

**ENVIRONMENTAL LAW FOUNDATION, PACIFIC
COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS,
and INSTITUTE FOR FISHERIES RESOURCES**

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**CALIFORNIA APPEALS COURT RULES STATE MUST REGULATE
GROUNDWATER PUMPING TO PROTECT RIVERS**

One week ago, on August 29, 2018, a California appeals court ruled that groundwater in California must be regulated to protect the flows in rivers and streams connected to the groundwater. The court, using an ancient legal principle called the public trust doctrine, held that Siskiyou County and the State Water Resources Control Board must protect the Scott River from groundwater pumping by farmers, effectively drying up the river in summer months. The case has been pending for nearly a decade as another battle in California's "water wars," and gives water agencies a new legal tool to get a handle on what has until recently been completely unregulated in California: groundwater.

The case was originally filed by the Environmental Law Foundation (ELF) and two commercial fisheries groups, Pacific Coast Federation of Fishermen's Associations (PCFFA), and Institute for Fisheries Resources (IFR), against the State Water Resources Control Board and the County of Siskiyou. The lawsuit sought to stop the dewatering of the river—which it claims harms surface irrigators, recreation, and local salmon fisheries—caused by unregulated groundwater pumping in the Scott River Valley in Siskiyou County. The court's ruling is not limited to that river, and will have statewide implications with the potential to radically change how California regulates its groundwater.

“California’s water future is underground,” said James Wheaton, President of ELF and lead counsel in the case. “That is where the real fight is and will continue to be. And this decision brings one of the most powerful legal rules—the public trust doctrine—to that fight. That doctrine is about sharing, not hoarding or wasting, our common resources.”

California is the only one of the western United States that has not historically regulated groundwater use. Counties can, but almost none do. As a result, decades of groundwater pumping, mostly for agriculture, have both drained underground aquifers and reduced river flows in many places in California—all problems made worse by recent droughts.

“This landmark ruling paves the way for the State to finally exercise some real control over California’s diminishing aquifers, many of which are seriously depleted,” said Glen Spain, Northwest Regional Director for PCFFA, the West Coast’s largest trade association of commercial fishing families and a co-plaintiff in this case. “When groundwater depletion diminishes the flows of nearby rivers, according to the court’s ruling, then both the State and the local counties have the legal power, but also a legal duty, to prevent that depletion,” Spain said. The vast majority of California salmon that are commercially fished come from rivers that are being increasingly depleted because the aquifers feeding those rivers are being overdrawn.

In addition to ruling that the public trust doctrine requires protections for rivers from groundwater pumping, the three-judge panel also ruled that a 2014 law that requires some local planning for groundwater did not change the state or counties’ powers under the doctrine. While that 2014 law started a statewide approach to regulating groundwater, the court held it was not comprehensive enough to write away the doctrine’s rules to protect surface waters in rivers.

“This opinion, to paraphrase the court, is the public trust case for the twenty-first century—a monumental decision bringing public trust principles to today’s water issues,” said Wheaton. The groups were also represented by Richard Frank, director of the California Environmental Law and Policy Center at UC Davis School of Law.

The court’s decision was based almost entirely on a 1983 California Supreme Court decision that applied the doctrine to protect and restore Mono Lake from diversions of its

tributary streams by the City of Los Angeles.

The case is *Environmental Law Foundation et al. v. State Water Resources Control Board et al.*, California Court of Appeal, Third District, Case No. C083239. A copy of the full decision is available at <https://www.envirolaw.org/documents/ScottCourtOfAppealOpinion.pdf>.

To read more about this case and the court's decision, please see Professor Frank's analysis at the Legal Planet, <https://legal-planet.org/2018/08/29/california-court-finds-public-trust-doctrine-applies-to-state-groundwater-resources/>.

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