



# Land Use and CEQA Litigation Update

Stephen Velyvis

SEPTEMBER 24, 2026

2026 League of California Cities Annual Conference



# About the Presenter

**Steve Velyvis** is a well-respected land use and CEQA attorney with over 26 years of expertise advising and representing clients in administrative proceedings and before state trial and appellate courts.

- Ohio University, BA – History 1993; Vermont Law and Graduate School, JD 1998
- Licensed in CO (inactive) and CA

After work at an environmental organization in Santa Barbara and two other small/mid-sized SF Bay Area firms, Steve joined Burke as a Partner in 2011 and has grown to be an integral member of the firm's Environmental, Land Use and Natural Resources, Real Estate and Business, Public Law, and Litigation Practice Groups.



# Agenda: CEQA Cases

- Not a “Project” subject to CEQA
- Issue Preclusion/Statute of Limitations
- Class 1 Existing Facilities Categorical Exemption
- Class 7 and 8 Categorical Exemptions (Protection of Natural Resources/Environment) and Common-Sense Exemption
- EIR pertaining to water supply and air quality impacts



***The Protect Our Communities Foundation v. City of San Diego***  
**(2026) 121 Cal.App.5<sup>th</sup> 449\*** **(\*CEQA portion NOT published)**

**Key Facts/Procedural History:**

- SDG&E has long been City's gas and electricity provider via 50-year franchise agreements first entered into in 1920 and renewed in 1970. City issued two separate RFPs seeking a new franchisee; SDG&E only bidder both times.
- City and SDG&E negotiated and City Council subsequently approved new franchise and cooperation agreements and related MOUs.
- With respect to CEQA, City concluded that awarding the franchises was not a project subject to CEQA because it constituted "a fiscal and administrative activity of a government that will not result in a direct or indirect physical change in the environment." Alternatively, City found the franchise agreements were exempt from CEQA under the Class 1 existing facilities categorical exemption.
- Trial court found award of franchises was a project because they allowed SDG&E to construct, maintain and use pipes, poles, wires and appurtenances for distribution and thus physical changes to environment were reasonably foreseeable, but that the project was exempt under the Class 1 Existing Facilities categorical exemption. Both parties appealed.



***The Protect Our Communities Foundation v. City of San Diego***  
**(2026) 121 Cal.App.5<sup>th</sup> 449\*** (**\*CEQA portion NOT published**)

**Analysis:**

- The Court of Appeal focused on the fact that a "project" under CEQA is an activity that may cause a direct or reasonably foreseeable indirect physical change in the environment. The Court concluded that the franchise approvals did not authorize new development, establish new land uses, or encourage population growth. Instead, they merely established a funding and administrative structure without committing the City or SDG&E to any particular development or construction consistent with CEQA Guidelines § 15378(b)(4).
- Rejecting the Petitioner's claims, the court found no causal link between the City's approvals and any potential physical change in the environment, as any future infrastructure work would depend on independent factors such as customer demand or changes in technology and require subsequent approvals and CEQA review as needed.
- Ultimately, the court determined that the franchise approvals maintained the status quo, did not compel or induce new construction, and lacked the causal connection necessary to trigger CEQA. Therefore, the City's determination that CEQA did not apply was legally sound and supported by substantial evidence. Since not a project, court did not address the Class 1 Cat Ex.





## ***Baker v. Bay Area Toll Authority (2026) 120 Cal.App.5th 1254***

### **Key Facts/Procedural History**

- The original, temporary project debuted in March 2013 featuring 25,000 LEDs attached to vertical support cables. LEDs taken down in March 2015 after permits expired. Private campaign (\$4M) funded upgraded display with more robust fixtures that were installed and re-lit in Jan 2016. BATA approved these 2 early phases based on CEQA exemptions/NOEs that were not challenged.
- Harsh bay weather made LEDs fail faster than they could be repaired, forcing another shutdown in March 2023. Again, private funds (\$11 M) helped relaunch Bay Lights 360 with 48,000 custom-engineered LED lights arranged in non-repeating, abstract, wave-like patterns with 360-degree visibility (lights on both sides of cables). BATA again approved based on CEQA exemption and filed NOE in August 2023.
- Mark Baker, retired engineer and founder of the Soft Lights Foundation, filed CEQA lawsuit (*Baker I*) in pro per in December 2024. Trial court sustained BATA's demurrer without leave to amend, ruling the action was time-barred by both 35-day SOL triggered by August 2023 NOE and 180-day SOL triggered by BATA's decision to approve/carry out the project which it found was made no later than early 2023.
- Soon after trial court ruled in *Baker I*, Baker filed 2<sup>nd</sup> CEQA lawsuit challenging CalTrans Encroachment Permit attempting to frame it as a 'new project' based on permit condition requiring safety study/light test re new lights on interior side of cables. Trial court sustained BATA's demurrer without leave again, finding Baker failed to demonstrate safety study changed scope of project and that prior determinations in *Baker I* as to when project was approved and when SOL period expired were preclusive because Baker failed to appeal those rulings.



