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CALIFORNIA WATER NEWS

COLORADO RIVER BASIN STATES, INCLUDING CALIFORNIA, ARE QUICKLY APPROACHING THEIR 2026 DEADLINE FOR MANAGEMENT GUIDELINES

Negotiations over Colorado River water supplies are historically tumultuous and as of recent weeks that trend continues, creating significant uncertainty over allocations going forward. Circumstances of past and present demonstrate significant challenges from drought and overuse, threatening the ability of Colorado River supplies from reaching its natural discharge into the Gulf of California, otherwise known as the Sea of Cortez to which Mexico has water rights. 2026 was negotiated a few years ago for developing a more long-term framework. Time is quickly evaporating with tensions running high.

Background

The Colorado River is a 1,450-mile-long river that flows from the Rocky Mountains through seven U.S. states and into Mexico. The river is a critical water supply source for 40 million people. Stakeholders range from tribes, municipal and domestic uses, agriculture, and ecosystems. Thirty federally-recognized Tribal Nations are involved as well as approximately 5.5 million acres of farmland. Some habitats in the ecosystem include native species that are not known to exist anywhere else on Earth.

Its name translates from Spanish to "colored reddish," purportedly due to the river's high silt content, a characteristic that contributed to the formation of the Grand Canyon. Given federal, state, tribal jurisdictional topics, the identification, implementation, and enforcement of rights is fiercely complex on the Colorado River. Despite those complexities, the body of legal authorities governing the river is commonly referred to as the Law of the River.

Law of the River

The "Law of the River" is a collection of federal laws, interstate compacts, court decrees, treaties, and contracts that dictate the complex allocation of Colorado River water to the Colorado River Basin states (California, Nevada, Arizona, Utah, Wyoming, Colorado, New Mexico) and Mexico. Key components include the 1922 Colorado River Compact, the 1928 Boulder Canyon Project Act, the 1944 U.S.-Mexico Treaty, and the 1963 Supreme Court decision in *Arizona v. California* (373 U.S. 546), which together determine which entities receive how much water from the river system.

Seven states claim 15 million acre-feet (MAF) annually, while actual flow averages approximately 12.5 MAF since 2000.

Pending Efforts for Improved Methodologies

Several years ago, a deadline was set for October 1, 2026, as an absolute last-chance deadline to implement a new plan. If an agreement is not reached, the federal government will likely intervene.

A combination of various factors contributed to the challenging circumstances on the Colorado River. In its simplest form are climatological shifts with snow and rain fall as well as increased demands.

The United States Bureau of Reclamation (Reclamation) is developing new operational guidelines for Lake Powell and Lake Mead post-2026. Updated hydrology datasets are being used to better reflect climate change impacts and long-term drought conditions.

Traditional water management methods consist of: (i) Index Sequential Method: Previously relied on historical hydrology to simulate future scenarios; (ii) Stress Test Period: Since 1988, drier conditions have reduced average flows, prompting more targeted planning; and (iii) Natural Flow Decline: Average flow at Lees Ferry dropped from 14.8 to 12.4 million acre-feet/year over recent decades.

A new approach being developed is referred to as the "Super Ensemble." This approach combines four hydrology methods: (i) Observed history; (ii) Paleo hydrology (tree ring data); (iii) Global Climate Models (GCMs); and (iv) Statistical adjustments for climate change. Other valuation metrics being used are:

(i) Robustness: Measures how well a strategy performs across many scenarios and (ii) Vulnerability: Identifies conditions where outcomes fall below acceptable thresholds. For example, Lake Mead elevation staying above 1050 feet is considered a desirable outcome. Ultimately, the approach seeks to produce 400 traces of possible 30-year futures, capturing a wide range of wet and dry conditions.

Reportedly, experts favor this management-friendly approach over probabilistic risk models because the broader range of scenarios will likely make future projections appear less robust than past models. However, differences in risk tolerance between Upper and Lower Basin states may complicate consensus-building.

Pending Negotiations

Negotiators reportedly propose 1.5 MAF in cuts, while conservationists argue at least 5 MAF is needed. The delta in rights and average flows is approximately 2.5 MAF since 2000. While the numbers being negotiated remain in flux, implementation measures being contemplated, or advocated by some interests, include: (i) halt new dams and diversions; (ii) mandate water use reductions across all basin states; (iii) improve water accounting and transparency; (iv) prioritize potable water access for Tribal Nations; (v) invest in municipal reuse; (vi) protect endangered species; and (vii) promote more sustainable agriculture.

Conclusion and Implications

Numerous agencies and stakeholders are working hard toward the next iteration of a solution on the Colorado River. The importance is massive and obvious. The outcomes are uncertain. Critical for avoiding or at least limiting long, costly, and uncertain legal disputes is ensuring open communication to try to limit misperceptions or misunderstandings, coupled with doubling down efforts to identify negotiated allocations with creative solutions and methodologies as described above. The stakes are too big to allow a failed process, thus if negotiations fail, the federal government will likely step in and impose management rules of its own.
(Wes Miliband)

SANTA CLARA VALLEY WATER DISTRICT SUSPENDS DEVELOPMENT OF PACHECO RESERVOIR EXPANSION PROJECT

On August 26, 2025, the Board of Directors for the Santa Clara Valley Water District (Valley Water) voted to suspend the planned expansion of the Pacheco Reservoir (Project) in southern Santa Clara County. Despite investing over $100 million and securing another $504 million in conditional funding from California's Prop 1 Water Storage Investment Program, the Chair of the Board cited escalating costs as a reason behind Valley Water's decision to shelve the project for now.

Background

Valley Water is a special district formed pursuant to the Santa Clara Valley Water District Act, Water Code Appendix sections 60-1 *et seq.*, to provide comprehensive water management services to Santa Clara County in the San Francisco Bay Area. (Wat. Code App'x, §§ 60-4, 60-5.) In addition to providing flood control and groundwater management services to Santa Clara County residents, Valley Water operates as a water wholesaler and contracts for water supplies from the State Water Project (SWP) and Central Valley Project (CVP). Valley Water supplements these contractual supplies with surface water collected in ten small reservoirs it manages across Santa Clara County. These reservoirs were constructed prior to the completion of the CVP and SWP and initially served as Valley Water's central source of supply, with a total storage capacity of approximately 170,000 acre-feet.

