



SUPERIOR COURT OF CALIFORNIA COUNTY OF KERN

Minute Order

Date: October 8, 2026

Time: 8:30 AM

Location: Bakersfield Metro-Justice
Rulin

Case Number: BCV22100636

**CHEVRON U.S.A. INC. VS GAVIN NEWSOM, IN HIS OFFICIAL CAPACITY AS
GOVERNOR OF CALIFORNIA ET AL**

Judicial Officer: Bernard C. Barmann, Jr

Clerk: Veronica Urena

Court Reporter: None

Finalized by: Veronica Urena

**Nature of Proceedings: RULING RE ANNOUNCEMENT OF TENTATIVE DECISION
FOLLOWING COURT TRIAL PHASE 1 HERETOFORE SUBMITTED FOR
DECISION ON JULY 24, 2026**

The Court makes the following findings and orders:

See attached ruling incorporated hereto and made a part hereof.

Copy of ruling sent based on the attached Certificate of Service.

Chevron U.S.A. Inc. v. Newsom, et al. (Case No. BCV-22-100636)

Aera Energy LLC v. Newsom, et al. (Case No. BCV-22-100748)

Western States Petroleum Assoc. v. Newsom, et al. (Case No. BCV-21-102380)

Announcement of Tentative Decision following Court Trial

Trial of Phase I in these matters convened on January 20, 2026, with the evidence portion of the trial concluding on February 10, 2026. Afterward, the parties submitted closing, responding and reply briefs. The court heard closing arguments on July 24, 2026, and took the matters under submission.

Having considered the evidence and the arguments of counsel, the court issues the following tentative decision.

The discussion that follows explains the court's tentative resolution of the principal controverted issues. California Rules of Court, rule 3.1590, governs the procedure for requesting and preparing statements of decision.

Aera Energy LLC ("Aera") and Chevron U.S.A. Inc. ("Chevron") have requested statements of decision identifying principal controverted issues. Within 10 days after service of this tentative decision, any party may identify additional principal controverted issues or submit proposals not addressed herein, as California Rules of Court, rule 3.1590, permits.

Pursuant to California Rules of Court, rule 3.1590, Aera, Chevron, and Western States Petroleum Association ("WSPA") shall submit proposed statements of decision and proposed judgments consistent with this tentative decision for their respective actions, subject to further direction of the Court and any timely objections.

I. Summary of Ruling

These consolidated proceedings concern two actions by the California Geologic Energy Management Division ("CalGEM") relating to permits for well stimulation treatments ("WST"), including hydraulic fracturing. The first is CalGEM's policy, implemented beginning in 2021, of denying WST permit applications without individualized review or formal rulemaking. The second is the regulation codified at California Code of Regulations, title 14, section 1780, subdivision (d) (the "2024 Rule"), effective October 1, 2024, which prohibits approval of WST permit applications. The Court rules as follows:

1. Underground ban — Administrative Procedure Act. The Court grants declaratory relief. CalGEM's 2021–2024 policy of denying all WST permit applications was a "regulation" of general application adopted without the rulemaking the Administrative Procedure Act ("APA") requires and is an invalid underground regulation.

2. Statutory authority to disapprove WST by regulation. As to the underground ban, the Court grants relief in part: CalGEM violated Public Resources Code section 3160 by denying applications pursuant to an unadopted blanket policy rather than conducting the individualized review required when acting on those applications. As to the 2024 Rule, the Court does not decide whether CalGEM possesses statutory authority to impose a categorical prohibition through duly adopted rulemaking. Because the Rule is invalid for the independent reasons stated in Issue 5, resolution of that broader question is unnecessary.
3. Underground denials — substantial evidence. The Court grants declaratory relief. The permit denials were arbitrary and unsupported because they rested on a climate-change rationale that was not in fact the operative basis for the ban.
4. Separation of powers. The Court declines to rest any holding on a freestanding separation-of-powers theory; the statutory and APA grounds fully resolve the disputes (*Marine Forests Soc’y v. California Coastal Com.*, 36 Cal. 4th 1 (2005)).
5. 2024 Rule — arbitrary and capricious / necessity. The Court grants the writ petitions in part and declares the 2024 Rule invalid. CalGEM’s determination that a categorical ban is reasonably necessary to reduce greenhouse gas (“GHG”) emissions is not supported by substantial evidence and lacks a rational connection to that purpose, because the rulemaking record does not address or reconcile CalGEM’s own prior finding that banning WST would *increase* net global GHG emissions through import substitution (*Am. Coatings Assn. v. S. Coast Air Quality Mgmt. Dist.*, 54 Cal. 4th 446 (2012); Gov’t Code § 11350).
6. Mootness. The Court denies Respondents’ contention that the 2024 Rule moots the dispute (*Clovis Unified Sch. Dist. v. Chiang*, 188 Cal. App. 4th 794 (2010)).
7. Permit Streamlining Act. The Court denies the claim that the applications were “deemed approved.” WST permits are permits to operate, outside the Permit Streamlining Act (“PSA”), and in any event the deemed-approval notice prerequisite was not satisfied (*Mahon v. Cnty. of San Mateo*, 139 Cal. App. 4th 812 (2006); *Meridian Ocean Sys., Inc. v. State Lands Com.*, 222 Cal. App. 3d 153 (1990)).
8. Remedy — the permits. The Court grants a writ setting aside the denials and remanding the denied and pending applications to CalGEM for individualized review under section 3160, without reference to any underground ban, but denies the request to compel issuance of the permits (*Bernstein v. Bush*, 29 Cal. 2d 773 (1947);

