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FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS, INC.; CALIFORNIA SPORTFISHING PROTECTION ALLIANCE; FRIENDS OF THE RIVER; SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION, INC.; THE INSTITUTE FOR FISHERIES RESOURCES; FELIX SMITH, *Plaintiffs-Appellants*, v. ADAM NICKELS[*], Acting Regional Director of the U.S. Bureau of Reclamation; UNITED STATES BUREAU OF RECLAMATION; SAN LUIS & DELTA MENDOTA WATER AUTHORITY, *Defendants-Appellees*,	No. 23-15599 D.C. No. 2:11-cv-02980-DAD-CKD OPINION

[*] Under Federal Rule of Appellate Procedure 43(c)(2), Acting Regional Director Adam Nickels is substituted for Ernest Conant as his successor.

and

GRASSLAND WATER DISTRICT,

Intervenor-Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of California
Dale A. Drozd, District Judge, Presiding

Argued and Submitted October 21, 2024
San Francisco, California

Filed September 5, 2025

Before: Richard R. Clifton, Jennifer Sung, and Gabriel P. Sanchez, Circuit Judges.

Opinion by Judge Sanchez

SUMMARY[**]

Clean Water Act

The panel affirmed the district court's partial grant of summary judgment in favor of the U.S. Bureau of Reclamation, its Acting Regional Director, the San Luis &

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Delta-Mendota Water Authority, and the Grassland Water District (collectively "Defendants"), and the district court's conclusion that Defendants met their burden of establishing that the irrigation flow exemption under 33 U.S.C. § 1342(l)(1) of the Clean Water Act ("CWA") applied to the Grassland Bypass Project (the "Project") in California's Central Valley, which comprises an expansive drainage system that takes in water used for irrigation.

The CWA generally prohibits the discharge of pollutants into navigable waters of the United States without a permit under the National Pollutant Discharge Elimination System ("NPDES") program. Congress carved out an exemption to the permit requirement for "discharges composed entirely of return flows from irrigated agriculture" and entrusted the regulation of such discharges to the States. Under this exemption, the Project has operated without an NPDES permit since 1997.

Plaintiffs sought to undo the exempted status on the ground that the Project's discharge contained pollutants that were not related to irrigated agriculture. The panel held that plaintiffs' theory did not follow from the statutory text and was inconsistent with the purpose and structure of the CWA, and as a practical matter would render the irrigated agriculture exemption a dead letter.

The panel agreed with the district court that plaintiffs failed to raise a genuine dispute of material fact as to whether the irrigated agriculture return flow exemption applied to the Project. The panel concluded that the exemption applied because the alleged pollutants were either added to the Project via nonpoint sources or via a point source related to crop production.

COUNSEL

Stephan C. Volker (argued), Stephanie L. Clarke, and Jamey M.B. Volker, Law Offices of Stephan C. Volker, Berkeley, California, for Plaintiffs-Appellants.

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Julie L. Fieber (argued), Joseph W. Cotchett, and Andrew Kirtley, Cotchett Pitre & McCarthy LLP, Burlingame, California; Diane V. Rathmann, Linneman Law LLP, Los Banos, California; Ellen L. Wehr, Grassland Water District, Los Banos, California; for Defendant-Appellee and Intervenor-Defendant-Appellee.

Theresa A. Dunham, Kahn Soares & Conway LLP, Sacramento, California, for Amici Curiae Association of California Water Agencies, California Cotton Ginners and Growers Association, California Farm Bureau Federation, California Fresh Fruit Association, California Rice Commission, East San Joaquin Water Quality Coalition, California Rice Commission, East San Joaquin Water Quality Coalition, Family Farms Alliance, Kern River Watershed Coalition Authority, Kings River Conservation District, Kings River Water Quality Coalition, Western

Agricultural Processers Association, Western Growers Association, and Westside Water Quality Coalition.

OPINION

SANCHEZ, Circuit Judge:

The Clean Water Act ("CWA") generally prohibits the discharge of pollutants into navigable waters of the United States without a permit under the National Pollutant Discharge Elimination System ("NPDES") program. *See* 33 U.S.C. §§ 1311(a), 1342(a)(1). In 1977, Congress carved out an exemption to this permit requirement for "discharges composed entirely of return flows from irrigated agriculture" and entrusted the regulation of such discharges to the States. *Id.* § 1342(l)(1). Under this exemption, the Grassland Bypass Project ("Project") in California's Central Valley has operated without an NPDES permit since 1997. The Project comprises an expansive drainage system that takes in water used for irrigation from across 97,400 acres of land and transports that "return flow" over 28 miles through a canal before its ultimate discharge into the Mud Slough wetland.

At issue in this appeal is whether the statutory exemption for irrigation return flows has been wrongly applied to the Project because diffuse "nonpoint source" pollution—such as pollution from rainwater runoff or windblown dust and algae—commingles with the Project's return flows prior to discharge into waters of the United States. We agree with the district court that the Project's exempt status should be upheld and reject Plaintiffs' contention that the commingling of any amount of nonpoint source pollution from a non-agricultural source forecloses the exemption. To adopt

Plaintiffs' position would contravene the text, purpose, and structure of the Clean Water Act and render the exemption for irrigated agriculture a dead letter. Accordingly, we affirm the district court's partial grant of summary judgment.