The Pacheco Reservoir, on the other hand, is owned and operated by the Pacheco Pass Water District, a California Water District situated in Santa Clara and San Benito Counties. Pacheco Pass Water District impounds approximately 5,500 acre-feet of surface flow of the North Fork Pacheco Creek, tributary of the Pajaro River, behind the North Fork Dam and into the Pacheco Reservoir. The existing North

Fork Dam and Pacheco Reservoir are located just north of Highway 152 and just west of the San Luis Reservoir of the SWP and CVP.

Pacheco Reservoir Expansion Project

Valley Water, in coordination with Pacheco Pass Water District and San Benito County Water District, proposed to expand the Pacheco Reservoir's capacity by constructing a new earthen dam just upstream of the North Fork Dam to impound an additional 140,000 acre-feet of water. (Pacheco Reservoir Expansion Project Draft Environmental Impact Statement, Santa Clara Valley Water District (November 2021) at ES-5.) The Project would also include pumphouses and pipelines to tie in with the Pacheco Conduit, an existing system that moves water from San Luis Reservoir west. (*Id.* at ES-7–8.) Valley Water and San Benito County Water District agreed to shares of 90 and 10 percent, respectively, of the expanded reservoir's operational storage capacity. (*Id.* at ES-10.) In addition to capturing runoff into the North Fork Pacheco Creek, the new pipeline tying into the Pacheco Conduit would allow storing SWP and CVP water supplies in the expanded reservoir. (*Ibid.*)

Prior to Valley Water's suspension of the Project, the Project faced significant challenges with planning, design, and permitting issues. (Supplemental Board Agenda Memorandum (Staff Memo), regarding "Receive an Update on the Pacheco Reservoir Expansion Project, Project No. 91954002," Santa Clara Valley Water District (August 26, 2025) at p. 2 .) Valley Water, as lead agency under the California Environmental Quality Act, released a draft Environmental Impact Report (DEIR) for the Project in November 2021 and received a large number of public comments regarding the scope and potential impacts of the Project. (*Ibid.*) These comments prompted changes to the Project's design, which in turn required revisions to the DEIR and recirculation. (*Ibid.*) According to the Staff Memo, revisions to the DEIR were still underway at the time of the August 26, 2025, Board meeting.

Valley Water also faced challenges securing the necessary approvals from the United States Bureau of Reclamation for storing CVP water supplies in the expanded reservoir. (Staff Memo at p. 6.) According to Valley Water staff, the Bureau of Reclamation did not support the plan to store CVP water in an expanded Pacheco Reservoir and declined to serve as the lead agency for federal permitting processes under the federal Endangered Species Act (ESA), out of concern that the storage would trigger Section 7 ESA obligations for the Bureau. (*Ibid.*) Further, if Valley Water sought to store SWP water, it would need to negotiate a long-term Warren Act contract with the Bureau for the use of federal facilities—like the Pacheco Conduit—to convey non-CVP water. Such a process would also require environmental review under the National Environmental Policy Act.

Valley Water Votes to Suspend Project

At its August 26, 2025, meeting of the Board of Directors, Valley Water voted to suspend the Project and directed Valley Water's interim general manager to prepare a plan to close the Project out and withdraw Valley Water's application for state funds awarded under the Prop 1 Water Storage Investment Program. Valley Water's Chair of the Board of Directors, Tony Estremera, issued a statement that "proceeding with the Pacheco Project is not in Valley Water's best interest at this time," and while "this was a difficult decision, [it was] made with our community's long-term water affordability in mind." Indeed, Project's costs had inflated to $3.2 billion dollars. (*Id.*) When compared to the proposed Sites Reservoir, which would store up to 1.5 million acre-feet, the Pacheco Reservoir Expansion Project would have cost half as much for less than a tenth of the water supply.

Conclusion and Implications

Valley Water's decision to halt the Pacheco Reservoir expansion project comes on the heels of Contra Costa Water District's similar decision to scrap the planned expansion of the Los Vaqueros Reservoir. Proponents of both projects have cited affordability as a key factor behind their decisions. Valley Water states it will continue to evaluate the feasibility of water supply and infrastructure projects to meet its constituents' present and future water demands. (Nicolas Chapman, Austin Cho)

LEGISLATIVE DEVELOPMENTS

CALIFORNIA ASSEMBLY BILL 823: A BILL TO BAN MICROPLASTICS IN PERSONAL PRODUCTS AND CLEANING PRODUCTS PASSES THE SENATE AND MOVES TO GOVERNOR'S DESK FOR SIGNATURE

California Assembly Bill 823, authored by Assemblymember Tasha Boerner (Encinitas), received a passing 39-0 vote on the floor of the Senate on September 3, 2025, and, after previously passing through the California Assembly earlier this year, the bill now moves forward in the legislative process toward Governor Newsom's office for signature into law. If signed by the governor, AB 823 would ban the sale of microplastics in the form of plastic microbeads used as an abrasive in "leave-on" personal care products and cleaning products, as well as personal care products containing plastic glitter. To become law, the governor must sign by the legislation by October 13, 2025. The ban on personal care products and cleaning products would go into effect January 1, 2029, with the ban on products containing plastic glitter going into effect one year later, on January 1, 2030. This law would build on the current regulatory scheme which currently bans the use of plastic microbeads in "rinse off" personal care products.

Background

In 2015, California created several new laws in response to growing concerns around microplastics. Assembly Bill 888 banned the use of microbeads in personal care products, but focused only on "rinse off" products, as described above; Senate Bill 1263 required the California Ocean Protection Council to implement strategies to lessen impacts from microplastics on marine life and ocean; and Senate Bill 1422 required the California State Water Resources Control Board (SWRCB) to define microplastics by 2020, and implement a method for measuring the presence of microplastics in drinking water. As a result of the SB 1422, by 2022 the SWRCB published the Policy Handbook Establishing Methods of Testing and Reporting Microplastics in Drinking Water (*Policy Handbook Establishing Methods of Testing and Reporting Microplastics in Drinking Water*, 2022), which established further technology to monitor and track microplastics in drinking water supplies, while also providing a verifiable method for testing.

