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LAND USE NEWS

GOVERNOR'S OFFICE OF LAND USE AND CLIMATE INNOVATION AWARDS $9.4 MILLION FOR LOCAL GOVERNMENTS AND COMMUNITY-BASED ORGANIZATIONS TO COMBAT EXTREME HEAT AND BUILD COMMUNITY RESILIENCE

The Governor's Office of Land Use and Climate Innovation's (LCI) Extreme Heat and Community Resilience Program (EHCRP) announced in November 2024 $9.4 million in funding to help 32 California communities build capacity for extreme heat action planning and project implementation.

Planning Grants

Divided into 20 Small Planning Grants and 12 Small Implementation Grants, these awards support local, regional, and tribal efforts to reduce the impacts of extreme heat through investments including physical infrastructure, planning, nature-based solutions, and emergency preparedness. This funding, along with technical support for project management and evaluation, will develop frameworks for change across the state to reduce the risks of extreme heat events.

This investment comes at a critical time. "Governor Newsom's climate agenda takes historic action to address the climate crisis, and investing in building community resilience to extreme heat is at the very center," said Samuel Assefa, Director of the Governor's Office of Land Use and Climate Innovation. "The Extreme Heat and Community Resilience Program empowers California's communities to build essential projects and partnerships, that will safeguard residents and vital systems from the impacts of extreme heat."

Round 1 Awards

Round 1 awardees represent a wide range of local governments, community-based organizations, and academic institutions. One hundred percent of all awards will be invested into disadvantaged communities.

Small Planning Grant awards range from $113,00 - $250,000 ($4.4 million total) and will fund early-stage efforts for communities to mitigate extreme heat. Projects include the creation of local heat action plans, heat resilient infrastructure planning at schools, and designing heat resilient bus shelters.

"We believe this partnership is essential to building a safer, more resilient future for all communities in Kings County," said Alexander Mena, the Kings County Chief Resilience Officer and EHCRP small planning grant awardee:

> The Extreme Heat and Community Resilience Program grant enables us to prepare strategically, focusing on protecting vulnerable populations—such as those with access and functional needs, non-English speakers, unhoused individuals, farmworkers, and others who rely on outdoor labor.

Small Implementation Grants range from $330,000 - $450,000 ($5 million total) and will fund items like school campus landscaping retrofits, community safety training, and park retrofits to that add shade and heat relief.

"We're planning for the future, making sure that when the heat returns, our students have a campus that's comfortable, safe, and designed with them in mind," said SBVC President Gilbert J. Contreras:

> These upgrades came directly from our students' voices. We listened at San Bernardino Valley College. With shaded spaces, cool water stations, and solar-powered study spots, we're setting an example in sustainability too. It's all about building a campus where students feel supported and can focus on achieving their goals.

Conclusion and Implications

The EHCRP Small Grants were designed to ensure that smaller community-based organizations and heat-vulnerable communities have access to funding

that can help them plan and take action to protect themselves from extreme heat events.

As part of the Integrated Climate Adaptation and Resiliency Program, EHCRP is part of a family of grant programs that include the Regional Resilience Program and the Adaptation Grant Program. Funding for EHCRP was made available through the 2022-23 General Fund budget. An additional $3.5 million of funding was added to the small grant awards from the 2024-25 General Fund budget. These awards will be followed by large implementation grants which range from $450,000 to $4 million and will be announced later this fall. For more information about each grantee *see:* Small Implementation and Small Planning Grant Awards List.
(Robert Schuster)

REGULATORY DEVELOPMENTS

U.S. FISH AND WILDLIFE SERVICE ISSUES BIOLOGICAL OPINION FOR LONG TERM WATER PROJECT OPERATIONS

Surface water in California is conveyed primarily by two large conveyance systems commonly known as the State Water Project (SWP) and the federal Central Valley Project (CVP), which are owned and operated by the State of California Department of Water Resources (DWR) and the United States Bureau of Reclamation (USBR), respectively. The CVP and SWP are a network of dams, reservoirs, canals, and other facilities that provide water, power, and flood control for California. What one system does may, and often does, impact the other, thus making coordinated operations critical for timely and reliable delivery of water supplies throughout the state. These operations are referred as Long-Term Operations and become subjected to myriad of federal and state regulatory and environmental compliance requirements.

Background

Among those requirements for the federal government is developing and adopting a Biological Opinion, which the United States Fish and Wildlife Service (USFWS) has issued for the CVP's Long-Term Operations. USFWS is the primary federal agency whose main responsibility is to manage fish and wildlife resources.

By way of brief background, the Biological Opinions include Reasonable and Prudent Alternative (RPA) actions to prevent the projects from jeopardizing these species. For example, the 2008 Biological Opinion recommended actions to prevent the Delta smelt from becoming endangered. The Biological Opinions are intended to ensure consistency between the federal and state agencies that operate the CVP and SWP. However, a lawsuit filed by California and others in 2019 challenged the Biological Opinions, claiming the opinions did not provide enough protection for protected species.

In September 2021, the USBR requested to reinitiate Endangered Species Act consultation on the Long-Term Operations of the CVP and SWP. The new Biological Opinion includes goals to support species viability, protect life history diversity, support operational flexibility, provide regulatory certainty, support science and monitoring, and create a single, adaptable, coordinated operation for the CVP and SWP.

During late November 2024, the USFWS issued its Biological Opinion for the Long-Term Operations. This opinion assesses the potential impacts of the LTO on sixteen federally-listed and proposed species, as well as designated critical habitats.

Long-Term Operations Plan

The Long-Term Operations plan aims to provide more predictable actions for endangered fish species and a more reliable response to multi-year droughts. Key points include: (1) improved regulatory certainty for water users and a more stable water supply for communities, farms, and fish; (2) a new framework for Shasta Reservoir operations to benefit winter-run Chinook salmon; (3) revised operational criteria for Delta exports; (4) early implementation of components of the Healthy Rivers and Landscapes Program to provide more Delta outflow and habitat restoration in the Sacramento-San Joaquin Bay-Delta; and (5) collaboration with partners from various federal and state agencies.

The plan purports to be designed to build resilience to drought, support endangered species, and improve habitat conditions throughout the Delta. Also included in the plan is early implementation of components of the Healthy Rivers and Landscapes Program to provide more Delta outflow and habitat restoration. The Healthy Rivers and Landscapes Program involves numerous interests coming together to provide water for fisheries and riparian habitats in the Delta as part of the California State Water Resources Control Board's Water Quality Control Plan Update.

Ultimately, the proposed action's key findings include: (1) may affect, but is not likely to adversely affect, four species; (2) it is not likely to jeopardize the continued existence of twelve species; (3) the proposed action may affect, but is not likely to adversely affect, designated habitat for one species; and (4) it is

not likely to destroy or adversely modify designated critical habitat for three species

Conclusion and Implications

Biological Opinions impact the balancing of water resource management with the protection of endangered species and their habitats, especially given California's challenges with droughts. The Biological Opinion may impose restrictions on water deliveries to protect species such as salmon and delta smelt, affecting agricultural, urban, and environmental water users some of whom hold very senior water rights in the state. Long-term, this could lead to more stringent water management practices and investment in infrastructure or alternative water sources to mitigate impacts on water supply reliability. Additionally, these opinions may spur legal challenges or policy adjustments as stakeholders seek to balance ecological protection with their water needs.
(Wes Miliband)

BAY CONSERVATION AND DEVELOPMENT COMMISSION PUBLISHES REGIONAL SHORELINE ADAPTATION PLAN IMPLEMENTATION

The San Francisco Bay Conservation and Development Commission (BCDC) has developed the Regional Shoreline Adaptation Plan (RSAP), as mandated by California Senate Bill 272. This comprehensive policy establishes guidelines for cities and counties in the Bay Area to address sea level rise through coordinated, region-wide planning efforts. The RSAP is designed to ensure consistent and equitable adaptation measures across jurisdictions while protecting communities, infrastructure, and ecosystems from coastal flooding.

