

The era of collaboration and cooperation that CalFed briefly brought to management of California's water system is well and truly over. Lawsuits are multiplying like rabbits, promising to provide full employment for water and natural resource lawyers in California for the foreseeable future. For those of you scoring at home, here are some of the latest additions to an already crowded field.

- [Central Delta Water Agency v. US FWS](#): Plaintiffs, in-Delta water users, challenge the process used to develop the [Bay-Delta Conservation Plan](#). The Plan doesn't yet exist, and its EIR/EIS is still in the scoping phase, but that hasn't deterred the plaintiffs. They allege violations of NEPA, CEQA, ESA, California's Natural Community Conservation Planning Act and California's open meeting law. This suit is very much a longshot at the moment, since no final action has yet affected the plaintiffs. But is surely is both a political shot across the bows and a preview of litigation to come when the BDCP comes to fruition, at least if it calls for a peripheral canal to replace current through-Delta conveyance. (Hat tip to [Jacqueline L. MacDonald, Somach Simmons & Dunn](#)).
- [Butte Environmental Council v. California Department of Water Resources](#): This is a challenge to DWR's creation of a Drought Water Bank for 2009 without an EIR. DWR claimed an emergency exemption from CEQA. Plaintiffs assert that no exemption applies. (Hat tip to [Jonathan Schutz, Somach Simmons & Dunn](#)).
- [Coalition for a Sustainable Delta v. USFWS](#): The Coalition, made up of San Joaquin Valley agricultural water users, challenges FWS's December 2008 [biological opinion](#) on the effects of operation of the State Water Project and Central Valley Project on the delta smelt. The suit claims that FWS did not use the best available scientific evidence, that the biological opinion does not adequately identify the environmental baseline, that the "reasonable and prudent alternatives" it identifies are not feasible, and that its issuance was arbitrary and capricious. This suit is a slight variant on challenges to the smelt biological opinion brought by State Water Contractors, Westlands Water District and the San Luis & Delta-Mendota Water Authority, and the Metropolitan Water District of Southern California. Eric Davis of Somach Simmons & Dunn discusses those suits [here](#). The Coalition for a Sustainable Delta has also filed a [Notice of Intent to sue](#) FEMA, EPA, the US Department of Transportation, the Maritime Administration, the Army Corps of Engineers, and FWS over failures to consult under section 7 on a wide variety of activities that may affect listed Delta species. The Coalition has also sued the California Department of Fish and Game over its management of striped bass in the Delta and the City of Stockton over stormwater discharges.
- [California Water Impact Network v. Department of Water Resources](#): This state court

suit alleges that operation of the State Water Project and Central Valley Project violate California's Public Trust Doctrine, and that the State Water Resources Control Board has violated its affirmative duty to protect the public trust. It also charges that Delta exports amount to an unreasonable method of diversion, and delivery to Westlands lands is an unreasonable use of water contrary to Article X, section 2 of the California Constitution; that operation of several project dams violates California Fish and Game Code section 5937, which requires that dam operators allows sufficient water to pass to keep fish below the dam in good condition because the water released is too warm; and that project operations have violated state water quality mandates.