SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE/TIME JUDGE	March 21, 2025, at 2:30 p.m. HON. STEPHEN ACQUISTO	DEPT. NO CLERK	36 M. LU
TULARE LAKE BASIN WATER STORAGE DISTRICT, **Petitioner,** **v.** **CALIFORNIA DEPARTMENT OF WATER RESOURCES,** **Respondent,** **And Consolidated and Related Cases.**		**Case Nos. 24WM000006** 24WM000008 24WM000009 24WM000010 24WM000011 24WM000012 24WM000014 24WM000017 24WM000062 24WM000076 25WM000030	
Nature of Proceedings:	**Ruling on Submitted Matter – Respondent's Motion for Stay of Enforcement of Injunction Ruling**		

The following is the Court's final ruling denying the Motion for Stay of Enforcement of Injunction Ruling filed by Respondent California Department of Water Resources.

BACKGROUND

On December 21, 2023, the Department approved the Delta Conveyance Project (the DCP) and certified its final environmental impact report (EIR) required by the California Environmental Quality Act (CEQA). The DCP is an expansive water infrastructure project to divert water from the Sacramento River and the Sacramento-San Joaquin Delta. The DCP aims to improve the reliability and resiliency of the State Water Project, the existing infrastructure that delivers drinking water to millions of Californians. Following its approval, ten writ petitions were filed, challenging the approval under CEQA, the Water Code, and other laws.[1]

[1] These ten cases are the first ten cases listed in the caption, and have been consolidated. The remaining case in the caption—case 25WM000030—has been related but not consolidated. That case challenges a separate administrative decision by the Delta Stewardship Council regarding a certification of consistency issued by the Department under the Delta Reform Act.

Prior to consolidation, the petitioners in five of the related cases (case nos. 24WM000009, 24WM000010, 24WM000012, 24WM000014, and 24WM000017) filed motions for preliminary injunction seeking to enjoin the Department from undertaking geotechnical investigations, described in Chapter 3 of the EIR as work to "identify geotechnical, hydrogeologic, agronomic, and other field conditions that will guide appropriate construction methods and monitoring programs for final engineering design and construction." Petitioners contended that before beginning any geotechnical work, the Department must first self-certify that the DCP is consistent with the Delta Plan as required by the Sacramento-San Joaquin Delta Reform Act of 2009 (Delta Reform Act), set forth in Water Code section 85000, et seq.

On June 20, 2024, following a hearing, the Court issued an order granting the requested preliminary injunction mainly based on an analysis of Water Code section 85225, which provides: "A state or local public agency that proposes to undertake a covered action, *prior to initiating the implementation of that covered action, shall prepare a written certification of consistency* with detailed findings as to whether the covered action is consistent with the Delta Plan and shall submit that certification to the [Delta Stewardship C]ouncil." (Wat. Code, § 85225 [emphasis added].) The Court observed that Water Code section 85057.5 defines "covered action," in relevant part, as a "project as defined pursuant to Section 21065 of the Public Resources Code," which is CEQA's definition of "project."

The Court found that because the geotechnical work was included in Chapter 3 of the EIR and described as part of the "key components and actions" of the project, the geotechnical work was a part of the DCP, which constitutes a project under CEQA and a "covered action" under the Delta Reform Act. The Court concluded that undertaking the geotechnical work before filing a certificate of consistency for the DCP would be "initiating the implementation of" the DCP in violation of Water Code section 85225.

The Court found that "Petitioners have established a strong likelihood of success on the merits on the mostly legal question of whether certification under Water Code section 85225 is required prior to the geotechnical investigations," and that the "procedural harm of being denied the opportunity to appeal the Department's certification prior to the completion of geotechnical investigations is sufficient to justify the issuance of a preliminary injunction." (6/20/2024 Order, p. 10.) Accordingly, the Court enjoined the Department "from undertaking the geotechnical

work described in Chapter 3 of the [EIR] prior to completion of the certification procedure that the Delta Reform Act requires." (*Id.*, pp. 10-11.)

The Department then moved to modify the preliminary injunction to allow limited geotechnical work, or in the alternative, stay the preliminary injunction pending appeal. The Court denied the motion on the ground that the motion did not present any changed circumstances, and that staying the preliminary injunction and thereby allowing work to proceed would change the status quo. In August 2024, the Department appealed the order granting the preliminary injunction. The appeal remains pending.[2]

The Department also filed with the Council a certification of consistency under Water Code section 85225.[3] The certification, however, was not for the entire project as described in the EIR, but just a portion of the geotechnical work proposed in the Department's last motion. The petitioners who were granted the preliminary injunction in these cases administratively appealed the certification to the Council. They argued, in part, that because case law and CEQA Guidelines interpret a "project" under Public Resources Code section 21065 to be the "whole of the action, section 85225 requires the Department to certify the DCP before implementing any part of it. They further argued that by incorporating the CEQA definition of "project" to define "covered action," the Delta Reform Act also incorporated the CEQA prohibition against "piecemealing," which refers to conducting environmental review of segments of a larger project individually to avoid examining the cumulative impacts of those segments.

