 that led to the creation of the HUP. The Colorado Climate Center reported that 60 of its 64 data sites either tied or had the lowest measurement on record for April 1, and more than 25 percent of those sites had no snow at all. That drought combined with the warmest water year on record pushed the Colorado River basin into severe drought status by March.

Colorado Governor Jared Polis activated Phase 2 of the state's drought response plan, and the Colorado Rive Water Conservation District (River District) obtained an emergency Substitute Water Supply Plan to support domestic users that borrowed water from Wolford Mountain Reservoir near Kremmling, Colorado and Ruedi Reservoir near Basalt, Colorado. The owners of the Cameo Call water rights also voluntarily held their call target below its full legal entitlement. These emergency stopgap measures worked until mid-August.

On August 16, the emergency supplies ran out and the full Cameo Call was administered. Without HUP or backup water supplies, the state began to administer all water rights junior to the 1912 Cameo senior water right. This meant ditches that had never been curtailed, even some that were more than 100 years old, were shut down for the first time in history. Many of these ditches have both senior priorities, senior to Cameo, and junior enlargement priorities that were appropriated as the state's population expanded. In those situations, the ditches were curtailed to only their senior priority, subjecting the users to unprecedented low water levels.

In theory, the Cameo Call without HUP protection applied to both domestic and irrigation water users. The Division 5 Engineer's Office has not yet issued an official policy on the administration of historically HUP protected water rights, but in practice this year the State typically curtailed larger irrigation ditches instead of smaller domestic wells that may not have a backup supply. Colorado law "does not contemplate automatic cessation of diversions by junior appropriators in response to a river call." See: Colorado Water Conservancy Dist. v. Rich, 625 P.2d 977, 981 (Colo. 1981). This means that, although a water right may have been out-of-priority to Cameo when HUP water ran out, the user does not have to curtail unless directly administered by the Division Engineer or water commissioner. The State's response was not uniform, likely as a result of limited resources and the physical availability to tabulate and administer every water right within the respective water districts.

Local Administration

The effects of this year's unprecedented water year were also felt by non-HUP beneficiaries. The HUP protection only applies to calls on the Colorado River. Increased calls on the Colorado River's many tributaries do not benefit from HUP water. Many water users rely on plans for augmentation using historic consumptive use (HCU) credits from former irrigation water rights. The HCU from an irrigation water right is calculated in water court and those credits may then be used to replace out-of-priority depletions against a local call. But many of these plans for augmentation assume a "worst case" call scenario that was still a better water year than 2026. In these cases, the state has sometimes taken the position that, if the call period exceeds the assumed call under the plan for augmentation, those water rights may be subject to administration and curtailment. In these situations, the State sometimes directly curtailed domestic wells, forcing the users to haul water or otherwise find alternate supplies.

Conclusion and Implications

The driest 24 years in Colorado in the last 1,200 years have occurred since 2000, including the driest years of record: 2002, 2012, 2018, 2020, and 2026. Colorado State University, Colorado Climate Center. Only one year in this century has been cooler than the 1971-2000 average. By 2050, models predict statewide temperatures are expected to further increase by 2.5°-5.5° F compared to the 1971-2000

average. This means that this year's conditions could very likely be the average in coming decades. This is expected to dramatically increase demand, lengthening the irrigation season, and increasing requirements for water storage and augmentation. Consecutive hot and dry years may further deplete reservoirs making it more likely that HUP water runs out sooner. The River District's Substitute Water Supply Plan is not a long-term solution, and itself relies on releases from other reservoirs that may not fill in the face of continuing drought.

The 2026 water year highlights the fact that water sharing and drought contingency plans are only as good as the snowpack behind them. Unprecedented drought and low snowpacks can and have stressed even the most robust systems that have operated successfully for decades. This year may serve as a wake-up call for the Western Slope, forcing users to reevaluate drought contingency measures, plans for augmentation, and dry year operations.
(John Sittler)

LEGISLATIVE DEVELOPMENTS

IDAHO LEGISLATORS SEEK REVIEW AND POTENTIAL AMENDMENT OF IRRIGATION DISTRICT ELECTION LAWS

A common theme for several recent Idaho legislative sessions has been "transparency," and where can more (or better) transparency be engrafted into various statutory processes. Idaho irrigation entities, particularly irrigation districts, have been swept up in the "transparency" cause and it appears that irrigation district election laws are next under the microscope.

Background

As in many other states, Idaho irrigation districts are unique statutory creatures. Irrigation districts are considered political subdivisions of the state in some respects, but not all respects. For example, irrigation districts enjoy the protections of Idaho's Tort Claims Act (Idaho Code Section 6-901, et seq.) and are generally subject to Idaho's open meeting laws under Idaho Code Title 74. However, irrigation districts are not subject to the more general provisions of Idaho's public records laws (see, Idaho Code Section 43-303). Irrigation districts levy assessments and are required to hold elections, but they do not serve the citizenry at large. Rather, irrigation districts are special purpose districts serving (and ultimately answering to) those landowners within their external boundaries who are on a district's assessment rolls (i.e., only those landowners whose lands are apportioned the benefit of irrigation water use and who are assessed for that benefit apportioned).

Because of the unique space irrigation districts occupy, amongst other reasons, irrigation district election laws are likewise unique. Irrigation districts enjoy four available election days per year—the typical May and November dates available under the general election laws of the state (Idaho Code Title 34), as well as dates in August and February each year (§ 34-106(1) and (10)).

Irrigation District "Election" Issues

Typical election subjects extend beyond elected officials (Board of Directors seats; § 43-201) and include the issuance of bonds or undertaking contracted-indebtedness of greater than one year (§§ 43-322, 43-401), entering into contracts with the United States (§ 43-401), conversion to acreage-weighted voting (§ 43-111), and adoption of additional elector and director qualifications based on residence and geographic proximity (§§ 43-111 and 43-201). While irrigation district elections are to be conducted "as nearly as practicable in accordance with the general laws of the state," there are various additional elector qualification restrictions tied to landownership and entity holdings owned, held and managed by (depending on entity) natural person shareholders, members, managers, or beneficiaries all related by blood or marriage (§§ 43-111, 43-119).