I. BACKGROUND

A. Clean Water Act

In 1972, Congress passed the Clean Water Act to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." 33 U.S.C. § 1251(a). One "central provision" of the Act is that "individuals, corporations, and governments secure National Pollutant Discharge Elimination System (NPDES) permits before discharging pollution from any point source into the navigable waters of the United States." *Decker v. Nw. Env't Def. Ctr.*, 568 U.S. 597, 602 (2013) (citing *id.* §§ 1311(a), 1362(12)). While the CWA "banned . . . discharges from point sources" without NPDES permits, the "discharge of pollutants from nonpoint sources—for example, the runoff of pesticides from farmlands—was not directly prohibited." *Or. Nat. Desert Ass'n v. Dombeck*, 172 F.3d 1092, 1096 (9th Cir. 1998) (quoting *Nat. Res. Def. Council v. EPA*, 915 F.2d 1314, 1316 (9th Cir. 1990)). This differential treatment of "point sources and nonpoint sources is an organizational paradigm of the [CWA]." *Or. Nat. Desert Ass'n v. U.S. Forest Serv.*, 550 F.3d 778, 780 (9th Cir. 2008).

The CWA defines key terms such as "point source," "pollutant," "discharge of a pollutant," and "discharge" in service of that regulatory distinction. A "point source" is defined in the statute as:

> [A]ny discernible, confined and discrete conveyance, including but not limited to any

> pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture.

33 U.S.C. § 1362(14). The term "pollutant" is defined as:

> [D]redged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.

Id. § 1362(6). "[D]ischarge of a pollutant" and "discharge" are defined as:

> (12) The term "discharge of a pollutant" [means] any addition of any pollutant to navigable waters from any point source . . . .
>
> (16) The term "discharge" when used without qualification includes a discharge of a pollutant . . . .

Id. § 1362. Because "discharge of a pollutant" is necessarily "from any point source," *id.* § 1362(12), the term "discharge" refers specifically to a point source discharge of a pollutant. *See Dombeck*, 172 F.3d at 1096.

The CWA does not define "nonpoint source pollution," but "it is widely understood to be the type of pollution that arises from many dispersed activities over large areas, and is not traceable to any single discrete source." *League of Wilderness Defs./Blue Mountains Biodiversity Project v. Forsgren*, 309 F.3d 1181, 1184 (9th Cir. 2002). "The most common example of nonpoint source pollution is the residue left on roadways by automobiles," such as "[s]mall amounts of rubber" that are "worn off of the tires of millions of cars" or the "minute particles of copper dust from brake linings" that eventually "wash off of the streets and are carried along by runoff in a polluted soup, winding up in creeks, rivers, bays, and the ocean." *Id.*; *see also Dombeck*, 172 F.3d at 1095 ("Other pollution sources, such as runoff from agriculture or in this case, animal grazing, are nonpoint sources."). Because nonpoint source pollution "arises in such a diffuse way, it is very difficult to regulate through individual permits." *Forsgren*, 309 F.3d at 1184.

Nonpoint source pollution lies outside the federal NPDES permit scheme and is "not regulated directly by the [CWA]." *Dombeck*, 172 F.3d at 1096. Rather, the CWA indirectly regulates nonpoint source pollution through "federal grants for state wastewater treatment plans" under Section 208, codified under 33 U.S.C. § 1288. *Id.* The CWA "envisions EPA's role in managing nonpoint source pollution . . . as limited to studying the issue, sharing information with and collecting information from the States, and issuing monetary grants." *Cnty. of Maui v. Haw. Wildlife Fund*, 590 U.S. 165, 175 (2020). As the Supreme Court explained in *Maui*, "the structure of the [CWA] indicates that, as to groundwater pollution and nonpoint source pollution, Congress intended to leave substantial responsibility and autonomy to the States." *Id.* at 174.

Indeed, the regulation of nonpoint source pollution falls within States' "traditional regulatory authority." *Id.* at 175.

Although the CWA's direct regulation of pollution is limited to point source discharges, the Environmental Protection Agency ("EPA") nevertheless "found it difficult to process permit applications from countless owners and operators of point sources throughout the country." *Decker*, 568 U.S. at 602. One year after the passage of the CWA, the EPA promulgated regulations to exempt several kinds of point source discharges from the NPDES permit system, including discharges from irrigated agriculture. *Nw. Env't Def. Ctr. v. Brown*, 640 F.3d 1063, 1073 (9th Cir. 2011), *rev'd and remanded sub nom. Decker*, 586 U.S. 597. The EPA acknowledged "that the exempted categories of sources are ones which fall within the definition of point source," but concluded that these sources "[were] ill-suited for inclusion in a permit program." *Id.* at 1073-74 (citation omitted). The agency explained that "while some point sources within the excluded categories may be significant contributors of pollution . . . , it would be administratively difficult if not impossible, given Federal and State resource levels, to issue individual permits to all such point sources." *Id.* at 1074 (quoting 40 Fed. Reg. 56932 (Dec. 5, 1975)).