Malaga Cnty. Water Dist. v. Cent. Valley Reg'l Water Quality Control Bd., 58 Cal. App. 5th 418 (2020)).

9. Remedy — the 2024 Rule. The Court vacates the 2024 Rule rather than remanding it while leaving it in effect (*King & Gardiner Farms, LLC v. Cnty. of Kern*, 45 Cal. App. 5th 814 (2020); *Golden Door Props., LLC v. Cnty. of San Diego*, 50 Cal. App. 5th 467 (2020)).
10. Relief against the Governor. The Court denies all writ and injunctive relief against Governor Newsom; he has no ministerial duty to compel and is not a proper respondent to the challenge to CalGEM's Rule (*Jenkins v. Knight*, 46 Cal. 2d 220 (1956)).

II. Background

A. The Statutory and Regulatory Framework

Division 3 of the Public Resources Code. The State Oil and Gas Supervisor administers Division 3 of the Public Resources Code, which governs oil and gas operations in California. Section 3106 directs the Supervisor to supervise wells “so as to prevent, as far as possible, damage to life, health, property, and natural resources” (subd. (a)), and also “so as to permit” operators “to utilize all methods and practices known to the oil industry” that, “in the opinion of the supervisor, are suitable for this purpose in each proposed case” (subd. (b)) (Pub. Res. Code § 3106). Section 3013 requires that Division 3 be liberally construed and gives the Supervisor “all powers, including the authority to adopt rules and regulations, which may be necessary to carry out the purposes of” the division (*TRC Operating Co. v. Shabazian*, 100 Cal. App. 5th 91 (2024)).

Senate Bill 4 (2013) and the WST permitting scheme. Well stimulation treatments, including hydraulic fracturing, were used in California for decades before being comprehensively regulated. In 2013, the Legislature enacted Senate Bill 4 (“SB 4”), finding WST “critical to boosting oil and gas production” and directing CalGEM to prepare an environmental impact report, adopt regulations, and establish a permit process. That scheme is codified principally at section 3160, which provides that the Supervisor “shall review” each WST permit application, “may approve the permit if the application is complete,” and “shall evaluate the quantifiable risk of the well stimulation treatment” (Pub. Res. Code § 3160).

The 2015 regulations and SB 4 EIR. In 2015, CalGEM implemented SB 4 by adopting WST regulations (Cal. Code Regs., tit. 14, § 1780 et seq.) and certifying the EIR the Legislature had ordered. The EIR concluded that banning WST would be worse for the environment than regulating it because prohibiting in-state WST would force California to import additional foreign oil produced under less stringent controls, an “import substitution” effect that

would increase net global GHG emissions by the equivalent of roughly 57 million additional barrels per year. The EIR further stated that a WST ban was “not supported by the plain language of the statute.”

Later amendments. In 2019, Assembly Bill 1057 renamed the division “CalGEM” and reinforced the State’s health and environmental protections. Effective in 2020, section 3011 declared that the purposes of Division 3 “include protecting public health and safety and environmental quality, including reduction and mitigation of greenhouse gas emissions associated with the development of hydrocarbon and geothermal resources in a manner that meets the energy needs of the state” (Pub. Res. Code § 3011). Section 3291 preserves “the authority of the supervisor to deny, revoke, or suspend permits” to protect public health, safety, and environmental quality, “including the reduction and mitigation of greenhouse gas emissions” (Pub. Res. Code § 3291). Effective January 1, 2025, section 3106.1 provides that, “[n]otwithstanding any other law,” local entities may ban extraction methods to protect public health and the environment.