Irrigation districts are not required to use any particular form of ballot. There is no voter registration, rather the administration and recitation of the elector's oath at the polling place (§ 43-113). Irrigation districts may consolidate polling places amongst their various divisions (§ 43-206), and they may shorten polling hours by resolution of the Board (§ 43-207). Depending on the subject matter of the election, different subjects require different thresholds to pass (for example, director seat elections are simple majority results while undertaking contract indebtedness for greater than one year requires a super-majority result).

Amendment Efforts

The foregoing differences straying from the more familiar provisions of the general election laws of the state exist for various reasons and have evolved for over 120 years since the initial enactment of Idaho irrigation district code. There is little doubt that the irrigation district election laws could (and probably should) be reviewed, streamlined, and modernized where possible. The Idaho Water Users Legislative Committee has been doing just that, in conjunction with the Idaho Department of Water Resources where appropriate, in other large-scale amendment efforts over the last few legislative sessions (e.g., rewrites and consolidations of Idaho Code Title 42, Chapters 9, 11, 12, and 13, and Title 43, Chapter

7). But that modernization effort must be careful to perpetuate the meaningful differences and needs that have been engrained in the creation and function of irrigation districts from their inception, as well as those that have developed over time.

Conclusion and Implications

Again, irrigation districts are political subdivisions of the state in some respects, but not all. While it may be tempting to try to more closely marry irrigation district election laws with the general election laws of the state, one should not attempt to pound a square peg into a round hole for the sake of merely doing so. Whether there are legitimate problems to solve remains the threshold question. Just because a body of law looks and feels different does not mean it is inappropriate or problematic. Chances are it is different for a variety of very important reasons.
(Andrew J. Walder)

REGULATORY DEVELOPMENTS

ARIZONA REGULATORS APPROVE TIER 3 PROTECTION FOR UPPER VERDE RIVER AND SYCAMORE CREEK

The Governor of Arizona's Regulatory Review Council approved a rule designating specified segments of the Upper Verde River and Sycamore Creek as Outstanding Arizona Waters. This rule subjects those segments to Arizona's highest level of antidegradation protection, which restricts future point-source discharges without changing water rights, groundwater regulations, or most existing land uses.

Background

The Sierra Club Grand Canyon Chapter nominated the reaches (defined segments of a river or stream) in November 2023, and the Arizona Department of Environmental Quality (ADEQ) opened a rulemaking under A.A.C. R18-11-112. On September 1, 2026, the Governor's Regulatory Review Council approved a final rule adding nearly 36 miles of the Upper Verde River and almost 12 miles of Sycamore Creek to Arizona's list of Outstanding Arizona Waters.

Outstanding Arizona Water Standard

Arizona's antidegradation rules implement the federal Clean Water Act through a three-tier system. Tier 1 protects existing uses, Tier 2 restricts degradation of waters whose quality exceeds minimum standards, and Tier 3 is the most protective category, and applies to waters with exceptional ecological or recreational significance.

Arizona refers to waters receiving Tier 3 protection as Outstanding Arizona Waters. Once a segment receives that designation, its existing water quality must be preserved, subject to some limited allowances for short-term and temporary changes. The rule generally prohibits new or expanded point-source discharges into a protected segment under Arizona Administrative Code R18-11-107.01(C)(2).

To qualify under A.A.C. R18-11-112, a water must be perennial or intermittent, free-flowing, and of good quality. It also must have exceptional recreational or ecological significance, support threatened or endangered species that depend on its existing water quality or provide critical habitat for such species. ADEQ then considers whether the water can be managed to preserve its quality, the designation's social and economic effects, public comments, consistency with water-quality plans, and other special designations affecting the water.

Scope of Tier 3 Protection

The rule does not allocate water, modify surface-water rights, regulate groundwater pumping, or establish an Active Management Area. Those subjects remain governed by other laws and agencies, including the Arizona Department of Water Resources. The designation also does not impose a general prohibition on development within the watershed.

Instead, the rule protects the existing water quality of the designated segments from new or increased point-source discharges. ADEQ stated that ordinary farming and ranching activities generally fall outside the point-source restrictions and remain subject to voluntary best management practices for nonpoint-source pollution. The designation also does not categorically prohibit discharges to tributaries within the watershed, although a project that may affect a protected segment could require further Clean Water Act review.

The designation is also distinct from a potential federal Wild and Scenic River designation. Outstanding Arizona Water status protects water quality through state and federal antidegradation law. Wild and Scenic status concerns federal river and land management. Neither designation depends on the other.

ADEQ's Review

ADEQ found that both nominated segments met the regulatory criteria. According to the agency, the waters are largely spring-fed and generally flow year-round. The segments contain no dams, major impoundments, or significant structural modifica-

tions, and their water quality meets all applicable surface-water standards. Neither segment is listed as impaired.

The agency also found that the segments have exceptional ecological and recreational value, supporting substantial biodiversity and providing habitat for several threatened or endangered species, including native fish. The segments pass through largely undeveloped canyons, and most adjoining lands are publicly owned. ADEQ concluded that these conditions make it practical to preserve the existing water quality.

No existing permittee discharges directly into either segment, and no application for such a discharge is pending under the Arizona Pollutant Discharge Elimination System. ADEQ therefore projected little immediate compliance cost for landowners, businesses, utilities, or local governments. The rule will primarily affect future applicants seeking approval for new or expanded facilities that would discharge pollutants directly into a protected segment.

Public Comments and Objections

Most public comments supported the rule. Conservation groups cited the river's wildlife habitat, recreational uses, cultural importance, and contribution to the regional economy. The Yavapai-Apache Nation generally supported the designation but questioned whether Tier 3 protection could limit future recharge or augmentation projects intended to preserve river baseflows. The Nature Conservancy raised similar concerns about projects using treated effluent or stormwater. Salt River Project sought assurance that it could continue maintaining stream gauges, flumes, and other monitoring infrastructure.