One Bay Vision: A Regional Framework

The RSAP is built around the "One Bay Vision," which outlines the desired long-term outcomes for the Bay shoreline. This vision emphasizes enhancing community health and well-being by improving public safety and reducing displacement risks. It also prioritizes protecting and expanding natural habitats to ensure ecosystem health and resilience. Sustainable growth and equitable land use are key components, alongside safeguarding critical infrastructure and services from flood hazards. Ensuring uninterrupted public shoreline access and maintaining critical transportation routes are vital goals. The vision also focuses on reducing environmental hazards related to shoreline contamination and fostering collaborative governance to promote inter-agency cooperation and shared responsibility.

Subregional Shoreline Adaptation Plans (Subregional Plans)

Local governments within BCDC's jurisdiction are required to create Subregional Plans that detail how they will adapt to rising sea levels. These plans must align with the One Bay Vision and fulfill specific requirements.

Each plan must outline how stakeholders are involved in the decision-making process, ensuring transparency and inclusivity. They must also include an analysis of existing shoreline conditions, infrastructure, and community vulnerabilities to establish a baseline for adaptation strategies. Vulnerability assessments must evaluate areas at risk due to sea level rise and coastal flooding, identifying critical assets that require protection.

Adaptation strategies in the plans should include specific measures to reduce flood risks, with an emphasis on nature-based solutions that benefit both the environment and communities. Policies to support resilient development and land use must be integrated into the plans to guide sustainable growth. Implementation plans should include timelines, responsible agencies, and funding strategies to ensure that proposed projects are actionable and achievable. Additionally, the plans must include a comprehensive list of proposed adaptation projects, prioritizing those that address the most urgent risks and needs.

Minimum Standards for Compliance

The RSAP establishes four critical Minimum Standards that all Subregional Plans must meet to ensure consistency and effectiveness. Evaluations must address a range of future sea level rise scenarios based on the latest scientific data, incorporating both intermediate and high-risk projections. Plans must also account for essential community assets, such as housing, transportation, and environmental resourc-

es, ensuring that critical infrastructure and vulnerable populations are protected. Equity considerations are a central requirement, mandating that planning processes prioritize socially vulnerable communities and incorporate their needs into adaptation measures. Proposed strategies must align with regional goals while allowing local flexibility to address unique community conditions and priorities.

Plan Submission and Review Process

Subregional Plans must be submitted to BCDC for review and approval, following a structured process to ensure alignment with RSAP guidelines by January 1, 2034. After this, BCDC will conduct a thorough evaluation to assess compliance. Plans that meet the requirements are approved, while those that do not are returned with specific recommendations for revision. Local agencies will be incentivized to have an RSAP because they will be prioritized for funding for the implementation of sea level rise adaptation strategies and recommended projects in the approved plan. Once approved, plans must be updated periodically to reflect changing conditions, new data, and progress on implementation efforts. This iterative process ensures that adaptation measures remain effective and relevant over time.

Conclusion and Implications

The RSAP establishes a forward-looking framework for managing sea level rise and coastal flood risks in the San Francisco Bay Area. By requiring comprehensive, locally-driven Subregional Plans that align with region-wide standards, the policy aims to create a resilient, equitable, and environmentally sustainable shoreline. Local governments are tasked with the next steps of responsibility by developing and implementing these plans proactively. These plans look to ensure long-term protection for residents, infrastructure, and natural ecosystems, while also creating a new framework for coordinated climate adaptation efforts in coastal regions.
(Darien Key)

LAWSUITS FILED OR PENDING

CEQA LAWSUIT FILED IN SUPERIOR COURT AGAINST KERN COUNTY FOR CARBON CAPTURE AND STORAGE PROJECT

Committee for a Better Shafter, et al v. County of Kern, et al, Case No. BCV-24-104003 (Kern County Super. Ct. Nov. 20, 2024).

On November 20, 2024, the Committee for a Better Shafter filed a lawsuit against Kern County Superior Court challenging the first carbon capture project of its kind in California and requesting injunctive relief. Named the Carbon TerraVault 1, the project plans include annually injecting up to one million metric tons of C02 in the Elk Hills oil field.

Factual Background

A coalition of advocacy groups, including Earthjustice, is suing Kern County in an attempt to block a carbon capture and storage project in California. The lawsuit alleges that Kern County government officials did not properly weigh, nor did they honestly consider the project's environmental risks. In October 2024, the Kern County Board of Supervisors (Board) approved the Carbon TerraVault 1 project (Project), which proposes to capture millions of tons of carbon dioxide over the next 26 years and store it underneath the Elk Hills oil field.

The plaintiffs requested that the court reverse the Board's approval, along with the Environmental Impact Report (EIR) containing the Board's environmental analysis of the Project, which allegedly violates the California Environmental Quality Act (CEQA).

Alleged CEQA Violations

In the complaint, the plaintiffs allege violations to CEQA for a handful of reasons. The lawsuit states that the Board's final EIR for the Project failed to comply with CEQA's official guidelines. Under Public Resources Code Sections 21002.1(a) and 21080(b), CEQA requires the lead agency for a project that has the potential to cause significant environmental impacts to provide an EIR containing sufficient environmental analysis for the public and the decision-makers to intelligently consider the potential consequences of approving such project. Further, an EIR's description of the environmental setting must be sufficiently comprehensive to allow any significant impacts to be considered in the full environmental context. CEQA Guidelines Section 15125(c).

In addition, the plaintiffs state that a complete analysis of alternatives to a project is required under CEQA and that a public agency should not approve a proposed project if feasible alternatives are available that would substantially lessen any significant impacts on the environment. Public Resources Code Section 21002; CEQA Guidelines Sections 15002(a)(3), 15021(a)(2), 15126(f).

Next, an EIR must include a discussion regarding a project's incremental effect when combined with the effects of other projects is cumulatively impactful. CEQA Guidelines Section 15130(a). Furthermore, an EIR must respond to comments containing specific suggestions for mitigating a significant impact unless such suggestion is infeasible. If a suggestion is deemed infeasible by the rejecting agency, the agency must support its decision with substantial evidence free of legal error. Public Resources Code Sections 21002, 21002.1(b), 21168.5.

The plaintiffs claim that, by using the 110 year-old Elk Hills oil field, the Project is extending the life of the field for years longer than necessary. As such, the Project incentivizes a massive build-out of new industrial facilities in Kern County, which directly contradicts the purpose of carbon capture and storage projects—to meaningfully reduce greenhouse gas emissions from industrial activities.

In addition, the plaintiffs claim that the final EIR prepared under CEQA failed to properly and sufficiently analyze the mitigation efforts, reasonable alternatives, and the unavoidable impacts that will result from the Project. These impacts include greenhouse gas emissions and significant energy use, as well as the Project's potential carbon sources. A

concerning topic of analysis in the EIR revealed that the Project could not ensure the permanent storage of the carbon dioxide underground in perpetuity.

If the approval of the Project is not overturned, there will be significant potential impacts on nearby communities, including heavy-duty truck traffic associated with the Project. The communities already suffer from the surrounding oil and gas fields; Kern County is considered one of the most air-polluted regions in the United States. As oil and gas production are significant sources of greenhouse gas emissions and are primary factors of climate change, the Project risks worsening air quality and resulting health problems, especially for Kern County residents.

In addition, Kern County is located in a very seismically active area and accounts for numerous earthquake faults. This is particularly troublesome as high seismic hazards have the potential to increase the risk of carbon dioxide leaks from oil and gas wells, in addition to underground storage reservoirs. In turn, high pressure injections of carbon dioxide may increase the risk of inducing earthquakes in the area.

These potential environmental impacts pose a threat to a majority Hispanic population; over 60 percent of people that live nearest to the Project's site are Hispanic with limited English proficiency.

Conclusion and Implications

A notice of a mandatory settlement meeting appears on the docket dated December 19, 2024, which signifies that the court will attempt to have the parties to the lawsuit resolve the dispute through settlement negotiations prior to going to trial.