The Administrative Procedure Act. The APA bars any agency from enforcing a “standard of general application” that is a “regulation” unless it has been adopted and filed through rulemaking (Gov’t Code § 11340.5). A regulation is valid only if it is “consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute” (Gov’t Code § 11342.2). A court may declare a regulation invalid, among other grounds, where “[t]he agency’s determination that the regulation is reasonably necessary ...is not supported by substantial evidence” (Gov’t Code § 11350).

The Permit Streamlining Act. The PSA sets timelines for agency action on applications for a “development project,” which “includes a project involving the issuance of a permit for construction or reconstruction but not a permit to operate” (Gov’t Code § 65928). If an agency fails to act within the statutory period, the application is deemed approved, but “only if the public notice required by law has occurred,” which must include a statement that the project will be deemed approved absent agency action within 60 days (*Mahon v. Cnty. of San Mateo*, 139 Cal. App. 4th 812 (2006)).

The 2024 Rule. On August 26, 2024, the Office of Administrative Law approved CalGEM’s regulation, which became operative October 1, 2024, and provides: “The Division, including the supervisor and district deputies, will not approve applications for permits to conduct well stimulation treatments” (Cal. Code Regs., tit. 14, § 1780, subd. (d)).

B. Factual Background

The following facts are drawn from the record developed by all parties and are presented chronologically.

2019. Governor Newsom removed the then-Supervisor, Ken Harris, in connection with the issuance of what the Governor's office regarded as too many WST permits. In a July 2019 interview, the Governor stated that he could not unilaterally impose a fracking moratorium: "You can't do that unilaterally. Legally, you cannot. The governor of California cannot do that."

2020 – early 2021. CalGEM continued to approve WST permits after section 3011 took effect — 83 permits in 2020 and 11 in early 2021.

April 2021. On April 23, 2021, the Governor's office issued a press release directing CalGEM to initiate rulemaking to end new WST permitting by 2024. A 2021 legislative effort to ban fracking failed.

September 2021. Chevron's and Aera's applications had passed technical review. CalGEM denied the pending applications and, in a September 16, 2021, letter, Supervisor Ntuk articulated a climate-change rationale for the denials.

2021 – 2022. WSPA filed its action on October 8, 2021; Chevron and Aera filed on March 17 and March 30, 2022.

2022–2024. For approximately two years of litigation, Respondents repeatedly and unequivocally denied that CalGEM had implemented a categorical policy against approval of WST permits. These denials were not confined to advocacy in briefs: Respondents denied the policy in verified discovery responses (see, e.g., PEXH 214 at RFA No. 186) and represented to the Court: "[Y]our Honor, there is no ban . . . The allegations of a ban are conclusions only . . . [A]ll we have in this case is hyperbole and speculation." (PEXH 187 at pp. 11:20–12:26.) Respondents also resisted discovery directed at determining whether such a policy existed. The court recounts these representations because their duration and categorical nature are significant to the procedural history and to understanding the subsequent admissions.

February – October 2024. CalGEM, which had paused its rulemaking in 2021, restarted it in February 2024. On July 31, 2024, and August 1, 2024, Supervisor Ntuk was deposed in these actions. The Office of Administrative Law approved the Rule on August 26, 2024, and it became operative October 1, 2024. On October 2, 2024, one day after the Rule became operative, after approximately two years of litigation denying the existence of a ban, and two months after Supervisor Ntuk's deposition, CalGEM amended its discovery responses to admit it had applied a "generally applicable policy of denying new WST permits beginning in July 2021," not adopted through APA rulemaking, and that Ntuk "did not exercise application-specific or case-by-case discretion" in denying the permits. Later in discovery, Defendants advanced an account that in the summer of 2021 the Governor's office conveyed a "policy preference" that a tranche of pending WST permits not be approved, and that the same preference apply to future applications and that

CalGEM thereafter applied a “de facto moratorium on the issuance of WST permits,” i.e., the “underground ban.” Supervisor Ntuk testified that he was told in 2021 that the Governor “was no longer comfortable” with his issuing further permits and that he would have issued the denied permits but for this directive. No WST permit has been issued in California since the policy began in 2021. Thus, Petitioners litigated for approximately two years over the existence of a policy that Respondents ultimately acknowledged had governed WST permitting during that period. The Court makes no separate finding concerning the subjective knowledge of individual counsel when the earlier representations were made.