Parallel to California's in 2015, federal lawmakers passed the Microbead-Free Waters Act of 2015 was passed which created federal law prohibiting the manufacture, packaging, and distribution of cosmetics containing plastic microbeads in rinse-off products. Over the past decade, efforts continue to develop in response to continued research and analysis of the prevalence of microplastics in our everyday environment, with introduction of The Microplastics Safety Act, bipartisan bill in July of this year, directing the Food and Drug Administration to conduct a study focusing specifically on human health impacts of exposure and ingestion of microplastics. This study would be the first to specifically focus on these types of impacts.

AB 823

AB 823 directly reflects efforts amongst California lawmakers to continue driving advances in technology, and encourage industry shifts manufacturing toward creating products responsive to microplastic concerns. Over the past decade, these legislative efforts have evolved at both federal, and state, levels to respond to evolving concerns around microplastics, and AB 823 provides a vehicle to continue that evolution. As research surrounding microplastics has exponentially developed in recent years, microplastics have been defined in varying ways. Broadly, the term refers to plastic particles which are 1) intentionally manufactured in small sizes and to be used in specific products, such as microbeads, in personal care products or abrasives in cleaning products, or 2) the result of degradation of larger plastic materials. The Environmental Protection Agency describes microplastics as ranging in size up to 5 millimeters, equivalent to the size of a pencil eraser, or as small as one nanometer.

For purposes of AB 823, the regulation of microplastics includes only those microplastic particles, or microbeads, which are intentionally included in

certain personal care products and cleaning products. The legislation aims to build upon the current legal framework which bans the sale of microbeads used as an abrasive in "rinse-off" personal care products such as facial scrubs, body washes, or similar items intended to be rinsed off with water. AB 823 would ban the sale of microbeads used as an abrasive in "leave-on" personal products, such as sunscreen, lotions, or other items intended to be used in a manner that is not rinsed off with water. The ban would also include personal care products containing plastic glitter which, also departs from current federal law, as well as other state laws. Inclusion of plastic glitter, specifically, generated industry push back in an earlier version of the legislation, resulting in an amendment that would provide an additional timeframe before the ban of personal products containing glitter took effect. This extension of time was added in response to concerns from certain industry groups about the need for research and development to create alternative products that would comply with the new law.

AB 823 reflects growing concerns over potential harmful health effects as a result of the prevalence of microplastics in drinking water, food, and other products. While several steps have been taken at both state, and federal, level to create laws responding to these growing concerns, AB 823 would be the first law to ban microbeads, and plastic glitter, in certain personal care products. In recent years, increasing awareness and concerns have developed as a result of developing research that indicate microplastics may be increasingly present, not only in oceans and waterways, but in the surrounding environment and in everyday products, increasing the potential for these microplastics to be ingested, inhaled, or otherwise absorbed into the human body. As a result, efforts to address the issue of microplastics has shifted from concerns of potential presence of microplastics, not only, in drinking water supplies, but toward presence of microplastics in food, beauty products, and other products, generating interest in the issue beyond environmental concerns, to a broader human health focus.

Conclusion and Implications

If signed, AB 823 would expand California's current regulatory framework in response to growing concerns surrounding microplastics, and potential negative effects on both environment, and human health. The law would create a structure more stringent than both federal law, and other state laws. However, this regulatory expansion could provide beneficial to creating a standard to which other states may draft laws to similarly expand their current legal frameworks and may also generate a shift in larger industry trends by requiring a change in current manufacturing of personal care products. Continued, increased technological advancements may also result. For more information, *see:* https://legiscan.com/CA/text/AB823/id/3131841
(Miles Krieger, Steve Anderson)

CALIFORNIA LEGISLATURE SHELVES BILL INTENDED TO FACILITATE FARMLAND CONVERSIONS FOR RENEWABLE ENERGY DEVELOPMENT

Assembly Bill (AB) 1156 was introduced by Assemblymember Wicks to broaden the definition of solar-use easements under the California Land Conservation Act of 1965 (Williamson Act) and further streamline the process for property owners to convert their Williamson Act or Farmland Security Zone contracts into solar-use easements for renewable energy project development. Intended to further efforts by the state to achieve its goal of 100 percent of electric retail sales served by renewable and zero-carbon energy resources by the end of 2045, AB 1156 was shelved at Assemblymember Wicks' request on September 13, 2025. While currently inactive, AB 1156 may be revived during a future legislative session.

Background: The Williamson Act and Solar-Use Easements

The Williamson Act authorizes local governments to create agricultural preserves within their jurisdictions and contract with landowners to restrict land uses to agriculture, open space, and certain compatible uses in exchange for lower property tax assessments. Land within an agricultural preserve is eligible

for a ten-year Williamson Act or a 20-year Farmland Security Zone contract. In return for the land-use restriction, landowners receive property tax assessments based on the agricultural or open-space use of the land, rather than the full market value of the parcel. Farmland Security Zone contracts are limited to higher-quality farmlands and offer a greater property tax reduction, at the lower of either 65 percent of its Williamson Act valuation or 65 percent of its Proposition 13 valuation. While the Williamson Act lists agricultural labor housing, water facilities, or electrical generation facilities as permissible related open space uses, the rules of each local government's agricultural preserve establish the permissible uses for lands under Williamson Act or Farmland Security Zone contracts.

In 2011, the Legislature created solar-use easements through Senate Bill (SB) 618. SB 618 authorizes parties to a Williamson Act or Farmland Security Zone contract to mutually agree to rescind the contract and simultaneously enter into a solar-use easement, under which the land is used for solar photovoltaic facilities for at least 20 years. As a pre-condition to the recission of the contract, the Department of Conservation (DOC) must consult with the Department of Food and Agriculture (DFA) to determine that the land has limited agricultural value, due to soil quality, and is eligible for conversion. If the parcel or parcels are designated as prime farmland, unique farmland, or farmland of statewide importance on California's Farmland Mapping and Monitoring Program, the DOC must conduct further analyses of water availability, crop yield, soil quality, and a landowner's management plan before allowing the parties to rescind the Williamson Act or Farmland Security Zone contract.

A local government and landowner may rescind the Williamson Act or Farmland Security Zone contract and enter into a solar-use easement if the DOC approves the land-use conversion and the landowner had paid a recission fee based on the fair market value of the property. SB 618 authorized local governments to include restrictions, conditions, or covenants in the solar-use easement to ensure that photovoltaic solar facilities are developed. Furthermore, local governments and persons or entities can seek an injunction if a building permit is issued or action is taken that violate the easement. Solar-use easements renew automatically on an annual basis for 20 years and can only be extinguished by nonrenewal if either party files a notice, termination, or by returning the land to its previous Williamson Act or Farmland Security Zone contract. Although SB 618 had a statutory sunset in 2020, the California Legislature reauthorized its solar-use easements in 2023 with SB 1489.

