

# The Delta Plan

Ensuring a reliable water supply for  
California, a healthy Delta ecosystem,  
and a place of enduring value



2013



DELTA STEWARDSHIP COUNCIL

# **A. Promote Options for New and Improved Infrastructure Related to Water Conveyance Proposed Revisions To Delta Plan:**

1. DWR and the U.S. Department of the Interior, Bureau of Reclamation (Reclamation) should pursue a dual-conveyance solution for the Delta **by constructing new facilities for isolated, below-ground conveyance of State Water Project (SWP) and Central Valley Project (CVP) water supplies from the Sacramento River to the South Delta via multiple intakes.**

The isolated conveyance should complement existing through-Delta conveyance to improve operational flexibility and reduce conflicts with ecosystem needs.

# **Appendix A**

## **The Delta Stewardship Council's Role Regarding Conveyance**

**FROM THE DELTA PLAN 2013:**

**“At this time, the agencies pursuing BDCP are best positioned to develop possible options, evaluate them, and decide on the best one.”**

**“For this reason, the Delta Plan does not include any regulatory policies regarding conveyance.”**

**“If the Council then decides to amend the Delta Plan to include regulatory policies regarding conveyance, the Council would do so only after extensive analysis of the conveyance options and associated detailed environmental review.”**

**THIS IS WHY WE SUED THEM**

By Fax COPY

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Email: Michael@brodskylaw.net  
Attorney for Petitioner/Plaintiff  
SAVE THE CALIFORNIA DELTA ALLIANCE

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

OCT 01 2013

CLERK OF THE COURT  
BY: ANNA L. TORRES  
Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN FRANCISCO**

SAVE THE CALIFORNIA DELTA  
ALLIANCE

Petitioner and Plaintiff,

v.

DELTA STEWARDSHIP COUNCIL, a  
state public agency, and  
Does 1 through 100, inclusive,

Respondents and Defendants.

**CEQA CASE**

Case No.: CPF-13-513049

**FIRST AMENDED VERIFIED  
PETITION FOR A WRIT OF  
MANDATE AND COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF (Pub. Res. Code §§ 21000 et  
seq.; Water Code §§ 85000 et seq.; Code  
Civ. Proc. §§ 1060, 1085, 1094.5; Gov.  
Code §§ 11342.2, 11350)**

The Honorable Judge Teri L. Jackson  
Dept. 503

From Delta Alliance's Complaint:

“The net result of the Council's abdication is to convert the Delta Plan into little more than a rubber stamp for the massive and controversial water diversion project known inaptly as the Bay Delta Conservation Plan (“BDCP”) while leaving the Bay-Delta ecosystem without protection.”

### **“Prayer For Relief**

WHEREFORE, Petitioner prays for relief as follows:

For alternative and preemptory writs of mandate, commanding the Council to: a) vacate and set aside approval of the Delta Plan and Final Regulations [...]

For a declaration that the Council's actions approving the Delta Plan and Final Regulations are inconsistent with the Delta Reform Act”

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**FILED/ENDORSED**  
ENT'D  
NOV 28 2016  
A. Lee  
By S. Lee, Deputy Clerk

5 Attorney for Petitioner Save the California Delta Alliance

6  
7 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **IN AND FOR THE COUNTY OF SACRAMENTO**

9 **Coordination Proceeding**  
**Special Title (Rule 3.550),**  
10  
11 **DELTA STEWARDSHIP COUNCIL**  
**CASES**  
12  
13 **SAVE THE CALIFORNIA DELTA**  
**ALLIANCE**

14 Petitioner and Plaintiff,

15 v.

16 **DELTA STEWARDSHIP COUNCIL,**  
**a state public agency, and Does 1**  
**through 100, inclusive,**

17 Respondents and Defendants.

**JUDICIAL COUNCIL COORDINATION**  
**PROCEEDING NO. 4758**

18 ~~PROPOSED~~ **JUDGMENT IN**  
**SAVE THE CALIFORNIA DELTA**  
**ALLIANCE, Petitioner and Plaintiff, v. DELTA**  
**STEWARDSHIP COUNCIL, a state public**  
**agency, and Does 1 through 100, inclusive,**  
**Respondents and Defendants, SAN FRANCISCO**  
**SUPERIOR COURT**  
**CASE NO. CPF-13-513049**

