

DELTA PLAN AND TWIN TUNNELS DEALT A BLOW IN CALIFORNIA SUPERIOR COURT

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This summer, a California superior court judge invalidated the Sacramento-San Joaquin Delta Plan, saying that the plan must be set aside until revised to include measurable or otherwise quantifiable targets that would insure reduced reliance on the watershed and promote restoration of the environment and water supply reliability, as required by the Delta Reform Act. While the plan is invalidated, and until the plan is revised, requirements to protect portions of the delta for future habitat restoration and prohibitions on new development in floodplains and floodways are unenforceable. The court ruled that the Delta Stewardship Council must include quantitative numeric measures showing reduced reliance on the Delta for future water needs by exporters.

Two specific deficiencies were identified: (1) the lack of legally enforceable, quantifiable targets for achieving reduced reliance on Delta water, reduced harm from invasive species, restoring more natural flows and increased water supply reliability, and (2) inadequate promotion of options to improve the way water projects move water across the Delta.

The Delta Plan was adopted in May 2013. The plan is required by the 2009 Delta Reform Act, which created regulations to further the state's goals for the Delta to improve statewide water supply reliability, and protect and restore a vibrant and healthy Delta ecosystem, in a manner that preserves, protects and enhances the unique agricultural, cultural, and recreational characteristics of the Delta. A key component of the Delta Plan is the California WaterFix Project.

Seven separate cases challenged the plan and the regulations, including challenges to the environmental study conducted by the Delta Stewardship Council to support the plan. The court may issue writs to the Delta Stewardship Council to revise the plan and/or the regulations. Revisions to the regulations or the plan could result in delays in the \$15.5 billion project to build two tunnels through the delta to link the state's water system, known as the California WaterFix Project. The Delta Plan relied heavily on the twin tunnels in the California WaterFix Project to achieve its co-equal goals of providing a more reliable water supply and protecting, restoring, and enhancing the Delta ecosystem. Now that the plan is invalidated and the triggered revisions will likely require years of environmental review, the WaterFix Project's role in achieving the reliable water supply goal may be undermined. At a minimum, there will be significant delays in implementation of the plan and, consequently, the WaterFix Project. The court's decision may force reevaluation of reliance on Delta waters by the Metropolitan Water District, and other water districts throughout California.

The California Department of Water Resources and the U.S. Bureau of Reclamation have filed a petition to add three new points of diversion and/or points of rediversion of water to specified water right permits for the State Water Project and the Central Valley Project associated with the California WaterFix Project. They have also applied for a water quality certification pursuant to Clean Water Act section 401 for California WaterFix. The California WaterFix is the subject of an evidentiary hearing before the California State Water Resources Control Board. Part 1A of the California WaterFix water right change petition hearing began in July 2016. The hearing began with three days of policy statements, then turned to the evidentiary portion the change petition. Part 1A of the hearing will continue through August 2016, with possible additional days in September and October. Part 1B of the hearing will begin on October 20, 2016. Part 1A will consist of the Department of Water Resources' and the U.S. Department of the Interior's case-in-chief, including direct testimony and associated cross-examination. Part 1B will consist of other parties' case-in-chief, associated cross-examination, and then rebuttal by the Department of Water Resources and the U.S. Department of Interior.

Environmental groups fear that the WaterFix Project will deplete water in the Delta, below the level needed to maintain a healthy population of the Sacramento River winter-run Chinook salmon, Central Valley steelhead, Delta and longfin smelt, green sturgeon, and other fish species, as well as threaten the salmon and steelhead populations in the Klamath and Trinity rivers.

An appeal of the court's ruling is likely.