The EPA's attempt to exempt certain categories of point source discharges from NPDES permitting was rejected in *Natural Resources Defense Council, Inc. v. Costle*, 568 F.2d 1369 (D.C. Cir. 1977). The D.C. Circuit held that the EPA "does not have authority to exempt categories of point sources from the permit requirements" and that "[e]ven when infeasibility arguments were squarely raised, the legislature declined to abandon the permit requirement" because the CWA was designed to be a "tough law." *Id.* at 1375-77. What the EPA could not do by regulation,

Congress accomplished through legislation. In 1977, Congress amended the CWA to establish a statutory exemption for irrigated agriculture from NPDES permit requirements. *Brown*, 640 F.3d at 1073. The exemption provides:

> (l) Limitation on permit requirement
> (1) Agricultural return flows
> The Administrator shall not require a permit under this section for discharges composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

33 U.S.C. § 1342(l)(1). While "return flows from irrigated agriculture" was not defined by statute, Congress relied on the EPA's definition at the time of the amendment, which was "conveyances carrying surface irrigation return as a result of the controlled application of water by any person to land used primarily for crops." S. Rep. No. 95-370, 35 (1977), *as reprinted in* 1977 U.S.C.C.A.N. 4326, 4360.

In establishing the irrigated agriculture exemption, Congress sought to accomplish three aims. First, Congress intended "to alleviate EPA's burden in having to issue permits for every agricultural point source." *Pac. Coast Fed'n of Fishermen's Ass'ns v. Glaser*, 945 F.3d 1076, 1084 (9th Cir. 2019) (quoting *Brown*, 640 F.3d at 1073). As one member of Congress explained, "[t]he problems of permitting every discrete source or conduit returning water to the streams from irrigated lands is simply too burdensome to place on the resources of [the] EPA." 123 Cong. Rec. 38956 (Dec. 15, 1977) (statement of Rep. Roberts). Second,

the exemption "promote[d] equity of treatment among farmers who depend on rainfall to irrigate their crops and those who depend on surface irrigation which is returned to a stream in discreet [sic] conveyances." *Glaser*, 945 F.3d at 1084 (quoting 123 Cong. Rec. 26702 (Aug. 4, 1977) (statement of Sen. Stafford)); *see Forsgren*, 309 F.3d at 1189 (explaining that the "statutory exemption for agricultural return flows" reflected "the need for parity of regulation between irrigated and non-irrigated agriculture"). As one Congressman explained, the exemption "correct[ed] what has been a discrimination against irrigated agriculture . . . . Farmers in areas of the country which were blessed with adequate rainfall were not subject to permit requirements on their rainwater run-off, which in effect . . . contained the same pollutants." 123 Cong. Rec. 39210 (Dec. 15, 1977) (statement of Sen. Wallop).

Finally, the irrigated agriculture exemption was prompted because of the technological difficulties in determining whether pollutants commingled within an irrigation return flow could be traced to particular upstream sources. As the Senate Committee Report on the 1977 amendments to the CWA explained:

> Testimony in field hearings suggested that effluent limits based on technological methods may not be appropriate for control of return flow pollutants and the committee determined that these sources were practically indistinguishable from any other agricultural runoff, which may or may not involve a similar discrete point of entry into a watercourse. All such sources, regardless of the manner in which the flow was applied

> to the agricultural lands, and regardless of the discrete nature of the entry point, are more appropriately treated under the requirements of section 208(b)(2)(F).

S. Rep. No. 95-370, 35. In other words, Congress determined that return flows from irrigated agriculture were best managed under Section 208 as nonpoint source pollution because it proved difficult, if not impossible, to determine whether a given pollutant entered the waterway through a point or nonpoint source. Pollutants from irrigated agriculture "were practically indistinguishable" from nonpoint sources such as agricultural runoff. *Id.* As one Congressman described in a previously failed attempt to adopt the exemption, it is "virtually impossible to trace pollutants to specific irrigation lands, making these pollutants a nonpoint source in most cases." 118 Cong. Rec. 10765 (Mar. 29, 1972) (statement of Rep. Roncalio); *see Brown*, 640 F.3d at 1072.