19 **STATE WATER CONTRACTORS,**  
**ALAMEDA COUNTY FLOOD CONTROL**  
**AND WATER CONSERVATION DISTRICT,**  
**ZONE 7; SAN BERNARDINO VALLEY**  
**MUNICIPAL WATER DISTRICT; SANTA**  
**CLARA VALLEY WATER DISTRICT; THE**  
**METROPLITAN WATER DISTRICT OF**  
**SOUTHERN CALIFORNIA; MOJAVE**  
**WATER AGENCY; ANTELOPE VALLEY-**  
**EAST KERN WATER AGENCY; SAN LUIS &**  
**DELTA-MENDOTA WATER AUTHORITY**  
**and WESTLANDS WATER DISTRICT,**

20  
21  
22  
23 **Petitioner-Interveners.**

# The Court's Judgment

1           The First Amended Verified Petition for a Writ of Mandate and Complaint for Injunctive  
2 and Declaratory Relief filed on October 1, 2013, by Save the California Delta Alliance, Petitioner  
3 and Plaintiff, is hereby GRANTED in part and DENIED in part as follows.

4           Pursuant to this Court's May 18, 2016, Ruling on Submitted Matter: Petitions for Writ of  
5 Mandate ("Ruling"), and this Court's July 11, 2016, Order on Motions for Clarification, affirming  
6 and modifying the Tentative Ruling, **IT IS HEREBY ORDERED ADJUDGED AND DECREED**

7 **THAT:**

8           1.       Judgment is entered in favor of Save the California Delta Alliance, Petitioner and  
9 Plaintiff ("Petitioner"), and against Delta Stewardship Council, a state public agency, Respondent  
10 and Defendant ("Respondent" or "Council") on parts of the Second, Third, and Fourth Causes of  
11 Action stated in Petitioner's First Amended Verified Petition for a Writ of Mandate and Complaint  
12 for Injunctive and Declaratory Relief ("Petition") as set forth in the Ruling and Order on Motions  
13 for Clarification.

14           2.       In light of the Court's Ruling on the Second, Third, and Fourth Causes of Action, the  
15 Court finds the Petition's First Cause of Action is moot. As stipulated by the Parties, the Court has  
16 not resolved any Parties' claims pursuant to Public Resources code section 21000 et seq. ("CEQA")  
17 stated in the pleadings of this action. As stipulated by the Parties, all existing CEQA claims are  
18 preserved, regardless of the outcome of any appeals of this judgment. As stipulated by the Parties,  
19 any defenses arising out of this judgment—including but not limited to statute of limitations, laches,  
20 exhaustion of administrative remedies, and estoppel—shall not apply to Petitioners' re-pleading or  
21 resurrection of their existing CEQA claims at a later date. The following are not a part of the  
22 Parties' stipulation, but the Parties do agree they shall be, and are, part of the judgment: To the  
23 extent the Council relies on the 2013 Program EIR in the future, the Council shall—as part of that  
24 reliance—adopt new CEQA findings and recertify the 2013 Program EIR along with taking action  
25 on any other CEQA documentation it deems appropriate. The Council shall also file a CEQA  
26 Notice of Determination that reflects the full extent of this reliance.

27           3.       A Peremptory Writ of Mandate ("Writ") shall issue under seal of this Court to  
28 Respondent ordering Respondent to:

- 1 i. Set aside its approvals of the Delta Plan and any applicable Delta Plan
- 2 Regulations, until revisions listed in subparagraphs ii-v below are properly
- 3 completed.
- 4 ii. Revise the Delta Plan and any applicable regulations to:
- 5 iii. Include quantified or otherwise measurable targets associated with
- 6 achieving reduced Delta reliance, reduced environmental harm from
- 7 invasive species, restoring more natural flows, and increased water
- 8 supply reliability, in accordance with the Delta Reform Act;
- 9 iv. Provide a flow policy that includes quantified or otherwise
- 10 measurable targets; and
- 11 v. Promote options for water conveyance and storage systems.

12 4. Nothing in the Writ shall limit or control in any way the discretion legally vested in  
 13 Respondent. The Writ shall also command Respondent to make and file a return within 120 days  
 14 after issuance of the Writ, setting forth what it has done to comply with the Writ.