## ***Baker v. Bay Area Toll Authority* (2026) 120 Cal.App.5th 1254**

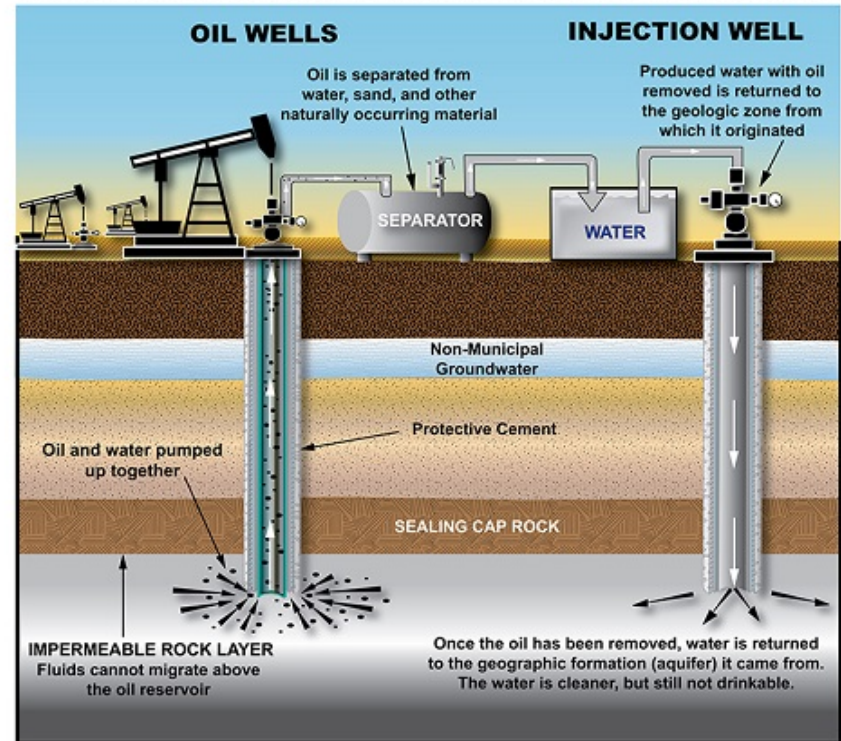
### **Analysis**

- In unpublished portion of opinion, Court of Appeal pointed to CEQA provisions explaining that the project is the whole of the action approved which may be subject to several discretionary approvals and that the term project does not mean each separate approval to easily dismiss Baker's argument that the Caltrans permit and its required safety study constituted a new, standalone project or a substantial change to the project. Only issue then left to decide was whether Baker was precluded/collaterally estopped from relitigating the trial court's initial, unappealed ruling that Baker's initial CEQA challenge was time barred.
- The Court laid out issue preclusion's four requirements - (1) final adjudication; (2) of identical issue; (3) actually litigated and necessarily decided in the first suit; and (4) asserted against one who was a party or in privity with party in first suit – but noted that the CA Supreme Court described them somewhat differently in *Samara v. Matar* (2018) 5 Cal.5th 322 and *People v. Curiel* (2023) 15 Cal.5th 433, with the *People v. Curiel* decision adding that the final adjudication requirement had to be a final adjudication on the merits. That prong was the only one in dispute.
- Without deciding whether the final adjudication requirement has to be on the merits or not, the Court held that even if it does it was satisfied here after an exhaustive review of myriad prior cases which it held require issue preclusion to apply to dispositive statute of limitations issues decided on demurrer when the losing party seeks to relitigate the exact same SOL arguments that were resolved against him in the first action.
- Finally, the Court bolstered its decision by holding that public policies underlying the issue preclusion doctrine – integrity of judicial system, judicial economy and protection of litigants against vexatious litigation – all also supported applying issue preclusion here.





