

# Environmental groups protecting local salt ponds in the San Francisco Bay finally win their Federal case when the Trump EPA and a Cargill Inc. affiliate voluntarily dismiss appeal of Federal District Court's Order

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In a federal case to protect the historic Redwood City salt ponds brought by San Francisco Baykeeper, Save the Bay, Green Foothills, and Citizens Committee to Complete the Refuge, a complete victory has been delivered. The U.S. Environmental Protection Agency and Redwood City Plant Site, LLC (an affiliate of Cargill, Inc.) have both dismissed the appeal of federal district court Judge William Alsup's October 5, 2020 ruling that the historic salt ponds in Redwood City, owned by the Cargill affiliate, are "waters of the United States," protected by the Clean Water Act.

The court ruled that the EPA "misapplied the law" in deciding that San Francisco Bay salt ponds in Redwood City aren't protected by the Clean Water Act. Cargill had intervened in the action on the side of the EPA. "After decades of denial, Cargill is finally acknowledging that these salt ponds are legally wetlands and waters of the United States. Now it's urgent to protect them for people and wildlife forever, by adding them to the San Francisco Bay National Wildlife Refuge." –David Lewis, Executive Director, Save The Bay.

The EPA and Cargill had appealed the ruling to the Ninth Circuit Court of Appeals. However, in a sweeping and final victory for science and the environment, the EPA filed a motion to voluntarily dismiss its appeal, and today Cargill also voluntarily moved to dismiss its appeal saving the historic salt ponds from potential commercial development. "The salt ponds are necessary to the ecosystem and an integral part of the Bay,

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## Practice Areas

Environmental Law

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clearly due environmental protections.”—Nazy Fahimi, Cotchett, Pitre & McCarthy.

Cargill’s voluntary dismissal of the appeal will now allow the EPA to issue a decision in line with the federal court’s ruling—finding that the salt ponds are “waters of the United States” and protected under the Clean Water Act, based upon scientific evidence, free of any further political influence by the Trump Administration. “We are honored to have represented such phenomenal environmental organizations which fight to protect and preserve the local ecosystems and communities that depend upon the Bay waters.”—Joe Cotchett, Founder of Cotchett, Pitre & McCarthy.

The case was brought by San Francisco Baykeeper, Save the Bay, Green Foothills, and Citizens Committee to Complete the Refuge, who sued over the EPA’s “jurisdictional determination” that the site was not subject to the protections of the Clean Water Act. The environmental groups were represented by Eric Buescher, Nazy Fahimi, and Joe Cotchett of Cotchett, Pitre & McCarthy, and Allison LaPlante and James Saul of the Earthrise Law Center at Lewis and Clark Law School.

The Court held Plaintiffs proved the EPA “misapplied the law” in making its final decision. The court threw out EPA’s 2019 decision that the ponds should not receive federal protection and ordered EPA to make a new determination based on the law. “We are pleased that Cargill has seen the light and dropped their appeal. We urge them to sell the Redwood City salt ponds for conservation. In the face of the climate crisis, every remaining acre of restorable wetlands needs to be protected,” stated Megan Fluke, Executive Director of Green Foothills.

The salt ponds have been owned and operated by Cargill, Inc. and its affiliates since 1978. They constitute one of the last remaining undeveloped areas along the San Francisco Bay’s shoreline. “Cargill’s decision to drop the appeal today is an unexpected victory for the Bay and for common sense. San Francisco Baykeeper will continue to watchdog Cargill, as well as Biden’s EPA, to make sure the ponds are afforded Clean Water Act protections. And we’ll keep advocating for the ponds to be restored to functioning tidal wetlands, creating habitat for hundreds of species of plants and animals, and providing a natural buffer that will help protect Bay Area shorelines and communities from climate-driven flooding,” stated Sejal Choksi-Chugh, Executive Director, San Francisco Baykeeper.

For over a decade, Cargill and its developer partner DMB Associates have sought to build on the Salt Ponds. In 2012, the companies withdrew a proposal to build over 12,000 homes and thousands of square feet of commercial buildings on the ponds due to intense opposition from the local community, led by Save The Bay and many partner organizations.