ADEQ responded that routine operation and maintenance of existing infrastructure do not constitute point-source discharges and would not be prohibited. The agency also stated that the designation does not foreclose indirect recharge, stormwater infiltration, or upstream watershed projects. A discharge that travels through groundwater, however, may require an AZPDES permit if it is the "functional equivalent" of a direct discharge under County of Maui v. Hawaii Wildlife Fund, 590 U.S. 165 (2020). ADEQ declined to decide how the rule would apply to projects that have not been proposed, explaining that any future proposal will require site-specific review.

Notably, the Arizona Farm Bureau opposed the designation. It argued that ADEQ had not adequately consulted affected landowners, however few, and that the rule could interfere with agriculture, ranching, development, private-property rights, and local control. ADEQ disagreed, citing direct notice to adjacent landowners and a community meeting held near the affected reaches. It also emphasized that the rule protects water quality within the streams and does not regulate land ownership or ordinary land use.

Approval and Further Review

The final rule amends A.A.C. R18-11-112(G) to cover the Verde River from its meeting with Granite Creek to its meeting with Sycamore Creek. It also covers Sycamore Creek from its meeting with Cedar Creek to the Verde River.

The state rule becomes effective 60 days after the certified rule and preamble are filed with the Arizona Secretary of State. ADEQ must also submit the revised water-quality standard to the U.S. Environmental Protection Agency for Clean Water Act review and final approval.

Any future project involving a new or expanded direct discharge must comply with the requirement to preserve the segments' existing water quality. Most current landowners and operators should see little immediate change unless a proposed activity requires a point-source discharge permit or could be treated as the functional equivalent of a direct discharge.

Conclusion and Implications

The Upper Verde River and Sycamore Creek designations are preventive: they protect unimpaired waters before any facility seeks approval for a direct discharge. That timing limits the rule's immediate economic effect while establishing a firm restriction against future degradation. The main unresolved issue is how Tier 3 protection will apply to recharge, effluent, and stormwater projects intended to improve river flows. ADEQ did not foreclose those projects but committed only to case-by-case review. Agencies, utilities, landowners, and developers should determine early whether a proposed discharge could reach a protected segment and should evaluate its water-quality effects separately from any water-supply benefits.

(Ian Kavanaugh, Micheline 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.

Sept. 19, 2026—The U.S. Environmental Protection Agency (EPA) is seeking applications from Tribes for a total of approximately $3.5 million in new competitive grant funding under Clean Water Action Section 319. Funding from the agency's 319 grant program helps improve water quality in local waterbodies by reducing nonpoint source pollution—contaminants that can be carried from urban, suburban, and rural landscapes and deposited into waterways. This available grant funding builds on the success of previous grantees who have documented water quality improvements across more than 16,300 miles of rivers and streams and over 230,000 acres of lakes since 2009.

The voluntary work done by grantees under EPA's 319 grant program complements the agency's regulatory and permitting authorities under the Clean Water Act to help ensure that all Americans can rely on clean and safe water. Projects funded by Clean Water Act Section 319 grants will reduce polluted runoff, also known as in nonpoint source pollution, which originates from many diffuse sources across the landscape. An analysis of successful nonpoint source water quality restorations estimated that for each Section 319 dollar invested in water quality projects, partners contributed an additional eight dollars.

Some examples of projects that would be eligible for this competitive Tribal funding, include planting streambanks, controlling erosion, installing livestock exclusion fences, addressing stormwater flow and developing watershed-based plans. Each eligible Tribe and intertribal consortia may apply for up to $175,000. EPA expects to select approximately 20 projects for awards. The 2026 Notice of Funding Opportunity (NOFO) is available on grants.gov and application packages must be submitted by November 9, 2026.

EPA will host an informational webinar on the 2026 Tribal Competitive NOFO on September 17. Registration and other webinar details, as well as access to the NOFO, are available on EPA's Tribal Section 319 Grants webpage.

Sept. 18, 2026—The U.S. Environmental Protection Agency (EPA) announced a $251 million Water Infrastructure Finance and Innovation Act (WIFIA) loan to the Las Virgenes-Triunfo Public Financing Authority in Los Angeles and Ventura Counties, California, to make improvements to several drinking water treatment plants. This loan will advance water reuse technologies to help address aging infrastructure and increase capacity to meet the community's current and future water demands while strengthening resilience to droughts and wildfires.

EPA's WIFIA loan is a critical piece of the Las Virgenes-Triunfo Public Financing Authority funding strategy for the Pure Water Project (PWP) that will bring the Las Virgenes—Conejo region its first local supply of water. The PWP will construct an advanced water purification facility to purify recycled water from western Los Angeles and eastern Ventura Counties. Through these improvements, the Authority will be able to reduce the impact of drought by providing a local, reliable, more affordable water supply and increase system reliability and their ability to respond to emergencies and supply outages.

Furthermore, the PWP advances the goals of EPA's Water Reuse Action Plan (WRAP) 2.0 by being a leading example of advancing water reuse to strengthen key sectors of the U.S. economy. In this case, this project will reduce demand on water from northern California, increasing supplies for central California farmers.

EPA's WIFIA program provides flexibility through the ability to defer principal payments for several years after substantial completion of construction, which will save the Las Virgenes-Triunfo Public Financing Authority $13.6 million over the life of the loan and reduce water bill impacts for its customers.

EPA's WIFIA program provides a powerful financial tool that accelerates investments in water

infrastructure to protect human health and the environment while saving communities millions of dollars through its flexible financing features and competitive interest rates. Since issuing its first loan in 2018, EPA's WIFIA program has announced $24 billion to financing water infrastructure projects that are strengthening drinking water, wastewater, and stormwater infrastructure while creating over 175,000 jobs.

WIFIA funding is available to support additional water infrastructure projects: up to $6.5 billion is available to water systems and another $550 million is available to state infrastructure financing authorities. EPA is currently accepting letters of interest.

Learn more about EPA's WIFIA Program and water infrastructure investments, including how to submit a letter of interest.

Established by the Water Infrastructure Finance and Innovation Act of 2014, the WIFIA 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.

