

Law Summary

9th Circuit Decision

Pacific Coast Federation of Fishermen's Associations Inc. v. Nickels

What happened: Typically any discharge of polluted water into a navigable waterway subject to the US government's authority is required by the Clean Water Act (CWA) of 1972 to have a National Pollutant Discharge Elimination System permit. However, in 1977 CWA was amended by Congress to exempt from this requirement the discharge of water used for irrigated agriculture (called a "return flow"). Since the Grasslands Bypass Project is part of the system serving the western San Joaquin Valley to drain used irrigation water containing salts, selenium, and other polluting elements, discharging it into the San Joaquin River via the San Luis Drain and Mud Slough, it has operated since 1997 without a CWA permit.

In 2011, several environmental and fishing industry organizations, led by the Pacific Coast Federation of Fishermen's Associations, sued the US Bureau of Reclamation and the San Luis & Delta Mendota Authority, who jointly operate the Grasslands Bypass Project, to require a CWA permit because, in their opinion, the water used in the Project also contained non-agricultural pollution from a variety of sources. Agricultural organizations feared that if the suit was successful, all agricultural run-off to waterways across the nation could be said to have non-agricultural pollution and thus require an expensive and restrictive permit.

The suit went through several iterations and appeals, but finally a federal district court ruled that the environmental and fishing industry had failed to make its case that the pollutants in the discharged water came from any specific sources (or "point sources") un-related to agriculture, instead coming from rain and contaminants blown by the wind. For this reason the court dismissed the suit. On September 8, 2025, the US Court of Appeals for the Ninth Circuit [upheld this decision](#). Unless an appeal is heard by the US Supreme Court, which is highly unlikely, this is likely the end of the matter.

What it means: For farmers this means that the status quo prevails, that the return of agricultural irrigation water to rivers and streams will continue to not require a CWA permit. Had the case gone the other direction, then likely all used irrigation water within the jurisdiction of the Ninth Circuit (and possibly the whole nation) could not have been returned to waterways without a CWA permit, which would take time, money, and likely been conditioned on extensive environmental review and testing. For environmental and fishing interests, the decision means that used irrigation water potentially containing pollutants will continue to be discharged into waterways.



Disclaimer

The California Water Institute (CWI) is not a law firm, and this material does not constitute legal advice. It is provided solely for educational purposes in support of CWI's mission to connect academia and the water community in addressing California's water challenges. For legal advice about your specific situation, please consult an attorney.