Assembly Bill 1156

AB 1156 would encourage renewable energy project development by changing how solar-use easements are defined under the Williamson Act and by expanding authorized uses of land, overhauling the DOC's review process, and adding provisions that apply after the DOC has approved a land conversion.

AB 1156 expands the authorized uses of land under the term "solar-use easement" to include solar energy storage and appurtenant renewable energy facilities. In addition, AB 1156 requires the DOC to consult with the local groundwater sustainability agency to review whether water limitations would support solar easement eligibility. Eligibility based on limited water supply would look to whether the parcel or parcels have insufficient surface water or groundwater to support agricultural activities and whether the land had been historically used as irrigated cropland rather than unirrigated grazing land. The DOC would be required to issue a final determination on whether the parcel is eligible for conversion within 120 days. If the DOC does not act on a solar-use easement application within that time, it would be automatically approved.

AB 1156 also proposed provisions that would be binding on solar-use easements, local governments, and the landowners. While SB 618 authorized local governments to include restrictions, conditions, or covenants that might restrict the use of land for photovoltaic solar facilities, AB 1156 requires that mitigation measures must have an essential nexus and be roughly proportional to the impacts the local government seeks to mitigate. Finally, AB 1156 would have exempted the entering or recording a solar-use easement from environmental review requirements under the California Environmental Quality Act (CEQA).

Conclusion and Implications

AB 1156 sought to expand opportunities for landowners to convert their Williamson Act land con-

tracts to solar-use easements in support of renewable energy project development needed to meet long-term zero-carbon energy goals. Although AB 1156 will not go into law as part of the 2025–2026 Legislative Session, the bill sheds light on the statewide efforts to facilitate the state's clean energy transition. A similar bill may be introduced during the upcoming 2026–2027 Legislative Session.
(Christopher Marelich, Austin Cho)

REGULATORY DEVELOPMENTS

CALIFORNIA STATE WATER RESOURCES CONTROL BOARD TO SET 2025-2026 WATER RIGHTS FEES

The California State Water Resources Control Board (State Water Board) recently issued a Notice of Proposed Emergency Rulemaking regarding Water Rights Fees for Fiscal Year 2025-26. (fy2526-wrfees-nper.pdf.) The proposed rule includes amendments to Division 3 of Title 23 of the California Code of Regulations and provides details on the proposed emergency regulations, fee schedules, and administrative procedures.

Background

California's emergency rulemaking process is an accelerated path to adopting regulations in response to immediate public harm, requiring agencies to submit a finding of emergency and a finding of necessity to the Office of Administrative Law (OAL) for review and potential filing. The process involves an agency's finding of an emergency, a brief public notice and comment period, and the OAL's ten-day review of the agency's finding of emergency and 30-day review of the regulation itself for compliance with the Administrative Procedure Act (APA).

The California Water Code provides authority and parameters around the State Water Board adopting emergency regulations to revise and establish fees for the Water Rights Fund (WRF) to support water rights program activities. The regulation must duly be deemed necessary for the immediate preservation of public health, safety, and welfare.

State Water Board water rights fees fund the administration and enforcement of water rights programs, which include issuing permits, managing water quality, and ensuring sustainable water use. These fees provide the State Water Board and Department of Tax and Fee Administration with resources to operate these programs, supporting everything from the Sustainable Groundwater Management Act initiatives to stream gauging and data modernization projects. The significance lies in providing stable funding for managing the state's limited and complex water resources, ultimately aiming to balance human needs with ecosystem health.

The Proposed 2025-2026 Fees

The Notice purportedly seeks to provide: (i) clarification of fees for splitting applications requesting authorization to divert 40,000 acre-feet or more per year; (ii) adjustment of fee caps for change petitions involving transfers based on the California Consumer Price Index; (iii) updates to references from the Board of Equalization to the California Department of Tax and Fee Administration; and (iv) temporary suspension of water quality certification fees during the Federal Energy Regulatory Commission pre-licensing phase under specific conditions.

The proposed filing fees for water right applications are tiered based on the volume of water requested for diversion, ranging from $5,000 to $811,000. Additional surcharges apply for certain applications that the State Water Board deems complex. Reduced fees are available for specific temporary permits and projects meeting environmental criteria.

In summary form, the proposed fees are as follows:

- Petition Fees: Fees for petitions to change water rights terms, extensions of time, or temporary changes range from $850 to $695,052, depending on the type and scope of the petition. Fees for petitions related to treated wastewater or state-filed applications are also specified.

- Annual Fees for FERC Licensed Hydroelectric Projects: Fees are calculated based on the installed generating capacity of the hydroelectric facility, with specific provisions for pausing fees during inactive periods.

- Administrative Procedures: Annual fees are assessed based on the fiscal year and are due 30 days after notice. Fee payers can file petitions for reconsideration, but interest and penalties may accrue if payment is postponed.

The California Department of Tax and Fee Administration is responsible for collecting fees and

expenses. The regulation does not impose mandates on local agencies or school districts. Increased costs due to fee cap adjustments are reportedly unlikely to significantly impact state or local agencies.

Conclusion and Implications

The establishment of these water rights fees does not typically catch the news wires in the ways of other topics. Yet the process, and ultimately the fees, are very impactful to water right holders of all types and magnitudes around the state. An "emergency" process is much more swift and less likely to be know by those impacted. On the other hand, modification and implementation of the water rights fees, as this Notices demonstrates, emphasizes the importance of timely fee collection to ensure the continued administration of water rights programs critical to California's economy, environment, and public health. (Wes Miliband)

CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE RELEASES WESTERN JOSHUA TREE CONSERVATION PLAN

On August 13, 2025, the California Department of Fish and Wildlife (CDFW) issued the Western Joshua Tree Conservation Plan (Plan). The Plan serves as a comprehensive blueprint for managing, conserving, restoring, and otherwise protecting western Joshua trees through a mix of regulatory, voluntary, and collaborative strategies.