## HOW WATER IS PUMPED UP WITH OIL AND RETURNED TO THE GROUND



NOT TO SCALE



# *Sunflower Alliance v. Dept. of Conservation (2026) 20 Cal.5th 22*

## Key Facts/Procedural History

- Reabold California, LLC has leasehold in Brentwood Oil Field with three oil wells, one of which has been inactive since 1984 (built in 1963, extracted oil and gas until 1984 when it became inoperable and was plugged).
- Reabold proposed converting the inactive well into a water injection well to dispose of wastewater produced by its two active wells (300 barrels/12,600 gallons of wastewater per day), which currently requires trucking offsite. Reabold's proposal included a technical report indicating 459,900,000 gallons of treated wastewater would be injected over 20 years into an exempted aquifer (i.e., determined to have no beneficial use).
- Water injection wells are subject to extensive state and federal regulations due to their potential impact on nearby clean water sources. Dept. of Conservation's Division of Geologic Energy Management (CalGEM) must approve such projects and consult with water boards.
- CalGEM, State Water Board and Central Valley RWQCB raised concerns about potential for injection well to contaminate USDW due to the proximity of a fault line and other wells.
- Reabold revised its technical report and CalGEM imposed conditions including pressure testing and reporting requirements, which resolved all agency concerns. CalGEM approved the project and issued NOE determining project exempt under the Class 1 existing facilities categorical exemption because it involved negligible expansion of former use and no unusual circumstances that would cause significant adverse impacts.
- Sunflower Alliance challenged CalGEM's CEQA determination, arguing the project was a significantly different use, not a negligible expansion of former use. Trial Court agreed, issued writ directing CalGEM to rescind the NOE.
- The Court of Appeal reversed, focusing on the project's negligible environmental risks rather than the change in use. The Court explained, "No purpose is served by myopically focusing on whether a use is new, thereby excluding from the exemption many projects that would cause no environmental harm — precisely the type of borderline projects for which categorical exemptions are useful." Court also rejected additional argument that CalGEM based exemption on project conditions that were mitigation measures negating the exemption.



## *Sunflower Alliance v. Dept. of Conservation* (2026) 20 Cal.5th 22

### Supreme Court's Holdings and Analysis

- The Court held that the phrase “negligible or no expansion of existing or former use” in CEQA's class 1 exemption pertains to an expansion or change in the **nature or degree** of a structure or facility's **use**, not the **risk of environmental harm** caused by such an expansion or change in use.
- The Court rejected the interpretation that the Class 1 exemption extends to *any* change in use provided the change results in negligible or no expansion in the risk of environmental harm, emphasizing that the plain language of the exemption does not refer to the risk of environmental harm, aligning with CEQA's statutory and regulatory scheme, which empowers the Secretary of California's Natural Resources Agency to identify categories of projects exempt from CEQA as unlikely to cause significant environmental effects.
- Based on the exemption's plain language, and on deference to the Secretary's adoption of the categorical exemptions, the Court clarified that the Class 1 exemption can apply to new uses of an existing facility so long as such new use involves “negligible or no expansion” of the existing or a former use, and agencies should examine the nature and scope of the proposed change of use in making exemption determinations.
- The Court noted that interpreting the exemption as turning on the scope of an expansion or change in use rather than environmental effects is consistent with CEQA's three-step analysis, which involves determining whether a project is exempt *before* performing a full environmental review.
- Unfortunately, the Court declined to address whether a lead agency may impose project conditions relating to environmental effects while declaring a project exempt from CEQA, as this issue might become unnecessary depending on the Court of Appeal's disposition on remand.





## ***Russian Riverkeeper v. County of Sonoma (2026) 122 Cal.App.5th 382***

### **Key Facts/Procedural History**

- Sonoma relies on more than 45,000 water wells, the most per capita in any CA county. Between 2017 and 2022, Sonoma issued an average of 320 groundwater well permits per year, all on a “purely ministerial basis” per the 2015 version of its groundwater well permit ordinance in Chapter 25B of the County Code.
- Sonoma County sought to amend ordinance in response to the decision in *Environmental Law Foundation v. State Water Resources Control Bd.* (2018) 26 Cal.App.5th 844, which held Siskiyou County had fiduciary duty to consider public trust in permitting groundwater wells that could impact navigable waters. Main stem of Russian River is navigable waterway protected by public trust doctrine and is critical habitat for threatened and endangered salmonids, which require sufficient water depths in order to reach their spawning areas.
- Between August 2022 and April 2023, and with help of a policy working group and a separate technical working group convened by the Board, the County analyzed and revised proposed amendments to the ordinance. Temporary moratorium on new wells from October 2022-April 2023 imposed. County approved amendments without any environmental review under CEQA because it determined that the Class 7, Class 8 and the common sense exemptions applied given the stated intent and effect “is to protect the environment, public health and safety and groundwater resource[s]” and “to address the County’s public trust obligation.
- Amended ordinance created a “Public Trust Review Area [PATA],” defined as area where underlying aquifer is interconnected with navigable surface waters or related tributaries and may impact public trust resources including instream salmonid habitat, and two categories of permit applications – Discretionary and Ministerial. Discretionary permit applicants must provide sufficient info to determine whether well will cause or exacerbate adverse impact on public trust resources, but four categories of wells were exempt from discretionary permits due to low potential for impacts or involvement of overriding public interest in ensuring adequate water supply: (1) wells outside PATA; (2) Low Water Use wells; (3) Existing Use wells; and (4) Net Zero Groundwater Increase wells.



