Blogs
August 22, 2022
CEQA Review Not Required for Water Allocations That Were Part of Earlier Project

A CEQA challenge to water allocations by the City of Los Angeles and its Department of Water and Power was barred by the statute of limitations because the allocations were under leases approved years earlier. *County of Mono v. City of Los Angeles*, 81 Cal.App.5th 657 (2022).

In 2010, the City approved a set of substantially identical leases covering about 6,100 acres of land owned by the City in Mono County. The City's determination that the leases were categorically exempt from CEQA was not challenged. The leases provided that any supply of water by the City to the leased premises was conditioned upon the quantity in supply at any given time, and that "the amount and availability of water, if any, shall at all times be determined solely by the City of Los Angeles."

Over the following eight years, the City provided varying amounts of water to lessees on an annual basis, ranging from zero to 5.4 acre-feet. In March 2018, the City sent lessees copies of a proposed new form of lease — termed the "Proposed Dry Leases" — under which the City would not furnish irrigation water but would, from time to time, provide "excess water" for spreading on the leased land. It also notified lessees that it was performing CEQA review of the Proposed Dry Leases and that the 2010 leases would remain operative in holdover status until completion of that review. In May 2018, the City informed lessees that the 2018-19 allocation under the 2010 leases would be 0.71 acre-feet per lease.

The County of Mono, one of the lessees, filed suit contending that the City improperly failed to conduct CEQA review before deciding upon the 2018-19 allocation because the allocation constituted a "new reduced water project," either on its own or as part of the Proposed Dry Leases.

The Court of Appeal was unpersuaded. Examining the history of water allocations under the 2010 leases, the court found no indication that the 2018-19 allocation represented "a turning point toward a low-water policy or Proposed Dry Leases." It rejected, as unsupported by the evidence, the County's claim that the City's prior water allocations had been closely tied to the snowpack and anticipated runoff and that the 2018-19 allocation represented a departure from this practice. Rather, the allocations were only loosely tied to snowpack and runoff estimates and depended on other factors, including the City's own needs and conservation practices.

The court also dismissed the County's claim that the timing of the 2018-19 allocation relative to the Proposed Dry Leases indicated the City was engaging in de facto implementation of proposed new leases before completing CEQA review. The court pointed out that the City had announced its intention to perform environmental review before approving the new leases and expressly committed to abiding by the 2010 leases while proceeding with that review. The 2018-19 allocation was both within the City's authority under the 2010 leases and consistent with its prior allocation practices.

Because Mono County's suit was filed years after the approval of the 2010 leases, it was time-barred. The fact that the 2018-19 allocation was a discretionary decision did not remove it from the ambit of the project approved as part of the 2010 leases, as those leases plainly gave the City authority to make such subsequent discretionary decisions. If Mono County believed the reduction of water allocations in specific years would constitute a substantial change in practice that could have significant environmental effects, it should have raised that argument in 2010 when the City approved the leases that gave it authority to make such decisions.