

## Appellate Ruling Extends Public Trust Doctrine to Groundwater

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It is not surprising that the 3rd District extended public trust protections to groundwater through the "tributaries" approach applied in prior cases.

The 3rd District Court of Appeal recently published its opinion in *Environmental Law Foundation v. State Water Resources Control Board*, 2018 DJDAR 8805 (Aug. 29, 2018), a case involving a challenge to Siskiyou County's issuance of well permits in the vicinity of the Scott River, a navigable waterway, under the common law public trust doctrine. While the opinion professes to be "extraordinarily narrow," its implications are broad. For the first time, an appeals court has applied the doctrine to the administration of groundwater in holding that counties are obligated to consider the trust before authorizing groundwater wells whose extractions will have adverse impacts on navigable waterways. The court also rejected the notion that the 2014 Sustainable Groundwater Management Act "abrogated" county or state public trust duties. This ruling marks a significant extension of the doctrine since the California Supreme Court's 1983 decision in *National Audubon Society v. Superior Court* and has opened the door to a new frontier for groundwater litigation in California.

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