## ***Russian Riverkeeper v. County of Sonoma (2026) 122 Cal.App.5th 382***

### **Court of Appeal's Holdings/Analysis**

- Sonoma appropriately considered the public trust doctrine, amendments were not arbitrary, capricious, or entirely lacking in evidentiary support. Sonoma gathered information, engaged the public, and balanced conflicting policy concerns to address the practical realities of groundwater well permitting. Court rejected County arguments and affirmed that counties share responsibility with the state for administering the public trust in permitting groundwater wells.
- The amendments to the ordinance were not entitled to a categorical exemption from CEQA review because as a matter of law and based on the record they did not qualify as actions "to assure the maintenance, restoration, or enhancement" of the environment, as they both strengthened *and weakened* environmental protections.
- Amendments weakened environmental protections because they lifted moratorium and: (1) discretionary permit process only applied to about 5% of applications so 95% still subject to ministerial review and no evidence discretionary permits would be denied (and if denied could be appealed to Board which could approve based on overriding considerations that balance environment with need for drinking water) and no evidence the conservation measures that would attach to discretionary permits will maintain, restore or enhance the environment; (2) categories exempt from discretionary review included those deemed to have low potential for public trust impacts or an overriding public interest in ensuring adequate water supply; (3) ministerial Net Zero Groundwater Increase well permits allowed for increased water use so long as it didn't result in net increase in groundwater extraction but key required recharge plan and report could be costly, not uniformly applied and enforced inconsistently.
- Court also ruled the common sense exemption did not apply because record lacked substantial evidence that the amendments would result in fewer wells or a decrease in water use, and thus it could not be said with certainty that the amendments would have no significant environmental effect





***Comite Civico Del Valle v. County of Imperial* (2026) \_\_\_ Cal.App.5<sup>th</sup> \_\_\_;  
Appeal No. D085747, 2026 WL 2593390**

**Key Facts/Procedural History**

- Proposal to build 49.9 megawatt geothermal power plant, mineral extraction and processing operation, and related facilities for administration, repair and shipping on vacant land in Imperial County on the southeast edge of the Salton Sea.
- Wells would bring hot geothermal brine from beneath the sea and steam therefrom would generate energy at the power plant, while a separate plant would extract lithium hydroxide, silica, polymetallic products and possibly boron compounds. The processed brine would then be injected back into the geothermal reservoir. Project would require approx. 6,500 acre-feet (AF) of raw water to be supplied by the Imperial Irrigation District (IID). Water from CO River is County's *only* source of fresh water; IID has access to 3.1 AF of CO River water per year with nearly all allocated to ag uses.
- County released a June 2023 Draft EIR and draft Water Supply Assessment (WSA) in September 2023. In response to comments, County prepared a revised WSA in November 2023 and issued both a revised DEIR and Final EIR in December 2023 and Planning Commission certified the EIR and approved the project. Project approval was appealed to County Board of Supervisors, who denied appeal and approved project in January 2024.
- IID provided comments and its own WSA rejecting the EIR's claim that there was sufficient water to supply the project for next 50 years, finding that it was reasonably likely IID could supply project water for *up to* 30 years *if* it received its full CO River entitlement. IID also indicated that reduced delivery of CO River water to IID was "increasingly likely" and asserted that the project would cause significant adverse air quality impacts.



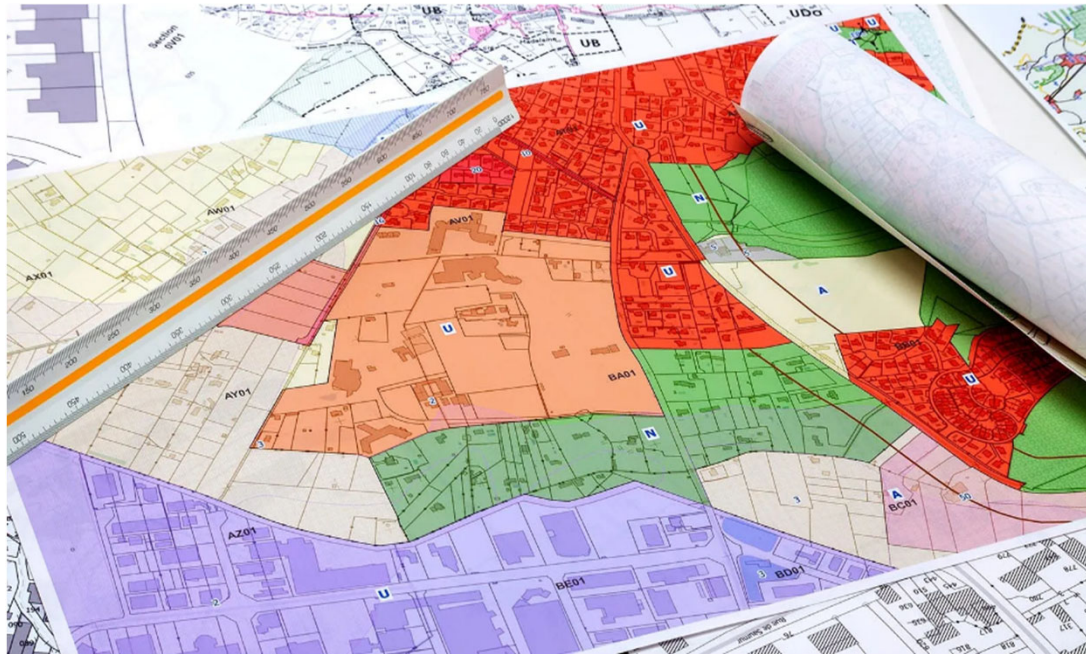
***Comite Civico Del Valle v. County of Imperial* (2026) \_\_\_ Cal.App.5th \_\_\_;  
Appeal No. D085747, 2026 WL 2593390**