Sept. 14, 2026—The U.S. Environmental Protection Agency (EPA) is announcing $3.46 million in wetland grant funding to nine communities across the Pacific Southwest region. These investments in states, Tribes and Pacific Island territories support EPA's goals of protecting and improving water quality, providing habitat for fish and other wildlife, maintaining surface water flow during dry periods, storing floodwaters, and protecting against storm surges.

The grants are:

•$454,832 to the Buena Vista Rancheria of Me-Wuk Indians to inventory wetlands and other aquatic resources on Tribal trust lands, create a unique planting guide for culturally significant vegetation, and complete a small-scale wetland restoration demonstration project.

•$500,000 to the Commonwealth of the Northern Mariana Islands to develop a Wetland Program Plan for Saipan, Tinian, and Rota that will protect vital wetland ecosystems from pollution and improve aquatic resource restoration activities.

•$210,585 to the Hualapai Tribal Council to update a Wetland Program Plan that includes water quality monitoring and analysis, reduction of polluted runoff, wetlands identification and protection, and Tribal outreach and education.

•$467,075 to the State of Hawaii to expand community stewardship at restored wetland sites, increase coordination among agencies, landowners, and organizations working on wetland restoration, and reduce regulatory barriers for wetland restoration practitioners.

•$397,461 to the State of Nevada to improve Nevada's springs inventory and develop a guide for Nevada wetland types and a guide to common wetland plants.

•$127,894 to the Summit Lake Paiute Tribe to restore a wetland meadow next to Summit Lake using experimental restoration techniques that mimic a naturally occurring beaver dam.

•$399,965 to the Tolowa Dee-Ni Nation to plan watershed and aquatic resource restoration and to develop assessment methods using Indigenous and Traditional ecological knowledge.

•$406,972 to the White Mountain Apache Tribe to update wetland ecosystem mapping databases, conduct wildlife surveys, and conduct outreach and education to partner organizations and community representatives.

•$499,727 to the Yurok Tribe to protect and restore the Klamath River headwater wetlands.

The selected projects build capacity for states, Tribes, Territories to develop or refine their own wetland protection and management programs. These programs support community resilience through wetland monitoring and mapping information, gold-standard science-based assessment tools, and the development of long-standing wetland conservation and protection strategies.

EPA's Wetland Program Development Grants help state, tribal, and local government agencies to build programs for protecting, managing and restoring wetlands. Recipients build their capacity to increase the quantity and quality of U.S. wetlands.

Sept. 10, 2026—The Justice Department, on behalf of the EPA lodged a proposed settlement agreement with Environmental Resource Holdings LLC (ERH) to perform critical work to support the cleanup of the Diamond Alkali Superfund site, including the lower 17 miles of the Passaic River. The work is estimated to cost $125 million and focuses on the next steps needed to get the in-river work started.

Under the proposed consent decree, ERH would construct an upland processing facility and several upland support facilities that would enable dredging and capping work in the Lower Passaic River. The construction would include a facility to handle sediment dredged from the river before it is sent for off-site disposal. The upland support facilities would provide land and infrastructure needed to support future in-river construction work. ERH would sample the lower 8.3 miles of the river to establish a baseline and reimburse EPA for future oversight costs related to this work.

ERH is a potentially responsible party for the site and a corporate successor to Occidental Chemical Corporation and to Diamond Alkali Company/Diamond Shamrock Corporation, which owned and operated the former Diamond Alkali facility in Newark.

The proposed consent decree was filed in U.S. District Court for the District of New Jersey and is subject to a 30-day comment period. The complaint and the proposed consent decree are available on the Justice Department's website at www.justice.gov/enrd/consent-decrees.

Sept. 9, 2026—The U.S. Environmental Protection Agency (EPA) announced a new scientific study using cutting-edge methods to improve the agency's understanding of what pollutants may be present in drinking water. This groundbreaking new research by EPA scientists goes beyond traditional testing methods to screen for a broad array of pollutants, including pharmaceuticals, PFAS, and more than 1,000 potential contaminants. This action advances EPA's commitment to help Make America Healthy Again while following gold standard science.

This study and EPA's ongoing efforts implementing the Safe Drinking Water Act are accelerating progress to ensure that all Americans have confidence their drinking water is safe. EPA's new study represents a major step in aligning EPA research with the concerns of hardworking Americans. This scientific assessment will use Non-Targeted Analysis, which can identify unknown pollutants present in a drinking water sample. While conventional analytical methods measure a handful of specific chemicals at a time, Non-Targeted Analysis allows researchers to scan for thousands of potential pollutants. The resulting insights will help EPA prioritize future actions to ensure that drinking water is safe.

The agency's new study complements existing Safe Drinking Water Act programs being implemented by EPA. This spring, the agency released its draft Sixth Contaminant Candidate List (CCL 6), which helps prioritize funding, research, and information collection to better understand the potential health risks of unregulated contaminants in drinking water while advancing the agency's commitment to gold standard science. For the first time, EPA designated both microplastics and pharmaceuticals as priority contaminant groups on the draft CCL 6. In June, the agency proposed its Sixth Unregulated Contaminant Monitoring Rule (UCMR 6), which would require monitoring for contaminants not currently regulated but may be present in drinking water. UCMR 6 would require monitoring using existing approved methods to detect 30 unregulated contaminants. The agency's non-targeted analysis complements these efforts by filling in gaps not addressed by the Safe Drinking Water Act's Contaminant Candidate List and Unregulated Contaminant Monitoring processes.

Aug. 31, 2026—The U.S. Environmental Protection Agency (EPA) announced $5,194,030 in grant funding for midsize and large drinking water systems in California to help protect them from cybersecurity threats and improve resiliency against extreme weather events. This funding, through the Midsize and Large Drinking Water System Infrastructure Resilience and Sustainability grant program, will support four projects in California and affirm EPA's commitment to ensuring all Americans have access to clean and safe drinking water.