Background

The Plan implements the Western Joshua Tree Conservation Act (WJTCA), passed in July 2023. The Act requires CDFW to prepare a conservation plan for the *western Joshua tree* (*Yucca brevifolia*), with collaboration among tribes, local governments, and the public. The Plan does not impose new statutory mandates; its management actions may be voluntarily adopted by project proponents and land owners, or incorporated into project approvals by local, state, and federal agencies that approve projects and management plans in the tree's habitat.

Purpose and Scope of the Plan

Joshua trees are particularly vulnerable to shifts in habitat and environmental stresses. They are slow-growing, long-lived, reproduce slowly, dependent on specific pollinators (yucca moths) and seed dispersal by small mammals.

The Plan marks one of the first times in California that a species that is currently abundant but projected to lose habitat has been protected proactively under a law meant to deal with climate change.

Threats prompting the issuance of the Plan urgency include climate change (future habitat loss under warming trends), wildfire, invasive species, and land-use pressures from development, in particular housing, infrastructure, and renewable energy projects. While the Joshua tree is currently abundant in many areas, models predict much of its suitable habitat will decline sharply by end of the century.

Core elements of the Plan include: (1) avoidance and minimization of impacts, (2) relocation guidelines and protocols, (3) mitigation and permitting framework, (4) land conservation and management, (5) tribal co-management and traditional knowledge, (6) research monitoring and adaptive management, and (7) public education, awareness and outreach.

voidance and Minimization of Impacts

The Plan provides guidance on how development projects should avoid harming trees or habitat, or at least minimize such harm, including siting large development projects in lower-conflict areas.

elocation Guidelines and Protocols

The Plan includes rules for relocating Joshua trees, if necessary, as a condition of permits (incidental take permits). It allows for short-distance moves (*e.g.*, less than 2.5 km) into "future suitable habitat" if certain requirements are met.

itigation and Permitting Framework

When Joshua trees are removed or potentially harmed in projects, mitigation will be required including fee payment, habitat acquisition/conserva-

tion, or habitat restoration. The Plan also provides for local governments to obtain delegated permitting authority under certain conditions.

Land Conservation and Management

The Plan requires identification of priority conservation areas where trees are currently healthy, where future habitat is projected to be viable, where threats (fire, invasive plants, *etc.*) are lower, where pollinators (e.g., moths) and seed-dispersing animals are present. The Plan calls for strategic land acquisitions or protections to safeguard such areas.

Tribal CoManagement and Traditional Knowledge

The Plan mandates collaboration with California Native American Tribes, including in implementation and decision-making. In addition, traditional ecological knowledge is to be leveraged and relocation onto tribal lands may be an option if requested.

Research, Monitoring, Adaptive Management

The Plan establishes monitoring to track the health of Joshua tree populations and habitat trends over time and may be amended as necessary. Starting in 2026, and at least every two years thereafter, CDFW will review status of the species and the effectiveness of the Plan, with a public meeting held before August 31.

Public Education, Awareness, and Outreach

The Plan includes efforts to educate the public about threats and conservation of the western Joshua tree.

Plan Implementation

While the Plan does not create new statutory mandates by itself, it provides management actions, guidelines, and a framework that may be incorporated by CDFW, local, state, or federal agencies, or voluntarily by landowners or other stakeholders. Permitting and mitigation obligations stem from the WJTCA: If a project impacts Joshua trees, certain "incidental take" permits may be required, with associated mitigation or relocation, and payment of fees. Projects can pay into a mitigation fund and those funds are to be used for habitat acquisition, conservation or restoration. Local agencies may in some cases assume permitting authority under delegated arrangements.

Innovations and Unprecedented Features

The Plan is notable for explicitly planning for future climate scenarios; projecting where Joshua trees may thrive under warming and protecting land accordingly. The Plan also contains unique structured comanagement and tribal involvement that is more explicitly built in than many prior conservation plans.

Points of Controversy

Some in the development community expressed concern that mitigation fees and permitting burdens could increase costs or impede housing and infrastructure projects. Concerns were raised about fairness of fee structures, particularly for smaller landowners or low-income households; the Plan acknowledges potential disproportionate effects and includes adjustment processes.

Also, some stakeholders raised issues regarding delays or challenges introduced by the relocation guidelines. Such issues of concern include setting thresholds for when relocation is required, capacity, survival of relocated trees, and the practical limits for moving trees.

Outcomes and Targets

A key goal of the Plan is to identify priority conservation lands — areas that are likely to have healthy Joshua tree populations now and in a future climate — and to protect a substantial portion of those. The Plan aims to permanently protect 70 percent of these priority lands by 2033. The Plan emphasizes fire risk reduction through reducing invasive grasses, managing wildfire response, rehabilitating burned areas with native species, and protecting existing trees from fire damage.

Conclusion and Implications

The Plan's success will turn on many factors, including the effectiveness of calculating, collecting and use of mitigation fees. Other key measurements will be the success of relocation efforts and whether trees that are moved survive and thrive. Whether delegated permitting to local governments maintains

conservation standards is certain to be watched along with whether enforcement efforts ensure that projects comply with avoidance, minimization, permitting, and mitigation requirements.

Given the unprecedented nature of the Plan, one can expect future amendments in response to new science, changing conditions and the practicality of compliance.
(Todd Williams, Darien Key)

RECENT FEDERAL DECISIONS

U.S. DISTRICT COURT DIRECTS U.S. FISH AND WILDLIFE SERVICE TO COMPLETE REVIEW OF PETITION FOR ESA LISTING OF WHITE STURGEON AS "THREATENED" WITHIN NINE MONTHS

San Francisco Baykeeper, et al. v. United States Fish and Wildlife Service, et al., ___F.Supp.4th___, Case No. 25-cv-01360-LJC (N.D. Cal. Sept. 3, 2025).

On September 3, 2025 the United States District Court for the Northern District of California rejected arguments as to infeasibility on the part of the United States Fish and Wildlife Service (USFWS) to complete review of a petition to list the San Francisco Bay Estuary population of the White Sturgeon as "threatened" and held that the agency must comply with mandatory deadlines set forth under the Endangered Species Act (ESA) by providing a finding on the petition, no later than June 3, 2026.