The Council rejected those arguments and found that the Department's certification of part of the geotechnical work did not violate the Delta Reform Act. The Council acknowledged that Water Code section 85057.5 defines a "covered action" pursuant to the definition of a CEQA "project" under Public Resources Code section 21065. But the Council reasoned that because it had not promulgated any regulations which defined "covered action" to be "the whole

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[2] The petitioners who oppose the motion request judicial notice of Exhibits 2-4 to the declaration of Osha Meserve, which are appellate court records from the Department's appeal of the preliminary injunction. This unopposed request is granted. (Evid. Code, § 452, subd. (d).)

[3] The Department requests judicial notice of records related to the Department's certification of the limited geotechnical work and the Council's handling of appeals of the certification (Exhibits B-K), records of prior proceedings in these cases (Exhibits A, L-O), and five procedural facts related to the certification and appeal process with the Council. The request is granted as to all of the items over Petitioners' relevance objections. (Evid. Code, § 452, subds. (c), (d).)

of an action," it was not bound by case law interpreting a project under CEQA to be "the whole of an action." In other words, the Council concluded that it was free to interpret "project" under section 21065 differently from how case law has interpreted that term under CEQA. The Council concluded that under the Delta Reform Act, the Department could properly determine that different segments of the DCP constitute distinct covered actions, and the Department could then seek certification of each segment of the DCP separately. The Council ultimately concluded that the segment of geotechnical work that the Department had selected to certify does not qualify as a reviewable "covered action" because, when examined in isolation, it does not implicate a Delta Plan regulatory policy.[4]

The Department then filed this motion under Code of Civil Procedure section 918 seeking to stay enforcement of the preliminary injunction on the ground that by certifying the designated segment of geotechnical work, it has complied with the injunction and can now proceed with the limited geotechnical work. Alternatively, the Department asks the Court to clarify that it has complied with the preliminary injunction so that it may now proceed with the limited geotechnical work, or clarify that the preliminary injunction is mandatory rather than prohibitory. The petitioners who obtained the preliminary injunction oppose the motion on the basis that the preliminary injunction unambiguously requires the Department to certify the entirety of the DCP before proceeding with the limited geotechnical work.

On March 21, 2025, the Court held a hearing on the motion and took the matter under submission. Having considered the parties' filings as well as arguments offered at the hearing, the Court issues this ruling denying the motion.

DISCUSSION

I. A Discretionary Stay Is Not Warranted.

Subject to exceptions, "the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order[.]" (Code Civ. Proc., § 916, subd. (a).) "Thus, where a preliminary injunction has been appealed to the Court of Appeal, the trial court is without jurisdiction to modify or dissolve the preliminary injunction during pendency of its appeal." (*Waremart Foods v. United Food and Commercial Workers Union, Local 588* (2001)

[4] The Council's decision is being challenged through the petition for writ of mandate under case number 25WM000030.

87 Cal.App.4th 145, 154.) Although the trial court may not modify or dissolve a preliminary injunction while it is being appealed, the trial court may stay its enforcement. (Code Civ. Proc., § 918, subds. (a), (c).)

The Department is now asking again for permission to proceed with some of the geotechnical work even though it has not yet certified the DCP. Proceeding in this manner would conflict with the terms of the preliminary injunction, as well as the legal analysis on which it is premised. In granting the preliminary injunction, the Court concluded that the geotechnical work described in Chapter 3 of the EIR is a part of the "covered action," i.e. the DCP. Proceeding with the limited geotechnical work after certifying only a *portion* of the covered action would be "initiating the implementation of that covered action" without certifying the "covered action" in violation of section 85225.

The motion to stay the preliminary injunction is, in effect, a request of the Court to reconsider the analysis and determinations that led it to grant the preliminary injunction. The Department's arguments have changed over time, but the central issue remains whether the Department may undertake any of the geotechnical work, described by the EIR as a key component of the DCP, prior to certification of the DCP as a whole.[5] This issue is pending before the Court of Appeal. In fact, the specific question of whether the CEQA prohibition on piecemeal review of a project applies to the Delta Reform Act has been raised in the Department's appellate opening brief. (Meserve Decl., Exh. 4, p. 45.) Under these circumstances, staying the preliminary injunction to allow the Department to undertake the limited geotechnical work would essentially dissolve the preliminary injunction based on a reconsideration of the issues now pending before the Court of Appeal. The Court declines to use its discretion under section 918 in this manner.[6]

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[5] The Department originally opposed the motion for preliminary injunction on the basis that geotechnical investigations are planning and design activities that do not implicate the Delta Reform Act at all. (The Department's Opp. Br. filed 5/20/2024, pp. 20-23.) But in seeking partial certification, the Department took the position that a segment of geotechnical work is a severable CEQA project by itself that can be independently reviewed for Delta Reform Act purposes. (The Department's RJN, Exh. D, p. 4-1; Exh. K, p. 19.)

