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Milliken v. Coachella Valley Water Dist., No. E029724, 2002 Cal. App. Unpub. LEXIS 2541 (Cal. Ct. App. Mar. 28, 2002)

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Milliken v. Coachella Valley Water Dist., No. E029724, 2002 Cal. App. Unpub. LEXIS 2541 (Cal. Ct. App. Mar. 28, 2002) (holding an environmental impact report is adequate if it: (1) properly describes a project's environmental setting and scope; (2) adequately analyzes a project's impact on groundwater quality; (3) adequately analyzes a reasonable range of alternatives and properly rejects each alternative; and (4) is consistent with the applicable zoning and land use laws).

The plaintiff, Bradley Milliken, appealed a Superior Court of Riverside County order to the Fourth Appellate District of the California Court of Appeals. The order denied Milliken's petition for a writ of mandate to prohibit the defendant, the Coachella Valley Water District ("District"), from certifying an environmental impact report ("EIR") and expanding its Water Reclamation Plant ("Plant").

Milliken appealed from an order that denied a writ of mandate to set aside the actions of the District in certifying an EIR and approving plans to expand its Plant. The District proposed to increase the Plant's wastewater collection, reclamation, and disposal capacity from 2.5 to 5.0 million gallons per day ("mgd"). In order to achieve the proposed increase, the District planned to upgrade the Plant's facilities and build two more percolation ponds. The proposed location for the ponds was a 105-acre parcel north of the Plant and on the upstream side of a United States Bureau of Reclamation flood control dike. Milliken's family owned a date farm and residence north of the Plant site and southeast of the pond site. A portion of Milliken's land was an agricultural preserve under the Williamson Act.

The Plant originally consisted of a 1.0 mgd aerated lagoon treatment facility with on-site percolation pond disposal. In 1995, the District completed construction of a 2.5 mgd extended aeration facility with tertiary and biosolids handling facilities at the Plant. The District proposed several upgrades including headworks, an aeration basin and blower, two secondary clarifiers, and a pump to transport treated effluent (recycled wastewater for irrigation) to new ponds. The District intended the project to provide treatment of increased sewage flows until 2017.

Milliken appealed the District's certification of the EIR to the court based on five arguments: (1) the EIR failed to adequately describe the project's environmental setting; (2) the EIR failed to describe the project's true scope as a segment of a larger unstated project; (3) the EIR failed to analyze the project's potential impacts on water quality; (4) the EIR failed to consider alternatives and rejected each alternative based only on cost; and (5) the project's purpose was inconsistent with zoning and land use laws and would have significant impacts on land use.

The court began its analysis by stating Milliken had the burden of proving the EIR was inadequate. In response to Milliken's first claim,

the court stated the EIR adequately described all land uses in the area of the Plant. Further, the EIR contained extensive information about the area's weather and wind conditions. The court then concluded the EIR specifically described Milliken's land, the exact location of Milliken's residence in relation to the Plant and the pond site, and the wind conditions near the project. The EIR also acknowledged one alternative pipe line might cross Milliken's property and that some of Milliken's property had been removed from agricultural reserve status. Milliken relied on two other cases where the court held an EIR as inadequate. However, the court distinguished the prior cases, where the court found EIR lacked sufficient explanation or detail regarding the surroundings, from the present case and concluded the EIR sufficiently described in detail the project's environmental setting.

Second, Milliken asserted the project's true scope was 20.0 mgd, not 5.0 mgd as stated in the EIR. The District argued any expansion of the Plant above 5.0 mgd was not foreseeable, thus no analysis of the effects of future expansions was needed. Milliken provided no evidence to show the EIR understated the project or concealed the ultimate capacity of 20.0 mgd. The EIR based its estimated scope on population growth according to census tract figures, which were not disputed by Milliken.

Furthermore, Milliken claimed the project sized its headworks for 8.5 mgd. According to Milliken, the headworks size proved the ultimate capacity of 20.0 mgd. Contrary to Milliken's assertions, the court concluded the 8.5 mgd headwork proposed by the District did not necessarily mean the Plant expansion was planned to be 20.0 mgd. The court found Milliken overestimated the importance of the 8.5 mgd headworks and ignored evidence the Plant's overall operating capacity was 5.0 mgd. Milliken claimed a 1993 interoffice District memorandum showed the true scope of the project was 20.0 mgd. The court held Milliken misread the 1993 memorandum and later interoffice communications clarified Milliken's misunderstanding. Milliken also claimed the average daily influent to the Plant increased by 222 percent between 1994 and 1999, which proved the true scope of the project was 20.0 mgd. The court dismissed Milliken's second argument and stated the evidence did not prove the 222 percent growth rate would continue in the future.