**Court of Appeal's Holdings/Analysis**

- The Court scoured the EIR and record to ascertain what the project's lifespan was and found it was described inconsistently throughout the record, with the EIR and other documents referencing both 30- and 50-year lifespans with starkly different total water usage amounts. County insistent in briefing that project's lifespan was 50 years so Court took County at its word.
- Applying the water supply impact analysis principles set forth in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, the Court explained that while an EIR need not point to a guaranteed source of water, it must adequately address the reasonably foreseeable impacts of supplying water to the project and if uncertain supplies make it impossible to confidently identify future water to supply the project the EIR must note the uncertainty and discuss and disclose the significant foreseeable impacts of each water supply alternatives and mitigation measures addressing them.
- Court held there was insufficient evidence to support a finding that 50 years' worth of water is available or likely to become available via conservation efforts and rejected the EIR's UTIL-1 mitigation measure as insufficient for numerous reasons (revised and expanded at last minute without any public review, lacked binding and enforceable commitment or performance standards; failed to analyze feasibility of or impacts from pumping groundwater or using IID's ag drainage water).
- Court also found EIR violated CEQA because it dismissed and failed to respond in good faith to IID's timely comments asserting potential air quality impacts and that the EIR's air quality impacts analysis was inadequate because didn't analyze impacts of reduced water inflows from agricultural runoff to the Salton Sea that could result from UTIL-1's water supply mitigation measure requiring diversion of such ag drainage from the Salton Sea to the project and thus exposing more and more of the seabed and the toxic chemicals therein from years of pesticide- and fertilizer-laden ag flows into the sea.



# Agenda: Land Use Cases



- Traditional Mandamus – Ministerial Duty case involving Health and Safety Code § 117045 pertaining to the opening of a reservoir to public fishing
- Sustainable Groundwater Management Act case involving reverse validation action and primary jurisdiction and mootness doctrines
- Housing Accountability Act case pitting the Builder's Remedy against the CA Coastal Act
- Short Term Rental case involving STR ban that allowed CIDs to vote to opt out and permit STRs



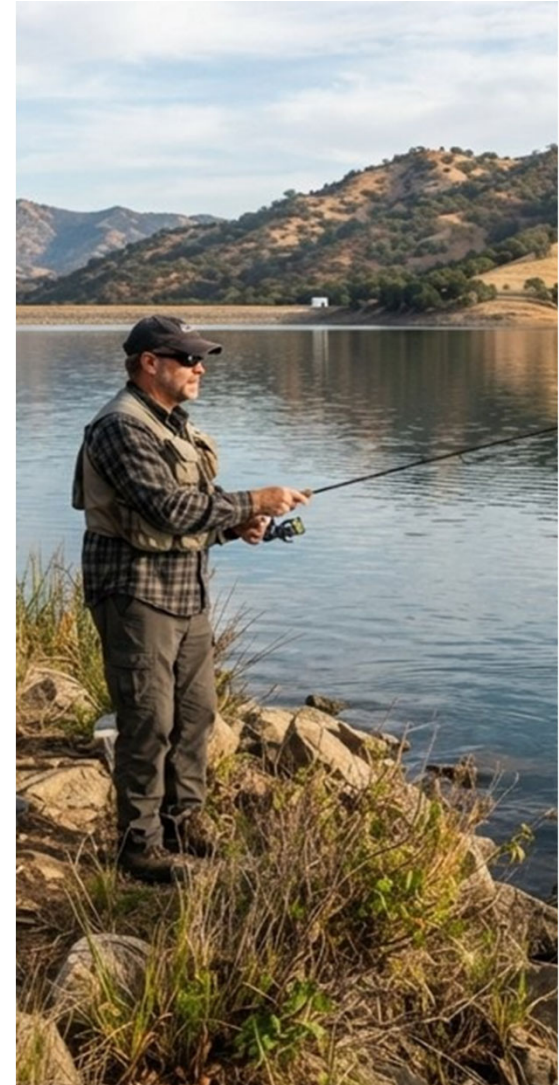
## ***Dummer v. City and County of San Francisco (2026) 120 Cal.App.5th 1009***

