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Sierra Club v. W. Side Irrigation Dist., 128 Cal.App.4th 690 (Cal. Ct. App. 2005)

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the Department of Water Resources issued a regulation incorporating the License Law exemption into the Code. The court reasoned the legislature failed to incorporate the regulation into later amendments to the statute, and an administrative agency's interpretation of a statute cannot enlarge the scope of a statute.

The court held the Code required builders of water wells to possess a C-57 license, and upheld the decision of the trial court denying the property owners' petition for a writ of mandate.

Kate Brewer

Sierra Club v. W. Side Irrigation Dist., 128 Cal.App.4th 690 (Cal. Ct. App. 2005) (holding a city does not need to consider allocations of water rights from two separate irrigation districts jointly for purposes of the California Environmental Quality Act).

The Sierra Club brought suit against two California irrigation districts, the West Side Irrigation District and the Banta-Carbona Irrigation District, (collectively "Districts") alleging the Districts' decision to assign water rights to the City of Tracy ("City") violated the California Environmental Quality Act ("CEQA"). In 1993, the City adopted a general plan for directing future development, which predicted the City's population would quadruple over a twenty-year period. The general plan calculated the City would need an additional 29,000 acre-feet of water to sustain the projected growth. In 2001, as part of the City's plan to obtain the additional 29,000 acre-feet, the City negotiated with two separate irrigation districts for water rights. Both districts assigned 5,000 acre-feet to the City on the condition that all parties comply with CEQA. In 2002, both districts decided not to prepare environmental impact reports ("EIR") and instead issued negative declarations.

The Sierra Club claimed the assignments were sufficiently related to require a joint EIR, and that the Districts' decisions to issue negative declarations violated CEQA. The trial court ruled the Sierra Club failed to prove the projects would have a significant impact on the environment, and therefore a joint EIR was not required. The Sierra Club appealed the decision to the California Court of Appeals for the Third District.

On appeal, the Sierra Club argued the two water assignments were one project for purposes of CEQA, and therefore the parties had to prepare one joint EIR. The court disagreed and ruled that the assignments were two separate projects and entirely independent of each other. Specifically, the court noted that the Districts did not contemplate the second project as a future part of the first project, and that the District required approval from different agencies for each project.

Next, the Sierra Club argued the Districts failed to analyze the effect of the assignments as cumulative impacts and therefore violated

CEQA. CEQA required the City to prepare an EIR if the cumulative impacts would be significant and if the project's incremental effect would be considerable when viewed in connection with the effects of past projects, current projects, and probable future projects. The court found the Districts had indirectly studied potential cumulative impacts by looking at ongoing and proposed development plans. The court found that these studies determined the assignments would have no significant cumulative impacts, and therefore, the Districts did not need to prepare an EIR to consider cumulative impacts. In addition, the court said the mere presence of other projects in the area, which might cause significant cumulative impacts, was not evidence that the assignments' impacts would be cumulatively considerable.

The Sierra Club also argued the Districts failed to analyze whether assigning water rights to the City would cause the City to grow beyond the growth approved in the general plan. However, the court found no evidence to support this contention because the City's initial study clearly states the City would assign the water only to those areas already subject to the general plan. The court also sharply rebuked the Sierra Club for using CEQA to cause delays.

Finally, the Sierra Club argued the Districts failed to consider the possibility of drought because both Districts received water from the Bureau of Reclamation, which could not guarantee full allotment of water rights during drought years. Therefore, the possibility existed during drought years that the Bureau of Reclamation would cut back the water supply to the Districts, and consequently to the City. However, the court noted that the City's initial study acknowledged the Bureau would cut back deliveries. In fact, the previous environmental analysis addressed the very situation about which the Sierra Club complained.

Thus, the court held that under the CEQA, the irrigation districts could separately assign water rights to the City without performing a joint EIR.

Kathryn Lane Garner

Cal. Earth Corps v. Cal. State Lands Comm'n, No. CO41603, 2005 Cal. App. LEXIS 627 (Cal. App. Apr. 21, 2005) (holding that the California State Lands Commission's exchange of land held by the public trust doctrine to allow the city developer to construct a retail complex violated the California Public Resources Code because the exchange did not enhance the configuration of the shoreline as required by the statute).

California Earth Corps ("Earth Corps") appealed a judgment that denied its petition challenging the validity of a land exchange agreement ("Exchange") between the California State Lands Commission ("Commission") and the City of Long Beach ("City").