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San Luis Coastal Unified Sch. Dist. v. City of Morro Bay, 97 Cal. Rptr. 2d 323 (Cal. Ct. App. 2000)

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user actually receives. A paper water right is so named because, as here, when there is not enough water to fulfill the entitlement, the right exists only on paper. In addressing this problem, the court found the EIR did not view Article 18(b) as a feasible alternative and instead summarily dismissed it as infeasible. The EIR failed to meaningfully analyze the permanent proportionate decrease provisions of Article 18(b) to reflect SWP's actual yield as a project alternative.

On the whole, the court found the EIR's analysis defective because it did not sufficiently provide the public with a base line against which to measure the project, the status quo, and the alternatives. In reversing the trial court, the court held harmless error review inapplicable to a court evaluating the statutory mandates of CEQA. Thus, the trial court's conclusion that the EIR was sufficient even though the agency drafting it was not the proper lead agency constituted reversible error. The court also reversed the trial court's dismissal for failure to serve indispensable parties because the reverse validation proceeding was an *in rem* action whose only indispensable party consisted of the public agency owning the *res*.

Susan P. Klopman

San Luis Coastal Unified Sch. Dist. v. City of Morro Bay, 97 Cal. Rptr. 2d 323 (Cal. Ct. App. 2000) (holding section 1810 of the California "Wheeling Statutes" did include as a transferor entitled to use a city's water conveyance facility's unused capacity, a school district purchasing less expensive water from the county).

The San Luis Unified School District ("School District") appealed the trial court's judgment denying a writ of mandate against the City of Morro Bay ("City"). The writ would compel the City to allow the School District to use the excess capacity of the City's water conveyance facility to transfer water purchased by the School District from San Luis County ("County") to schools within the City. Section 1810 of the California Water Code required public agencies to allow bona fide transferors to use excess unused capacity in their water conveyance facility in return for fair compensation. The School District argued it was a "bona fide transferor" within the meaning of section 1810.

The trial court ruled the School District was not included within the definition of a "transferor" because a "transferor" was limited to those who contracted for the sale of water. The trial court agreed with the City that the School District had a contract to purchase water, not a contract for the sale of water. Therefore, the School District was not a transferor entitled to use the City's water conveyance system.

The court of appeals reversed. First, the court ruled the School District was a transferor within the statute. The court stated a contract

for purchase only exists with a corresponding contract for sale from the County, and whether the transferee or transferor actually applied for the use of the conveyance system was not important.

Second, the court of appeals rejected the City's argument that the conveyance facility contemplated in the statute included only aqueducts and canals, and not local distribution systems. The court stated the legislature would have specifically excluded local distribution systems from the statute if that was the legislature's intent. The court ruled the City had no duty to allow the School District to use the City storage facility for any period longer than the incidental use time necessary to convey the water.

Third, the court of appeals rejected the City's argument that the statute should not be enforced because the School District's use did not promote the statute's conservation purpose. The court stated the statute did not indicate conservation was the statute's only purpose. Therefore, the School District's purpose of reducing cost was acceptable.

Finally, the court of appeals rejected the City's argument that allowing the School District's use of the water conveyance system violated section 1810(d) of the Water Code. Section 1810 did not allow use of the water conveyance facility if the use caused legal injury to other legal users. The City argued the agreement violated this provision, because injury would occur to other legal users due to the increases in the City's water prices if the School District did not purchase its water from the City. The court rejected this argument stating an increased water prices was not the type of injury the legislature intended to prevent.

The court remanded the case with the instruction that the trial court order the City to produce the information listed in section 1812, including the amount and availability of the conveyance facility's unused capacity and the terms and conditions of the facility's use.

Tiffany Turner

COLORADO

Bd. of County Comm'rs v. Crystal Creek Homeowners' Ass'n, 14 P.3d 325 (Colo. 2000) (holding that the Gunnison River, located in the Aspinall Unit, did not contain sufficient water for Arapahoe County to meet the "can and will" requirement of a conditional water right decree).

The Board of County Commissioners of Arapahoe County ("Arapahoe") applied for a decree for a conditional water right. The District Court, Water Division No. 4, denied Arapahoe's application,