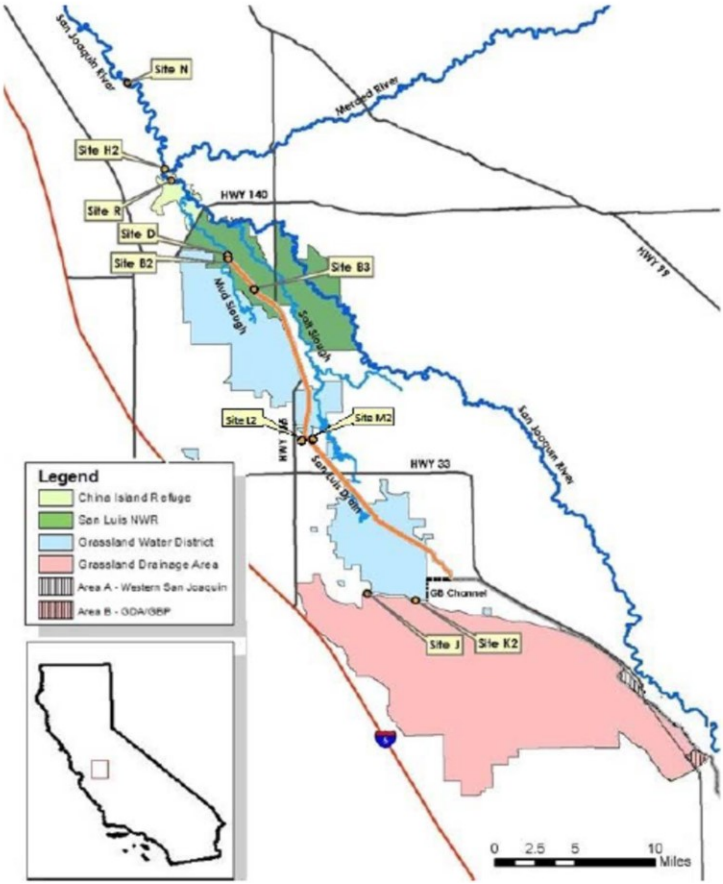
Congress thus chose to regulate return flows from irrigated agriculture under Section 208 as though they were nonpoint sources of pollution. S. Rep. No. 95-370, 9. State-managed treatment plans under Section 208 involve procedures to "(i) identify, if appropriate, agriculturally and silviculturally related nonpoint sources of pollution, including return flows from irrigated agriculture, and their cumulative effects . . . and (ii) set forth procedures and methods . . . to control to the extent feasible such sources." 33 U.S.C. § 1288(b)(2)(F). Consistent with this understanding, the definition of "point source" under the CWA provides that "[t]his term does not include agricultural stormwater discharges and return flows from irrigated

agriculture." *Id.* § 1362(14). With this background in mind, we turn to the facts of this case.

B. Factual Background

The Grassland Bypass Project ("Project") in California's Central Valley is jointly administered by Defendants-Appellees Adam Nickels (Acting Regional Director of the U.S. Bureau of Reclamation), the U.S. Bureau of Reclamation, the San Luis & Delta-Mendota Water Authority ("SLDMWA"), and the Grassland Water District. Implemented in 1996, the Project comprises an extensive underground tile drainage system beneath the Grassland Drainage Area ("Drainage Area"), serving 97,400 acres of land within the Delta-Mendota sub-basin of the San Joaquin Valley.

Figure 1: Map of Grassland Drainage Area (comprising lands served by the Grassland Bypass Project) and Grassland Bypass Project monitoring locations



This Drainage Area is composed of active, fallow, and retired farmland as well as non-irrigable land used for public infrastructure, residences, and businesses. On part of the retired land is the Vega Solar Project, an array of solar panels that occupies 178.3 acres of formerly irrigated land. The Drainage Area is designed to remove the contaminated irrigation water delivered by the Central Valley Project and

used by farmers. *Glaser*, 945 F.3d at 1080. "Irrigation and drainage are inherently linked" because "[a]ny water project that brings fresh water to an agricultural area must take the salty water remaining after the crops have been irrigated away from the service area." *Firebaugh Canal Co. v. United States*, 203 F.3d 568, 571 (9th Cir. 2000).

After the water leaves the Drainage Area, it enters the Grassland Bypass Channel ("Bypass") that conveys it further into the San Luis Drain ("Drain"). The Drain is owned by the Bureau of Reclamation and operated by SLDMWA. The Drain spans approximately 28 miles and was built with expansion joints and weep valves to prevent damage to its concrete lining from the pressure of surrounding groundwater. Nonetheless, the Drain has accrued some damage over time. Due to its perforated design and accumulated damage, surrounding groundwater seeps into the Drain.

Sediments containing concentrations of pollutants like selenium have also accumulated in the Drain, requiring monitoring, occasional physical removal, and certain reductions in flow rates. At its terminus, the Drain discharges its contents into the Mud Slough wetland, a navigable water of the United States, which feeds into the San Joaquin River and lies adjacent to numerous national- and state-protected wildlife areas.

Since 1997, Defendants have operated the Project as a nonpoint source without an NPDES permit under the exemption for "discharges composed entirely of return flows from irrigated agriculture." 33 U.S.C. § 1342(l)(1). In place of NPDES permit requirements, the Project's discharges have been subject to state and local environmental regulations that set water quality standards for pollutants,

require certain monitoring practices, and establish best practices requirements.

C. Procedural History

Plaintiffs initiated this action in 2011 alleging that Defendants' operation of the Project violated the CWA by discharging pollutants unrelated to irrigated agriculture into navigable waters without an NPDES permit.[1] After years of litigation, the district court in 2016 granted in part Defendants' motion for summary judgment. Plaintiffs then brought their first appeal to this court. We resolved that appeal in *Pacific Coast Federation of Fishermen's Associations v. Glaser*, concluding that the district court erred in three respects. 945 F.3d 1076 (9th Cir. 2019).

First, the district court erred by placing the burden on Plaintiffs to demonstrate that the statutory exemption to NPDES permitting for irrigated agriculture return flows did not apply, rather than on Defendants to establish that it did apply. *Id.* at 1083. Second, we concluded that the district court erred in its interpretation of the exemption "for discharges composed entirely of return flows from irrigated agriculture" under 33 U.S.C. § 1342(l)(1), by construing "entirely" to mean "majority." *Id.* at 1085. Third, we disagreed with the district court's decision to strike certain theories of liability on pleading grounds and remanded those stricken claims to be reconsidered under the correct interpretation of § 1342(l)(1). *Id.* at 1086-87. However, we upheld the district court's broad interpretation of the term

[1] Plaintiffs are Pacific Coast Federation of Fishermen's Associations, California Sportfishing Protection Alliance, Friends of the River, San Francisco Crab Boat Owners Association, Inc., Institute for Fisheries Resources, and Felix Smith.

