



## JUDICIAL COUNCIL OF CALIFORNIA

770 L Street, Suite 1240 • Sacramento, California 95814-3368  
Telephone 916-323-3121 • Fax 916-323-4347 • TDD 415-865-4272

TANI G. CANTIL-SAKAUYE  
*Chief Justice of California*  
*Chair of the Judicial Council*

MARTIN HOSHINO  
*Administrative Director*

CORY T. JASPERSON  
*Director, Governmental Affairs*

April 20, 2015

Hon. Das Williams, Chair  
Assembly Natural Resources Committee  
State Capitol, Room 4005  
Sacramento, California 95814

Subject: AB 311 (Gallagher), as amended April 15, 2015 – Oppose  
Hearing: Assembly Natural Resources Committee – April 27, 2015

Dear Assembly Member Williams:

The Judicial Council regrets to inform you of its continuing opposition to AB 311. The bill, as amended April 15, 2015, requires the Judicial Council, on or before July 1, 2016, to adopt a rule of court to establish procedures applicable to actions or proceedings seeking judicial review of a public agency's action in certifying the environmental impact report and in granting project approval for specified water storage projects funded by the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1). The current version of AB 311 directs that the procedures established by the rule require that the actions or proceedings, including any appeals therefrom, be resolved, to the extent feasible, within 370 days of the certification of the record of proceedings. The bill also prohibits a court from staying or enjoining those water projects unless the court finds either of the following: (i) the continued construction or operation of the water storage project presents an imminent threat to the public health and safety; or (ii) the water storage project site contains unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values that would be materially, permanently, and adversely affected by the continued construction or operation of the project unless the court stays or enjoins the construction or operation of the project. In addition, AB 311 specifies that if the court finds that either of the above criteria is satisfied, the court shall only enjoin those specific activities associated with the water storage project that present an imminent threat to public health and safety or that materially, permanently, and

adversely affect unforeseen important Native American artifacts or unforeseen important historical, archaeological, or ecological values. It is important to note that the Judicial Council's concerns regarding AB 311 are limited solely to the court impacts of the legislation, and that the council is not expressing any views on CEQA generally or the underlying merits of the water storage projects covered by the legislation, as those issues are outside the council's purview.

AB 311's requirement that any lawsuit challenging a water storage project funded under the water bond, including any appeals therefrom, be resolved within 370 days (vs 270 days under the prior version) is still problematic for the same basic reasons. First, the timeline is triggered by *the certification of the record*, which is an action that takes place *before* the court has any jurisdiction or control over the proceedings. This means that the 370-day period in which the trial court and Court of Appeal must issue their respective decisions on an action could—and likely would—begin weeks before the lawsuit is even filed. It makes no sense to have something that occurs before the matter even comes to the courts start the courts' already limited time period to complete their work.

Second, the Judicial Council believes that the 370-day timeline will be unworkable in practice. During the council's development process for the rules to implement AB 900, it became clear that 175 days (which was the timeline under the enacted version of that bill) is an unrealistically short timeframe for the Court of Appeal to decide a large CEQA matter. This bill follows the approach taken in SB 743 ([Steinberg] Stats. 2013, ch. 386), which places the initial judicial review in the superior court. However, as was the case for initial review in the Court of Appeal, even assuming that no extensions of time are granted for any aspect of the proceeding, it appears that it will take about 175 days just to get to hearing in the superior court, much less to issue a decision, in the majority of these cases. Even if the superior court were able to issue its decision within 175 days, which is highly unlikely, that would leave only 195 days for proceedings in the Court of Appeal, which the council believes to be infeasible.<sup>1</sup>

Third, AB 311's expedited judicial review for all of the potential water storage projects covered by the bill will likely have an adverse impact on other cases. Like other types of calendar preferences, which the Judicial Council has historically opposed, setting an extremely tight timeline for deciding these cases has the practical effect of pushing other cases on the courts' dockets to the back of the line. This 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, will take longer to decide. Moreover, delays in the administration of justice that would likely result from any expansion of this expedited judicial review approach would be even more pronounced in light of the ongoing fiscal limitations faced by the judicial branch.

Fourth, providing expedited judicial review for the select water storage projects covered by AB 311 while other cases proceed under the usual civil procedure rules and timelines, in the Judicial

---

<sup>1</sup> In a typical civil appeal, it takes more than 95 days from when a trial court decision becomes final just for the record on appeal to be prepared and filed in the Court of Appeal. This does not include any time for briefing, oral argument, analysis of the issues, or preparation of a decision by the court.

Hon. Das Williams

April 20, 2015

Page 3

Council's view, undermines equal access to justice. The courts are charged with dispensing equal access to justice for each and every case on their dockets. Singling out this special category of cases for such preferential treatment appears at odds with how our justice system has historically functioned.

Finally, the provision in AB 311 that significantly limits the forms of relief that the court may use in any action challenging the water storage projects covered by the legislation interferes with the inherent authority of a judicial officer and raises a serious separation of powers question.

For these reasons, the Judicial Council opposes AB 311.

Sincerely,



Daniel Pone  
Senior Attorney

DP/lmb

cc: Members, Assembly Natural Resources Committee

Hon. James Gallagher, Member of the Assembly

Hon. Andy Vidak, Member of the Senate

Mr. Lawrence Lingbloom, Chief Consultant, Assembly Natural Resources Committee

Mr. John Kennedy, Consultant, Assembly Republican Caucus

Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor

Ms. Martha Guzman-Aceves, Deputy Legislative Affairs Secretary, Office of the Governor