Officials for Kern County have refused to comment on the pending litigation. The ongoing dispute speaks to a larger discussion—what the role of carbon capture and storage will have in the future and whether it will help or hinder efforts to combat climate change.
(Mona Goodarzi)

RECENT FEDERAL DECISIONS

NINTH CIRCUIT RULES IN HOTEL DEVELOPMENT PROJECT THAT ALLEGED CEQA ABUSES ARE NOT ACTIONABLE UNDER RICO

Relevant Group, LLC v. Nourmand, 116 F.4th 917 (9th Cir. 2024).

On September 5, 2024, the Ninth Circuit Court of Appeals took a narrowed approach to applying the Racketeer Influenced and Corrupt Organizations Act (RICO) to allegations of abuse of the California Environmental Quality Act (CEQA) in a proposed hotel project.

Factual Background

The plaintiff in this lawsuit, Relevant Group, LLC, sought to develop three hotels in the Hollywood area of Los Angeles, California. Relevant Group, LLC is an umbrella entity that manages three other plaintiffs, including the 1541 Wilcox Hotel LLC, the 6516 Tommie Hotel LLC, and the 6421 Selma Wilcox Hotel LLC (Relevant). However, Relevant hit a roadblock beginning in 2015, when defendant, Stephen "Saeed" Nourmand, and his attorneys began challenging Relevant's proposed projects. Nourmand is a finder of defendant Nourmand and Associates (N&A), a residential real estate brokerage firm, and serves as Sunset Landmark Investment LLC's (Sunset) principal. Sunset owns the historic Hollywood Athletic Club, which is located in the same neighborhood that Relevant wished to build its three hotels.

Nourmand and his associates, including Sunset, brought oppositions during the entitlement process and filed multiple lawsuits against the city of Los Angeles under CEQA.

The plaintiff settled the lawsuits related to two of its three hotel projects, which included a $5.5 million payment in cash to the defendant. However, immediately thereafter, Nourmand challenged the plaintiff's third hotel project, noting that another payment could resolve the last roadblock to the development of plaintiff's final project.

In its complaint, Relevant alleged that Nourmand and his associates abused the processes available under CEQA by bringing lawsuits against Relevant. Relevant argued that Nourmand's challenges were brought not for genuine concern of CEQA violations, but instead for the sole purpose of obstructing the development and extorting funds from Relevant in violation of RICO.

The U.S. District Court granted summary judgment in favor of the defendants and held that the Noerr-Pennington doctrine protected the defendants' petitioning activity from any statutory liability under the First Amendment.

The Noerr-Pennington Doctrine

Under the Noerr-Pennington doctrine, private entities may be immune from antitrust liability for certain actions that were intended to influence government decision-making. This doctrine seeks to protect the right to petition the government under the First Amendment.

However, this immunity shield is not absolute. For such immunity to apply, the action being challenged cannot be a "sham" or distraction to merely cover up a legitimate intent to interfere with a competitor's ability to compete. In other words, the Noerr-Pennington doctrine does not protect objectively baseless lawsuits brought against a party for an unlawful purpose, often referred to as the sham litigation exception.

Sham Litigation Exception

Under the sham litigation exception, a plaintiff must demonstrate that (1) the lawsuit was objectively baseless and (2) the defendant had an unlawful motive in bringing the lawsuit.

The Ninth Circuit's Decision

Here, the Ninth Circuit focused on the first element of the sham litigation exception in its discussion. The court found that two of the lawsuits brought by the defendant did not meet the objectively baseless standard. As evidence to its opinion, the

court pointed to the fact that Relevant chose to enter into settlement agreements in the first two lawsuits, which indicates that the lawsuit is not entirely and objectively baseless. While Relevant attempted to argue that they entered into settlement agreements with Nourmand in trying to avoid being ruined by the lawsuits and not because the lawsuits held any merit, the court was not convinced and ultimately dismissed Relevant's arguments.

Furthermore, the court highlighted the non-monetary provisions of the settlement agreements as well, which included measures for noise reduction and height limitations on Relevant's buildings. The court found that these non-monetary provisions were directly related to environmental matters.

As the court held that the lawsuits brought by the defendant under CEQA did not satisfy the sham litigation exception's first element, it did not discuss the second element in detail. However, the court did acknowledge that some facts and circumstances suggest that the defendant's lawsuits were brought for improper purposes.

In the end, the Court of Appeals found:

> Because the district court correctly held that Defendants' CEQA actions did not fall within the sham exception, we need not reach their other arguments to affirm the district court. These arguments are that "'litigation activity' can never be a 'predicate act' for purposes of civil RICO liability," and that Relevant has not alleged enough predicate acts to sustain a cause of action under RICO. Both of these questions involve unresolved issues of law, and we do not address them here. *See PDK Labs, Inc. v. U.S. D.E.A.*, 362 F.3d 786, 799 (D.C. Cir. 2004) ("[T]he cardinal principle of judicial restraint—if it is not necessary to decide more, it is necessary not to decide more—counsels us to go no further.")

Conclusion and Implications

The Ninth Circuit's opinion has established a high bar for bringing RICO claims to address alleged abuse under CEQA. The Court of Appeals' discussion may be worrisome for CEQA practitioners and relief-seeking individuals and entities as it signals that the federal judiciary will likely refuse to provide a remedy for alleged or attempted extortion or similar conduct. Instead, the court punts to the California state legislature for resolution, wherein state courts may provide a more favorable forum for addressing CEQA abuse. The Ninth Circuit's opinion is available online at: https://cdn.ca9.uscourts.gov/datastore/opinions/2024/09/05/23-55574.pdf
(Mona Goodarzi)

RECENT CALIFORNIA DECISIONS

FOURTH DISTRICT COURT REJECTS MOTIONS CHALLENGING COURT-CREATED AGENCY'S BUDGET ADOPTION FOR CEQA FIRST-TIER REVIEW LEAD AGENCY

Chino Basin Municipal Water District v. City of Ontario, *Unpub.* Case No. E080533 (4th Dist. Nov. 12, 2024).

In an *unpublished* opinion filed on November 12, 2024, the Fourth District Court of Appeal affirmed the trial court's denial of appellants' motions challenging a court-created agency's fiscal year (FY) 2022/2023 budget that included appropriations for environmental review of an updated long-term management program, managing several parties' basin water rights.

Factual and Procedural Background

The Basin, Pools, and Watermaster

In 1975, Chino Basin Municipal Water District initiated this action against several parties to adjudicate their rights and obligations with respect to groundwater in the Chino Groundwater Basin (Basin). Three years later, the parties stipulated a judgment (1978 Judgment) governing several parties' water rights in the Basin by establishing the Basin's governance structure, providing judicial oversight via continuing jurisdiction provisions, and creating the Chino Basin Watermaster (Watermaster), an arm of the court.

The 1978 Judgment also established three "Pools" of parties with water interests in the Basin: Overlying Agricultural Pool (Ag Pool), Overlying Non-Agricultural Pool (Non-Ag Pool), and Appropriative Pool (Ap Pool). The Pools are responsible for the costs of replenishment water and other aspects of the physical solution. Each Pool has a committee that administers its internal affairs, employs its own separate counsel, and may seek judicial review of any Watermaster action or failure to act. The Pool Committees can jointly form an Advisory Committee to advise and assist Watermaster in performing its functions under the 1978 Judgment. Appellants City of Ontario (Ontario) and City of Chino (Chino) are members of the Ap Pool.

Watermaster is a nine-member board, comprised of representatives of parties to the 1978 Judgment, including representatives from each Pool, and it administers and enforces the 1978 Judgment and any subsequent instructions of the Superior Court. It has express powers and duties as provided in the 1978 Judgment or as authorized by the court, but it may not contract with or purchase materials, supplies, or services from Inland Empire Utilities Agency (IEUA), a municipal water district that provides wastewater treatment services to various cities including Chino and Ontario, except upon the prior recommendation and approval of the Advisory Committee and pursuant to written order of the court.

Optimum Basin Management Program (OBMP)

In 1999, at the court's direction, Watermaster prepared the OBMP to address the Basin's water quality issues. The OBMP had two phases: Phase I (the report), adopted in 1999, and Phase II (Implementation Plan), submitted to the Superior Court for approval in 2000. Watermaster conducted a California Environmental Act (CEQA) evaluation of the OBMP via preparing a Program EIR (PEIR) since the OBMP was likely to involve numerous public agencies undertaking activities that may cause direct as well as indirect physical environmental harm, necessitating further project-specific CEQA evaluation, such as the desalter program. On November 18, 1999, the Superior Court approved the decision to prepare a PEIR and the designation of IEUA as the lead agency, and the completion of the PEIR was scheduled for May 17, 2000.