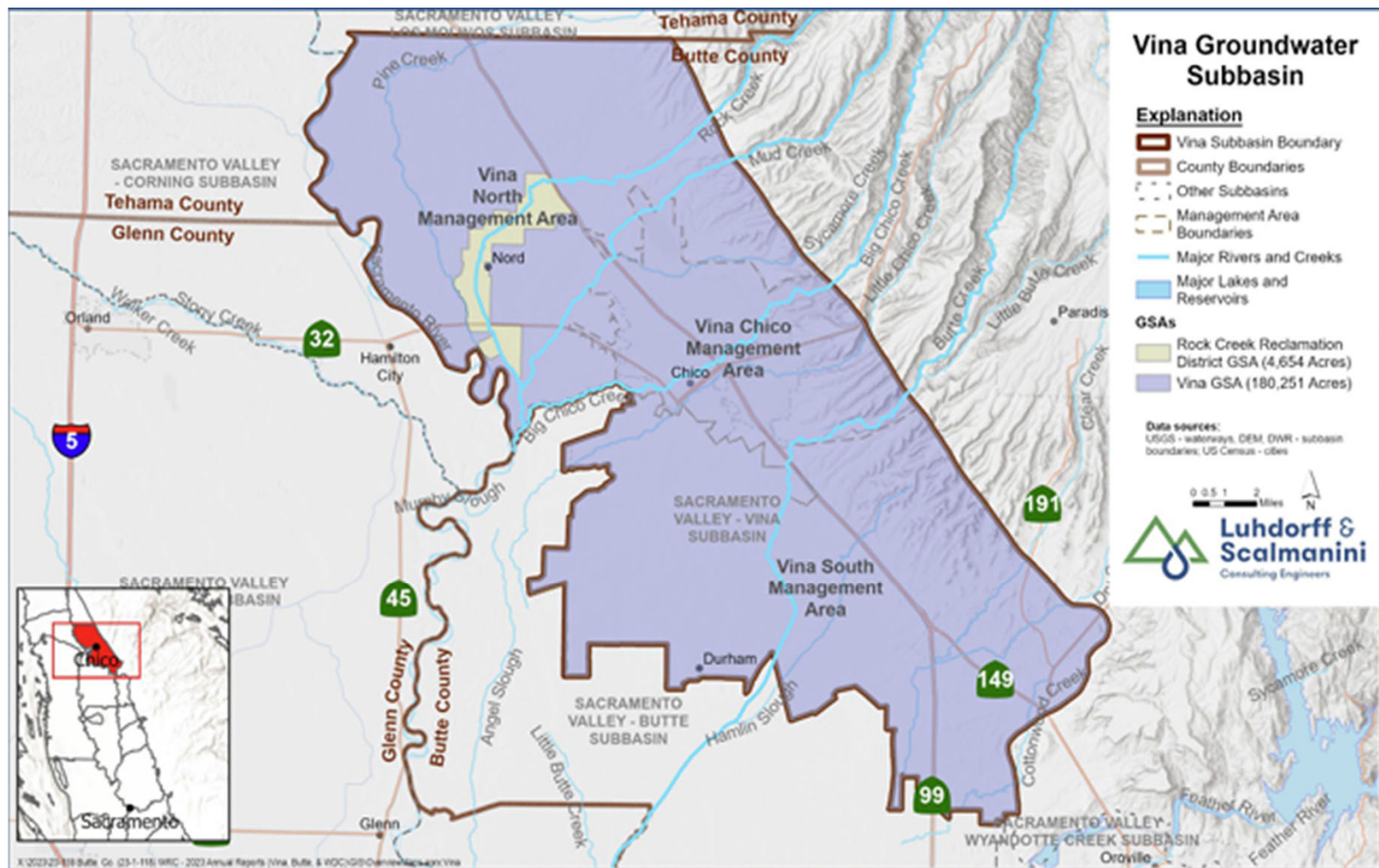
### **Key Facts/Procedural History**

- City of San Francisco owns Calaveras Reservoir, which is in Santa Clara and Alameda counties and manages it to provide drinking water to 2.7M Bay Area residents pursuant to the Alameda Watershed Management Plan. The reservoir contains fish (resident rainbow and anadromous steelhead trout) but the Plan prohibits access and fishing
- Dummer prevailed in earlier lawsuit to force City to consider whether public fishing could occur in the reservoir without affecting the water's purity. The City subsequently determined that shoreline fishing could safely occur, but specified that it would be subject to strict terms set by its general manager, CEQA review, and state-level approval.
- City pursued efforts to develop compliant fishing program, which would require a widened access road, restrooms, fencing, parking, and specific signage. Dummer wanted the reservoir opened immediately and sued again, claiming the City had a mandatory and ministerial duty under Health and Safety Code § 117045, Fish and Game Code § 5943 and CA Constitution to obtain requisite permit from SWRCB and provide public access for fishing. Trial court denied Dummer's petition and Dummer appealed.

