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Benicia Harbor Corp. v. City of Benicia, No. A108725, 2006 Cal. App. Unpub. LEXIS 1162 (Cal. Ct. App. Feb. 8, 2006)

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regulates fluoridation of public water systems having more than 10,000 hookups. The legislature intended to preempt local government ordinances that prohibit fluoridation of drinking water by public water systems with 10,000 or more service connections. Measure S conflicted with state law because it regulated an area fully occupied by state law.

The court established that public health and water quality were matters of statewide concern. The cost of healthcare and the protection and maintenance of dental health of Californians of all ages and the cost of healthcare were also statewide concerns. Similarly, water quality was a statewide concern because DHS developed comprehensive drinking water standards, including standards for fluoride. The legislature dictated that statewide standards were set and local health officers were to enforce, not create, the standards. Since the legislature implemented the fluoridation of public water systems to improve the dental health of all citizens, the fluoridation project was a statewide concern.

The court determined the state law was reasonably related to the identified state concern and narrowly tailored. The state's water fluoridation law promoted public health by protecting and maintaining dental health and insured the quality of the state's drinking water. The court concluded that the state law did not have any significant effect on other municipal affairs. Therefore, state law preempted Measure S. Accordingly, the court affirmed the trial court's judgment that Measure S was void and without effect.

Tomi L. Hanson

Benicia Harbor Corp. v. City of Benicia, No. A108725, 2006 Cal. App. Unpub. LEXIS 1162 (Cal. Ct. App. Feb. 8, 2006) (holding that the California Environmental Quality Act required a party contesting a certified environmental impact report to exhaust its administrative remedies first and that the environmental impact report did comply with the California Environmental Quality Act).

Benicia Harbor Corporation ("Benicia Harbor") appealed the decision of the Solano County Superior Court denying their petition for a writ of mandate. On appeal, Benicia Harbor argued that the certified environmental impact report ("EIR") pertaining to the City of Benicia's ("City") Marina Area Storm Drainage Project ("Project") violated the California Environmental Quality Act ("CEQA") on several grounds, and that the City inadequately responded to the questions raised by Benicia Harbor during the public comment period. The Project proposed to replace the existing storm drain facility in the marina where Benicia Harbor is located because it no longer functioned properly, causing occasional localized flooding.

On appeal, Benicia Harbor specifically argued three reasons for the deficiency of the EIR. First, the EIR allegedly did not contain an

adequate description of the project's environmental setting. Second, the EIR failed to describe the Project's impacts on the discharge areas. Finally, the EIR lacked evidence to support its assertion that the Project would successfully divert stormwater ("first-flush") from the marina. The Court of Appeal of California, First Appellate District determined, however, that parties must first raise allegations of noncompliance with CEQA during the public comment period and that they must exhaust all administrative remedies before filing a lawsuit. This prerequisite enables public agencies to respond to factual issues or legal theories before its actions are subject to lawsuits. According to the evidence, the court found that Benicia Harbor failed to effectively raise any of the three allegations prior to the filing of the lawsuit.

In addition to finding that Benicia Harbor could not raise their allegations because they failed to exhaust administrative remedies, the court further held that even if Benicia Harbor's arguments were properly before the court for review, the allegations were unfounded as the EIR did not violate CEQA. The court extended their holding in order to review whether prejudicial abuse occurred. After assessing the process used by the City in developing the EIR and reviewing the City's responses to the concerns raised by the public during the comment period prior to the final EIR, the court found the EIR sufficient and not in violation of CEQA. Thus, the court affirmed the trial court's dismissal of Benicia Harbor's petition.

Maria E. Hohn

City of Barstow v. City of Adelanto, No. E035595, 2005 Cal. App. Unpub. LEXIS 11294 (Cal. Ct. App. Dec. 6, 2005) (holding California law requires that a party preserve legal water rights by maintaining reasonable beneficial use and receiving the benefit of a judgment by intervention requires that a party establish a water right under the judgment's terms).

The City of Barstow and the Southern California Water Company filed a complaint in the Superior Court of Riverside County alleging that upstream water users excessively impacted their water supply in the Mojave Basin Area. The Mojave Water Agency ("MWA") served an amended cross-complaint on all basin water producers who produced more than ten acre-feet per annum ("AFA") between 1986 and 1990. The Mojave Basin Adjudication Committee completed a comprehensive settlement providing a free production allowance ("FPA") to each producer served by MWA, equal to that producers' highest annual production during the five-year period. Under the settlement, all producers who produced less than ten AFA were minimal producers not made parties to the suit and limited to a FPA of ten AFA in the future. The trial court entered judgment according to the settlement and subsequently denied minimal producers Richard and Teresa Fortynone's