[6] As discussed in the Court's June 2024 order, although the geotechnical work will yield additional data that will provide further specificity to the project, the Department has not satisfactorily explained why *any* additional data and specificity is required to satisfy Delta Reform Act standards. (6/20/2024 Order, pp. 9-10.) Given all of the data, studies, explanations,

II. The Alternative Relief Requested by the Department is Not Warranted.

The Department seeks a clarification that it has complied with the preliminary injunction by seeking certification of a segment of the geotechnical work, thereby allowing it to proceed with that portion of the geotechnical work. Proceeding in this manner, however, would not be in compliance with the preliminary injunction. The Court's ruling on the preliminary injunction determined that proceeding with *any* part of the DCP before certifying the DCP would violate section 85225.

Alternatively, the Department seeks a clarification that the preliminary injunction is mandatory rather than prohibitory. A prohibitory injunction "requires no action and merely preserves the status quo," while a mandatory injunction "requir[es] the defendant to take affirmative action[.]" (*Daly v. San Bernardino County Bd. of Supervisors* (2021) 11 Cal.5th 1030, 1035.) "A prohibitory injunction remains in full force pending such an appeal, and the court below may enforce obedience thereto; but a mandatory injunction is stayed by the operation of such appeal, the object of the rule in both cases being to preserve the *status quo*." (*Id.* at pp. 1040-1041.) "For example, in an action to establish an easement, a preliminary injunction ordering a party to remove an existing fence that blocks the easement is a mandatory injunction, while restraining the party from parking or storing vehicles along the easement is a prohibitory injunction." (*Id.* at p. 1042 [internal quotation marks omitted].)

The preliminary injunction here requires no action from the Department. It merely preserves the status quo by prohibiting the Department from performing geotechnical work within the Delta and thereby changing the existing conditions. The Department relies heavily on *Byington v. Sup. Ct. of Stanislaus County* (1939) 14 Cal.2d 68 in arguing that the preliminary injunction is mandatory. *Byington* involved a dispute over water rights between San Francisco, an appropriator of water from the Tuolumne River through the Hetch Hetchy reservoir, and a corporation with a riparian right to the same river downstream from the reservoir. (*Id.* at p. 69.) After trial, the trial court ruled that San Francisco has a prescriptive right to store 235,465 acre-feet per year (which was the capacity of the reservoir at the time) that is superior to the corporation's riparian right, and enjoined San Francisco from storing any additional amounts.

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and project specifications contained in the EIR, it would appear that the Department should already have the means to comply with the injunction and proceed with the geotechnical work anytime it chooses by self-certifying the DCP as a whole.

(*Ibid.*) While appeal was pending, San Francisco increased the capacity of the reservoir and began storing larger amounts of water. (*Id.* at pp. 69-70.) The city officials involved were found in contempt, after the trial court determined the injunction was prohibitory, and therefore not automatically stayed by the appeal. (*Id.* at p. 70.)

The California Supreme Court reversed, finding the injunction to be mandatory on the basis that it changed the positions of the parties. (*Id.* at pp. 71-72.) The Court observed that in addition to the *prescriptive* right adjudicated in the trial, San Francisco had a previously-adjudicated *appropriative* right to divert water to the full capacity of the reservoir. (*Id.* at pp. 72-73.) Therefore, the "effect of the injunctive decree was to compel the city to restrict its storage solely to the amount of water to which it was entitled under its prescriptive right and to subordinate certain of the city's appropriative claims to that of the plaintiff in the action and, in effect to deprive the city of the full possession and privilege of exercising such appropriative rights." (*Id.* at p. 72.) Because the injunction "did preclude the exercise by the city of its *appropriative* rights … it was affirmative or mandatory in character[.]" (*Id.* at p. 73 [emphasis added].)

Byington is not analogous. Whether the Delta Reform Act allows the Department to undertake the geotechnical work prior to certifying the DCP is disputed and continues to be litigated, of course. But the preliminary injunction here did not change the positions of the parties by limiting any existing rights such as the city's appropriative right in *Byington* that was incidentally restricted by the trial court's injunction upon the city's prescriptive right. The preliminary injunction issued in these cases is prohibitory, rather than mandatory.

CONCLUSION

For these reasons, the motion is denied.

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This minute order is effective immediately. No formal order or other notice is required. (Code Civ. Proc., § 1019.5; Cal. Rules of Court, rule 3.1312.)

CERTIFICATE OF ELECTRONIC SERVICE

I, the Clerk of the Superior Court of California, County of Sacramento, certify that I am not a party to this cause, and on the date shown below I served the foregoing RULING ON SUBMITTED MATTER – RESPONDENT'S MOTION FOR STAY OF ENFORCEMENT OF INJUNCTION RULING by electronic service to the below addresses:

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I, the undersigned deputy clerk, declare under penalty of perjury that the foregoing is true and correct.

Dated: April 9, 2025

Superior Court of California,
County of Sacramento

By: M. Lu
Deputy Clerk