15 5 The Court reserves jurisdiction over Petitioner's prayer for costs and attorneys' fees,  
 16 which shall be considered for determination based on Petitioners' timely filing of a motion in  
 17 accordance with the schedule set forth in the California Rules of Court.



18 BY: [Signature]  
 19 Hon. Michael P. Kenny  
 20 Judge of the Superior Court

21 Dated: 11/28/16

22 Approved as to form:

23 By: \_\_\_\_\_ Date: \_\_\_\_\_  
 24 Jeremy Brown  
 25 Deputy Attorney General  
 26 Office of the California Attorney General  
 27 Counsel for Respondent Delta Stewardship Council

28 By: \_\_\_\_\_ Date: \_\_\_\_\_  
 Daniel J. O'Hanlon  
 For Petitioner-Intervener San Luis & Delta-Mendota Water Authority

By: [Signature] Date: 11/4/16  
 Andrea A. Matarazzo  
 For Petitioner-Intervener Westlands Water District



## FROM THE COURT'S JUDGMENT NOV. 2016

“The First Amended Verified Petition for a Writ of Mandate and Complaint for Injunctive and Declaratory Relief filed on October 1, 2013, by Save the California Delta Alliance, Petitioner and Plaintiff, is hereby GRANTED”

“Judgement is entered in favor of Save the California Delta Alliance, Petitioner and Plaintiff (“Petitioner”), and against Delta Stewardship Council, a state public agency.”

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7 Attorneys for Petitioners/Plaintiffs/Petitioner-  
Interveners  
8 STATE WATER CONTRACTORS; ALAMEDA  
COUNTY FLOOD CONTROL AND WATER  
9 CONSERVATION DISTRICT, ZONE 7; and SAN  
BERNARDINO VALLEY MUNICIPAL WATER  
DISTRICT  
10

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF SACRAMENTO  
13

14 Coordination Proceeding Special Title  
(Rule 3.550),  
15

16 DELTA STEWARDSHIP COUNCIL  
CASES.  
17

JUDICIAL COUNCIL COORDINATION  
PROCEEDING NO. 4758

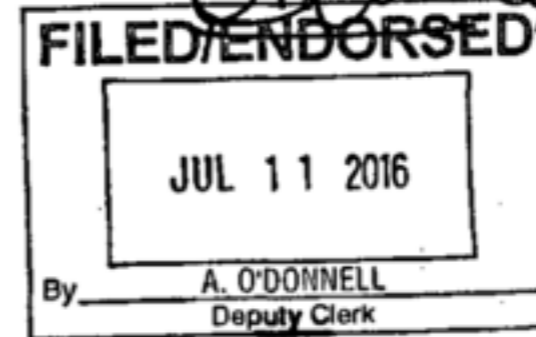
~~PROPOSED~~ ORDER GRANTING IN  
PART AND DENYING IN PART  
MOTIONS FOR CLARIFICATION OF  
COURT'S MAY 18, 2016 RULING

ASSIGNED FOR ALL PURPOSES TO HON.  
MICHAEL P. KENNY, DEPT. 31

Date: June 24, 2016  
Time: 9:00 a.m.  
Dept: 31

Action Filed: May 24, 2013  
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EXEMPT FROM FILING FEES  
PURSUANT TO GOVERNMENT  
CODE SECTION 6103



“To be clear, the Delta Plan is invalid and must be set aside until proper revisions are completed”

# Peremptory Writ of Mandate

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8 Attorney for Petitioner Save the California Delta Alliance

9 **THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **IN AND FOR THE COUNTY OF SACRAMENTO**

11 **Coordination Proceeding**  
12 **Special Title (Rule 3.550),**

13 **DELTA STEWARDSHIP COUNCIL**  
14 **CASES**

15 **SAVE THE CALIFORNIA DELTA**  
16 **ALLIANCE**

17 Petitioner and Plaintiff,

18 v.

