

## News

### DELTA LANDOWNERS HEADING TO COURT

### DOZENS REFUSE STATE ACCESS FOR SURVEY

By **Alex Breitler**

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STOCKTON - No, thank you.

Three dozen Delta landowners are headed to court after refusing state water officials' requests to access their lands as part of a peripheral canal study.

The state Department of Water Resources in the fall sent landowners a sort of permission slip, but about half refused to sign.

What the state is asking for, one farmer said, is a double insult: to drill holes, dig pits and intrude on private property for an environmental review that could lead to construction of a canal - an endgame for the Delta, in his eyes.

"First, you're basically letting them interrupt your farming operation, and then they come out and cut you off at the knees (with a canal). Supporting something like that runs against the grain for everyone," said 56-year-old Steve Coldani, whose family has farmed Terminous Tract west of Lodi since the 1920s. Coldani is a trustee for Reclamation District 548, one of 13 defendants in San Joaquin County.

Last summer, Water Resources sent about 1,000 initial letters to landowners on the west and east sides of the Delta, where canal routes have been considered. In October, the state asked for access to 126 properties, the first in at least two waves of requests.

They were resisted, however, and face-to-face meetings failed to appease landowners.

So the state Attorney General's Office has petitioned judges in five Delta counties for court orders granting access to these lands. Any further delay "may result in continued degradation of habitat for fisheries and may reduce the reliability of water deliveries in the state of California," reads one such petition filed in San Joaquin County Superior Court.

These documents detail the tactics over which farmers are fuming:

- » Net-wielding biologists would canvass properties in search of everything from tiny shrimp to giant garter snakes. They would build small traps to be checked daily, and they would use motor boats, kayaks or all-terrain vehicles to get around. Surveys could take place day or night, according to Water Resources court documents.
- » Geologists would drill 8-inch holes anywhere from 5 feet to 200 feet underground to explore soil conditions. Using backhoes, they would dig test pits measuring 20 feet long, 4 feet wide and 12 feet deep. Any drilling or digging near levees makes farmers nervous.
- » Surveyors would plant wooden stakes and iron pipes for aerial photographs. Still others would search for historic artifacts, take photos of the properties, or observe boaters or fishermen.

Water Resources spokesman Matt Notley said officials are making the process as easy as they can. They dug up data from past studies so that fewer lands would need surveying, he said. Also, not all of the actions described in these documents will need to be performed on all properties.

And while many critics believe a peripheral canal is a predetermined outcome of all this work, Notley said that's not true.

"We're just at a data-gathering stage," Notley said. The information will be used later to make a decision.

Attorneys representing 12 of the 13 San Joaquin County landowners say the work points squarely at a canal and call the proposed surveys "physically invasive," threatening farms and levee stability.

The attorneys argue that the state has sidestepped environmental law and failed to seek permission from reclamation districts, which oversee flood protection on each Delta island.

Also, the surveys - which could continue through 2011 - are intrusive enough to qualify as a taking of property under eminent domain law, requiring greater compensation for landowners than the \$500 per parcel that the state has offered, Stockton attorney Thomas Keeling argued in a court document.

"Our view is they are running roughshod over the law," Stockton attorney Dante Nomellini, also representing landowners, said.

In a January letter to Nomellini, Water Resources attorney David A. Sandino said "temporary and limited entry onto property is necessary" to get the information needed to decide whether to build a canal. He disagreed that the surveys would be akin to a "taking" of land under the law.

The surveys are part of the Bay-Delta Conservation Plan, a complex mesh of water conveyance and habitat restoration strategies that will purportedly stabilize the state's water supply while aiding fish.

The 13 San Joaquin cases are set to be heard June 29 in Superior Court.

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## The defendants

A list of Delta landowners and entities in San Joaquin County that have refused state access to their land and face court action as a result:

- Zuckerman Mandeville Inc.
- Heritage Land Co.
- Greenlaw Grupe Jr. Operating Co. (owns farmland on Elmwood Tract)
- CWC LLC
- James Harvey
- Jack Klein Trust Partnership
- Tuscany Research Institute (a nonprofit wetland restoration group with a field station on Mandeville Island)
- Reclamation District 548 (Terminus Tract)
- Estate of Frank Ormonde
- Thompson & Folger Co.
- Cotta Properties Inc.
- Reclamation District 2029 (Empire Tract)
- Clavius Land Co. (McDonald Island)