2025 – 2026. Petitioners amended their petitions in March 2025 to add challenges to the 2024 Rule. Aera dismissed the Governor from all its causes of action on October 13, 2025. In its March 3, 2026, order, the Court entered issue sanctions establishing that personnel in the Governor’s office understood the climate rationale in the denial letters “w[as] not the operative basis for the ban,” and that the ban “stemmed from direction originating from the Governor’s Office.” In sworn answers served March 18, 2026, the Governor denied personally directing the denial of permits but acknowledged that his staff “did give guidance or direction along those lines to CalGEM in June or July 2021,” and that it was “likely” those plans “were flagged for” him at the time.

III. Standards of Review

Traditional mandamus lies to compel a public agency’s performance of a ministerial act or to correct an abuse of discretion, but “does not lie to compel a public agency to exercise discretionary powers in a particular manner, only to compel it to exercise its discretion in some manner” (*Ctr. for Biological Diversity v. Dep’t of Conservation*, 26 Cal. App. 5th 161 (2018)). A court “may not substitute its discretion for the discretion properly vested in the administrative agency” (*Rodriguez v. Solis*, 1 Cal. App. 4th 495 (1991)).

A quasi-legislative regulation carries a presumption of validity, and the challenger bears the burden (*Delta Stewardship Council Cases*, 48 Cal. App. 5th 1014 (2020)). The regulation is valid only if it is both (1) “consistent and not in conflict with the statute” and (2) “reasonably necessary to effectuate the purpose of the statute” (Gov’t Code § 11342.2). The consistency prong presents a question of law the Court decides with independent judgment, giving weight to the agency’s construction; “[r]egulations that alter or amend the statute, or enlarge or impair its scope, are invalid” (*Delta Stewardship Council Cases*, 48 Cal. App. 5th 1014 (2020)). The necessity prong is reviewed deferentially: the inquiry is confined to whether the rule is arbitrary, capricious, or without rational basis and whether substantial evidence supports the agency’s determination that the rule is reasonably necessary (*Delta Stewardship Council Cases*, 48 Cal. App. 5th 1014 (2020)).

That arbitrary-and-capricious standard is “more deferential to agency decisionmaking than the substantial evidence standard,” but the court must still ensure the agency “adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute,” on the administrative record before the agency when it acted (*Am. Coatings Assn. v. S. Coast Air Quality Mgmt. Dist.*, 54 Cal. 4th 446 (2012)).

IV. Discussion

Issue 1 — The underground ban was an invalid underground regulation

Party Positions. Petitioners contend the 2021–2024 policy of denying all WST applications was a generally applicable “regulation” never adopted through rulemaking, and is therefore void. Respondents concede the APA violation but characterize it as the sole defect, cured by the 2024 Rule.

Analysis. The APA forbids enforcement of an unadopted “standard of general application” that qualifies as a “regulation” (Gov’t Code § 11340.5). A policy is a regulation when the agency intends it to apply generally rather than in a specific case, and it implements the law the agency enforces (*Patterson Flying Serv. v. Dep’t of Pesticide Regul.*, 161 Cal. App. 4th 411 (2008); *Tidewater Marine W., Inc. v. Bradshaw*, 14 Cal. 4th 557 (1996)); a policy may qualify even if unwritten and even if applied through intermediaries (*Vasquez v. Dep’t of Pesticide Regul.*, 68 Cal. App. 5th 672 (2021)). CalGEM has admitted it applied a “generally applicable policy of denying new WST permits” without case-by-case discretion. That admission satisfies both elements. An underground regulation is void and entitled to no deference (*Tidewater Marine W., Inc. v. Bradshaw*, 14 Cal. 4th 557 (1996)).

Ruling. The Court declares that CalGEM’s 2021–2024 policy of denying all WST permit applications was an invalid underground regulation under the APA.

Issue 2 — Statutory authority to ban WST by regulation

Party Positions. Petitioners argue that sections 3106(b) and 3160(d) require the Supervisor to “permit” WST, to “review” each application, and to retain discretion to “approve” complete applications “in each proposed case,” so that a categorical prohibition, whether informal or by regulation, cannot be reconciled with the statute; they add that the specific WST scheme in section 3160 controls over the more general sections 3011 and 3106. Respondents counter that section 3013’s broad rulemaking grant, section 3106(b)’s “suitability” judgment, and section 3011’s GHG mandate together authorize the Supervisor to find WST unsuitable and to effectuate that choice by regulation, and that an agency holding both adjudicatory and rulemaking power may choose between them.

