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Planning and Conservation League v. Department of Water Resources

Court of Appeal, Third District, California - January 5, 2024 - 98 Cal.App.5th 726 - 317 Cal.Rptr.3d 53 - 23 Cal. Daily Op. Serv. 359

Department of Water Resources filed action to validate amendments to long-term contracts with local government contractors receiving water through State Water Project, extending contract terms, expanding facilities listed as eligible for revenue bond financing, and making other changes to contracts' financial provisions.

Conservation groups and public agencies answered, some asserting affirmative defenses and contesting validation and others supporting validation. Conservation groups and other entities filed two separate actions for writs of mandate and for declaratory and injunctive relief challenging approval of amendments under California Environmental Quality Act (CEQA), Sacramento-San Joaquin Delta Reform Act, and public trust doctrine. Contractors intervened.

In coordinated proceeding, the Superior Court, Sacramento County, entered judgment in Department's favor in all three cases. Parties opposing validation appealed. Appeals were consolidated.

The Court of Appeal held that:

- Baseline for evaluation of environmental effects of proposed contract amendments was environmental setting under current contract conditions;
- Amendments were not part of larger project, such that they were properly studied in their own environmental impact report (EIR);
- CEQA did not require Department to consider environmental impacts of all potential projects which could be funded using revenue bonds issued under amendments;
- EIR adequately examined range of reasonable project alternatives;
  Amendments did not constitute "covered action" under Delta Reform Act;
- Sufficient evidence supported conclusion that amendments would not impact public trust resources; and
- Department complied with statute requiring it to present amendments to legislative committees.

Where a project involves ongoing operations or a continuation of past activity, the established levels of a particular use and the physical impacts thereof are considered to be part of the existing environmental baseline, for purposes of determining whether a project is likely to have significant environmental effects under the California Environmental Quality Act (CEQA); this rule applies to renewal of a permit or other approval for an existing facility even though the facility and its operations have not been previously reviewed under CEQA.

Baseline for evaluation by Department of Water Resources of whether proposed amendments to long-term contracts with local government agencies that received water through State Water Project

would have significant environmental effects under California Environmental Quality Act (CEQA) was environmental setting under current contract conditions, not hypothetical environmental setting if contracts were not in place.

Proposed amendments to long-term contracts between Department of Water Resources and local government agencies receiving water through State Water Project were not part of larger project to build new water conveyance for Sacramento-San Joaquin Delta, and thus, Department's environmental review of proposed contract amendments alone did not constitute improper piecemealing of single project in violation of California Environmental Quality Act (CEQA), even though legislative oversight materials indicated relationship between contract amendments and financing of proposed conveyance project; amendments served independent purpose from conveyance, namely fixing financing problems with State Water Project, and amendment was only small step towards conveyance, which faced significant other hurdles.

On appeal from judgment in favor of Department of Water Resources in California Environmental Quality Act (CEQA) action, conservation groups forfeited their argument that addendum to coordinated operations agreement between Department of Water Resources and United States Bureau of Reclamation, which Department allegedly negotiated at same time it was reviewing proposed amendments to long-term contracts with local government agencies receiving water through State Water Project, indicated amendments and addendum were part of same project, such that CEQA would have required environmental impact report (EIR) for amendments to consider addendum's impact; groups presented inadequate analysis and evidence indicating addendum was reasonably foreseeable consequence of amendments.

Existing State Water Project operations were part of baseline for environmental review of proposed amendments extending terms of and changing financing for long-term contracts with local government agencies that received water through Project, and thus, in environmental impact report (EIR) for proposed contract amendments, Department of Water Resources was not required to consider environmental impacts of extended period of existing operations; amendments would continue existing operations without change.

Links between proposed amendments to duration and financing provisions of long-term contracts with local government agencies receiving water through State Water Project and potential future projects involving existing State Water Project facilities, such as possible use of revenue bonds issued under amendments to repair aqueduct and reinforce dam, were too attenuated for California Environmental Quality Act (CEQA) to require Department of Water Resources, when assessing environmental impacts of proposed contract amendments, to forecast impacts of all such potential projects; amendments did not commit Department to, authorize revenue bonds for, or cause potential projects, and government funding mechanisms with no commitment to specific projects were specifically excluded from CEQA review.

