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CASE ALERT

County of Imperial v. Superior Court (State Water Resources Control Board) (June 14, 2007, C048984), ___ Cal.Rptr.3d ___, 2007 WL 1723558

June 19, 2007

In a case of first impression regarding which parties are "recipients of an approval" that must be named as defendants in an action challenging a regulatory agency's approval of a project under the California Environmental Quality Act (CEQA), the Third District Court of Appeal held that the term includes all parties who ultimately received an approval from the agency even if they were not applicants for the proposed agency approval. As a result, the Court of Appeal upheld the trial court's ruling sustaining demurrers without leave to amend in two actions brought by the County of Imperial under CEQA for failure to join such recipients as real parties-in-interest within the applicable statute of limitations.

Under Water Code sections 1735 through 1737, the California State Water Resources Control Board (State Board) approved a long-term transfer of water from the Imperial Irrigation District (IID) to the San Diego County Water Authority (SDCWA). As part of this transfer, the State Board also approved a collateral agreement for IID to transfer water to the Coachella Valley Water District (Coachella) and the Metropolitan Water District of Southern California (Metropolitan) in lieu of a previously-proposed larger transfer to San Diego. Because the State Board specifically approved a transfer of water to Coachella and Metropolitan, the Court of Appeal affirmed the trial court's determination that this approval qualified Coachella and Metropolitan as "recipients of an approval" under Public Resources Code section 21167.6.5 (section 21167.6.5), even though they were not applicants for the transfer and in fact had initially opposed it.

The Court of Appeal held that section 21167.6.5 defines as a matter of law those parties that are necessary to the litigation and must be named within the meaning of Code of Civil Procedure section 389(a) (joinder of parties necessary to an action). The Court interpreted the Legislature's response to *Deltakeeper v. Oakdale Irrigation Dist.* (2001) 94 Cal.App.4th 1092 in enacting section 21167.6.5 to create "necessary parties" under CEQA. However, the Court found that section 21167.6.5 did not automatically confer indispensable party status on "recipients of an approval" under Code of Civil Procedure section 389(b) (section 389(b)). Hence, once it found that Coachella and Metropolitan were recipients of an approval under section 21167.6.5, the Court of Appeal went on to analyze whether the trial court abused its discretion in determining that Coachella and Metropolitan were indispensable parties under section 389(b) and whether the actions were properly dismissed for failure to timely name them as real parties-in-interest in the CEQA actions.

The Court found no abuse of discretion because the trial court had carefully balanced the factors under section 389(b) and found, *inter alia*, that: (1) the unnamed parties (Coachella and Metropolitan) could not adequately be represented by the named parties (IID and SDCWA); (2) proceeding without the unnamed parties could result in the loss of the rights to water conferred on them under the State Board order; and (3) petitioner County did not show how such prejudice could be ameliorated without the participation of the unnamed parties in the actions.

The decision is also significant because it upheld dismissal of a CEQA challenge to the State Board order that approved the IID-SDCWA water transfer. That transfer, the largest in the history of the United States, is a critical component of the QSA (quantification settlement agreements), a set of agreements signed in 2003 that allow California to live within the amount of water it is entitled to divert from the Colorado River.