### **Court of Appeal's Holdings/Analysis**

- **No Ministerial Duty** – The court ruled that Dummer failed to show that any state statute or constitutional clause forced the City to open the reservoir immediately. The relevant regulatory frameworks do not establish a strict timeline or mandatory deadline for the City to submit an amended water supply permit application to the SWRCB.
- **CEQA is Prerequisite** – The court held that crafting a CEQA-compliant fishing program and performing the required environmental analysis are legal prerequisites that the City must complete *before* applying to the State Water Resources Control Board (SWRCB) for an amended water supply permit
- Public health laws and municipal discretion regarding water purity outweigh any generalized constitutional or statutory provisions regarding public access to fishing. The City did not abuse its discretion, as it was actively working through the required planning steps (e.g., evaluating environmental impacts, planning infrastructure, and modifying its watershed management plans) before seeking amended permit from SWRCB.





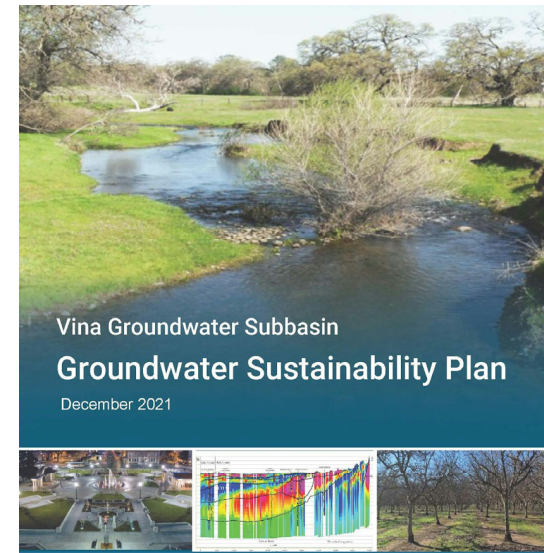
# AquAlliance v. Vina Groundwater Sustainability Agency (2026) 122 Cal.App.5th 118

## Key Facts/Procedural History

- Vina Groundwater Subbasin is 289 square mile area on the eastern side of Butte County. The Subbasin is jointly managed by two Groundwater Sustainability Agencies (GSAs), the Vina GSA and the Rock Creek Reclamation District GSA, and is designated a high-priority basin by CA DWR under SGMA.
- In December 2021, the the Vina GSA and the Rock Creek Reclamation District GSA adopted a Groundwater Sustainability Plan (GSP) and submitted it to DWR for review in January 2022.
- In February 2022, Petitioners filed a reverse validation action challenging the GSP, claiming it failed to ensure long-term sustainability. Specifically, they claimed it established unreasonably low minimum thresholds for groundwater levels, lacked measurable objectives, and ignored the environmental impacts on land subsidence, domestic wells, and local surface waters.
- While lawsuit was pending, DWR completed its extensive, independent review of and approved the GSP. The trial court ruled that DWR's approval of the GSP mooted the lawsuit and dismissed it.

## Court of Appeal's Holdings/Analysis

- **Reverse Validation Action Permitted but Moot here**
  - Plain language of Water Code § 10726.6, which incorporates CCP validation procedures, establishes that reverse validation actions can be used to challenge a GSP, but
  - Because the Petitioners' technical environmental challenges directly overlapped with SGMA's detailed allocation of authority to DWR to perform the technical sustainability evaluation of GSPs, it was not arbitrary or capricious for the trial court to apply the Primary Jurisdiction Doctrine and dismiss the action as moot.
  - The decision does not foreclose judicial review of DWR's evaluation, but Petitioners' action was not to review DWR's evaluation but to supplant it.



