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## **Deltakeeper v. Oakdale Irrigation Dist., No. C035745, 2001 Cal. App. LEXIS 3687 (Cal. App. Dec. 26, 2001)**

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recommendations regarding feasibility and the amount of water necessary to accomplish the homeland purpose.” Rather than set forth a clear test to quantify water rights, the court provided a list of factors, consistent with the idea of a reservation serving as a permanent homeland, with which to determine the minimal amount of water necessary for an Indian reservation. These factors include a tribe’s history and cultural practices, geography and topography of the reservation, groundwater availability, and past water use.

The state litigants argued their water rights would decrease due to the proposed system of allocation to Indian reservations. The Arizona Supreme Court rejected their argument, holding, “such a minimalist approach demonstrates appropriate sensitivity and consideration of existing users’ water rights, and at the same time provides a realistic basis for measuring tribal entitlements.”

Thus, the Arizona Supreme Court vacated that part of the September 1988 order that established PIA as the standard for reserving federal water rights on Indian reservations, instead requiring courts to grant water rights to Indian reservations based on a case-by-case basis. The court affirmed the remainder of the order.

*Katharine J. Ellison*

## CALIFORNIA

**Deltakeeper v. Oakdale Irrigation Dist., No. C035745, 2001 Cal. App. LEXIS 3687 (Cal. App. Dec. 26, 2001)** (when certain unnamed parties to litigation are protected by the interests of named parties, dismissal of a case is not necessary under the rules of indispensable parties and necessary parties).

Oakdale Irrigation District (“Oakdale”), South San Joaquin Irrigation District (“South San Joaquin”) and Stockton East Water District (“Stockton East”), entered into the Joint District Water Purchase Agreement (“Agreement”) with the City of Stockton, Lincoln Village Maintenance District, Colonial Heights Maintenance District, and Central San Joaquin Water Conservation District, for the sale of water by Oakdale and South San Joaquin to the other parties to the Agreement. Oakdale and South San Joaquin prepared an Environmental Impact Report (“EIR”), which Deltakeeper challenged by a petition for a writ of mandate. On August 26, 1999, Deltakeeper filed a petition for writ of mandamus alleging the EIR failed to address adequately the environmental impacts of the project proposed in the Agreement. They requested the setting aside of the certification of the EIR and a permanent injunction enjoining respondents from engaging in any activity connected with the project until the project approvals fully complied with the California Environmental Quality Act (“CEQA”). The Oakdale, South San Joaquin, and Stockton East

Districts filed a motion to dismiss the petition on December 13, 1999 for failure to join indispensable parties.

The court determined whether the unnamed parties are necessary parties or indispensable parties to the litigation, under section 389 of the Public Resources Code of California. Section 389 mandates that whenever feasible, the person materially interested in the subject of an action should be joined as a necessary party so they may be heard. This section insures that complete, not hollow, relief will be had by all interested parties, the protection of parties whose joinder is in question, and a party is not subject, after the adjudication, to double or otherwise inconsistent liability. The court here found that the EIR ensured complete relief for all the interested parties. Secondly, the court found the unnamed parties did not lose protection of their interests when the joined parties had the same interest in the litigation. All parties have voting rights under the Agreement before any action is taken which binds the named parties to the outcome of the vote. Finally, the parties will not be threatened with double or inconsistent liability because any of them may cancel the Agreement if the EIR is determined to be inadequate.

The next issue was whether a necessary party to the action is indispensable. A party is indispensable only in the conclusory sense that in its absence, the court has decided the action should be dismissed. Ordinarily courts refuse to adjudicate a contract case when all parties to the action are not present. The fact that the action may affect the interests of the non-joined parties in the underlying contract in this case does not dictate the conclusion they are indispensable parties. The rights asserted in this litigation are independent of the contractual rights to water established by the Agreement. An indispensable party is determined by four factors: (1) whether the judgment is prejudicial to parties or non-parties; (2) whether any prejudice be lessened or avoided, (3) whether the judgment will be adequate; and (4) whether the plaintiff will have an adequate remedy if the action is dismissed. First, the court decided the non-joined parties had interests in the litigation but the parties to the action adequately protected the interests. Second, the unnamed parties could make no new arguments since a determination of an EIR's adequacy was based on the existence of substantial evidence and any party could make this argument. Third, any judgment rendered will adequately adjudicate the rights of all parties. Fourth, if the action was dismissed Deltakeeper would have no recourse because the statute of limitations had run for joining more parties.

Finally, the court found that if the action were dismissed, the evaluation of the EIR would escape scrutiny, the main recourse the public has to ensure projects comply with CEQA. Therefore, the court did not dismiss the case.

*Shandra Dobrowolny*