


COURTHOUSE NEWS: Feds' discrimination claim over California salinity standards deemed premature

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The bureau claimed the state's standards — which it called discriminatory — would hamper its operation of the New Melones Dam and Reservoir.

By Edvard Pettersson, Courthouse News Service

A federal judge agreed with California that the U.S. Bureau of Reclamation can't claim yet that an amendment to salinity standards for parts of the Sacramento-San Joaquin River Delta discriminates against the U.S. government.

U.S. District Judge Jennifer Thurston in Sacramento on Wednesday dismissed the bureau's claim under the federal constitutional intergovernmental immunity doctrine, which prohibits state or local laws that discriminate against the U.S. government, because until the amendment is implemented, it won't be possible to evaluate whether the bureau is treated differently than similarly situated parties.

"To evaluate the IGI claim, the court must be able to compare the impacts of the amended plan on Reclamation to the impacts upon some comparator entity," Thurston said. "At this time, it is unclear how the court could do so."

In addition, the judge said, the State Water Resources Control Board is still working on procedures designed to get at the heart of the issues in the lawsuit, and this "further factual development" factor weighed strongly against the bureau's argument that its discrimination claim should be allowed to proceed.

The judge asked both sides for further briefing on how, if at all, to proceed on the remaining state law claims in the case, given that these are also litigated in state court.

Representatives of the Bureau of Reclamation didn't immediately respond to a request for comment on the ruling.

The bureau, through the Justice Department, sued in 2019 over the state water board's 2018 amendments to its water quality control plan, which set new flow objectives for the Lower San Joaquin River and its tributaries and established revised water quality objectives for salinity applicable to the southern Sacramento-San Joaquin Delta.

The problem, according to the federal bureau, was that the amended plan included revised, and less stringent Southern Delta salinity objectives, but it didn't apply these less stringent objectives to Bureau of Reclamation, which operates the New Melones Dam and Reservoir on the Stanislaus River.

The dam and reservoir are part of the Central Valley Project, the largest federal water management project in the nation, which supplies water for irrigation, industrial and municipal users in California's Central Valley. The quality of the water released from the reservoir is checked at a compliance station in Vernalis.

"The new flow objectives in the amended plan, and its requirement that Reclamation continue to meet the former, and more stringent salinity objectives at Vernalis, through dilution flows, would significantly reduce the amount of water available in New Melones Reservoir for meeting congressionally authorized purposes," the bureau argued. "The reduced water available for New Melones Project purposes would also impair Reclamation's delivery of water under contracts it presently holds with irrigation and water districts."

The federal judge previously assigned to the case had allowed the bureau's discrimination claim to proceed but stayed its state law claims under the California Environmental Quality Act. This prompted a trip to the Ninth Circuit, which said the judge shouldn't have split up the case and sent it back.

A new judge in Sacramento then stayed the entire case for 10 months to allow the parties to come up with a settlement, but when that didn't yield a solution, the state board renewed its attempt to get the discrimination claim dismissed.

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