The Midsize and Large Drinking Water System Infrastructure Resilience and Sustainability Grant

Program supports building resilience against cyberattacks and natural hazards to strengthen vital water infrastructure across the country. Cyberattacks on critical water infrastructure have increased significantly, including high-profile attacks this year targeting more than 100 drinking water and wastewater systems across 12 states. At the same time, water infrastructure must have built-in resiliency to withstand natural hazards, such as wildfires, hurricanes, earthquakes, and flooding so they can continue their mission to deliver safe water uninterrupted to the communities they serve.

Awardees for this funding include public water systems that serve a population of 10,000 people or more. EPA anticipates awarding federal grants to these recipients in California after legal and administrative requirements are satisfied:

•City of San Diego, CA—$2,375,000 to address natural hazard and cybersecurity vulnerabilities through Programmable Logic Controller (PLC) replacement.

•City of Anderson, CA—$804,530 to increase drinking water system resilience to drought and wildfire through water tank replacement and the installation of smart water monitoring devices and security cameras.

•City of Hemet, CA—$ 1,150,000 to increase drinking water system resilience to wildfires and extreme heat through storage tank and transmission main upgrades.

•California-American Water Company, Sacramento, CA—$864,500 to increase drinking water system resilience to wildfires through water system upgrades and the purchase of an emergency generator.

This funding is another way EPA is partnering with federal agencies, states, and the water sector to strengthen cybersecurity in the water sector. Last year, EPA proactively identified cybersecurity vulnerabilities at 277 water systems https://www.epa.gov/newsreleases/epa-actions-help-safeguard-water-systems-cyberattacks and worked to fix the issues with individualized solutions ranging from authentication protocols to enforcing strict access controls along with other technical updates and restrictions. This work is continuing today. The agency also released new and updated planning tools that water systems across the country can use to help prevent and respond to cybersecurity incidents. EPA provides fee cyber security technical assistance, assessments, training, and tools to help systems improve their cyber defenses.

For natural hazards, utilities can receive technical assistance to increase resilience through EPA's Strengthening Water Infrastructure for Tomorrow (SWIFT) initiative. EPA also provides trainings on how to help utilities build resilience to cyberattacks and natural hazards. Utilities can visit EPA's Water Utility Resilience Events webpage for a list of upcoming trainings. In addition, EPA offers self-help resources such as the Cybersecurity Risk Self-Assessment Resources, which help utilities systematically assess their own cybersecurity preparedness, and SWIFT's Hazard Data Explorer, which helps utilities understand their unique natural hazard risks.
(Robert Schuster)

RECENT FEDERAL DECISIONS

NINTH CIRCUIT HOLDS U.S. BUREAU OF RECLAMATION NOT REQUIRED TO CONDUCT NEPA REVIEW OR ESA CONSULTATION WHEN CONVERTING WATER SERVICE CONTRACTS UNDER WIIN ACT

Center for Biological Diversity v. United States Bureau of Reclamation, ___F.4th___, Case No. 25-5137 (9th Cir. Aug. 17, 2026).

In Center for Biological Diversity v. United States Bureau of Reclamation, the United States Court of Appeals for the Ninth Circuit issued a published opinion on August 17, 2026, affirming that the Bureau of Reclamation (Bureau) was not required to complete environmental review under the National Environmental Policy Act (NEPA) or engage in consultation under the federal Endangered Species Act (ESA) when converting water service contacts under the Water Infrastructure Improvements for the Nation Act (WIIN Act or Act). The WIIN Act developed a new contracting mechanism to allow water districts to prepay for water infrastructure projects. The Bureau converted over sixty water service contracts to repayment contracts under the Act. The issue on appeal was whether the Bureau violated NEPA and the ESA by not completing environmental review and consultation with each contract conversion. Affirming the U.S. District Court's holding, the Ninth Circuit determined environmental review and consultation were not required because the WIIN Act imposed a mandatory duty to convert the contracts and did not afford the Bureau discretion to benefit protected species or consider environmental effects in doing so.

Background

The WIIN Act was enacted in 2016 and provided a mechanism for water districts to change the payment structure of their contracts so that the water districts could prepay the costs of their water service contracts with the federal government. The government could then in turn use the prepaid funds to build new water storage infrastructure. This Act applies to the Central Valley Project, which is a federally owned network of dams, canals, and power plants that transports water from Northern California to Central and Southern California water districts.

Many water districts took advantage of the conversional mechanism under the Act; the Bureau converted 67 water service contracts into repayment contracts between 2020 and 2021. The terms governing the water delivery, including maximum quantity of water and purpose of delivery, remained the same in each contract. However, unlike service contracts which expire and must be renewed, repayment contracts continue indefinitely so long as the payments are made.

At the U.S. District Court

The Center for Biological Diversity, Restore the Delta, and Planning and Conservation League sued the Bureau of Reclamation, Department of Interior, and the Secretary of the Interior alleging the Bureau was required to perform environmental review under NEPA and consultation under the ESA before it converted each water service contract to a repayment contract under the WIIN Act. Failure to do, they alleged, violated NEPA, the ESA, and the Administrative Procedure Act. The Plaintiff asserted that the water allocations under the converted contracts would harm the Bay-Delta eco-system including four species of protected fish. The District Court compelled joinder of the water districts with the converted contracts.

The District Court granted summary judgment for the Bureau and the water districts, holding that the conversion of the contracts under the WIIN Act did not require contract-specific NEPA review or ESA consultation. The District Court found the WIIN Act restricted the Bureau from exercising any "discretion to modify any water contractual rights other than those related to the financial terms specifically addressed by the WIIN Act." Resultantly, the WIIN Act did not afford the Bureau discretion to benefit protected species or consider environmental effects as

part of the contract conversion process. The Plaintiffs appealed.

The Ninth Circuit's Decision

NEPA instructs agencies to prepare environmental impact statements for "major Federal actions significantly affecting the quality of the human environment." (42 U.S.C. § 4332(2)(C).) However, it excludes the review requirement for activities "that are non-discretionary and made in accordance with the agency's statutory authority. (Id. § 4336e(10)(B)(vii).) Environmental review is not required for federal actions where the "agency does not have authority to take environmental factors into consideration in determining whether to take the proposed action." (Id. at § 4336(a)(4).)