In preparation for the development of the OBMP PEIR, Watermaster budgeted for and assessed the parties for expenses associated with the CEQA review in FY 1998/1999 and 1999/2000. On June 29, 2000, the parties executed the Peace Agreement (Peace I) to fa-

cilitate the implementation of the OBMP. According to Peace I, the parties agreed that no project subject to CEQA review would be carried out unless and until the environmental review and assessments have been completed. Peace I's recitals state that the draft PEIR for the OBMP was completed and circulated to the parties prior to execution of Peace I. Certification of the OBMP PEIR was a condition for court approval of Peace I. Peace I was amended in 2004 and 2007.

In 2007, the parties entered into the Peace II Agreement (Peace II, collectively with Peace I as Peace Agreements) wherein they agreed, among others, to support Watermaster's OBMP Implementation Plan and acknowledged IEUA as the properly designated lead agency to complete environmental assessment and review of the proposed project, such as expanded desalting and re-operation programs.

Addendum to OBMP PEIR

By 2017, the water storage capacity of the Basin had exceeded 500,000 acre-feet (AF), when the Peace Agreements and the OBMP Implementation Plan had established rules and procedures for stored water up to a maximum of 500,000 AF. Storage of the increased amount was temporarily authorized from June 2017 until June 30, 2021, and IEUA, as the lead agency, certified an addendum to the OBMP PEIR (Add PEIR), stating a temporary increase in storage would have no undesirable results.

In 2020, Watermaster began a facilitated process for negotiation of the OBMPU, an update to the OBMP, to address the storage capacity of over 500,000 AF, holding orientation and drafting sessions on March 2 and 16, 2020. Cost for the updated PEIR (PEIRU) for the OBMPU (which focused on groundwater storage management within the Basin—as high as 1,000,000 AF) had been added to the FY 2019/2020 budget; appellants did not challenge Watermaster's budgeting process or how its technical consultant and legal counsel participated in the development and review of the OBMPU PEIRU. The budget amendment for CEQA work for the OBMPU PEIRU was unanimously recommended for approval by the Ap Pool Committee and unanimously approved by the Advisory Committee, but the process for negotiation of the OBMPU was paused due to the COVID-19 pandemic, and the parties focused on the local storage limitation solution. IEUA still continued preparing a draft OBMPU PEIRU, but when Ontario sent a letter to IEUA alleging deficiencies in the draft OBMPU PEIRU, IEUA's board of directors did not certify the draft OBMPU PEIRU.

In the meantime, since Watermaster and the parties to the 1978 Judgment had vastly exceeded the initial expectations for storing water in the Basin, Watermaster requested the Superior Court issue an order for the management of all quantities of water held in storage in amounts from 500,001 AF up to a maximum of 700,000 AF until June 30, 2030, and thereafter a maximum of 620,000 AF until June 30, 2025. Moreover, on March 17, 2021, as the lead agency, IEUA certified a second addendum to the OBMP PEIR (2ndAddPEIR), which concluded there were no significant unavoidable adverse impacts attributable to the adoption and implementation of the local storage limitation solution. Like the AddPEIR, IEUA did not require the consent of all signatories to the Peace Agreements for the 2ndAddPEIR because Watermaster only sought to supplement and not amend or modify the

Peace Agreements and the OBMP Implementation Plan.

Updated OBMP PEIR (OBMPU PEIRU)

After COVID-19 restrictions were lifted, preparations for the OBMPU PEIRU resumed. Watermaster included funding for activities necessary to complete the environmental review of the OBMPU in its FY 2022/2023 budget, and presented its proposed budget to the Advisory Committee for approval. In May 2022, the Advisory Committee approved the FY 2022/2023 budget. Soon after, over appellants' objections, Watermaster adopted the FY 2022/2023 budget that allocated a certain amount to fund the OBMPU PEIRU and to assist the parties in agreeing to amend the OBMP Implementation Plan. Appellants objected.

In response, in July 2022, Watermaster provided a staff report that addressed the need for the OBMPU PEIRU, explaining that the 22-year-old PEIR was unable to address the current conditions sufficiently to secure state and federal funding and held a special meeting to attend to appellants' concerns, favoring in approving only environmental coverage of the local storage limitation solution. At the meeting, Watermaster staff explained that the OBMPU does not mandate projects, and the programmatic CEQA evaluation of the OBMPU does not obligate any

party to any such expenditures, that the programmatic analysis was simply a cumulative analysis of any projects the parties might choose to agree on and to implement in the future. The General Manager of Watermaster reiterated the environmental analysis of the OBMPU was at the programmatic level and not a prescriptive-type document.

Following the close of the meeting, Watermaster took action to: (1) direct staff to meet with all interested stakeholders to evaluate the current status of the OBMPU, consider changes in circumstances, and gather stakeholder input; and with this input, (2) develop a project description for the OBMPU PEIRU (with IEUA as lead agency), and (3) proceed with the effort within the approved budget.

At the Trial Court

On August 26, 2022, appellants challenged Watermaster's FY 2022/2023 budget action to fund CEQA review of the 2020 OBMP (the OBMPU PEIRU) by moving for a court order invalidating (1) Watermaster's May 26, 2022, adoption of the FY 2022/2023 budget to the extent it includes funding for the OBMPU PEIRU, and (2) any corresponding assessments. Moving parties further sought an order restraining and preventing Watermaster from expending funds on CEQA review until after parties to the Peace Agreements agreed on an amendment to the 2020 OBMP Implementation Plan and provided direction to Watermaster regarding the projects requiring CEQA review.

Watermaster and IEUA opposed the motion, arguing that approval of the budget was based on the advice and counsel of the three Pools and the recommendation of the Advisory Committee; that the budget was to study actions, not a project; that technical work in support of a PEIR is not the same as performing a CEQA duty; and that Watermaster's technical support of IEUA was previously ordered in 1999, by the Superior Court, and subsequently contractually agreed to under Peace I. Separately, IEUA argued that the pending motion was not so much a challenge of Watermaster's authority but rather a manipulation of the Watermaster process to challenge IEUA's separate project (Chino Basin Project), which addresses local water issues involving water exchange, recycled water projects, and new infrastructure and upgrades. On November 18, 2022, the Superior Court heard arguments from both sides and denied the appellants' motion.

The Court of Appeal's Decision

The Fourth District Court of Appeal affirmed the trial court's order denying appellants' motion. The court first clarified the two main issues raised: (1) Whether the Watermaster may appropriate and expend funds for the OBMPU PEIRU and (2) Whether the Watermaster may designate IEUA as the lead agency. Chino and Ontario differed in raising their arguments on several minor points, but the court analyzed them under the two main issues.

Appropriation and Expenditure of Funds for the OBMPU PEIRU

The appellants argued that CEQA does not apply because Watermaster is not an agency, that its action does not qualify as a project, and that it may not assess money for CEQA review. However, the court diagnosed that this case did not present a typical project-specific CEQA case and, in challenging the funding for the OBMPU PEIRU in the FY 2022/2023 budget, that appellants ignored or discounted the value of the 1978 Judgment, prior court orders, Watermaster rules and regulations, the initial PEIR for the OBMP, and past actions approved by the parties.

After analyzing statutes and case law regarding "tiering" in the context of CEQA, the court concluded that CEQA also applies to long-term, multipart projects such as the OBMP and the OBMPU. Thus, the court decided that the OBMPU PEIRU was the first-tier programmatic level EIR under CEQA that analyzes the broad impact of the management program that addresses the Basin's water quality issues.