Background

According to a February 2, 2025 complaint filed in the United States District Court for the Northern District of California by the San Francisco Baykeeper, the California Sportsfishing Protection Alliance, Restore the Delta and Friends of the River, the San Francisco Bay Estuary population of the White Sturgeon is in increasingly critical decline prompting the need for protection and conservation provided with designation as a "threatened" species under the federal Endangered Species Act (ESA). The white sturgeon are only known to spawn in the San Francisco Bay watershed, making this specific population of certain concern, and subject of a petition to list the species as threatened under the ESA which submitted to the USFWS by the San Francisco Bay Keeper et al, on December 6 2023. According to the petition, the population of the white sturgeon has declined significantly over recent decades, with a heightened decrease in population in 2021 and 2022 as a result of algal blooms. The groups contend that the 2021 and 2022 blooms, compounded with overharvest and diversion of fresh water flows needed for reproduction have contributed the increasingly rapid decline of the species.

As is noted by the court, the ESA provides detailed timetables in which a petition must be answered. Broadly, a response must be provided to a petition, first, through a finding within the first 90 days, after receiving the petition, which specifies whether the petition presents substantial scientific information indicating that the petitioned action is, or is not, warranted. A subsequent, more detailed, finding must be made 12 months after the petition is received. These findings must be published in the Federal Register to as to apprise all interested parties as to the decision. 16 U.S.C. § 1533(b)(3)

On October 8, 2024, the USFWS responded to the December 2024 petition by publishing the agency's 90-day finding which included a determination that the petition provided substantial information to indicate that the petitioned action "may be warranted." The agency further provided that status review of the species to determine whether the actions petitioned are warranted would be initiated. Subsequently, on December 6, 2024, upon the 12-month deadline, the USFWS did not provide the subsequent, requisite finding or results of the status review to which the previous finding stated would be initiated. In response, on December 9, 2025 the San Francisco Baykeeper, et al. submitted a Notice of Failure to Issue a 12 Month finding, and subsequently filed for declaratory judgment, and injunctive relief compelling the USFWS to issue the 12-month finding, in the United States District Court for the Northern District of California.

On September 3, the court issued its decision, rejecting the USFWS claims of infeasibility to complete the mandated, statutory review, and directed the agency to provide the 12-month finding within nine months from the date of the court decision.

The District Court's Decision

The San Francisco Baykeeper allege that the USFWS violated the ESA through failure to make

a timely 12-month finding, pursuant to 16 U.S.C. § 1533(b)(3)(B), and in response the groups' petition which requested listing the San Francisco Estuary population of the White Sturgeon as a threatened species under the ESA. The groups further contend that this unjustified delay in providing full protections of the ESA to the white sturgeon population has caused additional harm, as the species continue to decline throughout this extended decision-making process. The court rejected arguments set forth by USFWS, stating that the agency "disregarded the ESA's firm deadlines" and directed the agency to comply with the those deadlines through expediting review, and producing the requisite 12 month finding no later than nine months from the date of the court's decision.

In assessing the ESA claim, the court first examined the statutory language detailing the timelines required for consideration of petitions to designate a species as endangered or threatened. In doing so, the court stated:

> . . .an agency must consider petitions "solely on the basis of the best scientific and commercial data available to him after conducting a review of the status of the species and after taking into account" conservation efforts by other government entities. 16 U.S.C. § 1533(b)(1)(A).

The court addressed the evidence offered regarding the "lifecycle and recent decline" of the white sturgeon population in the San Francisco Estuary in which it finds to be straightforward in indicating that the species has significantly declined in recent decades, with "sharp decreases" in 2021 and 2022. However, citing *Nat. Res. Def. Council v. Kempthorne*, 506 F.Supp.2d 322, 359 (E.D. Cal. 2007), the court pointed out that, while an agency may have some discretion in determining how a review may be conducted, namely that the discretion may be used in assessing the requisite "best scientific and commercial data available" as well as other general conversation efforts, an agency has no discretion, or authority, to extend statutorily provided timeframes which mandate when the review must be finalized.

The court noted, an agency must show evidence sufficient to meet the "especially high burden of showing infeasibility" to delay, or extend, the statutorily mandated deadlines, and provides examples that would likely meet this burden, such as demonstration of budgetary or staffing demands which the agency cannot meet, that conducting the review would unduly jeopardize implementation of other programs, or that the agency needs more time to sufficiently evaluate complex, technical issues related to the review. *Nat. Res. Def. Council v. Sw. Marine, Inc.*, 236 F.3d 985, 999–1000 (9th Cir. 2000), The court rejected the USFWS' arguments that such delay was permissible and ruled that the USFWS failed to conclusively provide evidence that this burden had been met.

In analyzing the defenses set forth by the USFWS, the court first addressed documents provided demonstrating a comprehensive schedule of deadlines for review of the petition concerning the white sturgeon, as well as several other pending petitions before the agency. With this schedule, the agency additionally provided a declaration stating that creating an expedited deadline for review for the white sturgeon petition only, would disrupt the USFWS's ability to resolve all petitions on scheduled. The court rejected this information, stating that any impediments to the review process were of the agency's own making, and thereby irrelevant. Thus, the court found the evidence offered to be inconclusive to meet the high burden required to show infeasibility of expedited review.

The court further rejected the USFWS additional defense that a current hiring freeze imposed by presidential memorandum has forced significant staff reduction, and created potential for further, future reduction, both amounting to a scenario to which the agency lacked the resources necessary to produce the 12-month finding. The court similarly rejected this claim, finding that insufficient evidence had been provided to support this argument.

Conclusion and Implications

In accordance with this holding, the U.S. Fish & Wildlife Service is subject to the mandatory deadlines for petition review, and has no discretion to extend these deadlines, without a clear showing of infeasibility to do so, a burden which has not been met in this instance. Thus, the USFWS must provide a determination as to the petition for "threated status" within nine months from the date of the decision. This decision could impact other agency's which face staffing and resource limitations in light of recent hiring freezes, and staff reductions, though the decision

makes it clear that any such agency would be required to meet a heavy burden in demonstrating such need to any extension statutorily defined decision-making process. The court's findings of fact and conclusion of law is available here: https://www.courthousenews.com/wp-content/uploads/2025/09/sf-baykeeper-v-fws-finding-of-fact.pdf
(Miles Krieger, Stever Anderson)

RECENT CALIFORNIA DECISIONS

CALIFORNIA SUPREME COURT REPLACES *GREYHOUND* DEFERENCE FOR PUBLIC UTILITIES COMMISSION'S INTERPRETATION OF ITS CODE WITH LESS DEFERENTIAL *YAMAHA* STANDARD

Center for Biological Diversity v. Public Utilities Commission, ___Cal.5th___, Case No. S283614 (Aug. 7, 2025).