The ESA directs 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 a critical habitat. (16 U.S.C. sec. 1536(a)(2).)

But like NEPA, the ESA only requires an agency to engage in consultation when the agency has some discretion to act for the benefit of the protected species. (Nat. Res. Def. Council v. Jewell, 749 F.3d 776)

Plain Reading of the WIIN Act

Looking to the plain meaning of the text, the Ninth Circuit found the WIIN Act commands the Bureau to convert contracts upon request by the water districts and provides the Bureau with discretion to change only contract terms that relate to the contract's payment structure.

The court pointed to two sections of the WIIN Act leading to this conclusion. Section 4011(a)(1) states:

> . . .[u]pon request of the contractor, the Secretary of the Interior shall convert any water service contract […] to allow for prepayment of the repayment contract pursuant to paragraph (2) under mutually agreeable terms and conditions.

This section creates a mandatory duty for the Bureau to convert the contracts upon request because of the word "shall." Section 4011(a)(4) states, in part:

> . . .[a]ll contracts entered into pursuant to [this section] shall … not modify other water service, repayment, exchange and transfer contractual rights between the water users' association, and the Bureau of Reclamation, or any rights, obligations, or relationships of the water users' association and their landowners as provided under State law.

The court found this section bars the Bureau from changing other existing rights in the prior water service contract, including the amount or manner of water delivered.

Considering each of these sections, the court found the Bureau must convert contracts upon request and cannot consider environmental effects or take actions to benefit protected species when doing so. Since the Bureau lacks discretion to take actions to benefit protected species or alleviate environmental harms as part of the WIIN Act conversions, NEPA and the ESA do not require the Bureau to conduct environmental review or consultation.

The court also found the purpose of the WIIN Act further supports its interpretation. The WIIN Act was created to fund water storage construction projects in response to a period of prolonged drought. Restricting agency modification of the contracts encourages water district engagement in prepayment without risking their previous water service rights and arrangements.

The Court Rejected Plaintiffs' Interpretation of the WIIN Act

The court disagreed with the Plaintiffs' interpretation of section 4011(a). Citing to Natural Resources Defense Council v. Houston, 146 F.3d 1118 (9th Cir. 1998) (Houston), the Plaintiffs argued the WIIN Act's language allowing for negotiation of "mutually agreeable terms and conditions" granted the Bureau discretion to modify contractual terms in ways beneficial to the environment. In Houston, the Ninth Circuit found the Bureau had discretion under the Reclamation Act in contract renewals where the government could renew the contracts on "mutually agreeable terms" and had discretion to set rates and reduce overall available water supply to protect spe-

cies. But the court distinguished the Reclamation Act from the WIIN Act. The court found the WIIN Act expressly limits the scope of contract negotiations with language stating the Bureau "shall… not modify other water service… contractual rights." There was no similar limitation in the Reclamation Act. The court determined Houston did not apply.

Plaintiffs also pointed to converted contracts as indicating that the Bureau's actions were inconsistent with its position that it does not have discretion to modify terms of a contract beyond the contracts' payment structure. Plaintiffs identified one converted contract which deleted a section from the original contract that included obligations to conduct environmental review. However, this section was titled "term of contract," and the court determined that this was merely the process of converting a renewal contract into a repayment contract, the purpose of the WIIN Act. Renewal of contracts under the Reclamation Act require environmental review. But repayment contracts remain in place indefinitely and do not require renewal. Thus, the environmental review contract provisions would no longer apply to the converted contracts.

The court further determined that its interpretation of section 4011(a) complied with the WIIN Act's savings clauses that preserve obligations under the Central Valley Project Improvement Act (CVPIA), the ESA, and "existing law." The court found no conflict between its interpretation of the WIIN Act and the CVPIA, ESA, or existing law.

Conclusion and Implications

The Ninth Circuit affirmed the District Court's grant of summary judgment in favor of the Bureau and the water districts. The Ninth Circuit held that the Bureau's conversions of contracts under the WIIN Act without environmental review or consultation did not violate NEPA or the ESA.

The Ninth Circuit noted that this decision is limited and water deliveries remain subject to NEPA and the ESA as part of the Bureau's operation of the Central Valley Project. The opinion is not intended "to suggest that water deliveries secured by the converted repayment contracts are no longer subject to environmental review." The Ninth Circuit's opinion is available here: https://cdn.ca9.uscourts.gov/datastore/opinions/2026/08/17/25-5137.pdf.
(Sara Helms)

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).

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 federal Clean Water Act (CWA) 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 CWA'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 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

Sackett v. EPA

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

The Ninth Circuit's Decision

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 U.S. 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. 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 at risk for challenges and may require a new developed factual record post-*Sackett*, even where tributary status had previously been treated as sufficient under then-current law.

(Ian Kavanaugh, Darien Key, Derek Hoffman)

U.S. DISTRICT COURT IN NEVADA APPROVES INSTREAM WATER RIGHTS FOR WALKER RIVER RESTORATION

United States v. Walker River Irrigation District,
___F.Supp.4th___, Case No. 3-73-cv-00125-MMD-WGC (D. Nev. July 30, 2026).

The U.S. District Court for Nevada has approved changes allowing a group of longstanding Walker River water rights formerly associated with the Flying M Ranch and Rafter 7 Ranch to be managed as instream rights. The July 2026 decision completes a state-and-federal approval process for the Walker River Basin.

Background

The Walker River is governed in part by a federal decree dating to 1936, and Nevada's federal district court retains jurisdiction over the decreed waters. In 2009, Congress authorized what became the Walker Basin Restoration Program, which the Walker Basin Conservancy now administers through measures that include purchases and leases of water rights and conversion to instream use.

From Ranch Irrigation to Instream Use

The two ranch properties entered the restoration program at different times: Rafter 7 was acquired in 2013 and Flying M in 2016. The properties were later conveyed to the State of Nevada to help establish the Walker River State Recreation Area, while their surface-water rights were retained by the Conservancy for later conversion to instream use.