Third, Milliken maintained the EIR did not adequately analyze the possible contamination of the groundwater in the area of the Plant, including water in Milliken's well. In contrast, the District claimed the EIR adequately analyzed possible groundwater contamination and the EIR properly concluded the project would have no significant impact on the groundwater quality. The court reasoned an EIR's analysis should be specific enough to allow informed decision making and public participation. The EIR should also include information about a project's environmental impacts and reasonable alternatives. Based on test results from a monitoring well and an irrigation well, the EIR concluded there would not be a significant affect on the quality of the

groundwater. Further, there was no evidence of effluent contamination in Milliken's well. The court held the EIR adequately analyzed the project's affect on groundwater surrounding the Plant and substantial evidence supported the EIR's conclusions.

Milliken also argued the EIR failed to include evidence of past groundwater contamination at the Plant. Results of quarterly groundwater tests were part of the public record, even though the EIR and administrative record did not include the results. The court found Milliken failed to prove the EIR's lack of test results misled the District, the public, understated any problem, or was prejudicial.

Fourth, Milliken claimed the EIR did not adequately analyze alternatives to the project and the District chose this project based only on its low cost. An EIR must provide sufficient information about each alternative in order to permit evaluation, analysis, and comparison to the proposed project. The EIR analyzed seven alternatives to the proposed project and thoroughly explained the reasons why each alternative was rejected. The court held the EIR adequately analyzed a reasonable range of alternatives. The court found that the District rejected each alternative for an environmental or a technological reason, rather than cost alone.

Finally, Milliken asserted the project would significantly impact land uses, since it was inconsistent with Riverside County's and the City of Indio's zoning ordinances, and the Riverside County Comprehensive General Plan. The county zoned the Plant and pond site under the W-2 zoning ordinance. Uses permitted under the W-2 zoning included: water works facilities (public and private) for the primary purpose of production and distribution of water for irrigation purposes, public utility uses such as structures and installations necessary for conservation, and development of water (dams, pipelines, water conduits, tanks, reservoirs, and wells). Milliken argued the project was inconsistent with the W-2 zoning, because the project did not produce and distribute water for irrigation purposes. Milliken also claimed the project was not necessary to the conservation and development of water. According to Milliken, the project's main purpose was wastewater disposal. The court found the project would expand the Plant's capacity to produce and distribute recycled water for irrigation and conservation. The court held Milliken's interpretation of uses under W-2 zoning was too narrow. Accordingly, Milliken failed to show the project's inconsistency with the city's ordinance.

Milliken then presented an argument the project was inconsistent with the Western Coachella Valley Plan ("WCVP"). The WCVP provides rivers, floodways, lakes, and reservoirs are limited to open space and limited recreational land uses. Since the pond site would be located in a floodway, Milliken claimed the percolation ponds did not preserve or maintain open space. However, the court held Milliken disregarded section I.5 (a) of the WCVP, which provided several reasons a public service facility may be consistent with all land use

designations under the WCVF. The reasons included: the facility would not create a land use problem, the site had adequate circulation, water distribution, sewage collection and utility service, and the location would not jeopardize public health, safety and welfare or the facility was necessary to ensure public safety and welfare. The project satisfied all the requirements under the WCVF, therefore the court held it was consistent with the WCVF.

The court affirmed the District's decision and concluded the EIR adequately described the project's environmental setting and scope, adequately analyzed the project's impacts on groundwater quality and reasonable alternatives, and Milliken failed to show the project was inconsistent with zoning or land use laws.

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State ex rel. Dept. of Parks & Recreation v. Schoendorf, No. H022039, 2002 WL 972147 (Cal. Ct. App. May 10, 2002) (holding: (1) a claim of adverse use cannot be supported where a water right was used with implied permission that was never expressly disclaimed; and (2) a property owner may only rely on an overlying water right to extract water from the ground beneath the owner's property, not to divert surface flow to which the owner has no riparian right).

The Schoendorfs appealed an action alleging they illegally diverted surface flow of a spring from land owned by the State of California. Schoendorf claimed prescriptive and overlying rights to the spring. On summary adjudication, the Monterey County Superior Court ruled in the state's favor. Schoendorf appealed, alleging the trial court erred in failing to infer adverse use and improperly adjudicating their overlying right claim. The California Court of Appeal for the Sixth District affirmed the trial court's ruling.

The surface flow of the spring arose on the state's land and only reached Schoendorf's property by means of a springbox and pipeline. From 1944 to 1954, Schoendorf's predecessor in interest used this diversion to supply their property with water. The state gained title to the waters of the spring and surrounding land in 1962. In 1996, Schoendorf installed a new springbox and pipeline on the state's land after acquiring neighboring property.

In 1999, the state brought an action against Schoendorf alleging they were illegally diverting water from the spring. The state also claimed sole riparian rights to the spring because without the diversion, no water from the spring would reach Schoendorf's property. The state sought removal of the diversion and restoration of its property, as well as a declaration that Schoendorf's diversion was illegal. Schoendorf filed a cross-complaint seeking declaratory relief. They alleged a prescriptive right to the spring based on adverse use by