



Judicial Council of California

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April 11, 2023

Hon. Thomas Umberg, Chair
Senate Judiciary Committee
1021 O Street, Ste 6730
Sacramento, California 95814

Subject: Senate Bill 861 (Dahle), as introduced – Oppose unless amended
Hearing: Senate Judiciary Committee – April 18, 2023

Dear Senator Umberg:

The Judicial Council regrettably must oppose SB 861, unless amended to remove the 270-day expedited review provision and the related rulemaking requirement. This bill requires the Judicial Council to adopt rules of court applicable to actions or proceedings brought to attack, review, set aside, void, or annul the certification or adoption of an environmental impact report for water conveyance or storage projects, as defined, or the granting of project approvals, including any appeals to the court of appeal or the Supreme Court, to be resolved, to the extent feasible, within 270 days of the filing of the certified record of proceedings with the court to an action or proceeding seeking judicial review of the lead agency's action related to those projects.

It is important to note that our concerns are limited solely to the court impacts of this legislation. The Judicial Council does not express any views on CEQA generally or the underlying merits of any potential projects that may be covered by SB 861, as those issues are beyond the council's purview.

The requirement in SB 861 to ensure a water conveyance or storage project challenged under CEQA be resolved in 270 days, to the extent feasible, including appeals to the Court of Appeal and the Supreme Court is problematic. CEQA actions are already entitled under current law to calendar preference "over all other civil actions" in both the superior courts and the Courts of Appeal pursuant to section 21167.1(a) of the Public Resources Code. Imposing a 270-day timeline for review, on top of existing CEQA calendar preferences, even with language that references "to the extent feasible," is an arbitrary and unrealistically short timeframe for California's trial courts to address all the issues each CEQA case is likely to present.

There are several reasons why the time frame is, from the outset, not feasible.

- *CEQA cases are complex and time-consuming.* Under normal circumstances and assuming the unrealistic context in which no extensions of time are requested or granted for any aspect of a case, CEQA cases take, on average, an estimated six months to get to hearing, much less to a decision. So, even if the court was able to issue its decision within six months (approximately 180 days), that would leave less than three months for proceedings in the court of appeal, which is impracticable. And, of course, it is more than likely that one or more parties will request, if not stipulate to, continuances, delays, or other procedural extensions. Given these common requests and stipulated delays, and the likelihood of an appeal, a 270-day timeframe is not feasible.
- *Active CEQA cases often include ancillary administrative and non-CEQA judicial causes of action.* Providing expedited judicial review for the projects that may fall under SB 861 is also unworkable given the reality that CEQA cases involve ancillary motions, administrative review, other causes of action, and other civil actions and appeals in the middle of the CEQA action. These actions proceed under administrative (local governmental) and civil procedure (non-CEQA courtroom) timelines, often resulting in temporary stays or delays in the principal CEQA action. In other words, even if CEQA-specific procedures could be limited to 270 days for one or more of the projects, other, non-CEQA procedures related to the same cases that would occur in non-CEQA courtrooms and administrative hearings cannot be concluded in that same timeframe. These ancillary hearings and procedures make the 270-day goal infeasible.
- *Expediting CEQA cases means further delays for other cases.* Placing CEQA cases at the front of the line means that other cases, including cases that have statutorily mandated calendar preferences, such as juvenile cases, criminal cases, and civil cases in which a party is at risk of dying, as well as wage theft cases, unlawful detainer and foreclosure cases, and other important cases on the courts' dockets, will take longer to decide.

For these reasons, the Judicial Council opposes SB 861, unless amended, to remove the 270-day expedited review provision and the related rulemaking requirement.

Should you have any questions or require additional information, please contact Nicole Figueroa at 916-323-3121.

Sincerely,



Cory T. Jaspersen

Director, Governmental Affairs

Hon. Thomas Umberg

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cc: Members, Senate Judiciary Committee
Hon. Brian Dahle, Member of the Senate
Ms. Amanda Mattson, Counsel, Senate Judiciary Committee
Mr. Morgan Branch, Consultant, Senate Republican Office of Policy
Ms. Jessica Devencenzi, Chief Deputy Legislative Secretary, Office of the Governor
Ms. Millicent Tidwell, Acting Administrative Director, Judicial Council of California
Ms. Shelley Curran, Chief Policy & Research Officer, Judicial Council of California