

Delta diversion plan takes a hit when judge sides with farmers

Matt Weiser, Sacramento Bee, 4-12-11

State workers can't set foot on Delta farms to start designing a controversial canal or tunnel to divert water south, a Stockton judge has ruled.

It's the latest obstacle to the state's grand plan to build a canal or tunnel around the Sacramento-San Joaquin Delta. It's also a major victory for opponents, who view the project as a modern-day water grab, said Thomas Keeling, the Stockton attorney representing dozens of property owners in the case.

"Many of them are so opposed to the (diversion) system, which they see as Owens Valley writ large," said Keeling, recalling the epic diversion by Los Angeles of the Owens River and Mono Lake in the Eastern Sierra. "We think the court got this one right."

San Joaquin Superior Court Judge John P. Farrell ruled Friday that the access sought by the state Department of Water Resources amounted to a "taking" of land without adequate compensation or protections, Keeling said.

The state intends to enter private land and drill for soil samples, as deep as 200 feet, to find the best route for a canal or tunnel to divert a portion of the Sacramento River's flow out of the estuary and directly into state and federal Delta water diversion pumps near Tracy.

The proposal is the cornerstone of the Bay Delta Conservation Plan, a project largely funded by Delta water users to obtain approval for a new canal or tunnel, as well as habitat restoration efforts.

The court decision is likely to cause substantial delays in planning the canal project.

Ted Thomas, a DWR spokesman, said the state may appeal the ruling. In the meantime, though, it will work with property owners for access through eminent domain.

"We will negotiate with the landowners in an attempt to purchase the necessary easements for the drilling," he said.

Keeling said the state previously offered property owners no compensation for drilling access, only a process to seek compensation for damages. The state did not seek access through eminent domain, which provides a host of legal assurances to the property owner, but rather through a weaker set of land-entry statutes that amount to a kind of "authorized trespass," Keeling said.

The judge found this process was not designed for the kind of extensive access requested by DWR.

The proposed work called for as much as three weeks of activity involving drilling rigs, heavy trucks, forklifts and other equipment; construction of a drilling pad 100 feet square; the taking of soil samples; and resealing bore holes with a special sealant mixture.

DWR went to court after 150 property owners in five counties, including Sacramento County, objected to the work. The agency later reduced its request to about 30 properties.

Those landowners, Keeling said, "were all offended by the arrogance and high-handedness of DWR."

In a separate February 2011 ruling concerning property access for environmental and archaeological surveys, the judge reduced state access to Delta properties but didn't go as far as property owners wanted.

The state wanted 60 days of access over two years for a broad range of environmental studies. The judge limited those activities and cut the access to 25 to 30 days over one year. The property owners are appealing that decision.

The surveys were ordered during the administration of Gov. Arnold Schwarzenegger as part of DWR's authority under the State Water Project. This is the state entity that operates Oroville Reservoir, the California Aqueduct and associated plumbing for contractors who buy water from the state.

Those contractors, along with a separate group of federal water buyers, are funding the Bay Delta Conservation Plan. They see a new canal or tunnel – which could cost \$12 billion or more – as vital to continue diverting Delta water without killing endangered fish, including salmon and Delta smelt.

The plan has been in a kind of limbo during the opening months of Gov. Jerry Brown's administration. Officials have been negotiating behind the scenes on a new direction.

Before, the effort was led by a relatively limited steering committee of mostly water users, with a token few members from environmental groups and one person representing local Delta interests.

Within a week, the state Natural Resources Agency, under its new director, John Laird, is expected to announce a new process that will involve a larger, more collaborative leadership group, said Richard Stapler, a spokesman for the agency.

To kick off the process, Laird and Deputy Secretary of the Interior David Hayes plan to headline a public forum on the conservation plan, tentatively set for April 25.