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Sacramento-San Joaquin Delta Plan slammed with lawsuits

By Matt Weiser

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A planning document intended to resolve decades of water conflict in the Sacramento-San Joaquin Delta was instead greeted by a flood of lawsuits on Monday.

At least seven lawsuits were filed in three counties against what is known as the Delta Plan. The plan, which lays out a long-term strategy for developing and managing the sensitive estuary, is required by 2009 state legislation. That law also created the Delta Stewardship Council, a seven-member appointed commission charged with crafting the vision.

The lawsuits came from virtually all points of the political spectrum in California's unceasing water wars, including environmental groups, commercial fishermen, water diverters and local governments.

Richard Frank, a professor of environmental law at UC Davis, said the lawsuits appeared to mark a new front in the battle over the Delta, the largest estuary on the west coast of the Americas. A period of relative quiet that prevailed after the 2009 package of water bills was approved appears to be over.



More than 25 million people and 3 million acres of farmland depend on water from the San Joaquin-Sacramento Delta, usage that has caused degradation of the estuary. The Delta Plan announced last month was designed to address the issue's many heated conflicts.

"There was a short truce and now we seem to be back into litigation mode, although with a different and new target," Frank said.

"I think, in part, it's unavoidable," he said. "The Delta is really the perfect storm of virtually every environmental issue and environmental controversy you could imagine in California."

More than 25 million residents and 3 million acres of farmland depend on water diverted south from the Delta. That de-

mand has pushed the estuary to the edge of ecological collapse, scientists say, causing near extinction of numerous fish species as well as serious water-quality problems.

The Legislature ordered the Delta Plan with the aim of resolving these conflicts. The council members come from across the state and include a developer, a water expert and a farmer, among others. Their task was to come up with specific policies to manage the Delta that would have the force of law. The document took three years to complete and involved nearly 100 public meetings. It includes 14 enforceable policies, plus 73 additional recommendations.

Among other things, the plan sets standards for local development and flood protection, and designates areas for “priority habitat restoration” that must be protected.

For example, the plan specifies areas where setback levees must be considered for flood-control projects, an approach that increases the land available for floodplain and habitat.

A key requirement of the authorizing legislation is that the plan balance so-called “co-equal goals”: protecting the rich Delta environment, and ensuring stable freshwater supplies for a thirsty state. Those conflicting demands have defined much of the state’s water battles over the past 50 years.

The Delta Plan is different from the Bay Delta Conservation Plan, Gov. Jerry Brown’s proposal to build two giant water diversion tunnels on the Sacramento River. But the Delta Plan creates a kind of framework within which the tunnels must operate, if the \$24 billion plumbing overhaul is eventually built.

The council, chaired by Phil Isenberg, the former Sacramento mayor and assemblyman, approved the Delta Plan last month. The lawsuits were filed to meet a 30-day legal deadline.

The disparate groups behind the lawsuits seem to share the view that the Delta Plan violates the California Environmental Quality Act. But that may be all they share. How the plan violates that law, along with other allegations, varies depending on point of view.

For example, a key requirement of the plan, as laid out in the authorizing legislation, is to reduce California’s reliance on Delta water to ease environmental pressures. Environmental groups say the finished plan lacks teeth to make that happen.

“The Delta Stewardship Council was supposed to act as gatekeepers for the Delta,” said Adam Lazar, an attorney at the Center for Biological Diversity. “But instead of acting as gatekeepers for everyone, it appears they only let in the VIPs.”

Lazar's group joined five others in a lawsuit filed in Sacramento County: the California Water Impact Network, California Sportfishing Protection Alliance, AquAlliance, Restore the Delta, and Friends of the River.

Water users argue the opposite, saying the council exceeded its authority with rules intended to reduce reliance on the Delta. According to the group, the council lacks legal authority to impose the alternatives it recommends, such as more conservation and greater reliance on local water supplies.

"As it currently stands, the Delta Stewardship Council's Delta Plan goes well beyond its intended scope," Terry Erlewine, general manager of the State Water Contractors, said in a statement.

Westlands Water District and the San Luis & Delta-Mendota Water Authority, major agricultural water users in the San Joaquin Valley, also filed suit.

Other lawsuits came from the Pacific Coast Federation of Fishermen's Associations and several partner groups; Save the California Delta Alliance (filed in San Francisco County); the Central and South Delta water agencies (also San Francisco County); and the city of Stockton (filed in San Joaquin County). Stockton officials, among other things, are concerned that the Delta Plan intrudes on the city's local development authority.

Chris Knopp, executive officer of the Delta Stewardship Council, expressed disappointment that so many lawsuits would divert attention from the work of solving the Delta's problems.

"Our intent is to fully defend the Delta Plan," Knopp said in a statement. "The flexible nature of the Delta Plan is a preferable option to the litigation and inaction that California has endured for the past 50 years."

Frank, of UC Davis, said the deluge of lawsuits creates a sense of foreboding about Gov. Brown's twin-tunnel water diversion proposal, which is headed for a decision in April 2014.

"I think we need to fasten our seat belts," he said, "because we're looking at a very litigious time period ahead with respect to the Bay Delta Conservation Plan and related policy initiatives."