In July 2023, the Conservancy submitted seven applications to the Nevada State Engineer concerning approximately 1,540 afa of irrigation rights with a combined permitted rate of 24.72 cubic feet per second. The applications proposed shifting those rights from agricultural use to instream use beginning on the East Walker River and continuing toward Walker Lake. The affected rights span multiple priority dates and historically relied on numerous points of diversion.

In June 2025, the applications were approved by the Nevada State Engineer. Because the rights are governed by the Walker River Decree, however, the Conservancy also asked the federal decree court to amend the existing decree so that it would reflect the approved changes.

The Court's Decision/Order

A central issue in this application involved how the converted rights would be measured and administered. The Walker River Irrigation District initially protested the applications, raising concerns about shifting the administrative location for the rights and allocating hydrologic losses across a lengthy stretch of river.

The Conservancy and the District resolved those protests through conditional stipulations in 2025. Among other provisions, they agreed to use the Ivy Ranch Bridge Gage as the new point of non-diversion and to use downstream measurements to identify consumptive use and adjust the non-consumptive component of the water rights.

Under the court's final decree modification, administration of affected rights begins using the Ivy Ranch Bridge Gage. Losses occurring between that location and the downstream Strosnider Gage are initially charged against the non-consumptive component of the former irrigation rights. Beyond Strosnider, proportional river losses continue to apply to the consumptive component.

The principal substantive issue the court examined is whether the proposed changes under the stipulation would harm other decreed users. Pointing to an absence of evidence demonstrating such injury and agreeing that the State Engineer's approval of the application involved an "implicit finding that the proposed changes do not conflict with existing rights or prove detrimental to the public interest," the court consequently granted the change petition and adopted the State Engineer's proposed order.

The court's companion order entered July 30 formally amended the Walker River Decree to reflect Nevada State Engineer Permit Nos. 92893 through 92899. The affected rights are now designated for instream wildlife use along the Walker River system, with non-consumptive portions to be administered by the state Water Master "to avoid conflict with and injury to existing water rights at and downstream of the point of non-diversion."

Conclusion and Implications

These orders represent meaningful step in the Walker Basin Restoration Program's efforts to increase instream flows while operating within the Walker River Decree. Collectively, the water rights involved are expected to provide more than 3,400 acre-feet of instream flow annually, approximately 6.8 percent of the Program's stated goal of delivering 50,000 acre-feet of reliable water to Walker Lake each year. This change is notable not only for the substantial contribution to the Program's overall restoration goal, but also for the administrative framework developed to address the effects of hydrologic losses along a lengthy river reach with many permitted rights. The proceedings highlighted the importance of negotiated solutions concerning water administration and flow accounting, as well as the respective roles of the State Engineer, Water Master, U.S. Board of Water Commissioners, and federal decree court. The court's order of July 30 is available here: https://www.leagle.com/decision/infdco20260804b81.

(Micheline Fairbank, Evan Klouse)

RECENT STATE DECISIONS

CALIFORNIA COURT OF APPEAL LIMITS SCOPE OF REGULATORY FEES UNDER SUSTAINABLE GROUNDWATER MANAGEMENT ACT TO OWNERS AND OPERATORS OF GROUNDWATER WELLS

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

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

Background

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

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

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

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

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

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

The Court's Decision

Statutory Interpretation of Water Code Section 10730

The court held that Section 10730 must be read in the context of the surrounding sections. Most impor-

tantly, 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)

WASHINGTON COURT OF APPEALS UPHOLDS GOLDENDALE § 401 CERTIFICATION, BUT REQUIRES EXPRESS LEAKAGE MONITORING.

Columbia Riverkeeper and Confederated Tribes and Bands of the Yakama Nation v. Pollution Control Hearings Board, Case No. 88259-7-1 (Wash.App. Sept. 21, 2026).

The Washington Court of Appeals has largely upheld the Department of Ecology's Clean Water Act § 401 certification for the proposed Goldendale Energy Storage Project, but sent it back on a discrete but important issue: the certification did not require the leakage monitoring and reporting that Ecology and the Pollution Control Hearings Board assumed would occur.

The decision in *Columbia Riverkeeper and Confederated Tribes and Bands of the Yakama Nation v. Pollution Control Hearings Board*, (Div I), offers useful guidance well beyond the Goldendale project. Most significantly, the court distinguishes between environmental assumptions made during SEPA review and the evidentiary record supporting a later permitting decision, confirms the importance of developing and

challenging findings before the PCHB, and clarifies that anticipated monitoring is not a substitute for an enforceable permit condition.

The case arose from Ecology's May 2023 issuance of a § 401 water quality certification for the Goldendale Energy Storage Project, a proposed closed-loop pumped-storage hydropower facility adjacent to the Columbia River. The project would use upper and lower reservoirs separated by approximately 2,400 feet of elevation difference, with water flowing through an underground tunnel and powerhouse system. The lower reservoir would be located at the former Columbia Gorge Aluminum smelter site, where historic operations left sulfate and phosphate contamination.

Columbia Riverkeeper and the Yakama Nation challenged the certification before the PCHB. The Board ultimately affirmed Ecology's certification, finding that the project was designed to avoid significant leakage and that the certification contained sufficient protections to ensure compliance with applicable water-quality standards. On direct review, the Court of Appeals affirmed those conclusions, except that the record did not support the Board's finding that leakage from the project's tunnels would necessarily be monitored and reported. The court therefore set aside the certification on that limited issue and remanded to Ecology and the PCHB to impose monitoring and reporting requirements capable of detecting tunnel leakage.

The Court of Appeals' Decision

The EIS Was Not the Final Word on Leakage

One of the more useful aspects of the opinion is its treatment of an apparent inconsistency between the project's environmental review and the later § 401 record.

The project Environmental Impact Statement (EIS) assumed approximately 100 acre-feet per year of leakage from the project's underground infrastructure. It further assumed that approximately 70 percent of that leakage would enter the Columbia River tributary watershed and 30 percent would enter the Swale Creek watershed.

