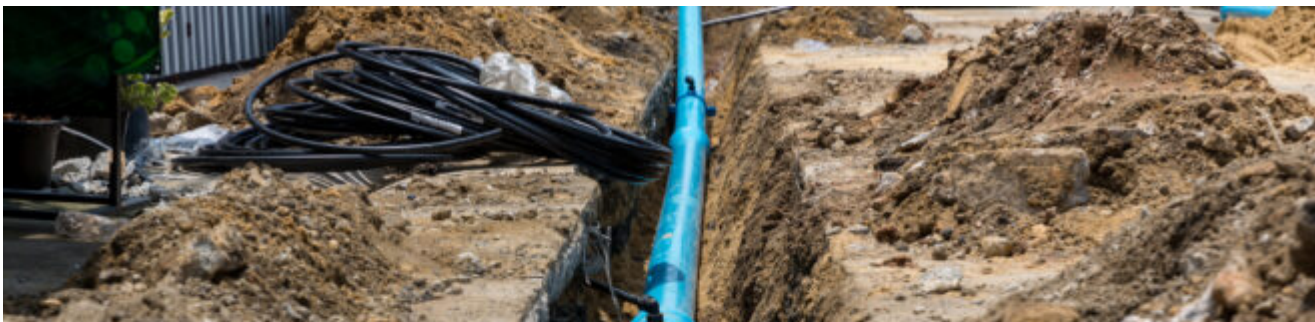




Concluding that it was a "near certainty" that the Stratford Public Utility District (SPUD) failed to comply with CEQA when it granted an easement for a water pipeline, the appellate court vacated an order denying a preliminary injunction that would have halted construction and operation of the pipeline, and ordered the trial court to reconsider. *Tulare Lake Canal Co. v. Stratford Public Utility Dist.*, 92 Cal.App.5th 380 (2023).



Sandridge Partners, L.P. owned a farm and proposed to install a new 48" water pipe that would transport its water from one area of its farmland to another. The pipe route would cross under a canal owned by the Tulare Lake Canal Company (TLCC), which lay within a 125-foot right of way TLCC held across Sandridge's land. The pipe also would cross a strip of land owned by SPUD. SPUD granted an easement to Sandridge for the pipe without considering environmental issues. When Sandridge started construction, TLCC sued Sandridge for trespass, and a few months later brought a separate CEQA action against SPUD. The trial court denied a preliminary injunction in the CEQA action, and TLCC appealed.

The appellate court discussed the rules applicable to preliminary injunctions, noting they require a showing of likelihood of prevailing on the merits and consideration of the relative balance of harms that is likely to result. With respect to the balance of harms, the court surveyed several CEQA cases in which courts employed the traditional approach of balancing harms to the parties, and several other cases in which courts used more general language. It concluded that "the balancing of interim harms likely to result from granting or denying a preliminary injunction in a CEQA proceeding requires the consideration of harms to public interests."

The court then applied the preliminary injunction standards to the circumstances at hand. It first considered the likelihood of prevailing on the merits. It held that SPUD, as a public utilities district formed under Public Utilities Code sections 15501 through 17501, was a public agency subject to CEQA. It also held that the grant of an easement was a grant of an entitlement for use, which is a "project" under CEQA. Further, SPUD's decision was discretionary, the project included the construction and operation of the pipeline, and the project could cause physical changes in the environment. Accordingly, TLCC had demonstrated a likelihood of prevailing on the merits of its claim that SPUD was required to comply with CEQA but did not.

The court then addressed the balance of harms. It concluded that "SPUD's failure to conduct a preliminary review and its failure to obtain the information essential to that review harmed the public interested in informed decisionmaking These public interests are the types of public interest that must be considered in evaluating the relative balance of harms" However, the court declined to adopt a bright line rule that a violation of CEQA's information disclosure provisions, by itself, either would or would not constitute sufficient harm to warrant a preliminary injunction. A further evaluation of the particular effects of not complying with CEQA, including potential environmental harm, is required on a case-by-case basis. The court cautioned that lack of evidence of environmental harms would not necessarily avoid a preliminary injunction, as the court did not want to incentivize project opponents to withhold information and complete construction before environmental review was undertaken.

Sandridge argued that environmental review would be meaningless, as SPUD had no authority to mitigate or avoid impacts because it had no jurisdiction over Sandridge's pumping or transportation of groundwater. The court disagreed, noting that CEQA Guideline 15041(a) states that a lead agency has authority to require feasible mitigation. The court did not discuss the fact that Guideline 15041 states that this authority is to be exercised "within the limitations described in Section 15040," and section 15040 cautions that "CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws." The court also omitted reference to the statutory mandate of Public Resources Code section 21004, which states "CEQA does not grant an agency new powers independent of the powers granted to the agency by other laws." The appellate court concluded there was a reasonable probability TLCC would have obtained a preliminary injunction if the trial court had considered harm to the public interest. It reversed the order denying TLCC's request for a preliminary injunction and ordered the trial court to reconsider the application in accordance with its decision.

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