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Galante Vineyards v. Monterey Peninsula Water Management District, 60 Cal. App. 4th 1109 (Cal. Ct. App. 1997)

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Galante Vineyards v. Monterey Peninsula Water Management District, 60 Cal. App. 4th 1109 (Cal. Ct. App. 1997)

transmitted.

Stanley and Rosalie Rybachek had resided on the patented mining property for more than 30 years. They appealed the Department's 1990 decision partially denying the petition for reclassification and challenged the validity of the regulations promulgated by the Department.

The superior court held that the department adopted regulations in compliance with the previous order and in compliance with proper procedure. The superior court questioned, however, the procedures for maintaining designated uses in the UAA where the study results were inconclusive, and remanded to the Department for further clarification and data. The superior court was concerned with the fact that the Department could fail to collect certain data and then deny reclassification based upon that lack of data. The court said this was a "restrictive inference."

The State appealed the order of remand and the Rybacheks cross-appealed claiming error in the findings by the superior court: "(1) that the Department had promulgated a proper reclassification regulation; and (2) that certain waters were appropriately not reclassified."

The Alaska Supreme Court applied the "reasonable and not arbitrary" standard to agency rule making. The supreme court stated that, "[t]he Department has discretion to determine the extent and scope of any UAA that it decides to perform, as long as it complies with 40 C.F.R. [Section] 131 and other applicable state and federal statutes and regulations." The supreme court held that neither state nor federal regulations required the State to provide information in support of a decision to maintain a designated use and therefore, "[t]he Department is not obligated by state or federal law to support its decision not to downgrade water uses so long as the decision is reasonable and not arbitrary."

The supreme court then addressed the validity of the regulations promulgated by the Department. The court stated that the State had wide discretion in enacting water quality regulations and the Department was vested with the power to establish water quality standards and various classes of water. The court held that, "[g]iven the EPA oversight, the Department reasonably adopted as Alaska's standard the EPA regulation governing reclassification . . . [t]hus we conclude that the regulation is reasonable and not arbitrary."

The court reversed the trial court's order for remand to the Department and affirmed the remaining issues.

Christine Wise-Ludban

CALIFORNIA

Galante Vineyards v. Monterey Peninsula Water Management District, 60 Cal. App. 4th 1109 (Cal. Ct. App. 1997) (holding that adequacy ob-

jections to an environmental impact report raised prior to certification preserved plaintiff's right to bring action, that a final environmental impact report must contain everything required to be considered, and that an inadequate report cannot be cured by an addendum).

The Monterey Peninsula Water Management District ("District"), when looking at a variety of long term water supply alternatives for the Monterey Peninsula area, prepared an environmental impact report ("EIR") for a 29,000 acre-foot dam and reservoir on the Carmel River—the New Los Padres Dam and Reservoir. The EIR certification process must comply with the California Environmental Quality Act ("CEQA") and the federal Clean Water Act. CEQA requires notice and public review of the EIR, with public hearings and comment periods.

Plaintiffs submitted comments to the District which criticized the EIR's description of the Cachagua Valley as sparsely populated, and raised concerns about air pollution from dust and its negative economic impact on the wine industry. Plaintiffs appeared at a public hearing on the EIR and wrote to the District detailing concerns about the impact to local agriculture. The court concluded that any party may bring an action pursuant to CEQA section 21167 if it has raised an objection to the adequacy of an EIR prior to certification. The court found plaintiffs exhausted their administrative remedies by raising concerns about the inadequacy of the final EIR prior to certification.

The District argued that the phrase "prior to the close of the public hearing on the project before the issuance of the notice of determination," as used in CEQA section 21177, must be interpreted as referring to a public hearing during the public comment period of the draft EIR. Such construction would have disallowed plaintiffs' comments since they were made after that period. The court rejected the District's construction of the statute and relied on the plain meaning of the statute. The court interpreted CEQA section 21177 as stating that any alleged grounds for noncompliance with CEQA provisions may be raised by any person prior to the close of the public hearing on the project before the issuance of the notice of determination.

CEQA requires that an EIR identify and focus on the significant environmental effects of the proposed project. It should include relevant specifics of the area, the resources involved, physical changes, alterations to ecological systems, and changes induced in the human use of the land, including commercial and residential development.

Through written and oral comments by the plaintiffs, the District was made aware of the importance of viticulture in the Cachagua Valley. However, in the final EIR, the District's only reference to this area is in the Climate and Air Quality chapter, where it described the area as sparsely populated, with no industry other than several vineyards in the Cachagua Valley.

Plaintiffs argued that the EIR failed to take into account the highly susceptible nature of the local agriculture. Plaintiffs said that while

data readily existed on the local microclimate, the EIR used an outdated study from 1967. The plaintiffs claimed the EIR also failed to address three adverse impacts to agriculture directly related to the reservoir construction: the potential increase of humidity, frost generation, and increased potential habitat for the leafhopper.

The court concluded that an addendum to an inadequate EIR does not cure the EIR. It found a proper analysis of the project's impacts was impossible because the EIR inadequately described the environmental setting for the project. The court found that everything to be considered must be in the final EIR and, therefore, material presented after certification may not be considered. The court stated that under CEQA section 21166, an addendum to a certified EIR is proper only where there are changed circumstances, or where new information, which was not known and could not have been known, arises. Through its comments and attendance public hearings, the plaintiffs made the District aware of the viticulture in the area.

Elaine Soltis

County of San Joaquin v. State Water Resources Control Board, 63 Cal. Rptr. 2d 277 (Cal. Ct. App. 1997) (affirming the trial court's holding that the United States Bureau of Reclamation is an indispensable party, and upholding dismissal of the action because the Bureau refused to waive its sovereign immunity).

The United States Bureau of Reclamation ("Bureau") operates the Central Valley Project under water rights permits from the California State Water Resources Control Board. The Central Valley Project includes the New Melones Dam. On June 8, 1995, the State Water Resources Control Board adopted Water Rights Order No. 95-6 ("WR 95-6") which approved changes in the water rights permits for both the State Water Project and the Central Valley Project. One month later, the County of San Joaquin (Plaintiffs/Appellants), filed a writ of mandate contending that use of water from the New Melones Dam for fish and wildlife restoration and water quality improvement violated California water laws and denied the water users their priority rights. The plaintiffs also asserted that WR 95-6 violated the California Environmental Quality Act and the California Water Code.

Appellants named as respondents the State Water Resources Control Board and the five individual members. Appellants named as real parties in interest the United States through the Bureau, the State of California through the Resources Agency, and the Department of Water Resources. The State Water Resources Control Board moved for judgment on the pleadings arguing that the Bureau was an indispensable party that had not been joined and accordingly, dismissal of the action was required. The trial court found that the Bureau was an indispensable party and accordingly, dismissed the action without prejudice. The sole issue presented to the California Court of Appeals was