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Judge Orders Army Corps, Port of Stockton to Stop Illegal Dredging

U.S. District Court Says Dredging Order Was “Arbitrary and Capricious”

STOCKTON (September 21, 2006) – In a blistering decision issued late yesterday, the U.S. District Court in Sacramento ordered the halting of all dredging at the Port of Stockton, and characterized the U.S. Army Corps of Engineers’ decision to issue the dredging permit as “arbitrary and capricious.”

The Deltakeeper Chapter of Baykeeper and the Natural Resources Defense Council (NRDC) sued the Army Corps of Engineers and the Port of Stockton last month to stop the dredging, which is part of a plan for massive expansion of the Port facility. The court agreed the dredging commenced without the appropriate environmental review.

The lawsuit charges the Corps of Engineers with violating the National Environmental Policy Act (NEPA) when it issued a permit allowing the Port to dredge in the San Joaquin River without accounting for the potential harm to the people living in surrounding communities, the river and its threatened and endangered fish species.

In siding with the conservation groups, U.S. District Judge Frank C. Damrell, Jr. explained that “while under NEPA the court owes deference to agency determinations, it certainly does not owe deference to a permit applicant. Here, it appears the Corps gave unquestioning deference to the permit applicant and now asks this court to do the same. ... There is not only no data to support the [Corp’s] conclusion,” the Court concluded, “there is not even a hint [in the Corps’ decision] of the considerable uncertainty and controversy surrounding the issue.”

The Port of Stockton is located 75 miles inland from San Francisco. The expansion will significantly increase the number of large diesel-powered ships annually polluting the 75-mile shipping route, and more than 50,000 additional vehicles, including many large trucks, will be passing through a region already plagued with some of the worst air quality in the nation.

“This decision will help ensure that public health and environmental issues are taken into consideration before the project moves forward. This is an opportunity to have the whole port expansion project done in a proper and safe way, not at the expense of public health,” said Melissa Lin Perrella, senior project attorney with NRDC.

Dredge spoils are often contaminated with toxic pollution from industrial activities, farming and gold mining. In July, the National Marine Fisheries Service expressed concern about the toxicity of the chemicals in the dredge spoils and the port has acknowledged that dredging would have considerable impact on the surrounding environment. The Corps has also stated that dredging “may adversely affect” threatened and endangered species.

The nearby Deep Water Ship Channel is already on the federal list of highly polluted waterways due to its low oxygen levels and is highly contaminated with toxic chemicals from Navy operations, large-scale agriculture and gold mining. Despite this, the Corps expedited the dredging permit without an Environmental Impact Statement (EIS) and without informing the public or the federal agencies responsible for protecting the environment that the Port had submitted a major last minute revision to its dredging application.

“Today the court ruled in favor of the public, emphasizing the importance of thorough environmental analysis to protect endangered salmon, trout and smelt in the Delta. We’re glad to see the Army Corps and the Port of Stockton held accountable.” said Leo O’Brien, Executive Director of Baykeeper.

For three years, the Corps, as well as other federal and state regulatory agencies, had repeatedly characterized the dredging activities as an essential component of the port’s massive development project. But just weeks prior to the issuance of the dredging permit, both the Port of Stockton and the Corps disavowed this position. In the end, the Corps bypassed the requirement for an EIS by considering the dredging an independent event without significant environmental consequences, and as a separate project unrelated to port expansion.

“The Corps’ approach shows troubling indications of a change of rules at the end of the game, just before the final buzzer,” said Robert ‘Perl’ Perlmutter, a partner with the San Francisco law firm of Shute, Mihaly & Weinberger and lead counsel for the plaintiffs in the lawsuit. “The Court reaffirmed the principle that federal agencies cannot avoid letting the public know about the full environmental impacts of their decisions by chopping their decisions up into smaller pieces.”

“A project as large as this one, with the potential to enormously affect the quality of life of millions of people, cannot be put in motion by a bureaucratic sleight of hand,” said Ann Chargin, from the Stockton-based Friends of Riviera Cliffs group. “It must have the attentive, engaged participation of all concerned parties and involve the communities that will have to live with the results.”

A separate lawsuit was filed by Baykeeper, NRDC and local residents, in 2004, against the Port of Stockton and its Board of Commissioners, under the California Environmental Quality Act. That lawsuit challenges the approval of the port’s expansion project, alleging that the Environmental Impact Report done by the port was wholly inadequate in its analysis of environmental impacts, mitigation measures and alternatives. The matter is currently pending in the Third Appellate District of the California Court of Appeal, where the Attorney General has filed a friend-of-the-court brief in support of the plaintiffs.

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The Natural Resources Defense Council is a national, nonprofit organization of scientists, lawyers and environmental specialists dedicated to protecting public health and the environment. Founded in 1970, NRDC has 1.2 million members and online activists nationwide, served from offices in New York, Washington, Los Angeles and San Francisco.

Founded in 1989, Baykeeper is an on-the-water advocacy organization dedicated to protecting the San Francisco Bay-Delta watershed. Since 1994, its Stockton-based Deltakeeper Chapter has provided educational programs on the Delta to schools and community leaders, conducted water quality sampling, and enforced environmental regulations to ensure a healthy Delta.