"irrigated agriculture" to encompass "all activities related to crop production." *Id.* at 1083-85.

On remand, and following cross-motions for summary judgment, the district court reconsidered Plaintiffs' claims predicated on four alleged sources of pollutants: "(1) groundwater originating from beneath 'non-irrigated' land adjacent to the Drain which seeps into the Drain through cracks and weep holes; (2) sediment that has settled out over time in the Drain from the waters it carries and which is purportedly discharged into Mud Slough 'when it is scoured and reworked by flows in the Drain'; (3) water transported into tile drains underneath the retired agricultural land occupied by the Vega Solar Project; and (4) flows of polluted water in the Drainage Area that allegedly stem from 'highways, residences and other non-irrigated lands.'"

The district court began by reconsidering "the scope of the agricultural return flows exception provided by § 1342(l)(1)" following our decision in *Glaser*. The district court first concluded that the exemption covered "discharges that 'do not contain additional discharges from activities unrelated to crop production.'" The district court reasoned that "additional discharges" must mean discharges that are "[a]dded, extra, or supplementary to what is already present or available." Consequently, "to qualify for the exception[,] defendants must establish that plaintiffs' alleged four sources of pollutants are not added to the Project from an extra or supplementary *point source*." Next, the district court concluded that an activity is "related to crop production" so long as it "is related to the function and operation of the overall drainage plan."

Putting these pieces together, the district court concluded that, to qualify for the irrigated agriculture exemption,

"defendants must establish that plaintiffs' alleged sources of pollutants . . . are not added from an extra or supplementary point source that is unrelated to the Project's overall drainage function." The district court concluded that Defendants carried their burden of establishing that the irrigated return flow exemption applied because each alleged pollutant was either added from a nonpoint source or was added from a point source that related to the Project's overall drainage function. The district court granted in part Defendant's motion for summary judgment.[2] This appeal followed.

II. DISCUSSION

We review the district court's grant of summary judgment and its interpretations of the CWA de novo. *Karuk Tribe of Cal. v. U.S. Forest Serv.*, 681 F.3d 1006, 1017 (9th Cir. 2012) (en banc) (summary judgment); *Olympic Forest Coal. v. Coast Seafoods Co.*, 884 F.3d 901, 905 (9th Cir. 2018) (CWA). We agree with the district court that Plaintiffs failed to raise a genuine dispute of material fact as to whether the irrigated agriculture return flow exemption applies to the Project. We conclude that the exemption applies because the alleged pollutants are either added to the Project via nonpoint sources or via a point source related to crop production.

A.

Although Defendants have operated the Project without an NPDES permit since 1997, Plaintiffs seek to undo the

[2] The district court denied Defendants' motion for summary judgment challenging Plaintiffs' Article III standing and declined to reach Defendants' argument that the so-called water transfer rule (40 C.F.R. § 122.3(i)) exempted the Project from permitting requirements.

Project's exempted status on the ground that the Project's discharge into the Mud Slough contains pollutants that are not related to irrigated agriculture. To that end, Plaintiffs interpret the language of the exemption in 33 U.S.C. § 1342(l)(1) to require that the exemption "appl[ies] only to *pollutants* that originated 'entirely' from irrigated agriculture." In Plaintiffs' reading, if an irrigation return flow commingles to any degree with pollutants unrelated to irrigated agriculture, then an NPDES permit is required for its discharge. To hold otherwise, according to Plaintiffs, would "effectively repeal[] the term 'entirely,' and preclude[] permit regulation of commingled discharges." We disagree.

Plaintiffs' theory does not follow from the text and is inconsistent with the purpose and structure of the CWA, and as a practical matter would render the irrigated agriculture exemption a dead letter. One of "our longstanding canons of statutory construction" is that "we must normally seek to construe Congress's work 'so that effect is given to all provisions, so that no part will be inoperative or superfluous, void or insignificant.'" *Ysleta del Sur Pueblo v. Texas*, 596 U.S. 685, 698-99 (2022) (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009)).

We begin with the text of the statute. The irrigation return flow exemption applies to "discharges composed entirely of return flows from irrigated agriculture." 33 U.S.C. § 1342(l)(1). This is not the first time we address the meaning of this provision. In *Glaser*, we approached the text in two pieces. We began by noting that the "plain meaning of the statutory text" did not resolve "whether the discharges at issue [were] exempt from the CWA's permitting requirement." *Glaser*, 945 F.3d at 1084. Accordingly, we relied on the legislative history of

§ 1342(l)(1) to broadly interpret the term "irrigated agriculture" as encompassing "all activities related to crop production." *Id.* at 1084-85. Turning next to the word "entirely," we observed that it was not defined by the statute and considered its ordinary meaning to conclude that "'[e]ntirely' is defined as 'wholly, completely, fully.'" *Id.* at 1085 (quoting *Webster's Third New International Dictionary* 758 (2002)).

