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[BASELINE USING EXISTING ENTITLEMENTS ACCEPTABLE IF IT CORRESPONDS TO CONDITIONS "ON THE GROUND"](#)

[Cherry Valley Pass Acres and Neighbors, et al. v. City of Beaumont, E049651 \(4th Dist. Div. 2, November 22, 2010\)](#)

By [Daniel Bane](#)

In *Cherry Valley Pass Acres and Neighbors, et al. v. City of Beaumont*, the Court of Appeal considered Plaintiffs Cherry Valley Pass Acres and Neighbors and Cherry Valley Environmental Planning Group ("Plaintiffs") claim that the City of Beaumont ("City") abused its discretion in certifying the environmental impact report ("EIR") for the Sunny-Cal Specific Plan ("SCSP" or "Project") because it failed to properly address the Project's significant impacts on area water supplies and agricultural land uses. Both claims were rejected. The appellate court concluded that the use of existing entitlements for baseline conditions was legitimate when it corresponds to an conditions "on the ground" at the time environmental review commenced. It also concluded that there was substantial evidence to support the City's findings related to agricultural impacts.

Background

Defendant City approved the SCSP to build 560 residential units on a 200-acre site long used for agricultural uses and located in an unincorporated area north of the City known as Cherry Valley. In August 2007, the City certified an EIR and adopted a statement of overriding considerations for the SCSP pursuant to the California Environmental Quality Act ("CEQA") (Pub. Resources Code, § 21000 et seq.), and took related actions approving the SCSP. Plaintiffs petitioned the trial court for a writ of mandate setting aside the City's certification of the EIR, adoption of the statement of overriding considerations, and related actions approving the project. The trial court denied the petition and Plaintiffs appealed.

On appeal, Plaintiffs argued that the EIR was legally inadequate as an informational document because: (1) The EIR relied upon an improper baseline or environmental setting in assessing the Project's impacts on local and regional water supplies and also failed to demonstrate a reasonable likelihood the project would have sufficient water supplies over the long-term; (2) the EIR failed to adequately consider mitigation measures and alternatives for reducing the Project's impacts on agricultural land uses; and (3) the findings the City made in adopting the statement of overriding considerations were not supported by substantial evidence.

The Baseline Issue

Plaintiffs contended that the EIR failed to properly failed to properly analyze the SCSP's impacts on area water supplies and resources because it relied on an improper baseline or environmental setting in analyzing these impacts - specifically, the property owner's ("Sunny-Cal") adjudicated right to draw 1,484 acre-feet ("afa") of groundwater from the Beaumont Basin. Plaintiffs believed the EIR should have analyzed these impacts based on the much lower 50 afa that Sunny-Cal was *actually* using on the project site after it ceased operating its egg farm in late 2005. According to Plaintiffs, the use of the 1,484 afa

figure caused the EIR to oversimplify and understate the Project's true impacts on area water supplies and resources.

The Court of Appeal determined that “[i]n using the word ‘normally,’ section 15125, subdivision (a) of the CEQA Guidelines necessarily contemplates that physical conditions at *other points in time* may constitute the appropriate baseline or environmental setting.” Thus, the Court of Appeal recognized that “environmental conditions may vary from year to year and in some cases it is necessary to consider conditions over a range of time periods.”

In certifying the EIR, the City concluded that the 1,484 afa Sunny-Cal was entitled to pump from the Beaumont Basin pursuant to the adjudication and was transferring to the Beaumont Cherry Valley Water District (“BCVWD”) as part of the project approvals was the appropriate baseline to use in measuring the SCSP's impacts on area water resources. Pursuant to this baseline, the City then concluded that the SCSP would not significantly impact area water resources because, even in a “worst case” scenario, the SCSP would consume no more than 531 afa of water, much less than the 1,484 afa entitlement. The remaining 953 afa would then be available to serve the BCVWD's other customers.

The Court of Appeal concurred with the City's findings based on the substantial evidence in the administrative record. The Court of Appeal reasoned that though, as Plaintiffs pointed out, Sunny-Cal was using only 50 afa on the site after it ceased operating the egg farm in late 2005, its *right to use* its full 1,484 afa entitlement on the Project site was wholly unaffected by its cessation of the egg farm operations. Thus, the Court of Appeal found that the 1,484 afa figure the City relied on accurately reflected the “physical environmental conditions in the vicinity of the project, as they exist[ed] at the time the notice of preparation [was] published” in December 2004.

