



News Release

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Appellate Court Upholds Delta Plan, Affirms Council's Authority for Sustainable Management of the Delta

The Third District Court of Appeal Friday (April 10) upheld the central role of the Delta Stewardship Council in Sacramento-San Joaquin Delta planning and sided with the Council on all remaining issues from a suite of 2013 lawsuits that challenged its long-term sustainable management plan for the Delta.

“We appreciate that the Court validated the Council’s authority to help achieve the State’s coequal goals for the Delta, measure progress appropriately, reduce reliance on the Delta for water supply, and improve conveyance, habitat, and operational infrastructure,” said Council Chair Susan Tatayon.

“On every single issue addressed regarding the legality of the Delta Plan, the Court sided with the Council. The Delta Plan is in effect, and the Court acknowledged the broad discretion the Delta Reform Act confers to the Council,” said 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 appealed, which placed the decision to invalidate the Plan on hold pending Friday’s ruling, and in the intervening years the Council has proceeded both to implement and amend the Plan. The Appellate court ruling finds 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

“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

promote conveyance options and to have sufficiently specific performance measures were both moot because of subsequent amendments to the Delta Plan.

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/>.