Analysis. The issue has two facets.

Implementation of the underground ban. Section 3160 requires the Supervisor to “review” each WST application and to “evaluate the quantifiable risk” of the specific treatment (Pub. Res. Code § 3160). Interpretations reached through case-specific adjudication are not regulations (*Tidewater Marine W., Inc. v. Bradshaw*, 14 Cal. 4th 557 (1996)). CalGEM concedes it did not adjudicate the applications individually but applied a blanket policy. To that extent the underground ban was inconsistent with section 3160’s command of individualized review, and the Supreme Court has confirmed that the suitability decision is the Supervisor’s “statutorily granted authority to decide whether those methods are ‘suitable ...in each proposed case’” (*Chevron U.S.A. Inc. v. Cnty. of Monterey*, 15 Cal. 5th 135 (2023)).

Whether CalGEM may ban WST by valid regulation. The parties also dispute whether CalGEM may, through a duly adopted regulation, categorically prohibit approval of WST permits. Petitioners rely on the individualized review contemplated by sections 3106 and 3160 and contend that the specific WST permitting scheme limits the general rulemaking authority granted by section 3013. Respondents invoke the broad delegation in sections 3013 and 3106, the environmental objectives reflected in section 3011, and the discretion generally afforded agencies possessing both rulemaking and adjudicatory powers. (See *TRC Operating Co. v. Shabazian*, 100 Cal. App. 5th 91 (2024); *Ass’n of California Ins. Companies v. Jones*, 2 Cal. 5th 376 (2017); *Chevron U.S.A. Inc. v. Cnty. of Monterey*, 15 Cal. 5th 135 (2023).) This presents a substantial issue of statutory interpretation, which is a close question. But the court concludes in Issue 5 that the 2024 Rule is invalid under Government Code section 11350 because the determination of reasonable necessity is not supported by substantial evidence and lacks the required rational connection to the asserted statutory purpose. That ground independently disposes of the challenge to the Rule. The Court therefore does not decide whether sections 3013, 3106, and 3160 would permit CalGEM to adopt a categorical WST prohibition supported by an otherwise sufficient rulemaking record. Nothing in this decision should be understood as approving or rejecting such authority.

Ruling. As to the underground ban, the Court declares that CalGEM violated section 3160 by denying applications pursuant to an unadopted blanket policy rather than conducting the individualized review required when proceeding on those applications. As to the 2024 Rule, the Court expressly reserves the question whether CalGEM has statutory authority to impose a categorical prohibition by regulation. The Rule is invalidated on the independent necessity ground addressed in Issue 5.

Issue 3 — The underground denials were unsupported by substantial evidence

Party Positions. Petitioners contend the denials rested on a pretextual climate rationale unsupported by the record. Respondents defend the 2024 Rule's separate record and invoke the closed-record and decision-maker-motive limitations on review.

Analysis. Agency action must reflect "a rational connection between those factors [and] the choice made." (*Am. Coatings Assn. v. S. Coast Air Quality Mgmt. Dist.*, 54 Cal. 4th 446 (2012)). Pursuant to the court's March 3, 2026, issue-sanctions order, it is established for purposes of these proceedings that the stated climate rationale was not the operative basis for the ban and that the ban originated in direction from the Governor's office. Supervisor Ntuk also testified that the stated excuses "were false." Respondents' closed-record and motive objections do not salvage denials that the agency acknowledges were not based on the stated ground and were not the product of individualized review.

Ruling. The Court declares that the underground permit denials were arbitrary and capricious and unsupported by the record. This ruling does not resolve the separate substantial-evidence question governing the 2024 Rule's own record.

Issue 4 — Separation of powers

Party Positions. Petitioners contend that only the Legislature may ban WST, rendering both bans ultra vires and violative of separation of powers. Respondents contend the Legislature delegated the suitability and rulemaking powers to the Supervisor.