Turning its analysis to the propriety of budgeting for the OBMPU PEIRU in the FY 2022/2023 budget, the court found that Watermaster was charged with discretionary authority and responsibility to adopt a management program to achieve full utilization of the Basin's resources. After examining how Watermaster prepared the OBMP back in 1999 and the OBMP PEIR subsequently, the court acknowledged that the Basin's conditions in the next 20 years had changed enough (such as the water storage capacity) to update the OBMP and the PEIR. The court also recognized that Watermaster received the Advisory Committee's unanimous approval for the budget amendment of the CEQA work, complying with its rules and regulations and the Judgment. The court stated that nothing in the Judgment, Peace Agreements, Watermaster's rules

and regulations, or prior practice of the parties prevented Watermaster from budgeting or approving a budget that includes funding for the OBMPU PEIRU. Rather, the court found that the 1978 Judgment explicitly permits Watermaster to undertake and fund environmental studies, hydrologic conditions, and operating aspects of implementation of the management program for the Basin.

As previously agreed by the parties, the court noted that the operating aspects of implementing the OBMP were subject to a first-tier programmatic CEQA review because the OBMP was likely to involve numerous public agencies undertaking activities that may cause direct and indirect physical environmental harm. Watermaster thus limited the CEQA review of the OBMPU to a first-tier PEIR. In short, the court decided that appellants failed to provide any evidence Watermaster violated the Judgment or any other controlling document by budgeting for the OBMPU PEIRU.

Designation of IEUA as the Lead Agency and Watermaster's Neutrality

The court also disagreed that Watermaster's support for IEUA's CEQA review of the OBMPU violated the neutrality principle by endorsing IEUA as the lead agency and the projects it may choose to review, regardless of whether the other parties to the 1978 Judgment agree. The court reasoned that the identification of IEUA as the lead agency for the OBMPU PEIRU was based on the Peace Agreements and IEUA's long history of serving as the lead agency for the OBMP PEIR. IEUA was approved by the parties and designated as the lead agency by the Superior Court in 1999. Additionally, in 2022, by a majority vote, the advisory committee approved Watermaster's FY 2022/2023 budget, which included funding for the OBMPU PEIRU by IEUA. The court could not find anything in the FY 2022/2023 budget that pre-supposes IEUA should or will be the lead agency for any project not yet identified or agreed upon.

Appellants claimed that the Chino Basin Program (CBP), IEUA's own billion-dollar potential project discussed in Watermaster's OBMPU," created a potential conflict of interests with IEUA's role as lead agency for the OBMPU PEIRU because it gives the ability to advance IEUA's own proposed projects at the expense of other parties to the 1978 Judgment. The court rejected this claim because a lead agency need not be free from receiving any benefit from the project, as long as that agency can fully and fairly provide the necessary environmental information required by CEQA's processes, citing *Center for Biological Diversity v. County of San Bernardino* (2016) 247 Cal.App.4th 326, 345. Even though Ontario initiated a lawsuit against IEUA relating to the CBP, the court decided that the merits of an action between Ontario and IEUA over competing projects were irrelevant to the challenge of Watermaster's funding of the OBMPU PEIRU by IEUA. Particularly, the court noted that, according to the general manager of IEUA, IEUA had implemented approximately 30 of its own projects that fall within the umbrella of the OBMP PEIR, yet no party asserted that IEUA used its lead agency status for the PEIR to favor its own projects over the projects of others.

Thus, the court concluded that Watermaster's designation of IEUA as lead agency for the OBMPU PEIRU neither violated its neutrality nor presupposed a preference that IEUA lead any or all future specific projects, but merely affirmed IEUA's prior designation as lead agency for the PEIR of the updated OBMP. Given IEUA's history as lead agency, the court found Watermaster's decision as economically sound.

Appellants' Challenge Was Not Premature

Lastly, the court agreed appellants' contention that the Superior Court erred in finding that the appellants' challenge was premature. Appellants challenged Watermaster's May 26, 2022, action of adopting the FY 2022/2023 budget. According to Paragraph 31(c) of the 1978 Judgment, notice of motion to review Watermaster's budget actions shall be within sixty (60) days of the action. Because Watermaster extended the deadline to challenge its budget action by an additional 30 days from its July 28, 2022, special meeting, the appellants' challenge filed on August 26, 2022, was not premature, though it did not change the outcome of this case.

Conclusion and Implications

This seems to be a unique case, where the challenged agency does not belong to one municipality but works with many. However, as long as that agency acted within the given boundary of the Superior Court judgment that created it, it shows that such agency could have a great impact in forming and

adopting a budget that few other municipalities have to follow. Thus, it would be prudent to inquire and review before entering into an agreement when forming such an agency in the first place and clarifying the authority it has to create less confusion. The court's *unpublished* opinion is available online at: https://www4.courts.ca.gov/opinions/nonpub/E080533.PDF
(David Song)

FOURTH DISTRICT COURT REJECTS CEQA CHALLENGE TO COASTAL DEVELOPMENT PERMIT AS MOOT

Midler v. City of San Diego, Unpub., Case No. D082495 (4th Dist. Nov. 22, 2024).

In an *unpublished* decision filed on November 22, 2024, the Fourth District Court of Appeal in *Midler v. City of San Diego* upheld denial of neighboring homeowners' petition under the Californian Environmental Quality Act (CEQA) that challenged the City of San Diego's issuance of a negative declaration for a home remodeling project proposed next door. The court agreed that the Coastal Commission's environmental review and issuance of a coastal development permit during the pendency of the CEQA writ proceeding mooted the underlying CEQA claims.

Factual and Procedural Background

The City's Review and Approval of the Project

The Midlers and the Abbots live in neighboring homes atop a coastal bluff in La Jolla, outside of the City of San Diego. In 2017, the Abbotts applied to the City for a Coastal Development Permit (CDP) and Site Development Permit (SDP) to remodel and expand their single-family home with a second story and two enlarged detached garages. The remodeling required a CDP due to the home's location in the coastal overlay zone, and an SDP because of the home's location in environmentally sensitive lands and coastal bluffs.

The City consolidated the Abbots' permit applications, reviewed the project under CEQA, and issued a draft report recommending issuance of a negative declaration based on a finding that the remodel would not have significant environmental impacts. The neighboring Midlers sent multiple letters to the City in opposition and expressing concerns about bluff stability and compliance with the Project's proposed setbacks, fences, retaining walls, views, and tree removal. Over those objections, the City's hearing officer adopted the negative declaration and granted the two permits on August 7, 2019.

The Midlers appealed the hearing officer's CEQA decision to the City Council. The Midlers alleged the officer failed to consider a geotechnical engineer's report that the Midlers had submitted with their comments, which revealed the project's proposed setback and seawall could harm the environment. At a public hearing held on November 18, 2019, the City Council found no substantial evidence that the Project would have a significant environmental impact and thus voted to deny the Midlers' appeal.

At the Trial Court

On December 17, 2019, the Midlers filed a petition for writ of mandate that solely asserted the City violated CEQA by adopting a negative declaration for the Abbotts' project. The Midlers alleged they had presented substantial evidence to support a fair argument that the Project may have significant environmental effects, including the geotechnical engineer's opinion about the Project risking the overall stability of the sensitive coastal bluff and the seawall's potential effects on soil stability.

The petition did not challenge the City's decision to issue the CDP and SDP, but instead alleged that the Midlers' appeal of that decision was still pending before the City planning commission. The petition therefore noted that the Midlers would request leave to amend once the appeal concluded and the Planning Commission made its final decision. Nevertheless, the Midlers ultimately never amended their petition to attack the issuance of either permit.

Appeal to the City Planning and Coastal Commission

While their CEQA petition was pending, the Midlers appealed the hearing officer's decision granting the Abbots a CDP and SDP to the City Planning Commission. On January 23, 2020, the Planning Commission denied the appeal and upheld issuance of both permits.

The Midlers appealed the Planning Commission's decision on the CDP to the California Coastal Commission on February 6, 2020. The Coastal Commission assumed jurisdiction over the appeal after finding that the approved siting of the structure within 25 feet of the bluff raised a "substantial issue" as to its conformity with the City's local coastal plan (LCP). After the Coastal Commission assumed jurisdiction, the Abbots submitted revised Project to address the siting concerns. The Midlers submitted comment letters that renewed their initial concerns.