The text does not dictate, however—and we did not decide in *Glaser*—whether "entirely" requires every pollutant within a return flow to be from irrigated agriculture or every discharge within a return flow to be from irrigated agriculture. In other words, the statute's use of the word "entirely" is ambiguous because the statute does not clarify the category of objects that "entirely" is meant to exclude. Consider the following analogy illustrating this ambiguity: If someone were to say, "My wallet is filled entirely with twenties," we might accept that statement as true even if the wallet also contained, say, a family photo, because the person presumably meant only that the wallet does not contain other denominations of money. Similarly, the text of § 1342(l)(1) can be read as applying to discharges composed entirely of return flows *as opposed to non-agricultural discharges*.

Given the ambiguity in the text, we turn to a highly probative piece of legislative history for guidance, as we did in *Glaser*. *See In re HP Inkjet Printer Litig.*, 716 F.3d 1173, 1180-81 (9th Cir. 2013) ("Where the statutory text is ambiguous . . . we may 'look to other interpretive tools, including the legislative history' in order to determine the statute's best meaning." (quoting *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 567 (2005))). Specifically, we quoted the Senate Committee Report's

explanation that "[t]he word 'entirely' was intended to limit the exception to only those flows which do not contain additional discharges from activities unrelated to crop production."[3] S. Rep. No. 95-370, 35; *see Glaser*, 945 F.3d at 1084 (quoting this language). It is fair to presume that the Report, which was "written by the same legislators that authored the exemption and which accompanied the proposed language in an effort to explain the language's meaning to the other members of the Senate and House," *Pac. Coast Fed'n of Fishermen's Assn's v. Glaser*, No. CIV S-2:11-2980-KJM, 2013 WL 5230266, at *11 (E.D. Cal. Sept. 16, 2013), *rev'd and remanded on other grounds*, 945 F.3d 1076 (9th Cir. 2019), used key statutory terms as they were defined by the statute. *Cf. Garcia v. United States*, 469 U.S. 70, 76 (1984) ("In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill . . . ."). Under the CWA, the term "discharge" necessarily presumes a point source. *See* 33 U.S.C. § 1362(12), (16); *see also Dombeck*, 172 F.3d at 1097 (holding that "[t]he term 'discharge' in § 1341 is limited to discharges from point sources"). Applying the statutory definitions in the context of the exemption's legislative history, we agree with the district court in concluding that the exemption applies to irrigation return flows that do not contain additional point source discharges from activities unrelated to crop production.

Such a reading is consistent with the purpose and structure of the CWA and Congress's enactment of the

[3] Plaintiffs concede that *Glaser* stated that the text of § 1342(l)(1) "meant discharges that 'do not contain additional discharges from activities unrelated to crop production.'"

irrigated agriculture exemption. As discussed above, "[n]onpoint source pollution is not regulated directly by the [CWA]." *Dombeck*, 172 F.3d at 1096. Indeed, the CWA "uses the 'threat and promise' of federal grants to the states to accomplish this task." *Id.* at 1097 (quoting *Shanty Town Assocs. Ltd. P'ship v. EPA*, 843 F.2d 782, 791 (4th Cir. 1988)). Leaving nonpoint source pollution to the States, the CWA's NPDES permitting scheme focuses on pollution from point sources, "presumably because they could be identified and regulated more easily tha[n] nonpoint source polluters." *Id.* at 1096 (quoting *Nat. Res. Def. Council v. EPA*, 915 F.2d at 1316); *see also U.S. Forest Serv.*, 550 F.3d at 780 ("Congress primarily focused its regulation under the [CWA] on point sources, which tended to be more notorious and more easily targeted . . . .").

As we explained above, Congress established the irrigated agriculture exemption to address three primary concerns. Congress sought to lessen the EPA's burden in having to issue permits to an excessive number of point source discharges related to irrigated agriculture. *See* 123 Cong. Rec. 38956 (Dec. 15, 1977) (statement of Rep. Roberts). The exemption was also designed to address the unequal treatment between farmers who depend upon rainfall to irrigate their crops and were not subject to federal permitting requirements, and other farmers who relied on surface irrigation and were subject to NPDES permitting. *See* 123 Cong. Rec. 39210 (Dec. 15, 1977) (statement of Sen. Wallop); *see also Glaser*, 945 F.3d at 1084. Finally, the irrigated agriculture exemption reflected the technical difficulties of regulating return flow pollutants through the permitting scheme because it was practically impossible to determine whether agricultural pollutants were originally from point or nonpoint sources. *See* S. Rep. No. 95-370, 35.

In enacting the exemption, Congress determined that return flows from irrigated agriculture were best managed under Section 208 as nonpoint sources of pollution, through direct regulation by the States. *Id.*

If Plaintiffs' theory were correct that for the exemption to apply, irrigation return flows cannot contain *any* amount of nonpoint source pollution unrelated to irrigated agriculture, then all three of Congress's aims would be thwarted. The EPA would again face the heavy burden of issuing permits for an inordinate amount of irrigation return flows. *See Glaser*, 945 F.3d at 1084. Farmers reliant on surface irrigation for their crops would be disproportionately burdened with NPDES permit requirements relative to farmers blessed with abundant rainfall for their crops. *Id.* And the EPA would be saddled with the "virtually impossible" task of disentangling commingled pollutants, tracing them back to specific irrigated lands, and imposing permit requirements for point source discharges on those farms. 118 Cong. Rec. 10765 (Mar. 29, 1972) (statement of Rep. Roncalio).