Analysis. The separation-of-powers doctrine is violated only when one branch's action "defeat[s] or materially impair[s]" another branch's core functions (*Marine Forests Soc'y v. California Coastal Com.*, 36 Cal. 4th 1 (2005)). For the underground ban, the APA and section 3160 grounds fully resolve the legality of the challenged conduct, making a separate constitutional holding unnecessary. For the 2024 Rule, the Court invalidates the regulation on the independent necessity ground discussed in Issue 5 and expressly reserves the question of CalGEM's statutory authority to impose a categorical prohibition through rulemaking. Accordingly, the Court need not reach a freestanding separation-of-powers theory or resolve the related ultra vires contention.

Ruling. The Court declines to rest any holding on a freestanding separation-of-powers ground.

Issue 5 — The 2024 Rule is arbitrary and capricious and not supported by substantial evidence of necessity

Party Positions. Petitioners contend the Rule is invalid because CalGEM's own 2015 EIR found, after extensive analysis, that banning WST would *increase* net global GHG emissions through import substitution, and the rulemaking record neither acknowledges nor reconciles that finding with the Rule's contrary climate rationale. Respondents contend necessity review is highly deferential, that substantial evidence (GHG reduction consistent with the State's net-zero-by-2045 goals, public-health protection, and natural-resource protection) supports the Rule, and that in-state demand for oil will decline over time.

Analysis. The necessity inquiry is deferential and asks only whether the Rule is "arbitrary, capricious, or without rational basis" and supported by substantial evidence (*Am. Coatings Assn. v. S. Coast Air Quality Mgmt. Dist.*, 54 Cal. 4th 446 (2012); *Delta Stewardship Council Cases*, 48 Cal. App. 5th 1014 (2020)). California applies this narrow standard to quasi-legislative action because, in that setting, "the demarcation between facts, reasoning, policy and discretion is quite vague," and the court does not demand the reasoned-explanation-for-a-change-of-course analysis familiar from federal administrative law (*Am. Coatings Assn. v. S. Coast Air Quality Mgmt. Dist.*, 54 Cal. 4th 446 (2012)). Petitioners' framing (CalGEM's failure to explain the departure from its own EIR) therefore does not state a freestanding defect; the court evaluates it through the rational-connection and substantial-evidence prongs.

So evaluated, the challenge has merit on this record. The court does not conclude that CalGEM was bound by the conclusions of its 2015 EIR or that a change in regulatory policy, standing alone, required a particular explanation. The significance of the EIR is evidentiary: its import-substitution finding concerns a material consequence of a WST prohibition directly bearing on the Rule's asserted GHG-reduction purpose. The court must ensure a "rational connection between those factors ... the choice made, and the purposes of the enabling statute" (*Am. Coatings Assn. v. S. Coast Air Quality Mgmt. Dist.*, 54 Cal. 4th 446 (2012)). The enabling purpose CalGEM principally invokes is GHG reduction under section 3011 (Pub. Res. Code § 3011). Yet CalGEM's own comprehensive and unretracted prior finding was that banning WST would increase net global GHG emissions by displacing in-state production with roughly 57 million additional barrels of imported oil per year produced under weaker controls. The rulemaking record does not grapple with that finding; CalGEM's only responsive observation is that in-state demand "may decrease over time," which does not address the import-substitution mechanism the EIR identified. On this record, CalGEM's determination that a categorical ban is reasonably necessary to reduce GHG emissions is not supported by substantial evidence and lacks a rational

connection to its stated climate purpose (*Am. Coatings Assn. v. S. Coast Air Quality Mgmt. Dist.*, 54 Cal. 4th 446 (2012); Gov't Code § 11350). The court has also considered CalGEM's non-climate justifications, including localized public-health and natural-resource protection and section 3291's preservation of the Supervisor's denial authority (Pub. Res. Code § 3291). These are legitimate statutory considerations. On the record presented, however, the Court finds that they do not independently establish the necessary rational, evidence-based connection between the identified harms and a statewide categorical prohibition, as distinct from regulation or denial of particular treatments. This conclusion concerns the sufficiency of this rulemaking record, not the wisdom of the policy choice.

Ruling. The Court declares the 2024 Rule invalid and grants the writ on this ground.

Issue 6 — Mootness

Party Positions. Respondents contend the 2024 Rule moots the underground-ban claims because the Court can no longer grant effective relief and must apply current law to prospective relief. Petitioners contend subsequent regulation does not automatically moot a dispute, the Rule is prospective only, and past conduct remains remediable.