On September 14, 2022, Coastal Commission staff reviewed the Project *de novo*, during which it recommended approval subject to two conditions that would render "the least environmentally damaging feasible alternative": one requiring no portion of the residence be located closer than 40 feet to the bluff edge; another requiring a landscape plan that prohibited permanent irrigation in the setback area to decrease the risks to geologic stability from excess water infiltration. The full Commission heard the Project on October 12, 2022, and, over the Midlers' objections, approved issuance of a CDP subject to staff's recommended conditions.

Back at the Trial Court

In light of the Coastal Commission's review and approval of the Abbots' CDP, the City and the Abbots filed a motion for judgment on the pleadings, arguing the Midlers' writ proceeding was moot and that any leave to amend should be denied. The Midlers opposed the motion, arguing that they should be granted leave to amend their petition with additional allegations about agency actions taken after they filed their initial petition, particularly because the City's approval of the SDP was not mooted by the Coastal Commission's decision.

The trial court granted the motion, finding that the Coastal Commission's review and approval mooted the entire CEQA action. The court also denied the Midlers' request for leave to amend, finding that any new relief would involve future City and/or Coastal Commission review under a separate standard of review. The Midlers timely appealed.

The Court of Appeal's Decision

On appeal, the Midlers claimed the trial court erred for two reasons: (1) by erroneously ruling the writ proceeding was moot after the Coastal Commission denied their appeal of the Abbotts' CDP; and (2) even if the Coastal Commission's decision mooted the CEQA claim, by erroneously denying leave to amend because the Midlers could still add allegations to state a valid claim. Finding both arguments lacked merit, the Fourth District Court of Appeal concluded the trial court did not err and upheld denial of the Midlers' petition as moot.

Mootness

As to the first argument, the court explained that the Midlers' petition only challenged the City's issuance of a negative declaration for the remodeling Project. The City's approval, however, was no longer in effect when the City and the Abbots moved for judgment on the pleadings because the Coastal Commission had assumed jurisdiction over that decision and the related CDP. More specifically, when the Coastal Commission accepts an appeal of a local agency's decision to grant a CDP, the Commission's review becomes the "functional equivalent" of the environmental review process under CEQA. The Commission will hold an entirely new hearing on all aspects of the CDP application as if no decision had been previously rendered. In other words, the City's CEQA decision is superseded by the Coastal Commission's environmental review.

Thus, as applied to the facts here, the court explained that, by issuing a staff report and holding a public hearing on the Abbotts' CDP, the Commission performed the further environmental review that the Midlers sought to compel the City to perform through their CEQA writ proceeding. As a result, the Midlers' case was rendered moot because they had already obtained all the relief they had originally demanded in their pleading. Moreover, and by virtue of this, the Midlers could no longer obtain relief under CEQA from the City because, once the Commission assumed jurisdiction, there was no longer a decision by the

City for the court to review. Instead, the Commission, not the City, rendered the final decision that the Abbotts' project, as modified and conditioned, complied with CEQA. Consequently, the Midlers no longer had any CEQA claims against the City, thus mooting any possibility they could obtain further relief.

The court also rejected the Midlers' claim that their writ proceeding was not moot because the Commission did not consider the Abbotts' related SDP application. The court explained that the environmental review required by CEQA is *project*-specific, not *permit*-specific. Here, the Commission conducted *de novo* review of the potential environmental impacts associated with remodeling project *as a whole*, during which it prepared a staff report that served as the "functional equivalent" of an Environmental Impact Report (EIR). Unless the Abbotts substantially changed the Project from the modified iteration that the Commission conditionally approved, CEQA did not require any further environmental review even if additional permits (such as the SDP) were required. Instead, once the Midlers obtained the environmental review they sought by their writ proceeding, albeit from the Commission rather than from the City, the proceeding became moot. For these reasons, the Midlers were not entitled to continue proceeding against the City under CEQA simply because the City relied on the negative declaration to issue not only a CDP, which the Commission considered, but also an SDP, which the Commission did not consider.

To resolve any confusion surrounding the parties' competing interpretations about jurisdiction, the court closed by clarifying that its holding and mootness determination "has nothing to do with the City's role as the lead agency under CEQA or its authority over the SDP. Although the City consolidated the Abbotts' SDP and CDP applications for consideration, the only application the Coastal Commission considered was one for the CDP. In its review of that application, the Commission conducted its own environmental review of the Abbots' home remodeling project and determined that, as modified and conditionally approved, the Project was consistent with CEQA. That environmental review was functionally equivalent to preparation of an EIR and superseded the City's prior environmental review and decision to issue a negative declaration for the project. The decision to issue the negative declaration was the only one the Midlers attacked in the CEQA writ proceeding by which they sought to compel the City to prepare an EIR for the Abbotts' project. The Coastal Commission's preparation of the functional equivalent of an EIR during the pendency of the writ proceeding rendered the proceeding moot."

Leave to Amend

The court also rejected the Midlers' assertion that the trial court erred in denying leave to amend, particularly because "it was always contemplated" that their petition "would be amended to include the further administrative appeals relevant to the challenge to the Abbots' remodeling project." Unpersuaded, the court of appeal reiterated that the Midlers could not state a CEQA claim against the City because the City's prior determination was superseded by the Coastal Commission's subsequent de novo decision. If the Midlers wanted to attack the underlying CEQA determination, the proper defendant was the Coastal Commission, not the City. However, the statutory window to sue the Commission had long expired.

For these reasons, the court elaborated that the Midlers could not try to avoid the bar of the statute of limitations by amending their writ petition to substitute the Commission as a Doe defendant. Any CEQA claim against the Commission would have to be based on facts and events that occurred after the Midlers filed their original petition—therefore, amendment after the limitations period expired would not be allowed when the result would be to add a cause of action based on different operative facts against a party that was previously neither named nor fictitiously designated. For similar reasons, the court also held that the Coastal Commission would be an indispensable party to the litigation because any judgment against the City on the underlying CEQA claim would not bind the Commission, even though the Commission was the party that rendered the final decision under CEQA. As a result, the Midlers' petition would still be subject to dismissal because they failed to join the Commission as an indispensable party within the statutory time period.

Conclusion and Implications

Though *unpublished*, the Fourth District's opinion clarifies several important procedural principles, particularly in instances that involve projects with overlapping agency determinations and jurisdictions.

Where, as here, a project is subject to various permits from different agencies, a challenging party must be aware of what constitutes the "final CEQA decision" that will ultimately be subject to the underlying legal challenge. Moreover, while a project may require several different permits, CEQA is only concerned about the project as a whole—therefore, practitioners should confirm the scope and nature of their allegations prior to filing suit to ensure that they are challenging the final CEQA decision, as opposed to a tangentially related permit. This case demonstrates that other agencies that are not a city's council or planning commission could still create EIR-like *de novo* environmental reviews that nullify any CEQA issues raised originally against the city. Thus, it would be critical for the appealing party to determine if the agency taking on its appeal would require a whole new writ of mandate petition for that other agency's determination. A copy of the court's opinion is available online at: https://www.courts.ca.gov/opinions/nonpub/D082495.PDF.
(Bridget McDonald, David Song)

FIRST DISTRICT COURT OVERTURNS ENVIRONMENTAL IMPACT REPORT FOR LAKE COUNTY RESORT OVER WILDFIRE RISK CONCERNS

People ex rel. Bonta v. County of Lake, 105 Cal.App.5th 1222 (1st Dist. 2024).

The First District Court of Appeal held that a Final Environmental Impact Report (FEIR) and errata for a proposed mixed use development project failed to properly assess the risk of wildfire, caused by humans that emanated from the project. The court also addressed greenhouse gas carbon credit mitigation which the court the FEIR's analysis of impacts for a proposed offsite well.

Background

The proposed Guenoc Valley Mixed-Use Planned Development Project in Lake County, California, is now required to undergo additional California Environmental Quality Act (CEQA) analysis after *People ex rel. Bonta v. County of Lake* (2024) 105 Cal. App.5th 1222. The project, spearheaded by Lotusland Investment Holdings, Inc., envisioned a luxury resort spanning 16,000 acres with residential villas, hotel units, and associated infrastructure. While the development promised economic and tourism benefits, environmental groups, including the Center for Biological Diversity, and the California Attorney General challenged the project's Final Environmental FEIR, arguing it inadequately addressed risks related to wildfires, greenhouse gas emissions, and water use, as required by the California Environmental Quality Act (CEQA). Ultimately, the court agreed that Lake County failed to provide sufficient site-specific analysis regarding increased wildfire risks.

