

# FACTS & FAQs: County appeals well ordinance court decision

March 27, 2025



## KEY MESSAGES:

The Court of Appeal for the First District in California today granted Sonoma County its request for a temporary stay in the *Russian Riverkeeper & California Coastkeeper vs. County of Sonoma* decision issued by a Superior Court judge last fall. A temporary stay previously granted by the Superior Court was due to expire at the end of business today. Without an extended stay, Sonoma County would have been prohibited from issuing non-emergency water well permits. If for any reason the Court of Appeal modifies or lifts the temporary stay, the County will alert the public.

The County of Sonoma, meanwhile, has appealed the decision in *Russian Riverkeeper & California Coastkeeper vs. County of Sonoma* issued by Superior Court judge Bradford DeMeo last fall. The Superior Court's decision struck down amendments adopted by the County in 2023 to its well ordinance, County Code, Chapter 25B. Ironically enough, the amendments in Chapter 25B were far more protective of natural resources than the prior well ordinance, which only regulated well construction issues. However, Russian Riverkeeper & California Coastkeeper feel that the County did not go far enough under the "public trust doctrine."

## FAQs:

### What is the public trust doctrine?

Evolving out of Roman law, the public trust doctrine has its roots in the state's sovereign ownership of waterways and protection of these waterways for navigation. The doctrine has evolved through time and recent case law to include protection of other public trust uses including for recreation and wildlife. The State has ownership of navigable waterways that resulted from the admission of the State of California to the United States. With this ownership comes a related obligation to protect sovereign waters for the public trust uses and benefits, including the preservation of the environment. The California Supreme Court has explained that the State of California "has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible."

### What do water wells have to do with the public trust doctrine?

In 1983, in the case *National Audubon Society v. Superior Court*, the California Supreme Court held that State agencies had the obligation to consider and protect public trust resources in water rights decisions concerning non-navigable waters that had adverse effects on navigable public trust resources.

Groundwater is not navigable and is not a public trust resource. However, in a 2018 California Appeals Court decision involving Siskiyou County, *Environmental Law Foundation vs State Water Resources Control Board* (the "ELF decision"), the Court of Appeal extended the effects analysis of *National Audubon* to also apply to groundwater. In other words, like other non-navigable waters, use of

groundwater can have effects on public trust resources, where the two are interconnected, that must be considered.

A separate holding of the *ELF* decision, however, is more controversial and unprecedented. For the first time, the decision extended public trust obligations to counties that do not have a sovereign ownership of navigable waterways. The extension of public trust obligations on counties has created many problems and jurisdictional issues for counties that this case partially illustrates. By statute, counties regulate well construction standards, but they have no authority over groundwater rights.

### **Why does the County contend that the Superior Court's decision is legally erroneous?**

The Superior Court concluded that the County's ordinance was not based on "substantial evidence." The County very strongly disagrees with this conclusion. After a lengthy process, the County Board of Supervisors relied on a report by Dr. Matt O'Connor, a respected hydrogeologist, that identified sensitive areas for heightened review and also relied on input from technical and policy working groups, as well as other evidence obtained at several public hearings. The County strongly disagrees with the Court's characterization of the record.

The County's well ordinance amendments created a framework to minimize potential harm to public trust resources. The lengthy public process led to a nuanced legislative approach because not every well presents a threat to public trust resources. The amendments created a dual track, where certain permits presenting a higher likelihood of impacting public trust resources would be subject to discretionary review, public trust impact analysis, and imposition of mitigating conditions. Under the other track, permits could be issued ministerially, over the counter, if they met certain ordinance criteria, including compliance with water conservation measures. This framework utilized a delineated "Public Trust Review Area" that the County identified based on intensive community outreach, and consultation with retained experts and the working group. The amendments also recognized the importance of access to groundwater for a variety of uses, including fire protection and residential uses, and the need for meaningful consideration of impacts to and mitigation of impacts to public trust resources. The County actually went beyond what the public trust doctrine would require of the State, or the County under the *ELF* decision, because the Public Trust Review Area included protections for areas and resources *that are not public trust resources*.

