Water Law Review

Volume 8 | Issue 1 Article 39

9-1-2004

Rincon Del Diablo Mun. Water Dist. v. San Diego County Water Auth., No. D042529, 2004 Cal. App. Unpub. LEXIS 6839 (Cal. Ct. App. July 21, 2004)

Charles P. Kersch

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

Part of the Law Commons

Custom Citation

Charles P. Kersch, Court Report, Rincon Del Diablo Mun. Water Dist. v. San Diego County Water Auth., No. D042529, 2004 Cal. App. Unpub. LEXIS 6839 (Cal. Ct. App. July 21, 2004), 8 U. Denv. Water L. Rev. 273 (2004).

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.

Rincon Del Diablo Mun. Water Dist. v. San Diego County Water Auth., No. D042529, 2004 Cal. App. Unpub. LEXIS 6839 (Cal. Ct. App. July 21, 2004)

This court report is available in Water Law Review: https://digitalcommons.du.edu/wlr/vol8/iss1/39

court viewed the Addendum as an SEIR and ruled that, in adopting the Addendum, the County should have determined whether substantial changes to the Project existed or had occurred.

Thus, the court reversed the holding of the superior court and directed the superior court to issue a writ of mandate ordering the County to rescind its approval of the Addendum to the EIR. The court also specified that its holding only applied to the manner in which the County approved that particular Addendum, not whether an Addendum might be appropriate for the post-certification change from one water source to another.

David W. Hall

Rincon Del Diablo Mun. Water Dist. v. San Diego County Water Auth., No. D042529, 2004 Cal. App. Unpub. LEXIS 6839 (Cal. Ct. App. July 21, 2004) (affirming the superior court's ruling granting summary judgment and holding the capital portion of the San Diego Water Authority's transportation rate is not a capacity charge and even if the transportation rate qualified as a capacity charge, the charge does not exceed the estimated reasonable cost of providing service).

The San Diego County Water Authority ("SDCWA") provides water service, delivering water via an aqueduct system to member agencies. The SDCWA adopted Ordinance No. 2002-03 ("Ordinance") on June 27, 2002, which unbundled their flat fee water rate into multiple categories, one being a transportation rate based on every acre-foot of water consumed. Revenue from the transportation rate is deposited in the SDCWA's general fund and may be used to fund capital costs. Nonetheless, Government Code section 66013 defines a capacity charge as a fee for new or existing facilities benefiting the person charged and provides that capacity charges shall not exceed the estimated reasonable cost of providing the service. Five water districts located in the northeastern section of San Diego County ("Northern Districts") brought suit in the Superior Court of San Diego County to invalidate the transportation rate portion of the SDCWA's Ordinance under Government Code section 66013. The Superior Court granted summary judgment in favor of the SCDWA.

The Northern Districts asserted on appeal that the capital portion of the transportation rate ("capital portion") is a capacity charge under section 66013. Relying on the California Supreme Court's decision in *San Marcos Water District v. San Marcos Unified School District,* the Northern Districts argued that a fee for capital improvements based on anticipated water service constituted a special assessment under a "look to the purpose test." Additionally, the Northern Districts claimed the capital portion violates the reasonableness requirement of section 66013, because it unfairly reflects the cost of service provided.

The California Court of Appeals first looked to the statute, but found nothing in the language of section 66013 or its legislative history expressing the Legislature's intention to impose a new standard on water rates. Next, the court rejected the Northern Districts' *San Marcos* argument, relying instead on its decision in *Brydon v. East Bay Municipal Utility District,* holding that block water rates levied in accordance with patterned usage and not designed for the purpose of replacing property tax monies lost as a result of the passing of California Constitution, article XIII A ("Proposition 13"), do not constitute special assessments. Finally, the court rejected the Northern Districts' claim that the capital portion is unreasonable because, assuming the capital portion is a capacity charge, under the language of section 66013 a capacity charge does not violate the statute unless it exceeds the cost of providing the service. The Northern Districts, however, presented no evidence that the capital portion exceeded the capital costs of building, maintaining, or improving the aqueduct system.

Because the court concluded that the transportation rate was a charge for the delivery of water, that there was no indication the Legislature intended to change the statutory scheme governing water rates, and that there was no evidence that the capital portion exceeds the capital costs of the aqueduct, it affirmed the lower court's judgment.

Charles P. Kersch, Jr.

Sec. Nat'l Guar., Inc. v. Monterey Peninsula Water Mgmt. Dist., No. H024969, 2003 Cal. App. LEXIS 12230 (Cal. Ct. App. Dec. 31, 2003) (holding the water management district did not deprive a water rights holder of senior water rights in denying a water distribution permit to the water rights holder where water management district followed proper procedures).

In 1998 Security National Guaranty, Inc. ("SNG") obtained approval to construct a resort project on its beachfront property in Sand City under condition that SNG obtain a water distribution permit from the Monterey Peninsula Water Management District ("District"). Pursuant to this arrangement, SNG applied to the District for the permit and the District subsequently denied SNG's request. Following this denial, SNG petitioned the Monterey County Superior Court for a writ of mandate directing the District to grant the petition. The superior court granted the District's demurrer without leave to amend and SNG appealed to the Court of Appeal of California, Sixth Appellate District.

SNG alleged the District did not act pursuant to law, because the District allocated SNG's water rights to California American Water Company. SNG argued it owned overlying water rights in the Seaside Basin and, thus, its claims were paramount to those of other water rights holders. The court rejected this argument, because SNG retained the same water rights that it had prior to the District's decision;