In its opinion in *Center for Biological Diversity v. Public Utilities Commission* the California Supreme Court overturned the First Appellate District's application of the highly deferential *Greyhound* standard of review to the Commission's decision lowering compensation for "customer-generators," with instruction to review the matter anew under the less-deferential *Yamaha* standard, consistent with significant legislation from the late 1990's.

Background

On August 7, 2025, the California Supreme Court issued its decision in *Center for Biological Diversity, Inc. v. Public Utilities Commission* (Cal., Aug. 7, 2025, No. S283614), 2025 WL 2253765). In this landmark ruling, the Court rejected decades of heightened deference afforded to the Public Utilities Commission ("CPUC") under *Greyhound*, opting instead to bring the agency under a more flexible, case-specific standard of review.

Context and Legislative History

California has long encouraged homeowners with solar panels to export excess energy to the state's energy grid. These "customer-generators" are compensated through a Net Energy Metering program overseen by the CPUC. In 2013, the California Legislature passed Public Utilities Code § 2827.1, directing the CPUC to adopt a *successor tariff* (to the previous NEM regime) intended to compensate customers who generate electricity (*e.g.* through rooftop solar) and export the excess to the grid.

In 2022, the CPUC adopted the successor Net Energy Metering 3.0 (NEM 3.0) program, slashing the compensation paid to customer-generators. The Center for Biological diversity and other environmental groups sued, arguing that the new program violated PUC § 2827.1 by failing to ensure that customer-generated renewable energy continues to grow sustainably and by failing to account for all of the benefits of renewable energy.

At the Court of Appeal

The Court of Appeal upheld the CPUC's interpretation of § 2827.1 under the *Greyhound* standard.

But beyond solar policy, the case gave the California Supreme Court a chance to reexamine a core question in administrative law: What standard governs judicial review of agency statutory interpretations?

The Greyhound Standard

As mentioned above, the Court of Appeal had applied the highly deferential *Greyhound* standard to its review of CPUC's decision, which is different to the interpretation standard used for other agencies. Under *Greyhound*, courts would uphold an agency's interpretation of a statute as long as it was "reasonably related to the statutory purposes and language." (*Greyhound Lines, Inc. v. Public Utilities Commission*, 68 Cal.2d at pp. 406, 410 (1968).)

This meant that courts would not second-guess an agency's legal interpretations as long as they were plausible, even if a court believed a different interpretation would be better. In short, under *Greyhound*, the CPUC received significant deference for its decisions. This standard closely resembled the federal *Chevron* deference framework, which was recently overturned in *Loper Bright v. Raimondo*. (*Loper Bright Enterprises v. Raimondo* (2024) 144 S.Ct. 2244.)

The California Supreme Court's Decision—New Standard Emerges

The Court held that the "unique deferential" *Greyhound* standard differs from the standard generally applicable to agencies' statutory interpretations,

and that the standard is no longer appropriate for evaluating CPUC's statutory interpretations. Instead, the court reaffirmed and adopted the more general approach established in *Yamaha Corp. of America v. State Bd. of Equalization*, 19 Cal.4th 1, 78 (1998).

Under the *Yamaha* standard, courts retain ultimate interpretive authority but may give respectful consideration to an agency's interpretation based on several factors, including:

- The consistency of the interpretation;
- The agency's expertise in the subject matter;
- Whether the interpretation was adopted formally (*e.g.*, via quasi-legislative rulemaking) or informally (*e.g.*, staff guidance); and
- Whether the statutory language is ambiguous.

The *Yamaha* Court distinguished between quasi-legislative regulations (which may be entitled to judicial deference) and statutory interpretations, which are subject to independent judicial review. For example, a formal regulation interpreting a technical statute within the agency's subject area may warrant some deference, while an informal memorandum interpreting a statute would not.

Conclusion and Implications

The California Supreme Court's decision in *Center for Biological Diversity* marks a major shift in how courts evaluate the CPUC's statutory interpretations. While the Court preserved the limited use of *Greyhound* deference for rate-setting decisions involving water corporations governed by Public Utilities Code § 1757.1, it brought the CPUC in line with other state agencies by applying the *Yamaha* framework.

Courts will now independently interpret statutes and afford deference to the CPUC's interpretation only if it is persuasive-based on factors such as the agency's expertise, the consistency of its interpretation, and the formality of its adoption.

Although this decision may not significantly change how most state agencies are reviewed—since *Yamaha* already governs them—it could lead to increased litigation against CPUC decisions by stakeholders. More broadly, the *Center for Biological Diversity* decision reflects a judicial trend toward limiting agency autonomy in statutory interpretation. It aligns with the U.S. Supreme Court's 2024 decision in *Loper Bright Enterprises v. Raimondo*, which overturned the federal *Chevron* doctrine. Together, these decisions signal a shift away from strong agency deference and toward a model of judicial textualism and control. (Christina Suarez, Derek Hoffman)

STRUCTURING WATER SERVICE AGREEMENTS FOR NEW DEVELOPMENTS: LESSONS FROM THE FIRST DISTRICT COURT OF APPEAL'S DECISION IN *SOLANO V. FAIRFIELD*

Solano County Orderly Growth Committee v. City of Fairfield,
___Cal.App.5th___, Case Nos. A170680 *et. al.* (1st Dist. Aug. 28, 2025).

The recent decision in *Solano County Orderly Growth Committee v. City of Fairfield* clarifies that not all water service agreements must align with a city's General Plan, particularly where a city's role is limited to treatment. The ruling highlights the potential for "unbundled" agreements that separate treatment from distribution, offering agencies greater flexibility in regional water planning.

Background

In 2022, the City of Fairfield (City) agreed to treat raw water from the Solano Irrigation District (District) and return it as potable water for use in a new development located just outside the City's boundaries, with the District handling distribution, operations, maintenance, and billing (Agreement). The Solano County Organized Growth Committee (Committee) challenged the Agreement, arguing it

conflicted with the City's General Plan and violated California's Planning and Zoning Law. The trial court sided with the Committee, but was later reversed by the Court of Appeal.

The Court of Appeal's Decision

Was Consistency with the City's General Plan Required?