Analysis. A case is moot only when the Court cannot grant effective relief (*In re D.P.*, 14 Cal. 5th 266 (2023)). The enactment of subsequent legislation does not automatically render a matter moot (*Davis v. Superior Ct.*, 169 Cal. App. 3d 1054 (1985)), and a later valid regulation does not moot a challenge to the past use of an invalid one (*Clovis Unified Sch. Dist. v. Chiang*, 188 Cal. App. 4th 794 (2010)). Because the Court has invalidated the 2024 Rule (Issue 5), the premise of the mootness argument, *i.e.*, a valid Rule barring all relief, fails. The declaration that the underground ban was invalid and the challenge to the Rule itself concern live controversies, and the Court can grant effective relief by setting aside the denials and remanding (Issue 8).

Ruling. The mootness defense is denied.

Issue 7 — Permit Streamlining Act “deemed approved”

Party Positions. Petitioners (principally Aera, as to its 49 applications) contend WST permits are for a “development project,” that the Court previously overruled demurrers on this point, that CalGEM failed to act within the statutory timelines, and that CalGEM waived any completeness objection. Respondents contend a WST permit is a “permit to operate” excluded from the PSA, and that the applications never triggered the deemed-approval clock because they lacked the required development-project statement and hazardous-waste certification.

Analysis. The PSA reaches a permit “for construction or reconstruction but not a permit to operate” (Gov’t Code § 65928), and the Court of Appeal has held the PSA inapplicable to operating permits held by applicants who are “not developers in the classic sense” (*Meridian Ocean Sys., Inc. v. State Lands Com.*, 222 Cal. App. 3d 153 (1990)). A WST permit authorizes treatment of an existing well, rather than construction or reconstruction of a development project. On this record, the Court concludes that it is a permit to operate within the statutory exclusion. Independently, the deemed-approval remedy applies “only if the public notice required by law has occurred,” including a 60-day deemed-approval warning (*Mahon v. Cnty. of San Mateo*, 139 Cal. App. 4th 812 (2006)); the record does not establish that this prerequisite was met, and the remedy does not reach matters requiring legislative change (*Land Waste Mgmt. v. Contra Costa Cnty. Bd. of Supervisors*, 222 Cal. App. 3d 950 (1990)). Either ground defeats the “deemed approved” theory.

Ruling. The claim that the applications were deemed approved under the PSA, and the associated declaration that the PSA governs WST permits, are denied.

Issue 8 — Remedy as to the permits: issuance versus remand

Party Positions. Petitioners seek a writ ordering CalGEM to issue the denied and pending permits, arguing that issuance is the only reasonable exercise of discretion because the applications passed technical review and the Supervisor testified he would have approved them. Respondents contend section 3160 makes approval discretionary, so the Court may at most remand for the exercise of discretion.

Analysis. Section 3160 provides that the Supervisor “may approve” a complete application, which is discretionary language (Pub. Res. Code § 3160). Mandamus cannot compel a discretionary result (*Common Cause v. Bd. of Supervisors*, 49 Cal. 3d 432 (1989); *Rodriguez v. Solis*, 1 Cal. App. 4th 495 (1991)), and there is no Public Resources Code duty requiring the Supervisor to issue a permit (*Bernstein v. Bush*, 29 Cal. 2d 773 (1947)). The narrow exception permitting a court to compel a particular outcome applies only where a single choice is the sole reasonable exercise of discretion; the suitability and quantifiable-risk judgment here is an expertise-laden determination committed to the Supervisor, not a ministerial act. The proper course upon invalidating the policy is to set it aside and return the matter to the agency to proceed properly (*Malaga Cnty. Water Dist. v. Cent. Valley Reg’l Water Quality Control Bd.*, 58 Cal. App. 5th 418 (2020)).

Ruling. The request to compel issuance of the permits is denied. Upon entry of judgment, a writ shall issue directing CalGEM to set aside the challenged permit denials and reconsider those applications under section 3160 and applicable regulations. CalGEM shall also consider the pending

applications under those provisions. In doing so, CalGEM shall not rely on the invalid underground policy or the invalidated 2024 Rule. The Court expresses no opinion as to whether any particular application should be approved. The requested ancillary writs imposing additional denial-letter requirements or fixed review deadlines are denied.

Issue 9 — Remedy as to the 2024 Rule: vacatur versus remand

Party Positions. Respondents contend that if the Rule is found deficient, the Court should remand and leave it operative while CalGEM cures the defect, citing agency reliance and staffing concerns. Petitioners seek vacatur.