Trial Court Proceedings

The trial court ruled partially in favor of the petitioners, holding that the FEIR failed to provide substantial evidence regarding the project's impact on emergency evacuation routes during wildfires. The court emphasized the significance of this deficiency, particularly in light of California's escalating wildfire crises. The court's decision was rooted in the FEIR's failure to meaningfully address how the development would affect evacuation infrastructure for the surrounding community during emergencies.

Despite this finding, the trial court dismissed other claims, such as those addressing greenhouse gas emissions and water resources, reasoning that the mitigation measures proposed in the FEIR were consistent with CEQA requirements. The petitioners argued that this dismissal failed to recognize critical gaps in the FEIR's analysis, especially regarding the cumulative impact of increased development in an already vulnerable area. Nonetheless, the judgment was a mixed outcome for both parties, prompting appeals to address the unresolved disputes.

The Court of Appeal's Decision

On appeal, the petitioners argued that the FEIR failed to adequately disclose and analyze the increased wildfire risks associated with introducing high-density human habitation into a fire-prone area. They highlighted deficiencies in the wildfire risk assessment,

including insufficient evaluation of potential fire ignitions resulting from human activity and vehicular traffic.

The Court of Appeal agreed that the FEIR's wildfire risk analysis was conclusory and inadequate under CEQA. While the FEIR acknowledged that increased population density and vehicular traffic could exacerbate wildfire risks, its discussion lacked specificity. For example, it failed to quantify the increased risk or provide an analytic framework to assess how the project's wildfire prevention measures would mitigate these risks.

Wildfire Risk Assessment: A Key Deficiency

The project's wildfire plan, touted as a mitigation strategy, was a cornerstone of the County's approval. The FEIR relied heavily on general design features, such as firebreaks, vegetation management, and underground utilities, to conclude that wildfire risks would remain "less than significant." However, the Appellate Court found that the plan lacked sufficient detail to justify this conclusion.

The FEIR's errata, introduced late in the process, admitted that the project would increase risks from human-caused ignitions but did not meaningfully analyze this impact. For instance, it referenced studies about general declines in human-caused wildfires due to fire safety education and improved vehicle technologies. However, the court noted these findings were too generalized and failed to account for site-specific factors, such as introducing over 4,000 new residents and their associated activities. Furthermore, the FEIR did not include a comprehensive baseline assessment of existing wildfire risks, which made it impossible to measure the actual impact of the proposed mitigation measures.

The court also highlighted a significant procedural issue: the errata's analysis came too late to allow meaningful public scrutiny or decision-maker evaluation. Without baseline data and timely disclosure, the court deemed the wildfire risk assessment fundamentally incomplete, preventing decision-makers and the public from adequately understanding the project's potential impact.

The FEIR Failed under CEQA

The court concluded that the FEIR failed to comply with CEQA's requirement to provide a detailed, project-specific analysis of environmental impacts. As a result, the court ordered the County to decertify the FEIR and prepare a new Environmental Impact Report. This decision rendered moot the petitioners' demand for the recirculation of the FEIR for additional public comment.

However, the court upheld other portions of the trial court's ruling, rejecting challenges to the FEIR's handling of greenhouse gas emissions mitigation, transportation demand management, and water resource impacts.

Conclusion and Implications

This case underscores the critical importance of thorough environmental assessments under CEQA, particularly in regions prone to wildfires. The ruling highlights that mitigation measures cannot merely be asserted; they must be supported by robust, project-specific analysis and substantial evidence.

For developers, this decision serves as a cautionary tale about the need for comprehensive and transparent evaluations of environmental risks. For public agencies, it reinforces the obligation to ensure that environmental impact reports fully disclose and address potential impacts to enable informed decision-making by both officials and the public.

As the County of Lake revisits its environmental review, this case could set a precedent for how wildfire risks are evaluated in future projects across California. The court's *partially published* opinion on Oct 23, 2024 is available here: https://www4.courts.ca.gov/opinions/documents/A165677.PDF
(Darien Key)

SECOND DISTRICT COURT UPHOLDS EIR FOR CITY OF GLENDALE'S REPOWERING PROJECT

Sierra Club v. City of Glendale, Unpub., Case No. B333632 (2nd Dist. Nov. 27, 2024).

In an *unpublished* opinion filed on November 27, 2024, the Second District Court of Appeal in *Sierra Club v. City of Glendale* rejected the Sierra Club's challenge to the City of Glendale's Environmental Impact Report (EIR) for a power generator modernization project run by Glendale Water and Power. The court held that the EIR's project description met the California Environmental Quality Act's (CEQA) requirements and further concluded that CEQA does not require an analysis of a project's impacts on environmental justice communities.

Factual and Procedural Background

Project Background

In February 2022, the Glendale City Council certified an EIR for a Repowering Project, which would remove outdated power generators from the Grayson Power Plan run by Glendale Water and Power (GWP) and replace them with modern, state-of-the-art equipment.

The EIR described the Project as repowering the Grayson plant by replacing the existing but aging 238 megawatts (MW) of on-site electrical generation capacity (which consisted of 7 fossil fuel powered generating units) with approximately 270 MW of modernized on-site generation capacity (which would consist of 4 fossil fuel powered generating units), while rebuilding Grayson and continuing to operate an existing 48 MW generating unit. The EIR explained that the need for the Repowering Project was based on several factors, including providing reliable generating capacity, avoiding electric capacity shortages, and facilitating the use of more renewable energy by freeing up transmission line capacity and bringing more renewable-based electricity to the City.

The EIR's Project Description also set forth nine Project objectives. Of those, Sierra Club contested six objectives, but took particular concern with Objective Number 3, which stated:

> Provide a local generation resource sufficient to meet resource adequacy requirements, and the City's obligations within the Balancing Area (BA) to balance load and resource at the interconnection with the BA, in accordance with industry standards including North American Electric Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC) requirements; thus, providing local reliability and contributing to grid stability within the Los Angeles Basin.

In response to comments that questioned the need to repower the Grayson Plant, the Final EIR reiterated that the Project was sized to cover the City's peak demand plus contingencies to ensure a reliable supply to GWP customers. Contrary to comments that suggested otherwise, the Project was not sized to sell energy to other parties, but instead was designed to meet GWP's contractual obligation to cover contingencies from the two largest sources of energy loss: "N-1" and "N-1-1."

City staff repeated these conclusions at its public hearing on the Project. In response to comments from Sierra Club's counsel that questioned whether GWP could work with the Los Angeles Department of Water and Power (LADWP) to meet its N-1-1 reserve obligation, the City Attorney reiterated that LADWP had sought written assurances from the City that it would meet its reserve requirements. At the close of the hearing, the City Council voted to certify the EIR and adopted a resolution to move forward with a Project alternative that contemplated five internal combustion engine units producing approximately 93 MW net and a battery storage system that produced 75 MW with a storage capacity of 300 MWH net.

At the Trial Court

Sierra Club filed a petition for writ of mandate in March 2022, which alleged the final EIR presented an inaccurate and incomplete Project Description that inflated the City's reserve obligation to justify installing new fossil fuel burning units at the Grayson Power Plant. The Petition also claimed that the Project Description failed to disclose the Project's

potential plans to produce and sell excess fossil-fired energy to neighboring regions.

The trial court denied the petition on July 31, 2023; Sierra Club timely appealed.

The Court of Appeal's Decision

On appeal, Sierra Club reiterated its claims that the EIR violated CEQA because: (1) the project description was inaccurate and misleading; and (2) the EIR's discussion of Project impacts on environmental justice communities improperly limited its analysis to the geographic boundaries of the City. The Second District Court of Appeal rejected both claims and upheld the trial court's denial of Sierra Club's petition.

