

9-1-2004

**City of Huntington Beach v. Orange County Water Dist., No. G029778, 2004 Cal. App. Unpub. LEXIS 1600 (Cal. Ct. App. Feb. 23, 2004)**

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Jennifer Suh, Court Report, City of Huntington Beach v. Orange County Water Dist., No. G029778, 2004 Cal. App. Unpub. LEXIS 1600 (Cal. Ct. App. Feb. 23, 2004), 8 U. Denv. Water L. Rev. 267 (2004).

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City of Huntington Beach v. Orange County Water Dist., No. G029778, 2004 Cal. App. Unpub. LEXIS 1600 (Cal. Ct. App. Feb. 23, 2004)

quiet title, declaratory relief, and injunctive relief, without permitting Chino leave to amend.

Pursuant to a 1908 reservation of rights, Chino alleged ownership of groundwater rights and related easements to the Lewis property. Chino further alleged Lewis only had the right to use the groundwater on the property itself and solely for agricultural purposes. Chino claimed possession of the right to lay and maintain pipes and aqueducts on the land. In addition, Chino claimed the right to use all available water pumped from the property and to sell or lease the water. Last, Chino alleged Lewis proposed to increase water use resulting from further development of the property.

California classifies groundwater rights by three types: overlying, appropriative, and prescriptive. The property owner's right to take groundwater for use on the land within the basin or watershed characterizes an overlying right. The appropriative right depends on the actual taking of water. When a wrongful taking of water occurs, an appropriative right may ripen into a prescriptive right.

The California Court of Appeals held that Chino did not possess a water right recognized by California law. First, Chino could not possess an overlying right because Chino did not own the property. Second, Chino could not possess an appropriative or prescriptive right because neither Chino nor its predecessors ever took the water and applied it to beneficial use.

Since Chino could not claim a present interest in the property owned by Lewis, a quiet title cause of action could not exist. The court held that a complaint seeking declaratory relief required the existence of an actual controversy and none existed in this case. Further, injunctive relief is a remedy requiring an underlying cause of action. Chino provided no adequate explanation for amending its complaint to state a cause of action and, therefore, the court held the trial court did not abuse its discretion in sustaining Lewis' demurrer to Chino's complaint.

Thus, the court affirmed the trial court's judgment denying Chino a quiet title action, declaratory relief, or injunctive relief based on Chino's lack of a cognizable water right. The court further ordered Chino to pay Lewis' appeal costs.

*Kevin Lazar*

**City of Huntington Beach v. Orange County Water Dist., No. G029778, 2004 Cal. App. Unpub. LEXIS 1600 (Cal. Ct. App. Feb. 23, 2004)** (holding Orange County Water District's master plan report and capital improvement program do not fall within the provisions of the California Environmental Quality Act, and therefore, do not require an environmental impact report or an initial study).

Orange County Water District ("OCWD") manages and controls water, including basin groundwater, for most of the northern half of Orange County. In 1986, OCWD adopted a policy allowing its long-term producers to annex territories within the Santa Ana River watershed and the Metropolitan Water District of Southern California ("MWD"). In 1996, however, the state proposed the reorganization of water districts, placing annexation opportunities for OCWD producers in jeopardy. OCWD put a temporary moratorium on annexations until they identified the implications of the reorganization.

OCWD developed a master plan report ("Report") to identify long-term needs for water production and to determine OCWD's ability to meet those needs. The Report recognized anticipated growth of water demands, both within the existing boundaries and after potential annexation. Further, the Report suggested possible capital improvement projects to help meet future demands while keeping costs steady. Since the Report constituted an informational planning strategy and not a precise plan, OCWD received and filed the Report, instead of initiating the formal approval or adoption process. Shortly after filing the Report, OCWD adopted a five-year Capital Improvement Program ("CIP"), subject to further review, outlining the benefits of those potential projects. In light of their tentative plan for the future, OCWD lifted the moratorium on annexation, returning to their original policy.

The City of Huntington Beach and other interested cities ("Cities") filed a petition for a writ of mandate in the Superior Court of Orange County asking the court to limit water production and to prohibit annexation until OCWD complied with the California Environmental Quality Act ("CEQA"). The trial court summarily determined that OCWD's filing of the Report did not constitute a project under CEQA. Further, after trial, the court found OCWD's adoption of the CIP did not subject them to CEQA obligations.

On appeal to the California Court of Appeals, the Cities asserted that both the Report and the CIP constituted approved projects within the meaning of CEQA. CEQA requires a public agency to prepare an environmental impact report ("EIR") before approving a project resulting in a potential significant impact on the environment. The relevant inquiry to determine the application of the CEQA was whether OCWD's planning activities fell within the relevant definition of an approved project.

The CEQA statute defined a project as an activity that may cause a direct physical change or a reasonably foreseeable indirect change in the environment. Case law further narrowed the definition by requiring a project to amount to a necessary step in a chain of events culminating in an impact on the environment. The court found that the Report and the CIP constituted a general strategy on how to reach certain goals and the adoption of this plan had no binding effect. More-

over, the court held the Report and the CIP were not prepared pursuant to any statutory obligation and has no legal consequence for OCWD. Further, CEQA guidelines defined approval as a decision to commit an agency to a definite course of action. CEQA compliance was not required where the agency's action did not constitute a proposal to carry out or approve an activity.

The Cities' argument failed on three key points. First, the Cities contended that by lifting the moratorium on annexation, the OCWD implemented the Report. However, the court held that lifting the moratorium simply reinstated without change an existing annexation policy. Second, the Cities argued that OCWD implemented the Report when formally adopting the CIP, triggering CEQA's project requirement. The court reasoned that the CIP, a budgeting tool used to calculate potential capital projects, was not an essential step in a causal chain resulting in an impact on the environment. Finally, the court upheld the trial court's decision that the engineer's certification of the Report did not equate to approval or commitment. The engineer's statement indicated intent to prepare the necessary CEQA documents, if OCWD wished to implement any of the capital projects in the future.

In conclusion, the court affirmed the trial court's decision, holding OCWD made no commitment to a definite course of action. OCWD's plans were non-binding, fluid, and subject to annual change. OCWD had not indicated intent to approve a project within the meaning of CEQA. In the future, OCWD's approval of one or both of the initiatives would trigger environmental review. However, at this point, the CEQA did not apply.

*Jennifer Suh*

**Friends of the Santa Clara River v. Castaic Lake Water Agency, 2004 Cal. App. Unpub. LEXIS 8604 (Cal. Ct. App. Sept. 22, 2004)** (holding in order for a water management plan approved in conjunction with applicable state laws to be legally adequate, the plan (1) must abide by those state laws and (2) address the sufficient reliability of water for the future of the water district).

Friends of the Santa Clara River and others ("Friends") appealed the denial of their petition for writ of mandate alleging that the Urban Water Management Plan of 2000 ("UWMP") prepared by the Castaic Lake Water Agency ("CLWA") violated California state laws requiring water management plans to adequately assess the reliability of water supply for the future of the water district. Public review of the UWMP revealed much opposition to the plan, yet CLWA still approved the UWMP. Friends challenged this approval in the Superior Court of Kern County via a writ of mandate, which the court denied. The Court of Appeals of California, Fifth Appellate District, reversed the decision