Analysis. The APA remedy is a judicial declaration of invalidity; its text does not authorize leaving an invalid rule in force (Gov't Code § 11350). Leaving an invalid rule operative is an “extraordinary” equitable measure, and the authority permitting it arises under CEQA’s severance statute rather than the APA (*King & Gardiner Farms, LLC v. Cnty. of Kern*, 45 Cal. App. 5th 814 (2020)). Directing an agency to void its approval is a typical remedy, with the leave-in-place exception reserved largely for procedural defects; a substantively flawed rule should be set aside (*Golden Door Props., LLC v. Cnty. of San Diego*, 50 Cal. App. 5th 467 (2020)). Leaving a rule operative is improper where re-adoption is “committed to the [agency’s] discretion,” because doing so would be an impermissible judicial “prediction of how the [agency] would exercise its discretion” (*King & Gardiner Farms, LLC v. Cnty. of Kern*, 45 Cal. App. 5th 814 (2020)). Here the defect is substantive, not procedural, and whether to re-adopt a WST ban rests in CalGEM’s discretion.

Ruling. The 2024 Rule is vacated. Vacatur revives the Court’s authority to remand the denied and pending applications for individualized review, as it does under Issue 8.

Issue 10 — Relief against the Governor

Party Positions. Chevron and WSPA seek declaratory, writ, and injunctive relief against the Governor; Aera dismissed the Governor on October 13, 2025 and does not join. Respondents contend the Public Resources Code imposes no duty on the Governor, that a writ lacks any ministerial-duty basis, and that the Governor is not a proper respondent to the challenge to CalGEM’s Rule.

Analysis. A Governor’s action is reviewable to ensure that he does not exceed constitutional limits (*In re Rosenkrantz*, 29 Cal. 4th 616 (2002)), but mandamus against the Governor is confined to ministerial duties (*State of S. Dakota v. Brown*, 20 Cal. 3d 765 (1978); *Jenkins v. Knight*, 46 Cal. 2d 220 (1956)). The Public Resources Code imposes no ministerial duty on the Governor concerning WST permit decisions. The Court’s findings concerning

communications from the Governor's office relating to the underground policy do not establish such a duty. The 2024 Rule, by contrast, was adopted and is enforced by CalGEM; the Governor is not a proper respondent to the challenge to that regulation. Relief against CalGEM is adequate, and the Court does not order restrictions on policy communications between the Governor and executive agencies.

Ruling. All writ and injunctive relief against the Governor is denied, and the Governor is not a proper respondent to the challenge to the 2024 Rule. While a narrow declaration confirming that directing a categorical WST ban outside any valid process would exceed lawful executive authority is legally permissible (*In re Rosenkrantz*, 29 Cal. 4th 616 (2002)), the Court declines to issue it as unnecessary in light of the complete relief granted against CalGEM.

V. Conclusion and Disposition

For the foregoing reasons, the Court orders as follows:

1. Declaratory relief — underground ban. The Court declares that CalGEM's 2021–2024 policy of denying all WST permit applications was an invalid underground regulation adopted in violation of the APA, that it violated Public Resources Code section 3160's requirement of individualized review, and that the resulting permit denials were arbitrary and unsupported.
2. Declaratory relief — 2024 Rule. The Court declares the 2024 Rule (Cal. Code Regs., tit. 14, § 1780, subd. (d)) invalid because CalGEM's determination that the categorical ban is reasonably necessary is not supported by substantial evidence and lacks a rational connection to the statute's GHG-reduction purpose. The Court does not decide whether CalGEM otherwise possesses statutory authority to impose a categorical prohibition on WST permits through valid rulemaking.
3. Writ of mandate. Upon entry of judgment, a writ shall issue directing CalGEM to set aside the 2024 Rule and the challenged permit denials; reconsider the denied applications; and consider the pending applications under section 3160 and applicable regulations, without reliance on the invalid underground policy or the invalidated Rule. The Court does not direct issuance of any permit or impose additional denial-letter or deadline requirements.
4. Permit Streamlining Act. The petitions are denied insofar as they seek a declaration that the applications were deemed approved under the PSA.

5. Mootness. Respondents' mootness defense is overruled.
6. The Governor. All requested writ and injunctive relief against Governor Newsom is denied; he is not a proper respondent to the challenge to the 2024 Rule.
7. Separation of powers. The Court declines to enter relief on a freestanding separation-of-powers theory.

IT IS SO ORDERED.

The Clerk shall give notice of this ruling.

October 8, 2026

Hon. Bernard C. Barmann, Jr.