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References


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CALIFORNIA WATER REGULATION

FARM BUREAU CHALLENGES STATE FISH & GAME DEPARTMENT AUTHORITY

by Joseph M. Carpenter, Somach Simmons & Dunn (Sacramento, CA)

Introduction

On May 25, 2010, the California Farm Bureau Federation (Farm Bureau) filed suit against the California Department of Fish and Game (DFG), alleging that DFG has exceeded its authority to regulate water rights in California by interpreting Fish and Game Code section 1602 as requiring surface water users with valid water rights to notify DFG prior to diverting water, and, potentially, to obtain a streambed alteration permit. Farm Bureau alleges that DFG’s recent interpretation is contrary to the obligations prescribed under section 1602, which only apply to water diversions that substantially divert or obstruct the natural flow of a watercourse. Farm Bureau further alleges that DFG’s interpretation constitutes a fundamental change in the application of section 1602, and will have the effect of requiring nearly every surface water user in California to notify DFG of its water use and potentially obtain a permit prior to diverting water from a watercourse.