Plaintiffs' interpretation of the CWA would also render the irrigation return flow exemption a dead letter. As Plaintiffs' counsel conceded at oral argument, some amount of nonpoint source pollution unrelated to irrigated agriculture will inevitably commingle with irrigation return flows. For example, one nonpoint source pollutant Plaintiffs seek to regulate through the NPDES permit is "windblown dust." Under Plaintiffs' reading of the statute, an irrigation system would have to ensure that *no* windblown dust ever enters the return flow conveyance for the return flow to qualify under the statutory exemption—a scientific impossibility. We cannot adopt a statutory reading which

we know will sap the interpreted provision of all practical significance.

The same would apply for other nonpoint sources of pollution within an agricultural district such as runoff from highways and roads, groundwater seepage containing pollutants, or sediment that encroaches upon return flow conveyances. *See Forsgren*, 309 F.3d at 1184. Setting aside the difficult question of determining when a nonpoint source pollutant is "related to crop production," Plaintiffs have not been able to explain how any irrigated agriculture system would ever qualify for the exemption under their interpretation of § 1342(l)(1).

B.

Plaintiffs contend that their reading of the CWA is mandated by Supreme Court and Ninth Circuit precedents, which hold that an NPDES permit is required whenever nonpoint source pollutants are "ultimately discharged through a point source." Because the record here establishes a point source discharge of pollutants into navigable waters—effluent flows from the Drain into the Mud Slough—that is sufficient to require a permit under the CWA and to foreclose the irrigated agriculture exemption. Plaintiffs primarily rely on two cases, *South Florida Water Management District v. Miccosukee Tribe of Indians*, 541 U.S. 95 (2004) and *Committee to Save Mokelumne River v. East Bay Municipal Utility District*, 13 F.3d 305 (9th Cir. 1993).

In *Miccosukee*, the defendants operated a water pump—a point source—that pumped polluted water from a canal into a navigable water. 541 U.S. at 100-01. The defendants argued that the pump's operation did not require an NPDES permit because the pollutants it discharged did not originate

from the pump itself. *Id.* at 104. The Supreme Court rejected this argument and explained that "a point source need not be the original source of the pollutant; it need only convey the pollutant to 'navigable waters.'" *Id.* at 105. Put differently, "a point source is not exempt from the [NPDES] permit requirement merely because it does not itself add pollutants to the water it pumps." *Id.* at 112 (Scalia, J., concurring in part and dissenting in part).

In *Mokelumne*, the defendants operated a dam that discharged water into the Mokelumne River, a navigable water. 13 F.3d at 306-07. Commingled within this discharged water was surface runoff from an abandoned mining site that was channeled and then collected in the dam reservoir prior to discharge. *Id.* at 307. Similar to the defendants in *Miccosukee*, the defendants argued that the dam's discharges were not subject to NPDES permit requirements because the dam did not itself "add" any pollutants to a navigable water. *Id.* at 308. We disagreed and found the dam's discharge to be a point source discharge of pollutants because "the source of pollution added to the Mokelumne River is 'surface runoff that is collected or channelled by' defendants from the abandoned mine site." *Id.* *Mokelumne* thus held that a point source that channels "surface runoff" is subject to the permit requirement because the CWA "categorically prohibits any discharge of a pollutant from a point source without a permit." *Id.* at 309.

Miccosukee and *Mokelumne* are inapposite because neither case involved the statutory exemption for irrigated agriculture under 33 U.S.C. § 1342(l)(1). In the absence of the exemption, Plaintiffs are correct that a point source that conveys a pollutant—even if it does not generate that pollutant—is subject to the NPDES permitting scheme. *Miccosukee*, 541 U.S. at 105. But Congress carved out an

exemption to the NPDES permit requirement for certain discrete conveyances, including "discharges composed entirely of return flows from irrigated agriculture." 33 U.S.C. § 1342(l)(1). The fact that irrigation return flows are ordinarily point source discharges is precisely why Congress carved out the exemption in the first place. *See Brown*, 640 F.3d at 1073-74. Therefore, the analysis in *Miccosukee* and *Mokelumne* about the kinds of discharges that are subject to NPDES permitting provides no answer to the distinct question here—how we should interpret and apply the statutory exemption for return flows from irrigated agriculture.[4]

In conclusion, we hold that the exemption for "discharges composed entirely of return flows from irrigated agriculture" under 33 U.S.C. § 1342(l)(1) applies so long as the return flow does not contain additional point source discharges from activities unrelated to crop production.

C.

