

**M e m o r a n d u m**

To : Central Valley Flood Protection Board  
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**BY E-MAIL**

Date: January 14, 2014  
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From : **Leslie M. Gallagher**  
Chief Counsel

Subject : Delta Plan Litigation Update for January 24, 2014 Board Meeting

The CVFPB has expressed an interest in periodic legal updates on issues and cases in and around the area within its jurisdiction. In this inaugural legal update, Board Counsel and Department of Justice personnel will give the board a status update on the ongoing Delta Plan litigation.

Background

In an effort to address several ongoing water issues in California, new legislation went into effect in 2009, including the Sacramento San Joaquin Delta Reform Act of 2009 (Water Code Sections 85000 – 85350). This legislation was the culmination of a multi-year effort by the Governor’s Blue Ribbon Task Force to recommend a comprehensive strategic plan for the environmental and water supply challenges in the Delta. Water Code § 85200 established the Delta Stewardship Council and gave it broad powers to draft a plan for the Delta based on the co-equal goals of improving water supply reliability and improving the Delta ecosystem. Water Code §85022 states that once the Plan is approved all “covered actions,” including land use planning and development within the Delta, must conform to the Delta Plan policies.

The Plan

The Delta Plan was adopted by the Council in May 2013, after eight drafts, 100 public meetings and thousands of comments. The Plan includes 87 provisions (73 recommendations and 14 policies). The Plan’s Executive Summary states that there are six large things that the Plan seeks to do:

- 1) Move water more efficiently
- 2) Capture and store surplus water better
- 3) Provide adequate seaward flows
- 4) Bring back wetlands
- 5) Restrict urban development and support farming and recreation at the Delta core
- 6) Flood proof the Delta by improving levees and providing overflow zones

November 15, 2013

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## **ATTORNEY WORK PRODUCT**

### The Lawsuits

Within days of its adoption, seven separate lawsuits were filed in San Francisco, Sacramento and San Joaquin Counties, seeking to invalidate the plan on a number of legal theories. The lawsuits were recently consolidated in Sacramento County and assigned to Judge Michael Kenny. Deputy Attorney General Deborah Smith has been assigned as part of the Delta litigation team to defend the Delta Stewardship Council.

Ms. Smith will provide the Board with an overview of the causes of action in the lawsuits, the disposition of the cases to date, and the current briefing schedule and/or future hearing dates.

If there are individual Board Member questions, please feel free to contact me at any time.

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