

1-1-2011

Sonoma Cnty. Water Coal. v. Sonoma Cnty. Water Agency, 116 Cal. Rptr. 3d 616 (Cal. Ct. App. 2010)

Erik Lacayo

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>



Part of the [Law Commons](#)

Custom Citation

Erik Lacayo, Court Report, *Sonoma Cnty. Water Coal. v. Sonoma Cnty. Water Agency*, 116 Cal. Rptr. 3d 616 (Cal. Ct. App. 2010), 14 U. Denv. Water L. Rev. 447 (2011).

This Court Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact jennifer.cox@du.edu, dig-commons@du.edu.

Sonoma Cnty. Water Coal. v. Sonoma Cnty. Water Agency, 116 Cal. Rptr. 3d 616
(Cal. Ct. App. 2010)

claims. In doing so, the circuit court directed the claims court to proceed by applying the three-factor test articulated by the Oregon Supreme Court, with special focus on the third factor. It is the government's burden to show with specificity how the rights of one or more Plaintiffs have been clarified, redefined, or altered.

As to the breach of contract claims, Plaintiffs argued that the claims court erred in finding that impossibility of performance is not a threshold requirement the government must meet when asserting the sovereign acts defense. The United States responded that the claims court correctly held that the sovereign acts doctrine provides a complete defense, and that the ESA compelled the Bureau to reduce the amount of water delivered to the farmers and irrigation districts.

The court first outlined the two-part test that must be satisfied in order for the United States to invoke the sovereign acts defense: First, the court asks whether sovereign act is simply one designed to relieve the government of its contractual duties, or is it a genuinely public and general act that only incidentally falls upon the contract? If the act is sufficiently general and public, the court will next ask whether that act renders the performance of the act impossible under ordinary principles of contract law.

The circuit court found that although the claims court did not err in ruling that the Bureau's withholding of the water was a general and public act, the claims court failed to undertake the second part of the sovereign acts doctrine, which implicates the impossibility of performance component of the sovereign acts defense.

Accordingly, the court remanded the case so that the government may carry the burden of showing that performance of the contracts at issue was rendered impossible.

Toby Weiner

STATE COURTS

CALIFORNIA

Sonoma Cnty. Water Coal. v. Sonoma Cnty. Water Agency, 116 Cal. Rptr. 3d 616 (Cal. Ct. App. 2010) (holding that a county water agency's management plan was supported by substantial evidence and did not need an alternative plan for diverting water under California's Urban Water Management Planning Act).

California's Urban Water Management Planning Act ("UWMPA") required California urban water suppliers to adopt water management plans every five years. In this case, the Sonoma County Water

Coalition ("Coalition") challenged the adequacy of the Sonoma County Water Agency's ("Agency") 2005 Urban Water Management Plan ("Plan"). The Agency was a wholesaler of water from the Russian River watershed in Northern California. The Agency served water to its customers pursuant to an agreement that extended to 2040; the agreement set the maximum amount the Agency must supply to its customers. The California Department of Water Resources approved the Plan.

The Coalition challenged the Plan under the UWMPA, claiming that: (1) the Agency failed to coordinate with relevant agencies; (2) the Plan failed to include a proper degree of specificity in regards to water quality and quantity; and (3) the Plan failed to consider environmental impacts on endangered, salmonid species. After hearing the case solely upon the administrative record and the pleadings, the Sonoma Superior Court ("trial court") held that the Plan was not supported by substantial evidence and failed to comply with statutory requirements. The trial court reasoned that the Plan was invalid because the Agency did not identify alternatives to less-than-certain assumptions made in the Plan. The Agency appealed to the California First District Court of Appeal ("appellate court").

The appellate court noted that the Plan relied on certain assumptions in projecting its water supply. The key assumptions were: (1) the listing of three salmonid species as threatened or endangered would not reduce the water supply; (2) the local power company's federal energy license would not modify the amount of available water; (3) the Agency would construct facilities described in the Plan; and (4) the Agency would obtain additional water rights on the Russian River. The appellate court reviewed the Plan under an abuse of discretion standard and looked at whether substantial evidence supported the Agency's decisions. The substantial evidence standard required the appellate court to defer to reasonable Agency determinations and not substitute its judgment for that of the Agency. The appellate court noted that a possible negative outcome was not enough to invalidate a management plan or to require a contingent water supply plan if Agency experts thought that outcome was unlikely.

First, the appellate court found that the Plan properly considered the presence of threatened and endangered salmonid species listed under the state and federal Endangered Species Act. The Agency did not expect that the presence of the salmon would affect the amount of divertable water from the Russian River. The appellate court held that this conclusion was supported by substantial evidence because the Agency conducted a Biological Assessment that indicated structural changes would both protect the salmon and maintain water flows.

Second, the Plan also acknowledged that the power company's energy license could be changed and, thus, impact the amount of water diverted from the river. However, the Agency assumed the power company's impact would be unchanged due to the current energy demand. The appellate court held it was reasonable to assume diversions would remain uninterrupted similar to the past one hundred years.

Third, the appellate court noted that the Plan did not have to show with certainty that arrangements to expand transmission and diversion facilities would obtain future approval under the California Environmental Quality Act. The UWMPA only required the Plan to describe expected future projects because long-term water planning involves expectations, not certainties. The appellate court also rejected the Coalition's argument that the UWMPA required the Agency to describe alternatives. It reasoned that implementing an alternative plan would also require the Agency to describe uncertain contingencies that may never arise.

Fourth, the appellate court accepted the Agency's conclusion that the Agency did not expect any water quality deficiencies in the subsequent twenty-five years. Despite the Coalition's concern that a nearby city's discharge of wastewater would adversely affect the water quality, the Agency's experts analyzed the Coalition's concern and concluded that the wastewater did not present a threat to the water quality. The appellate court noted that the UWMPA required the Agency to update its plan every five years, which gave the Agency an opportunity to respond to any future risks that might materialize in connection to water quality.

Fifth, the appellate court held that the Plan properly addressed water conservation. The UWMPA required the Agency to include an estimate of water savings. The appellate court noted that the Agency's participation in the California Urban Water Conservation Council satisfied its conservation requirement because the organization required a good-faith effort to implement conservation measures.

The final issue was whether the Agency coordinated with the proper agencies in formulating the Plan. The UWMPA required coordination with other water suppliers who shared a common source of water; the appellate court held that the Agency consulted with the proper agencies. The other agencies identified by the trial court were not water suppliers that shared a common source, and the UWMPA did not require consultation with an agency just because it may have regulatory authority affecting the Agency's resources.

Accordingly, the appellate court reversed and remanded.

Erik Lacayo