In environmental impact report (EIR) regarding proposed amendments to terms and financial provisions of long-term contracts with local government agencies receiving water through State Water Project, project alternative of excluding amendment to revenue bond provisions was substantially similar to alternatives that Department of Water Resources, as lead agency, discussed in detail, and thus, California Environmental Quality Act (CEQA) Guideline governing discussion of range of reasonable alternatives did not require Department to discuss exclusion of revenue bond amendment in detail, where exclusion of revenue bond amendment could be understood from specifics of no-project alternative and alternative that only extended terms of contracts.

Decision of Department of Water Resources, in environmental impact report (EIR) for proposed amendments to terms and financing provisions of long-term contracts with local government

agencies receiving water through State Water Project, to reject project alternatives to reduce water amounts that agencies would receive under contracts and to implement new water conservation management provisions did not constitute failure to analyze range of reasonable project alternatives, as required by California Environmental Quality Act (CEQA); EIR for proposed contract amendments had limited objective of addressing financial issues with existing contracts, and Department would have needed to add objectives to EIR to develop alternatives regarding water reductions or conservation measures.

In environmental impact report (EIR) issued by Department of Water Resources for proposed amendments extending terms and changing financial provisions of long-term contracts with local government agencies receiving water through State Water Project, no-project alternative was based on plausible, fact-based forecast that agencies would each elect to extend their existing contracts pursuant to evergreen clause, rather than prediction that some or all agencies would fail to extend contracts, and thus, EIR satisfied California Environmental Quality Act (CEQA) requirement of analyzing no-project alternative; State Water Project had long history and played critical role in distributing water to many residents and much farmland, making it unlikely that agencies would terminate contracts.

Proposed amendments to long-term contracts with local government agencies receiving water through State Water Project, which extended terms of existing contracts and expanded ability of Department of Water Resources to use revenue bonds to finance betterments for State Water Project facilities and build new facilities, did not occur in Sacramento-San Joaquin Delta or change developed uses of State Water Project, and thus, amendments did not constitute "covered action" subject to certification requirements of Sacramento-San Joaquin Delta Reform Act; facilities were not located in Delta, term extensions did not expand State Water Project's existing operations, and financing amendments were not equivalent to future projects that would use revenue bond funds raised as result of amendments.

Sufficient evidence supported conclusion of Department of Water Resources that no public trust resource would be impacted by proposed amendments extending terms and changing financial provisions of long-term contracts with local government agencies receiving water through State Water Project, such that Department's approval of contract amendments did not violate public trust doctrine; State Water Resources Control Board or its predecessor had granted water rights to Department for State Water Project decades previously and amended such rights several times, contracts at issue were executed decades prior and allowed local agencies to extend their contractual interests indefinitely, and any use of preexisting financing mechanism that amendments broadened was speculative.

Public trust doctrine did not impose general duty of ongoing supervision on Department of Water Resources as to water rights with which it operated State Water Project, and thus, Department had no duty to weigh public trust interests or consider additional protections to those interests when considering proposed amendments extending terms and changing financing provisions of long-term contracts with local government agencies receiving water through State Water Project, where amendments had no impact on public trust uses, as they merely extended longstanding arrangements under State Water Project and bore only attenuated relationships to any projects that might be funded in future using revenue raised under amendments.

The statute requiring the Department of Water Resources to make a presentation to certain legislative committees at an informational hearing at least 60 days before the approval of a renewal or extension of a long-term water supply contract does not contemplate that the contract is in its final form when it is presented to the committees; the goal of the statute is to provide high-level oversight into the renewal or extension of State Water Project long-term contracts, but not to insert

such oversight into the details of finalizing the renewal or extension by requiring an additional hearing as to any changes made following the committee hearing.

Failure by Department of Water Resources, at informational hearing before legislative committee regarding proposed amendments to long-term contracts with local government agencies receiving water through State Water Project, to mention that it had received but not yet responded to public comments on draft environmental impact report (EIR) for contract amendments did not violate statute requiring Department to make legislative presentations at least 60 days before approving renewal or extension of long-term water supply contract under State Water Project; statute did not require presentation to include details about EIR, and Department stated when seeking hearing that draft EIR had been prepared and final EIR would be completed in future.

Granting request by Department of Water Resources for validation of proposed amendments to long-term contracts with local government agencies receiving water through State Water Project would not confer absolute power on Department to assume unbounded contracts; validation action was statutorily limited to contracts in the nature of, or directly relating to, revenue bonds issued by Department under State Water Project, and Department acted within its general contracting authority under State Water Project in approving and executing amendments.

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