That sounds significant on its own. Riverkeeper and the Yakama Nation accordingly relied heavily on the EIS estimate to argue that contaminated project water could enter groundwater and ultimately reach the Columbia River.

But the PCHB heard additional evidence developed after the EIS. Project witnesses testified about reservoir liners, grouting, reinforced tunnel construction, leak-detection systems, and other engineering measures intended to minimize seepage. Ecology witnesses likewise testified that the agency had developed a more refined understanding of the project during the § 401 process than it had when the EIS was prepared. The Board credited that later evidence and found that the project was designed not to leak, or, at most, would experience nominal seepage.

That factual posture mattered enormously on appeal.

The appellants did not assign error to the relevant PCHB findings of fact. Those findings therefore became verities on appeal. The Court of Appeals emphasized both the deferential substantial-evidence standard and the rule that reviewing courts do not reweigh competing expert testimony. The court characterized much of the appellants' argument as a disagreement with the Board's resolution of conflicting evidence, rather than a lack of evidence supporting the Board's decision.

The practical lesson is straightforward. An assumption in an EIS may be important evidence, but it does not permanently establish the factual predicate for every subsequent permit decision. As the administrative record develops, the PCHB may rely on later, more detailed technical information. A party seeking judicial review must therefore attack the resulting Board findings rather than simply return to an earlier environmental document.

No County of Maui Analysis Without the Factual Predicate

The court applied the same reasoning to the appellants' argument under County of Maui v. Hawaii Wildlife Fund. Maui recognizes federal Clean Water Act jurisdiction when a discharge through groundwater is the "functional equivalent" of a direct discharge into navigable waters, considering factors such as travel time, distance, dilution, and the extent to which the pollutant retains its identity.

Riverkeeper and the Yakama Nation argued that leakage from the Goldendale project into groundwater could be the functional equivalent of a direct discharge into the Columbia River.

The court never reached the *Maui* factors. Because substantial evidence supported the Board's finding

that the project was designed to prevent leakage and that contamination would not reach the Columbia River, the court concluded that no factual basis required a functional-equivalent analysis.

That portion of the decision may prove important in future groundwater-discharge cases. Maui does not necessarily require an agency to undertake its multifactor analysis whenever groundwater and navigable waters are hydrologically connected. The party invoking Maui still needs a factual predicate showing a discharge from the regulated activity for which the functional-equivalent inquiry is relevant.

The unusual feature here is that the court later required additional leakage monitoring. That does not necessarily conflict with its Maui holding. Instead, it illustrates the distinction between a record showing that significant leakage is expected and a certification intended to determine whether an unexpected discharge actually occurs.

Monitoring Must Be in the Certification

That distinction produced the appellants' sole success.

Washington precedent recognizes monitoring and adaptive management as legitimate tools for addressing uncertainty in § 401 certifications. But those tools must be codified as actual regulatory requirements.

The PCHB found that leakage from the tunnel system could be detected because the project was closed-loop. Evaporation and authorized mitigation discharges could be calculated, leaving unexplained losses as an indicator of leakage. Ecology witnesses also testified that seepage could be assessed through the project's groundwater-monitoring network.

The problem was that neither the § 401 certification nor the water-quality monitoring plan expressly required the monitoring described by the witnesses.

The court focused on that gap. Existing requirements addressed water-quality sampling but did not expressly require monitoring changes in water quantity from the closed-loop system or from downgradient wells, nor did they specify how unexpected tunnel leakage would be reported to Ecology. The Board therefore could not sustain a finding that leakage "would be monitored and reported" based primarily on testimony about what the project could monitor or what Ecology expected to happen.

For permit writers, applicants, and challengers, this is likely the most consequential part of the opinion. Technical capability is not a permit requirement. Agency expectations are not permit conditions. And expert testimony explaining how a future compliance program should operate does not substitute for language that requires the permittee to perform that monitoring and report the results.

When reasonable assurance depends on monitoring or adaptive management, the operative document should specify what is monitored, how it is monitored, the applicable frequency or triggering condition, and the reporting obligation.

"End-Result" Conditions Survive—At Least in the § 401 Context

The court also rejected an effort to extend the United States Supreme Court's 2025 decision in *City and County of San Francisco v. EPA* to § 401 certifications from § 402 permits.

The Goldendale certification includes a condition prohibiting exceedances of applicable Washington water-quality standards. The appellants argued that this type of "end-result" condition was inadequate in light of San Francisco, in which the Supreme Court rejected provisions in an NPDES permit that effectively made the permittee responsible for the ultimate condition of the receiving waters.

The Washington court distinguished *San Francisco*. That case addressed § 402 NPDES permits and, importantly, the interaction between end-result conditions and the statutory permit shield. The court concluded that *San Francisco* did not decide whether similar provisions were permissible under § 401 or whether they could contribute to Ecology's reasonable assurance that state water-quality standards would be met.

The distinction is significant. *San Francisco* should not be read as automatically applying across the Clean Water Act without attention to the statutory program at issue.

One Final Procedural Lesson

The appellants also argued that Ecology improperly relied on information developed after the EIS was completed without making it available through supplemental SEPA review. The court did not reach the merits. It held that the issue had not been adequately raised below and therefore declined to consider it.

That is another recurring theme in Washington environmental appeals: preservation matters. When

technical information changes materially between SEPA review and a later agency decision, a challenger should raise any supplementation or disclosure issue during the administrative proceedings rather than assume it can be raised for the first time on judicial review.

Conclusion and Implications

Taken together, the *Goldendale* decision is less a dramatic expansion or contraction of § 401 authority than a useful reminder of how these cases are won and lost. Administrative findings matter. Later technical evidence can overturn assumptions made earlier in environmental review. Maui requires an actual factual predicate before its functional-equivalent analysis is necessary. And when Ecology relies on monitoring to address uncertainty, that monitoring needs to appear in an enforceable condition—not merely in testimony explaining what everyone expects the permittee to do. The court's slip opinion is available here: https://www.courts.wa.gov/opinions/pdf/882597.pdf.
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