19 **DELTA STEWARDSHIP COUNCIL,**  
20 **a state public agency, and Does 1**  
21 **through 100, inclusive,**

22 Respondents and Defendants.

**JUDICIAL COUNCIL COORDINATION**  
**PROCEEDING NO. 4758**

~~PROPOSED~~ **PEREMPTORY WRIT OF**  
**MANDATE IN**  
**SAVE THE CALIFORNIA DELTA**  
**ALLIANCE, Petitioner and Plaintiff, v. DELTA**  
**STEWARDSHIP COUNCIL, a state public**  
**agency, and Does 1 through 100, inclusive, SAN**  
**FRANCISCO SUPERIOR COURT**  
**CASE NO. CPF-13-513049**

**STATE WATER CONTRACTORS,**  
**ALAMEDA COUNTY FLOOD CONTROL**  
**AND WATER CONSERVATION DISTRICT,**  
**ZONE 7; SAN BERNARDINO VALLEY**  
**MUNICIPAL WATER DISTRICT; SANTA**  
**CLARA VALLEY WATER DISTRICT; THE**  
**METROPLITAN WATER DISTRICT OF**  
**SOUTHERN CALIFORNIA; MOJAVE**  
**WATER AGENCY; ANTELOPE VALLEY-**  
**EAST KERN WATER AGENCY; SAN LUIS &**  
**DELTA-MENDOTA WATER AUTHORITY**  
**and WESTLANDS WATER DISTRICT,**

**Petitioner-Interveners.**

1 TO RESPONDENT AND DEFENDANT DELTA STEWARDSHIP COUNCIL, a state  
2 public agency:

3 Judgment having been entered in this proceeding ordering that a Peremptory Writ of  
4 Mandate issue from this Court, this Court commands as follows:

- 5 1. The Delta Stewardship Council (“Respondent”) shall:
  - 6 i. Set aside its approvals of the Delta Plan and any applicable Delta Plan  
7 Regulations, until revisions listed in subparagraphs ii–v below are properly  
8 completed.
  - 9 ii. Revise the Delta Plan and any applicable regulations to:
  - 10 iii. Include quantified or otherwise measureable targets associated with  
11 achieving reduced Delta reliance, reduced environmental harm from  
12 invasive species, restoring more natural flows, and increased water  
13 supply reliability, in accordance with the Delta Reform Act;
  - 14 iv. Provide a flow policy that includes quantified or otherwise  
15 measurable targets; and
  - 16 v. Promote options for water conveyance and storage systems.

17 2. On or before 120 days after entry of this Peremptory Writ of Mandate, Respondent  
18 shall by way of INITIAL RETURN report to the Court the steps Respondent has taken to comply  
19 with this Peremptory Writ of Mandate, this Court’s May 18, 2016, Ruling on Submitted Matter:  
20 Petitions for Writ of Mandate, and Order on Motions for Clarification, issued July 11, 2016,  
21 affirming and modifying the Tentative Ruling.

22 3. Within 120 days of its INITIAL RETURN or such additional time as Respondent  
23 may request and this Court may approve after notice to and an opportunity to respond by Petitioner  
24 Save the California Delta Alliance (“Petitioner”), Respondent shall file with the Court a FINAL  
25 RETURN to this Peremptory Writ of Mandate.

26 4. Nothing in this writ shall limit or control in any way the discretion legally vested in  
27 Respondent.

28 5. This Court shall retain jurisdiction over this proceeding until Respondent files a  
29 FINAL RETURN demonstrating compliance with this Peremptory Writ of Mandate and this Court  
30 issues an Order discharging this Peremptory Writ of Mandate in full.

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Timothy Ainsworth  
Acting Clerk of the Court

S. LEE

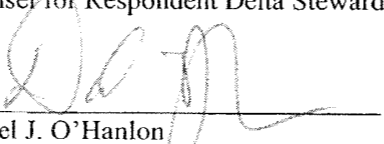
Dated: 11/28/16

By: \_\_\_\_\_  
Deputy Clerk

Approved as to form:

By: \_\_\_\_\_

Jeremy Brown  
Deputy Attorney General  
Office of the California Attorney General  
Counsel for Respondent Delta Stewardship Council

By:  \_\_\_\_\_

Date: 11/4/2016

Daniel J. O'Hanlon  
For Petitioner-Intervener San Luis & Delta-Mendota Water Authority

By: \_\_\_\_\_

Date: \_\_\_\_\_

Andrea A. Matarazzo  
For Petitioner-Intervener Westlands Water District

By: \_\_\_\_\_

Date: \_\_\_\_\_

Charity Schiller  
Jennifer Lynch  
For Petitioners-Interveners  
State Water Contractors; Alameda County Flood Control and  
Water Conservation District, Zone 7; and San Bernardino Valley  
Municipal Water District

