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Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, 127 Cal.App.4th 490 (Cal. Ct. App. 2005)

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nia for an access road on an agricultural ranch of this size. Johnson also argued access roads within agricultural zones should not be subject to permitting requirements. The Regional Board denied the request and imposed a fine.

Johnson sought review by the State Water Resources Control Board ("State Board"). The State Board dismissed the petition, citing the informal rule against reviewing administrative civil penalties imposed by regional boards. Johnson then filed this action for a writ of mandate and damages against both the State and Regional Boards in the Superior Court of San Diego County. Johnson alleged not only that the State Board abused its discretion in dismissing their request, but also that the State Board's informal rule constituted an abdication of its administrative oversight duties and violated due process and equal protection by imposing unequal penalties across the state. The State Board demurred to the claims against it. The trial court sustained the demurrer and dismissed the State Board from the proceedings. Johnson appealed to the California Court of Appeals, Fourth Appellate District, Division One. The court addressed whether the State Board's refusal to consider a petition challenging a regional board's action or inaction is subject to judicial review.

The Porter-Cologne Water Quality Control Act ("Act") established a statewide program of water quality control maintained through regional administration. This Act divided the state into nine regions, each governed by a board. Each board must formulate and adopt water quality control plans within its region and establish water quality objectives to ensure the protection of state waters. Pursuant to the Act, a regional board may issue orders to enforce its plans and may impose administrative penalties. An aggrieved party may seek administrative review by petition to the State Board. The State Board has discretion to review such orders and may refuse review if the petition fails to raise substantial issues appropriate for review. The court relied on an earlier case holding that the State Board's exercise of discretion to determine which issues were substantial and appropriate for review was itself not subject to judicial review.

Here, the court held that a discretionary decision by the State Board as to whether to review a regional board's decision imposing administrative penalties is not subject to judicial review. Moreover, the state protected Johnson's due process and equal protection rights by virtue of the statutory scheme that provides for direct judicial review of a regional board decision where the State Board declines review. The court affirmed the dismissal order.

Jennifer Suh

Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, 127 Cal.App.4th 490 (Cal. Ct. App. 2005) (holding that an environmental impact report must adequately describe the anticipated

sources of water and their impact on the environment, but need not identify and analyze every potential source of water for the project if the anticipated water sources fail).

In June 2002 Sacramento County ("County") certified the Final Environmental Impact Report ("EIR") for a development project ("Project"). The County approved the Project in July 2002, which included the development of several thousand acres of rural open space in eastern Sacramento County containing wetlands, creeks, and vernal pools for residential and commercial use. The water plan for the Project included both groundwater and surface water sources. The main source of water for the project was groundwater pumped to a location south of the Project known as the North Vineyard Well Field ("NVWF"). However, the NVWF water was not sufficient to provide for the needs of the completed project, and the Water Forum Plan ("WFP") limited the extraction of groundwater in areas of the Project and NVWF. To supply needs, the Sacramento County Water Agency ("SCWA") created "Zone 40," which supplied groundwater and surface water. The development of "Zone 40" was ongoing and, therefore, NVWF only provided a short-term supply of water for the Project. In August 2002 the Vineyard Area Citizens for Responsible Growth, Inc. and others ("VACRG") filed an action in the Superior Court of Sacramento County under the California Environmental Quality Act ("CEQA") to overturn the County's approval of the Project. The trial court denied the petition, and VACRG appealed to the California Court of Appeal, Third Appellate District.

The court reviewed the CEQA legal issues *de novo* to determine whether the trial court erred in denying VACRG's petition. VACRG alleged that the environmental review process did not adequately discuss the environmental impacts of the Project, which they alleged included lowering the water levels of two rivers and obliterating portions of the wetlands within the Project area. The court rejected the argument, stating that both the final EIR and the trial court's findings addressed the impacts. In addition, the Sacramento County Board of Supervisors ("Board") made findings that the Project would not result in a substantial impact on the rivers and, therefore, discussion of that issue was not necessary in the final EIR because the Board acted as the fact-finder in this matter.

The court stated that the critical issue was whether the final EIR adequately described the new water supply plan and its environmental impacts. The court held that the EIR met this requirement since the EIR described not only the sources of water the Project relied on, but also the present environmental conditions of the Project area, current water levels, and expected impacts of drawing water from the NVWF. The final EIR analyzed different water demand scenarios and the anticipated impacts on groundwater levels in each scenario. The court

held that the final EIR completely discussed groundwater-related issues, and sufficient evidence supported the Final EIR. . Therefore, the court held that the EIR comported with the CEQA requirements.

Further, the court held that VACRG's argument that the EIR inadequately described the impacts on the wetlands lacked merit. The final EIR explicitly stated the Project's unavoidable adverse effect on the wetlands. The EIR even quantified the amount of the wetlands losses projected. The function of the final EIR was to provide information, and the court held the EIR served that purpose.

VACRG next argued that the court should overturn approval of the Project because the EIR did not describe a complete and certain water supply throughout the completion of the Project. The court stressed that two critical issues under a CEQA include: (1) identifying a source of water for a project, and (2) addressing the environmental effects of obtaining water from that source. The court held that the Project identified the potential water supply sources and analyzed the environmental effects of those sources. Further, the court held that an EIR was adequate without identifying every possible source of water for the Project if the expected sources did not materialize. However, the EIR could not list only speculative sources of water.

The court held that, even though the EIR did not confirm the WFP water sources, the EIR was adequate, and although the identified sources were incomplete, they were not speculative. The court rejected VACRG's argument that the final EIR was speculative, because the availability of water from NVWF occurred on a first come first serve basis. Also, the court reasoned that the County was not required to take a "worse-case scenario" approach, but that the EIR met the CEQA requirements by discussing reasonable scenarios. Therefore, the court held that the County validly approved the Project, and affirmed the decision of the trial court.

Kate Brewer

COLORADO

Colo. Water Conservation Bd. v. Upper Gunnison River Water Conservancy Dist., No. 04SA44, 2005 Colo. LEXIS 201 (Mar. 14, 2005) (holding (1) the Colorado Water Conservation Board functions as a narrowly constrained fact finding advisory body when it reviews recreational in-channel diversions applications, (2) Colorado water courts give presumptive effect to the findings of the Colorado Water Conservation Board, which are binding on the water courts, but a party may produce evidence to rebut that presumption and the water courts must evaluate the contested factors using a preponderance of the evidence standard, and (3) water courts must determine whether an application for a recreational in-channel diversion is for a reasonable recreation experience on each particular stream and determine the minimum