The County in pursuing the appeal is defending these policy choices, based on the full 1,900-page record before the Board of Supervisors, which included technical and science-based evidence. The trial court in this matter incorrectly applied a heightened standard of review to the County's adoption of the well ordinance amendments – a standard that is not applicable to local legislative actions unless in limited cases there is a guiding state statute, which there is not in this case. This legal error led to the court ordering the County to rescind the amendments, among other things.

The County of Sonoma was the first county in the state to amend its well ordinance to try to comply with the *ELF* decision's novel holding. The County's amendments were informed by a robust public process, technical experts, and available science. Multiple public meetings were held, and technical and policy working group were formed. The County also relied on the report by Dr. O'Connor, of O'Connor Environmental, Inc., to inform the policy-making process.

The enhanced considerations called for in the County's ordinance were intended to comply with *ELF*, and the County strongly believes that they did. However, this case illustrates the pitfalls of *ELF*'s extension of ambiguous rules onto counties without any input or delegated authority from the state Legislature through a guiding state statute.

Complying with the Court's order could take years, with no certainty that County efforts to comply by adopting new ordinance amendments would withstand another legal challenge. The County would be left with no ability to issue non-emergency water wells in the meantime. Meanwhile, based on the trial court's reasoning, it is unclear what additional evidence would satisfy a court's review of the amendments at all based on the *ELF* decision. Having reviewed its options, the County concluded there is a strong public interest in defending the amendments and getting clarity from the Court of Appeals for the current and any future amendments.

The County's position is that the Superior Court's decision should be reversed because it is legally incorrect on multiple grounds. The County did not abuse its discretion in adopting the amendments, and did not violate CEQA by finding the amendments to be exempt from environmental review because they are more protective of the environment compared to the baseline established under the prior ordinance, which allowed all well permits to be issued ministerially.

The County recognizes that groundwater is complex. When it adopted the amendments, the Board of Supervisors also gave staff direction to return to the Board with a plan for program development, comprehensive studies, funding, and staffing. This was all part of the County's plan to immediately address the holding of the *ELF* decision based on available science and expert opinion, while also embarking on a longer-term effort to gain more information that could be used in program development or to support refinements or changes to the County's ordinance in the future. The amendments contained provisions to obtain more information that unfortunately would be thwarted by the Superior Court's decision.

Riverkeeper and Coastkeeper participated in the public process leading to the ordinance amendments. The County continues to welcome participation of all interested citizens and groups on important policy decisions, especially those involving the protection of the environment. The County will ask the Court of Appeal to reverse the trial court's decision invalidating the amendments, which were the product of a science-based process that balanced protecting public trust resources with the County residents need for access to groundwater.

### **What issues does the County's appeal raise?**

The County's appeal presents very important issues to the Court of Appeal for the First District for resolution:

- Under the deferential abuse of discretion standard of review, do the science-based amendments satisfy the duty that the *ELF* court imposed on counties to consider public trust resources when issuing well permits? In other words, did the trial court's application of the standard of review ignore the separation of powers and inappropriately encroach into the Board's legislative, policy making functions?
- Was the *ELF* decision correct when it concluded that counties automatically have the state's public trust duty merely because they are "subdivisions" of the state, even if they do not

share the state's ownership of public trust resources, and even if no statute delegates those duties to counties?

- Are the amendments exempt from review under the California Environmental Quality Act where they make the County's well ordinance more environmentally protective?
- Was it correct for the Superior Court to constrain the Board of Supervisors' legislative discretion when the court issued an injunction halting all non-emergency well permit issuance, throughout the county – even in areas with no public trust resources – while also not defining what qualifies as an “emergency”?
- Was it correct for the Superior Court to issue its injunction without any briefing or discussion? Real harms are created by the vague and overreaching injunction, which prevents the County from issuing, for example, permits for water wells or replacement water wells for housing (including rebuilding homes destroyed in past fires), fire protection, livestock or agricultural needs, and to service existing land uses?