



JUDICIAL COUNCIL OF CALIFORNIA

520 Capitol Mall, Suite 600 • 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

September 11, 2020

Hon. Gavin Newsom
Governor of California
State Capitol, First Floor
Sacramento, California 95814

Subject: Assembly Bill 3005 (Rivas, Robert) – Request for Veto

Dear Governor Newsom:

The Judicial Council regrets it must request a veto of AB 3005 because it contains a 270-day expedited judicial review provision.

Please note that our concerns regarding AB 3005 are limited solely to the court impacts of this legislation and is not an expression of any views on CEQA generally or the underlying merits of the project that would be covered by the bill, as those issues are outside the council's purview.

AB 3005 requires that any CEQA lawsuits challenging the Leroy Anderson Dam project, including any appeals therefrom, be resolved, to the extent feasible, within 270 business days. CEQA actions are already entitled under current law to calendar preference "over all other civil actions" pursuant to section 21167.1(a) of the Public Resources Code in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline for the review of a major infrastructure project such as the Leroy Anderson Dam, on top of existing CEQA calendar preferences, is an arbitrary and unrealistically short timeframe for the trial court in Santa Clara to address all of the issues each CEQA case is likely to present.

There are several reasons why the 270-day expedited judicial review timeframe is not feasible.

- *CEQA cases are complicated and lengthy even if they are not delayed at the request of the parties.* Under normal circumstances and assuming the most fluid of cases in which no extensions of time are requested or granted, CEQA cases take, on average, an estimated six months to get to hearing. So, even if the court was able to issue its decision within six months, that would leave only three months for proceedings in the court of appeal, which is impracticable.¹ And, of course, it is 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, a 270-day timeframe is not feasible.
- *Active CEQA cases often include ancillary administrative and non-CEQA judicial elements.* Providing 270-day expedited judicial review for these potential cases is even more unworkable in light of the common need of the parties to address ancillary motions or cases, specifically non-CEQA causes of action and/or separate lawsuits relating to the project. These actions proceed under administrative (local governmental) and normal civil procedure (non-CEQA courtroom) timelines, often requiring a temporary stay or delay in the CEQA case. In other words, even if CEQA-specific procedures could be limited to 270 days, other, non-CEQA procedures and causes of action related to the same projects that would occur in non-CEQA courtrooms and administrative hearings cannot be concluded in that same timeframe.
- *The courts anticipate significant pandemic-related litigation in the coming years.* The COVID-19 pandemic is impacting all social and government systems, including the courts. Moving CEQA cases to the front of the line in Santa Clara over the life of the project will 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 particular CEQA cases has the practical effect of pushing other cases on the courts' dockets to the back of the line. Without additional funding and resources, 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, as well as wage theft cases, unlawful detainer and foreclosure cases, and other important cases, will take longer to decide.

The council has studied the workload costs created by expedited CEQA judicial review requirements and determined that trial and appellate courts expend an average of \$340,000 in workload costs on each case eligible for expedited review. New unfunded workload to the courts could result in delays of court services, prioritization of court cases, and may impact access to justice.

¹ 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.

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For these reasons, the Judicial Council requests your veto on AB 3005.

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

Sincerely,

Sent September 11, 2020

Cory T. Jaspersen
Director, Governmental Affairs

CTJ/AL/yc-s

cc: Hon. Robert Rivas, Member of the Assembly
Mr. Anthony Williams, Deputy Legislative Secretary, Office of the Governor
Mr. Martin Hoshino, Administrative Director, Judicial Council of California



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GOVERNMENTAL AFFAIRS

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August 4, 2020

Hon. Robert Rivas
Member of the Assembly
State Capitol, Room 5158
Sacramento, California 95814

Subject: Assembly Bill 3005 (Rivas), as amended July 14, 2020 – Oppose if amended
Hearing: Senate Natural Resources and Water Committee – August 5, 2020

Dear Assembly Member Rivas:

The Judicial Council regrets it will be forced to oppose AB 3005 if it is amended with a Judicial Council rule making deadline of any date prior to January 1, 2022, and to re-insert the 270-day expedited review provision that was previously amended out of the bill. It is important to note that our concerns regarding the proposed amendments to AB 3005 are limited solely to the court impacts of this legislation. The Judicial Council is not expressing any views on CEQA generally or the underlying merits of the potential projects that could be covered by the bill, as those issues are outside the council's purview.

Starting with the rule-making provision, it is the policy of the Judicial Council to request a delayed implementation of at least one calendar year for legislation that directs the council to amend or draft new rules of court. This additional year ensures that the council may faithfully adhere to the internal and external/public review and feedback processes required for the adoption of new or modified rules of court. An April 1, 2021 date is not workable.

The proposed requirement that a CEQA lawsuit challenging the Leroy Anderson Dam project, including any appeals therefrom, be resolved within 270 days is problematic as CEQA actions are already entitled under current law to calendar preference pursuant to section 21167.1(a) of the Public Resources Code in both the superior courts and the Courts of Appeal. Imposing a 270-day timeline for the review of major infrastructure project such as the Leroy Anderson Dam, on top of existing CEQA calendar preferences, is an arbitrary and unrealistically short timeframe for the trial court in Santa Clara to address all of the issues each CEQA case is likely to present.

There are several reasons why the 270-day expedited judicial review time frame is not feasible.

- *CEQA cases are complicated and lengthy even if they are not delayed at the request of the parties.* Under normal circumstances and assuming the most fluid of cases in which no extensions of time are requested or granted, CEQA cases take, on average, an estimated six months to get to hearing. So, even if the court was able to issue its decision within six months, that would leave only three months for proceedings in the court of appeal, which is impracticable.¹ 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, a 270-day timeframe is unrealistic.
- *Active CEQA cases often include ancillary administrative and non-CEQA judicial elements.* Providing 270-day expedited judicial review for these potential cases is even more unworkable in light of the common need of the parties to address ancillary motions or cases, specifically non-CEQA causes of action and/or separate lawsuits relating to the project. These actions proceed under administrative (local governmental) and normal civil procedure (non-CEQA courtroom) timelines, often requiring a temporary stay or delay in the CEQA case. In other words, even if CEQA-specific procedures could be limited to 270 days, other, non-CEQA procedures and causes of action related to the same projects that would occur in non-CEQA courtrooms and administrative hearings cannot be concluded in that same timeframe.
- *The courts anticipate significant pandemic-related litigation in the coming years.* The COVID-19 pandemic is impacting all social and government systems, including the courts. Moving CEQA cases to the front of the line in Santa Clara over the life of the project will 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 particular CEQA cases has the practical effect of pushing

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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, as well as wage theft cases, unlawful detainer and foreclosures cases, and other important cases on the courts' dockets, will take longer to decide.

For these reasons, the council regrettably must oppose AB 3005 if it is amended.

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

Sincerely,

Submitted on August 4, 2020, via Legislature Portal

Andi Liebenbaum
Attorney

AL/yc-s

cc: Carolyn J. Veal-Hunter, Lobbyist, Sloat, Higgins Jensen & Associates, for the Santa Clara Valley Water District
Jessica Devencenzi, Deputy Legislative Secretary, Office of the Governor
Martin Hoshino, Administrative Director, Judicial Council of California