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County of San Joaquin v. State Water Resources Control Board, 63 Cal. Rptr. 2d 277 (Cal. Ct. App. 1997)

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data readily existed on the local microclimate, the EIR used an outdated study from 1967.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

whether the trial court erred in finding that the Bureau was in fact an indispensable party.

The appellate court found that the trial court had appropriately reviewed the propriety of the United States' participation in this action pursuant to the factors and considerations set forth in subdivision (b), section 389 of the California Code of Civil Procedure. Subdivision (b) states that if there is a party who cannot be joined in the action, and in whose absence complete relief cannot be accorded among those who are already parties to the action, the court shall determine whether, in equity and good conscience, the action should proceed among the parties who have been joined and are in front of the court, or whether the action should be dismissed without prejudice—the absent party having been thus determined indispensable. The appellate court characterized plaintiffs/appellants attempt to obtain a *de novo* review of the trial court's decision as an attempt to completely retry their case. The law is settled that it is within the trial court's discretion, as governed by the factors in subdivision (b) of Cal. C.C.P. section 389, whether to proceed in an action in the absence of a particular party. It would be illogical to grant a trial court this discretionary power to balance equities and then reject the court's evaluation and balance the equities anew. The rule provides for evaluations of situations on a fact specific basis. The appellate court reasoned that the trial judge is in a better position than an appellate panel to weigh the pragmatic considerations of a particular situation. Excluding the rare instances in which an abuse of discretion occurs, it would be counter-productive to second guess the trial court's management of a case.

Appellants argued that the factors considered by the trial court *could* have been weighed in a manner that would have favored their position. The appellate court held that this mere possibility did not amount to an abuse of discretion by the trial court. The language of the rule specifically granted the trial judge substantial discretion in considering which factors to weigh and how heavily to emphasize certain considerations. Accordingly, it was the trial court's decision to determine whether the action should go forward in the absence of a party needed for a complete adjudication of the dispute. Re-evaluating the trial court's consideration of the applicable factors would contravene the plain language of the rule.

Finding that the trial court had adequately considered the factors in subdivision (b), and that there was no abuse of discretion, the appellate court held that the action was properly dismissed.

Maureen D. McInerney

COLORADO

Chatfield East Well Co., Ltd. v. Chatfield East Property Owners Ass'n, 956 P.2d 1260 (Colo. 1998) (affirming the water court's order dismissing well company's application for decree allowing it to extract and use