Having established the scope of the irrigation return flow exemption, we now turn to Plaintiffs' four alleged sources of pollution commingled in the Project's return flow:

[4] We reject Plaintiffs' contention that "it is impossible to have two separate point sources in sequence, because by definition, a 'point source' discharges to a water of the United States." In *Maui*, the Supreme Court rejected the view that a point source must be the "immediate" source of a pollutant's addition into navigable waters. 590 U.S. at 172, 181 (holding that "pollution that reaches navigable waters only through groundwater" may still constitute "pollution that is 'from' a point source"). The Court reasoned that "[t]here is nothing unnatural about such a construction" of the CWA, as it "does not say 'directly' from or 'immediately' from." *Id.* at 182. "Indeed, the expansive language of the provision—*any* addition from *any* point source—strongly suggests its scope is not so limited." *Id.*

(1) seepage into the Drain from groundwater beneath non-irrigated land adjacent to the Drain; (2) groundwater seepage and runoff from "highways, residences and other non-irrigated lands" in the Drainage Area; (3) sediment that the Drain carries and discharges into the Mud Slough; and (4) runoff and groundwater from retired agricultural land occupied by the Vega Solar Project in the Drainage Area.

Plaintiffs contend that each of these sources of pollutants invalidates the Project's exempt status. We disagree. To reiterate, the irrigated agriculture exemption applies to discharges that do not contain additional point source discharges from activities unrelated to crop production. This means that for the exemption to apply here, Defendants bear the burden of demonstrating that the Project's discharged pollutants are either from a nonpoint source or from an additional point source that is related to crop production. *See Glaser*, 945 F.3d at 1083-85. Here, the district court correctly concluded that no genuine dispute of material fact exists as to whether any of these alleged pollutants originated from an additional point source that was unrelated to crop production.[5]

First, groundwater seepage into the Drain from adjacent non-irrigated and unfarmed lands is not a point source discharge. It is well-established that groundwater seepage is a type of nonpoint source pollution. Unlike a point source that is a "confined and discrete conveyance" like a "pipe, ditch, [or] channel," 33 U.S.C. § 1362(14), groundwater seepage is diffuse. *See also Maui*, 590 U.S. at 169

[5] Plaintiffs' counsel conceded at oral argument: "In this case, we identified four categories of pollutants that were *nonpoint source in nature* but were contributing to the pollutants in the waste stream discharged by the Drain."

(indicating without explanation that groundwater is a nonpoint source). Because groundwater seepage is not a point source discharge, Plaintiffs' evidence that "contaminated groundwater . . . seeps into the Drain" fails to create a genuine dispute of material fact.

Second, groundwater seepage and runoff from "highways, residences, and other non-irrigated lands" in the Drainage Area do not constitute point source discharges. Runoff is another quintessential example of nonpoint source pollution. We have explained that "the term 'runoff' describes pollution flowing from nonpoint sources." *Dombeck*, 172 F.3d at 1098 ("'Congress had classified nonpoint source pollution as runoff caused primarily by rainfall around activities that employ or create pollutants.'" (citation omitted)). Accordingly, the runoff and seepage here do not constitute additional point source discharges that would potentially foreclose application of the statutory exemption.

Third, accumulated and remobilized sediment in the Drain is not an additional point source discharge from activities unrelated to crop production. According to Plaintiffs, sediment in the Drain comes from either "dust, wind-blown plant debris, algae, and cattails" or from the return flow from the Bypass discharged into the Drain. Dust and other wind-blown particles do not originate from a discrete conveyance and thus do not constitute point source discharges. The discharge from the Bypass into the Drain *is* a discrete point source discharge, but the Bypass's conveyance of the Project's irrigation return flow to the Drain is clearly part of the Project's overall function and operation and is related to crop production. Therefore, pollution from sediment accumulated and remobilized in the Drain does not raise a genuine dispute of material fact

because it originates from nonpoint sources or from a point source related to crop production.

Lastly, runoff and groundwater from the land occupied by the Vega Solar Project do not constitute point source discharges. The alleged runoff is based on rainwater falling onto the site and water from solar panel washing. The alleged groundwater seepage involves natural upwelling of "older and deeper groundwater" into the tile drain system underneath the Vega site.[6] As discussed, both runoff and groundwater seepage are nonpoint sources of pollution. In addition, runoff from the Vega site does not create a genuine dispute of material fact because Defendants' uncontroverted evidence establishes that the runoff could not have penetrated eight feet into the ground to reach the Project's subsurface tile drains. Defendants' expert testified that between the Vega solar panel washings and rainfall, runoff flows penetrated less than an inch into the soil. Defendants also presented evidence of model simulations demonstrating that during the relevant period—that is, after the Vega site was converted from its previous agricultural use to its solar use—rainwater and surface runoff would not have percolated deep enough. Plaintiffs' expert failed to rebut this evidence. In short, Plaintiffs failed to dispute Defendants' evidence that there was no point source discharge of a pollutant from the Vega Solar Project.

We agree with the district court that no genuine dispute of material fact exists as to whether the four sources of pollutants "constitute nonpoint sources or whether they stem from 'activities related to crop production.'"

[6] The tile drain system underneath the Vega site long predates the Vega Solar Project and continues to serve adjacent farmland.

III. CONCLUSION

The CWA exempts "discharges composed entirely of return flows from irrigated agriculture" from the NPDES permitting scheme. 33 U.S.C. § 1342(l)(1). We hold that the irrigated agriculture exemption applies when return flows do not contain additional point source discharges from activities unrelated to crop production. In the absence of a genuine dispute of material fact, we affirm the district court's conclusion that Defendants have met their burden of establishing that the irrigation return flow exemption under 33 U.S.C. § 1342(l)(1) of the CWA applies to the Project.

AFFIRMED.