In its holding, the Court of Appeal was careful to distinguish the California Supreme Court's recent ruling in *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 315 (“CBE”) as well as the Court of Appeal's decisions in *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 705 (“Woodward Park”) and *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350 (“EPIC”). Specifically, the Court of Appeal pointed out that CBE, Woodward Park, and EPIC each involved the erroneous use of *hypothetical or allowable* conditions as baselines - that is, conditions that were *permissible* pursuant to an existing plan or regulation but that were not being employed or that did not exist “on the ground” at the time environmental review commenced. Based on this logic, the Court of Appeal found that Sunny-Cal's 1,484 afa entitlement to Beaumont basin groundwater was not a hypothetical or allowable condition, but a condition that existed on the ground and that had existed on the project site since February 2004, well before the notice of preparation was published in December 2004 and environmental review of the original SCSP commenced.

The EIR's Analysis Of The SCSP's Impacts On Water Supplies

Plaintiffs further asserted the EIR relied on “faulty assumptions and unduly optimistic predictions” concerning the long-term availability of water supplies in the BCVWD's service area based on the third and fourth requirements set forth in *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428-432. In sum, Plaintiffs claimed the EIR failed to adequately analyze the SCSP's impacts on local and regional water supplies because it failed to coherently and consistently explain how the BCVWD would have sufficient supplies of water to serve the needs of both the SCSP and the BCVWD's other customers over an approximate 20-year period. However, the Court of Appeal concluded that the EIR was not required to make this showing. Instead, the EIR was only required to show a *reasonable likelihood* that

sufficient supplies of water, *from an indentified source*, would be available to meet the needs of the SCSP, over 20 years. Accordingly, the Court of Appeal found the EIR demonstrated a reasonable likelihood that sufficient supplies of water would be available for the Project, from an identified source - the SCSP's own 1,484 afa entitlement over 20 years. Thus, the Court of Appeal decided it was unnecessary for it to determine whether the water supply assessment ("WSA"), the 2005 Urban Water Management Plan ("UWMP"), the EIR, or the record as a whole contains substantial evidence that the 531 afa requirements of the SCSP will be met over the long term *from sources other than Sunny-Cal's 1,484 afa entitlement, or the BCVWD's total supplies*.

Furthermore, the Court of Appeal found that the EIR also adequately addressed the impacts on the Beaumont Basin of providing water to the SCSP. Again, Plaintiffs argued that the EIR used an improper baseline that overstated the SCSP's water use. However, the Court of Appeal again rejected this contention and reiterated that the SCSP would use significantly less amounts of Beaumont Basin groundwater than the Sunny-Cal egg farm had historically used or was otherwise entitled to use. Thus, the Court of Appeal reasoned the EIR properly concluded that the SCSP would cause no "additional withdrawals" of Beaumont Basin groundwater beyond existing conditions.

Agricultural Land Use Impacts

Plaintiffs further claimed the City, in preparing the EIR, failed to investigate and analyze feasible mitigation measures and alternatives for reducing the SCSP's impacts on agricultural land uses. Specifically, Plaintiffs argued there was no evidence to support the City's determination in the EIR that the SCSP's adverse impacts on agricultural land uses in the Cherry Valley area could not be feasibly mitigated because such land uses were no longer economically feasible. Additionally, Plaintiffs asserted that there is no evidence to support the City's determination that several onsite project alternatives to the SCSP, involving various degrees of continued agricultural uses on the site, were economically infeasible. The Court of Appeal rejected each of these claims in turn.

The Court of Appeal reasoned that whether or not long-term agricultural uses were still feasible in the Cherry Valley and north Beaumont areas was a question of fact, and substantial evidence supported the City's determination in the EIR that such uses were no longer economically feasible. Moreover, the Court of Appeal stated that the EIR was not required to address every imaginable project alternative. Instead, the EIR only needed to address a reasonable range of feasible project alternatives. Accordingly, the Court of Appeal found that the EIR contained a sufficient range of alternatives for "informed decision-making."

Lastly, the Court of Appeal rejected each of the Plaintiffs' arguments regarding the Statement of Overriding Considerations stating that it was unwilling to second-guess the City's discretionary policy determinations which were clearly supported by substantial evidence.

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