The EIR's Project Description

As to their first claim, Sierra Club argued that the project description failed to specify whether the City was legally required to meet N-1-1 contingencies, rather than simply choosing to do so to ensure reliability and grid stability. The court disagree and instead found that the EIR's project description complied with CEQA. The court observed that, although Sierra Club "invite[d] a focus on isolated pieces of information," the legislative intent behind CEQA is to look at the EIR in its entirety and ascertain whether it provided the public and decisionmakers with information that enabled them to make a decision about the Project and its environmental consequences.

The court noted that Sierra Club failed to point to any way in which the EIR failed to present decisionmakers with an accurate, stable, and finite description of the Project. Instead, Sierra Club's only asserted inaccuracy related to the EIR's project objectives. Sierra Club maintained that Objective 3—*i.e.*, meeting reserve requirements against an N-1-1- contingency—resulted in decisionmakers approving a Project that was larger than necessary. The court countered though, explaining that, even if true, this objective would not undermine the key goal of CEQA, which is to ensure that decisionmakers are fully informed of the Project's potential environmental impacts. Moreover, the court noted that the Project alternative that was ultimately approved was significantly smaller than the one described in the original EIR—therefore, the EIR fully disclosed the maximum possible scope of the project, which in turn enhanced the information that was available to the public.

For similar reasons, the court held that the EIR's project objectives, including Objective 3, met the goals of CEQA: they advised the public and City Council of the Project's goals, and established benchmarks to assist interested parties to evaluate Project alternatives. As a result, the court rejected Sierra Club's claim that the EIR omitted an undisclosed objective to build a power plant large enough to sell excess electricity—nothing in the EIR or the record expressly referenced this, and GWP clearly repudiated any intent to generate electricity for sale.

In closing, the court opined that, at its core, Sierra Club's argument rested not on the adequacy of the EIR's Project Description, but instead on its frustration that the City Council did not adopt Sierra Club's view of a "hotly contested legal question: whether the City is required to maintain a level of reserve capacity to protect against an N-1-1 contingency." The court reasoned that opposing views on a disputed legal issue did not render the Project Description inadequate under CEQA—instead, the public and the decisionmakers were fully aware of this disputed issue and the City Council's final choice was well within its discretion.

The EIR's Discussion of Environmental Justice Communities

Sierra Club's second argument contended that the EIR's discussion of environmental justice communities violated CEQA because it only considered potential impacts to communities within the geographic boundaries of the City, as opposed to other neighboring regions.

The court noted that Sierra Club had not established that CEQA requires any discussion of a Project's impacts on environmental justice communities. As such, the court refused to indulge in any interpretation of CEQA or the CEQA Guidelines in a manner that would impose procedural or substantive requirements beyond those explicitly stated therein. For these reasons, the court summarily rejected Sierra Club's contention that the EIR constrained its analysis of potential environmental justice impacts, for no such analysis was statutorily required by CEQA.

Conclusion and Implications

The Second District's *unpublished* opinion reaffirms longstanding CEQA precedent regarding the adequacy of an EIR's project description. Though Petitioner

Sierra Club framed its arguments as an attack on the accuracy and stability of the Repower Project's project description, the court ultimately noted that such an attack merely boiled down to a disagreement on a legal question—one that the court was neither equipped nor empowered to entertain. Lastly, the court briefly reiterated a CEQA topic that has long been debated: the statute does not expressly require that an EIR analyze the impacts to environmental justice communities. A copy of the court's opinion is available online at: https://www4.courts.ca.gov/opinions/nonpub/B333632.PDF.
(Bridget McDonald)

FIRST DISTRICT COURT ADDRESSES THE GOVERNMENT CLAIMS ACT AND THE DISCOVERY RULE IN THE CONTEXT OF A DEVELOPMENT PROJECT WITH BOND FINANCING

Stead Financial, Inc. v. California Statewide Communities Development Authority, Unpub., Case No. A169218 (1st Dist. Dec. 9, 2024).

In a recent *unpublished* decision *Stead Financial, Inc. v. California Statewide Communities Development Authority*, the California Court of Appeal for the First Appellate District addressed issues regarding the Government Claims Act, the applicability of the delayed discovery rule, and the timeliness of claims against public entities. The case arose from a development project involving the Tracy Gateway Business Park, where Stead Financial, as the assignee of claims from SNB Tracy, LLC, sought reimbursement of funds from a reserve established by bond financing. The Court of Appeal affirmed the trial court's decision, holding that Stead's claims were time-barred due to failure to comply with the Government Claims Act.

Background

The Government Claims Act Requirements

The Government Claims Act (Cal. Gov. Code §§ 900 *et seq.*) establishes procedural prerequisites for bringing claims against public entities. Under the act, claimants seeking monetary damages must present their claims within one year of the accrual of the cause of action (Cal. Gov. Code § 911.2). Failure to do so bars subsequent lawsuits against the public entity (Cal. Gov. Code § 945.4).

In this case, Stead Financial's claims arose from the California Statewide Communities Development Authority's handling of an $875,000 reserve fund. Despite Stead's eventual discovery of its interest in the fund, the court determined that Stead's presentation of its claim occurred well beyond the one-year statutory deadline.

The Court of Appeal's Decision

The Delayed Discovery Rule

The delayed discovery rule provides an exception to the general rule of accrual, allowing a cause of action to accrue only when the plaintiff discovers, or reasonably should have discovered, the factual basis for the claim. To invoke this rule, claimants must demonstrate reasonable diligence in uncovering their claims.

Stead Financial argued that it only discovered its right to the reserve funds in August 2021 after reviewing bankruptcy pleadings and agreements obtained during that period. However, the court found that Stead had sufficient notice to investigate the matter as early as January 2015, when it acquired SNB's claims. Furthermore, Stead's co-plaintiff, Rosebrook 58, LLC, had obtained relevant documents from the Authority by November 2019. The court concluded that Stead failed to exercise reasonable diligence, and thus, the discovery rule did not extend the accrual period beyond November 2019.

Timeliness and the Concept of Inquiry Notice

Inquiry notice arises when a claimant has enough information to suspect wrongdoing and is under a duty to investigate further. The court emphasized that SNB's filing of a creditor claim in 2013 and the subsequent assignment to Stead in 2015 triggered inquiry notice. Stead had a duty to stay informed about the bankruptcy proceedings and review public records and documents that would reveal its rights.

By failing to obtain the necessary agreements and pleadings until 2021, despite their availability years earlier, Stead forfeited its ability to rely on the discovery rule.

Why Stead Was Time-Barred

The court's decision hinged on Stead's delay in presenting its claim. Despite being assigned SNB's creditor claim in 2015, Stead waited until November 2021 to notify the Authority of its interest in the reserve fund—nearly six years after the funds should have been returned under the trust agreement. The court found no reasonable explanation for Stead's delay in obtaining and reviewing the pertinent documents, many of which were public or accessible through reasonable inquiry.

Furthermore, the court rejected arguments that the Authority's continued uncertainty regarding the claim tolled the accrual of the cause of action. Accrual depends on the claimant's knowledge or reasonable suspicion of the claim, not the defendant's acknowledgment of liability.

Conclusion and Implications

The *Stead Financial* decision provides a stark reminder of the strict procedural requirements imposed by the Government Claims Act. Claimants must diligently pursue their claims, ensuring compliance with statutory deadlines to avoid dismissal on timeliness grounds. The Court of Appeal's analysis of the discovery rule highlights the high bar for demonstrating reasonable diligence and the critical importance of acting promptly upon suspicion of a claim.

This case serves as a cautionary tale for parties dealing with public entities, emphasizing the need to: (1) Monitor contractual and legal developments related to assigned claims; (2) Review public records and maintain awareness of proceedings impacting potential claims; and (3) Present claims to the appropriate entity within the prescribed timeframe.

In an era of increasingly complex public-private partnerships and financial arrangements, the *Stead Financial* ruling underscores the fundamental principle that procedural compliance is as vital as substantive rights in litigation against public entities. The court's *unpublished* opinion is available online here: https://www4.courts.ca.gov/opinions/nonpub/A169218.PDF

(Darien Key)

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