No statute or ordinance specifically required the City's approval of the Agreement be consistent with the City's General Plan, as it didn't fall within the scope of actions or decisions requiring consistency set forth by California's Planning and Zoning Law (Gov. Code § 65000 *et seq.*). Specifically, the Agreement did not constitute adoption or amendment of a "specific plan," zoning ordinance, development agreement, or subdivision or parcel map. Moreover, the Court of Appeal rejected the Committee's argument that case law requiring "all local decisions affecting land use must be consistent with the jurisdiction's applicable General Plan[,]" imposed a blanket consistency requirement on all decisions affecting land use. In doing so, the Court of Appeal declined to expand the range of decisions that must be consistent with a General Plan beyond those enumerated the Planning and Zoning Law.

Consistency Exists Where the Objectives of the General Plan Are Furthered

Although the court wasn't convinced California law required consistency between the City's approval of the Agreement and the General Plan, it adopted that view for argument's sake. In reviewing the applicable law and standard of review, the court stated:

> . . . consistency does not require a project to be in perfect conformity with every General Plan policy; instead the plan must be 'compatible with the objectives, policies, general land uses, and programs specified in' the General Plan.

Thus, an action is consistent with a General Plan where, in totality, the objectives and policies of the General Plan are furthered. A party challenging consistency bears the burden of showing the determination was unreasonable.

The City's Approval of the Agreement Was Reasonable

The Court of Appeal held the City reasonably determined the Agreement was consistent with the City's General Plan. The Court of Appeal specifically rejected the Committee's argument that allowing urban-style services in unincorporated areas could weaken growth boundaries and open the door to sprawl, limiting its review to the City's specific role. Instead, it accepted the City's argument that treating water under a "treat-and-wheel" arrangement is distinct from providing retail water services. It emphasized that distribution and billing remained the District's responsibility, therefore the City was not extending "basic municipal services" outside its borders. Consequently, the court held the Agreement complied with the City's land use policy set forth in the General Plan. Further, the court held that other provisions within the General Plan were merely advisory and were not "fundamental, mandatory, and clear." Thus, the City wasn't required to determine its decision to approve the Agreement was consistent with those provisions.

Conclusion and Implications

The ruling underscores that not all local decisions effecting land use require consistency with a city's General Plan. Rather, by focusing on the city's limited role and distinguishing treatment functions from distribution and retail services, the court preserved flexibility for agencies to structure narrowly tailored cooperative agreements. This "unbundling" of municipal services provides flexibility for regional water planning, particularly where infrastructure or supply constraints make shared arrangements practical. Agencies may increasingly look to these "unbundled" service models but should be prepared for ongoing challenges to be raised as the Court of Appeal did not expressly hold whether consistency was required – leaving that issue for another day.
(Kendall Lovell, Derek Hoffman)

FIRST DISTRICT COURT LIMITS USE OF PRE-PROPOSITION 218 ASSESSMENT FORMULAS

Thacker v. City of Fairfield, ___Cal.App.5th___, Case No. A171354 (1st Dist. Aug. 28, 2025).

The California Court of Appeal has recently published a decision offering important clarification on Proposition 218 and how it applies to assessment districts that existed before its passing.

The Court of Appeal held that when an agency adjusts an assessment under a formula or range adopted before Proposition 218, that adjustment still qualifies as an "increase" under the proposition. As a result, any assessment that predates the 1996 measure may only be maintained at the rate in effect when Proposition 218 was adopted, unless the agency complies with the propositions requirements for majority protest and balloting.

Factual Background

Thacker v. City of Fairfield deliberates requirements under Proposition 218, which was approved by voters in 1996. Proposition 218 places restrictions on a local government's ability to levy taxes, property-related fees and assessments. Under Proposition 218, voter approval is generally required prior to the implementation of new or increased taxes and special assessments. In addition, for property-related fees and assessments, Proposition 218 mandates that fees and assessments must be proportional to the specific benefit received by the property, cannot be used to fund general government services, and may only be imposed if affected property owners are given the chance to approve them through a vote or protest procedure.

In 1988, the city of Fairfield (City) established the Rolling Hills Maintenance District to fund landscaping and lighting improvements. By 1996, when Proposition 218 went into effect, the district charged homeowners a flat annual fee of $196.23 per lot to fund the landscaping, lighting, and related maintenance. The City's methodology allowed adjustments within a predetermined range based on budgetary needs, and by fiscal year 2022–2023, the City had gradually raised the assessment to $300 per parcel.

A homeowner challenged the increase in price and argued that the City violated Proposition 218; local governments are restricted from imposing or raising taxes, fees, and assessments without voter approval. The homeowner reasoned that the City needed to have followed the required procedures—such as sending mailed notices, holding a majority protest hearing or election, and complying with the measure's substantive limits. The City countered that its methodology predated Proposition 218 and therefore exempted it from compliance.

The Solano County Superior Court sided with the City, concluding that the assessment was grandfathered and that increases within the pre-1996 range did not qualify as "increases" under Proposition 218. The trial court reasoned that the assessment was exempt under Article XIII D, Section 5(a) of the California Constitution as a preexisting charge, and that the adjustments followed a methodology in place before Proposition 218 was adopted.

The Court of Appeal's Decision

On August 28, 2025, the Court of Appeal reversed the trial court's decision and held that Proposition 218 defines "increased assessments" broadly, covering any adjustment that results in a higher charge than the amount in effect in November 1996. The court also rejected the City's claim that a flat, per-lot charge was not a "rate," finding that the statutory language clearly encompasses per-parcel assessments. As a result, the court's decision reinforces Proposition 218's role as an ongoing check on local government revenue tools.

In summary, the court stated:

> In sum, even if the Assessment fell within the exemption set forth in article XIII D, section 5, subdivision (a) of the California Constitution, it was increased for purposes of Proposition 218 when it exceeded the rate of $196.23 per residential lot—the rate at the time Proposition 218 took effect

Conclusion and Implications

While the Court of Appeal remanded the case for further proceedings, the appellate ruling sends a clear message:

Agencies must treat any increase above 1996 levels as subject to Proposition 218.

Pre-1996 ranges or formulas cannot shield increases from voter approval.

Local governments should review existing assessments with counsel to determine compliance and assess potential revenue risks. The court's opinion is available online at: https://www4.courts.ca.gov/opinions/documents/A171354.PDF
(Mona Goodarzi)

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