PREPARED FOR  
VINA AND ROCK CREEK  
RECLAMATION DISTRICT  
GROUNDWATER SUSTAINABILITY  
AGENCIES



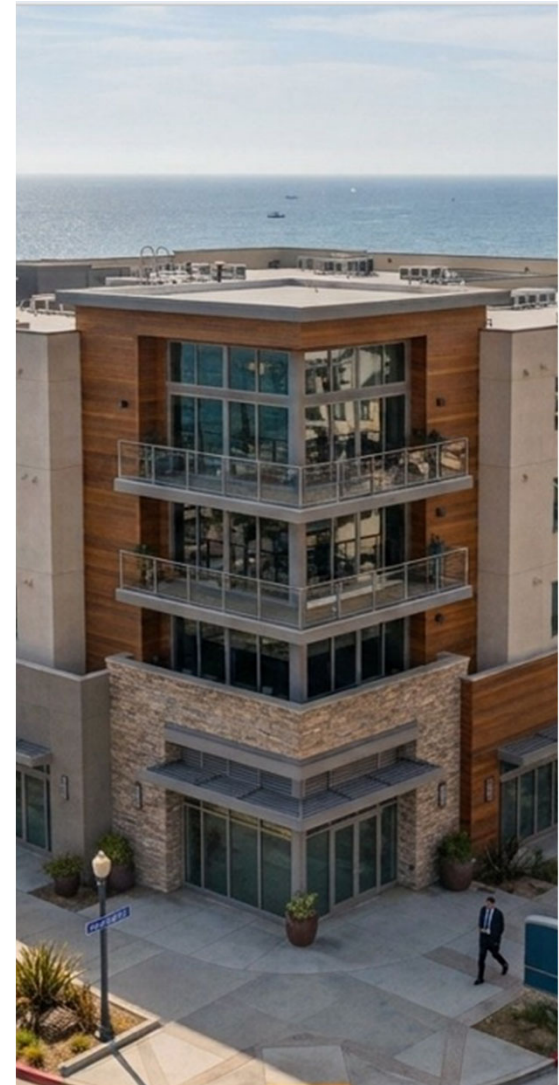
# New Commune DTLA LLC v. City of Redondo Beach (2026) 122 Cal.App.5th 99

## Key Facts/Procedural History

- In July 2022, developer New Commune DTLA LLC submitted a builder's remedy project that proposed a 141,000-square-foot mixed-use development with 30 condominium units, including six affordable units, over ground floor commercial retail. The project site is within the City's Coastal Commercial-4 (CC-4) zone. The City's Coastal Commission-certified LCP restricted the CC-4 zone to public access, commercial-recreational facilities, and pedestrian-oriented services supporting recreational boating and fishing and prohibited all residential uses.
- Because the project directly violated the certified LCP, the City declined to process the application and invited the developer to seek an amendment to the general plan, zoning, or LCP to allow housing, but the developer declined and insisted the City bypass local rules under the Builder's Remedy. City denied the project and the developer sued to force approval. Trial court denied the Petition for writ of mandate and developer appealed.

## Court of Appeal's Holdings/Analysis

- **Core Ruling** – the court held that the HAA's "Builder's Remedy" does not allow developers to bypass the California Coastal Act or disregard a Coastal Commission-certified LCP.
- The court rejected the developer's argument that the HAA entirely overrides coastal protections. It pointed out that the HAA contains its own built-in mechanism for reconciliation. Specifically, Government Code § 65589.5(d)(3), permits a city to deny an affordable housing project if denial is required to comply with specific state or federal laws (such as the Coastal Act). The court held that the City's disapproval was required under the HAA because the proposed project did not comply with the City's certified LCP, which prohibited all types of housing on the project site.
- The court drew a critical distinction between different types of local rules. While the Builder's Remedy can override purely local zoning densities or technical development standards (like setbacks or height limits), it cannot override fundamental land-use designations mandated by state-approved coastal protections.
- Finally, the court rejected the developer's proposal to "harmonize" the HAA and the Coastal Act by requiring the City to approve builder's remedy projects unless specific Chapter 3 policies of the Coastal Act necessitate disapproval. The court found this proposal unworkable as it would require subjective judgment and interpretation, which is the responsibility of the Coastal Commission, not local governments.





## ***Parsons v. City of Indian Wells* (2026) \_\_\_ Cal.App.5th \_\_\_; Appeal No. E082591, 2026 WL 2566150**

### **Key Facts/Procedural History**

- City declared STRs a public nuisance and enacted an ordinance with a 29-night minimum stay requirement, effectively banning STRs. To give flexibility, the city enacted an ordinance allowing members of a common interest development (CID) to vote to opt out of the minimum stay restriction.
- The Parsons invested \$1.5 M into their STR which was grandfathered under earlier version of the STR Ordinance. Parsons' CID was slow to pursue opt out vote so Parsons and two others formed a new, smaller CID, certified an opt-out vote, and applied for an unrestricted STR permit. The City denied it, prompting the lawsuit.
- Trial court ruled in Parsons favor, finding City STR Ordinance preempted by Civil Code § 4740 and an unconstitutional delegation of power.

### **Court of Appeal's Holdings/Analysis**

- No Preemption - Civil Code § 4740 does not preempt the opt-out provision because a CID's vote to opt out does not legally amend its governing documents or conflict with state rental protections.
- Valid Delegation/No Due Process Violation - Allowing CID members to vote to waive a citywide restriction is a permissible allowance under a general municipal policy and does not constitute an unconstitutional delegation of legislative authority.
- No Abuse/Harassment - The city's enactment of the STR ordinance was rational and not arbitrary or capricious





# Q&A

Stephen Velyvis  
svelyvis@bwslaw.com  
415.655.8133