By: \_\_\_\_\_

Date: \_\_\_\_\_

Anthony T. Fulcher  
For Petitioner-Intervener Santa Clara Valley Water District

**“this Court commands as follows:**

**1. The Delta Stewardship Council (“Respondent”) shall:**

**i. Set aside its approvals of the Delta Plan and any applicable Delta Plan Regulations, until revisions listed in subparagraphs ii–v below are properly completed.**

**ii. Revise the Delta Plan and any applicable regulations to:**

**iii. Include quantified or otherwise measurable targets associated with achieving reduced Delta reliance, reduced environmental harm from invasive species, restoring more natural flows, and increased water supply reliability, in accordance with the Delta Reform Act;**

**iv. Provide a flow policy that includes quantified or otherwise measurable targets; and**

# **A. Promote Options for New and Improved Infrastructure Related to Water Conveyance Proposed Revisions To Delta Plan:**

1. DWR and the U.S. Department of the Interior, Bureau of Reclamation (Reclamation) should pursue a dual-conveyance solution for the Delta **by constructing new facilities for isolated, below-ground conveyance of State Water Project (SWP) and Central Valley Project (CVP) water supplies from the Sacramento River to the South Delta via multiple intakes.**

The isolated conveyance should complement existing through-Delta conveyance to improve operational flexibility and reduce conflicts with ecosystem needs.



# Options for new and improved infrastructure (cont.)

## Proposed Revisions to Delta Plan:

2. DWR and Reclamation [...] should pursue [...]

**installation of permanent operable gates or  
barriers in the South Delta.**

# DELTA STEWARDSHIP COUNCIL HEARING

THURSDAY MARCH 23, 2017  
BRENTWOOD COMMUNITY CENTER  
708 3RD STREET  
BRENTWOOD, CA

**9:30 A.M**



# PROCESS TO STOP THE TUNNELS

- 1) Appeal and Cross-Appeal (underway)
- 2) Hearings at State Water Resources Control Board
- 3) Lawsuit #2: Challenge to Environmental Impact Report  
**Must be filed within 30 days of DWR's Certification of EIR** (expected May or June 2017)
- 4) Lawsuit #3: Challenge to Biological Opinion  
(Expected to be issued May or June 2017)
- 5) Lawsuit #4: Challenge to Army Corps of Engineers Granting of Permits to Dredge and Fill for Tunnel intake and other construction. (Expected to be issued this summer).

# PROCESS TO STOP TUNNELS CONTINUED

6)Appeal of consistency certification to Delta Stewardship Council

7)Lawsuit #5: Challenge to Delta Stewardship Council's Certification that the Tunnels are consistent with the Delta Reform Act and Delta Plan

8)Lawsuit #6: Challenge to State Water Resources Control Board's issuance of water rights permit for Tunnels.

9) Lawsuit #7: Challenge to Army Corps of Engineers issuance of permit for dredge and fill to Build Tunnels under §401 of Clean Water Act and challenge Army Corps issuance of permit under Rivers and Harbors Act because tunnels are obstruction to navigation.

# **State Water Resources Control Board Hearings**

**Part 1A (done)**

**Part 1B (done)**

**Part 1 Rebuttal: Evidence Due March 23; Hearings start up again on April 25, 2017**

**Part 2 Starts Approximately Fall 2017**

**We need people to show up at selected hearings and we need \$\$\$ to pay for experts to testify for us at Rebuttal and Part 2.**

# **DELTA STEWARDSHIP COUNCIL HEARINGS**

**We need people to show up and speak and March 23 meeting in Brentwood.**

Please sign up on the signup sheet and we will coordinate and give you talking points.

If you are uncomfortable speaking, come anyway and show your support by being there.

We need people to submit written comments. we should try for a thousand comments over the next month or so. We got that many to stop 2-Gates

We will provide bullet points for comment letters and emails. [cassandra.enos@deltacouncil.ca.gov](mailto:cassandra.enos@deltacouncil.ca.gov)

# **DELTA STEWARDSHIP COUNCIL HEARINGS**

We will need people to show up en mass at the hearings later this year also. Probably this summer.



ALL THE LAWSUITS

WE WILL KEEP YOU POSTED ON  
DEVELOPMENTS