

Impact of PEIR Court Ruling on ESJWQC

A tentative ruling by a Superior Court judge found that the Programmatic Environmental Impact Report (PEIR) used to support passage of the ESJWQC Waste Discharge Requirements (WDR) was deficient on two grounds. Should the court take that position in its final ruling expected in July 2013, the decision could impact the WDR adopted on December 7, 2012 for ESJWQC and WDRs currently in development for six other Central Valley Coalitions.

While the action does raise uncertainty, neither the court nor Regional Water Board ordered changes to the existing ESJWQC requirements nor the timelines for negotiating the remaining coalition WDRs. No final votes will be made on the remaining WDRs until the PEIR issues are resolved, according to a statement by the Board Chair at the April 12 meeting of the Regional Water Board.

The Superior Court of Sacramento County said in its tentative ruling that the PEIR was deficient in its alternatives analysis and cumulative impacts analysis. The tentative ruling also found that the short term renewal of the existing conditional waiver, adopted April 2011, did not comply with the antidegradation policy and the State's Nonpoint Source Policy. Although the short term renewal was tentatively determined to not be in compliance with antidegradation policy, the court was not going to require the Regional Board to rescind the short term renewal. Rather, the tentative ruling directs the Regional Board to leave the short term renewal in place while it corrected the PEIR.

As indicated at the March 29 hearing, and ordered by the court several days later, the court has asked for additional briefing on a few limited issues. Once the information is submitted, the court will have 90 days to issue a final ruling.

Notwithstanding the potential outcome of a court decision, the ESJWQC is proceeding with new member workshops scheduled for April 23, 24 and 25. The coalition also submitted its first deliverables per the schedules in the adopted WDR. This included templates for the Farm Evaluation, Nitrogen Management Plan and Sediment and Erosion Control Plans, due on April 11, and the outline for its Groundwater Assessment Report, also due April 11.

Key Points

The ruling on March 30 is tentative; a final decision will be made this summer, likely late July.

The final court ruling, if it mirrors the tentative ruling, will impact the fundamental underpinnings of the ESJWOC WDR, the Programmatic Environmental Impact Report (PEIR).

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- Templates for the Farm Evaluation, Nitrogen Management Plan and Sediment and Erosion Control Plans, due April 11,
- Outline for its Groundwater Assessment Report, due April 11.