



## JUDICIAL COUNCIL OF CALIFORNIA

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

MARTIN HOSHINO  
*Administrative Director*

CORY T. JASPERSON  
*Director, Governmental Affairs*

February 5, 2015

Hon. Andy Vidak  
Member of the Senate  
State Capitol, Room 3082  
Sacramento, California 95814

Subject: SB 127 (Vidak), as introduced January 20, 2015 - Oppose

Dear Senator Vidak:

The Judicial Council regrets to inform you of its opposition to SB 127. The bill, among other things, 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 projects funded by the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1). SB 127 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 270 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 project presents an imminent threat to the public health and safety; or (ii) the water 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 water project unless the court stays or enjoins the construction or operation of the water project. In addition, SB 127 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 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 SB 127 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 projects covered by the legislation, as those issues are outside the council's purview.

SB 127's requirement that any lawsuit challenging a project funded under the water bond, including any appeals therefrom, be resolved within 270 days is problematic for a number of 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 extremely tight 270-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 270-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 95 days for proceedings in the Court of Appeal, which the council believes to be infeasible.<sup>1</sup>

Third, SB 127's expedited judicial review for all of the potential 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.

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<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. Andy Vidak

February 5, 2015

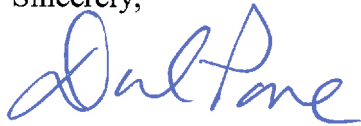
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Fourth, providing expedited judicial review for the select projects covered by SB 127 while other cases proceed under the usual civil procedure rules and timelines, in the Judicial Council's view, undermines equal access to justice. The courts are 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 SB 127 that significantly limits the forms of relief that the court may use in any action challenging the 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 SB 127.

Sincerely,



Daniel Pone

Senior Attorney

DP/nco

cc: Hon. Jean Fuller, Member of the Senate  
Hon. Jim Nielsen, Member of the Senate  
Hon. Kristin Olsen, Member of the Assembly  
Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor  
Ms. Martha Guzman-Aceves, Deputy Legislative Affairs Secretary, Office of the Governor  
Mr. Ken Alex, Director, Governor's Office of Planning and Research  
Mr. Kip Lipper, Chief Policy Advisor for Energy and the Environment, Office of Senate President  
Pro Tempore Kevin de León  
Ms. Margie Estrada, Policy Consultant, Office of Senate President Pro Tempore Kevin de León  
Mr. Tobias Halvarson, Counsel, Senate Judiciary Committee  
Mr. Mike Petersen, Consultant, Senate Republican Office of Policy  
Mr. Dennis O'Connor, Principal Consultant, Senate Natural Resources and Water Committee  
Mr. Todd Moffitt, Policy Consultant, Senate Republican Office of Policy  
Ms. Joanne Roy, Consultant, Senate Environmental Quality Committee  
Ms. Tiffany Roberts, Policy Consultant, Senate Republican Office of Policy  
Ms. Fredericka McGee, General Counsel, Office of Assembly Speaker Toni Atkins  
Ms. Catalina Hayes-Bautista, Special Assistant to Assembly Speaker Toni Atkins  
Ms. Alison Merrilees, Chief Counsel, Assembly Judiciary Committee  
Mr. Paul Dress, Consultant, Assembly Republican Caucus  
Mr. Lawrence Lingbloom, Chief Consultant, Assembly Natural Resources Committee  
Mr. John Kennedy, Consultant, Assembly Republican Caucus  
Ms. Diane Colborn, Chief Consultant, Assembly Water, Parks, and Wildlife Committee  
Mr. Steve McCarthy, Policy Director, Assembly Republican Caucus



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March 19, 2015

Hon. Bob Wieckowski, Chair  
Senate Environmental Quality Committee  
State Capitol, Room 3086  
Sacramento, California 95814

Subject: SB 127 (Vidak), as introduced January 20, 2015 – Oppose  
Hearing: Senate Environmental Quality Committee – April 15, 2015

Dear Senator Wieckowski:

The Judicial Council is opposed to SB 127. The bill, among other things, 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 projects funded by the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1). SB 127 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 270 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 project presents an imminent threat to the public health and safety; or (ii) the water 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 water project unless the court stays or enjoins the construction or operation of the water project. In addition, SB 127 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 project that present an imminent threat

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SB 127's requirement that any lawsuit challenging a project funded under the water bond, including any appeals therefrom, be resolved within 270 days is problematic for a number of 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 extremely tight 270-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 270-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 95 days for proceedings in the Court of Appeal, which the council believes to be infeasible.<sup>1</sup>

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Hon. Bob Wieckowski  
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For these reasons, the Judicial Council opposes SB 127.

Sincerely,



Daniel Pone  
Senior Attorney

DP/lmb

cc: Members, Senate Environmental Quality Committee  
Hon. Andy Vidak, Member of the Senate  
Hon. Jean Fuller, Member of the Senate  
Hon. Jim Nielsen, Member of the Senate  
Hon. Kristin Olsen, Member of the Assembly  
Ms. June Clark, Deputy Legislative Affairs Secretary, Office of the Governor  
Ms. Martha Guzman-Aceves, Deputy Legislative Affairs Secretary, Office of the Governor  
Mr. Ken Alex, Director, Governor's Office of Planning and Research  
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