



News Release

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Supreme Court Lets Stand Decision Upholding Council's Authority for Sustainable Management of the Delta

SACRAMENTO – The California Supreme Court Wednesday (August 12) [denied the petition](#) for review and request for de-publication made by the State Water Contractors in response to an April 10, 2020, Third District Court of Appeal decision. As a result, the appellate decision, which upheld the central role of the Delta Stewardship Council in Sacramento-San Joaquin Delta water management and land use planning, remains intact and is governing law. The Appellate Court decision had sided with the Council on all remaining issues from a suite of 2013 lawsuits that challenged the Council's Delta Plan, its long-term sustainable management plan for the Delta. By declining to hear the petition for review, the Supreme Court put an end to this fight over the scope of the Council's authority and the validity of its Delta Plan.

"We appreciate the validation of the Council's authority to achieve the state's coequal goals for the Delta, measure progress appropriately, reduce reliance on the Delta for water supply, and improve habitat and water supply reliability," said Council Chair Susan Tatayon.

"After a seven-year court battle, I am pleased that the Delta Plan is firmly in effect, and the Supreme Court and the Appellate Court acknowledged the broad discretion the Delta Reform Act confers to the Council," said Council Executive Officer Jessica Pearson.

Immediately after the Plan was adopted, 26 parties – local agencies, organizations, and individuals – filed seven lawsuits in three counties – later consolidated – arguing that some of the policies and regulations in the Delta Plan were in conflict with the 2009 Delta Reform Act.

In 2016, the trial court sided with the Council on almost all points, but invalidated the Plan because, the Court said, it lacked legally enforceable, quantifiable targets for certain objectives and inadequately "promoted" options to improve the way water projects move water across the Delta.

The Council and other parties appealed, which placed the decision to invalidate the Plan on hold pending the April 10, 2020 appellate court ruling, and in the intervening years the Council proceeded both to implement and amend the Plan. The Appellate Court ruling found specifically that the Council's regulatory policies align with the Council's authority under the Delta Reform Act, and that the Council has discretion to determine whether performance measures should be regulatory. It also found that the Council's alleged failure to promote conveyance options and to have sufficiently specific performance measures were both moot because of subsequent amendments to the Delta Plan.

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

– CA Water Code §85054

The trial court had earlier upheld all other portions of the Delta Plan, and the Appellate Court affirmed those decisions. The Appellate Court held that the Council's appeal procedures are valid and that the Delta Plan was based on the best available science. It rejected an argument that the Council could not enforce the state's policy of reduced reliance on the Delta.

Developed to achieve the state's coequal goals of a reliable statewide water supply and a protected, restored Delta ecosystem in a manner that preserves the values of the Delta as a place, the Delta Plan now includes 14 regulatory policies and 95 recommendations. Collectively, these policies and recommendations address current and predicted challenges related to flood management, land use, water quality, water supply reliability, and the Delta's ecosystems.

Created in 2009, the Council has a central role in guiding and managing the long-term sustainability of the Delta that goes beyond ensuring regulatory compliance with the Delta Plan regulations. This includes directing actions across state, federal, and local agencies that support the coequal goals and promote a shared body of transparent science upon which to base decisions.

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About the Council

Created by the legislature in 2009, the Delta Stewardship Council is composed of members who represent different parts of the state and offer diverse expertise in fields such as agriculture, science, the environment, and public service. Of the seven, four are appointed by the Governor, one each by the Senate and Assembly, and the seventh is the Chair of the Delta Protection Commission. For more information visit <http://deltacouncil.ca.gov/>.