

Agency's Preparation of Supplemental EIR Rather Than Subsequent EIR for Modifications to Proposed Desalination Plant Was Appropriate

The State Lands Commission was not required to assume the role of lead agency and prepare a subsequent EIR for changes to a desalination plant for which an EIR had already been certified by the City of Huntington Beach as lead agency. *California Coastkeeper Alliance v State Lands Commission*, 64 Cal. App. 5th 36 (2021). In 2010, the City of Huntington Beach certified a subsequent EIR for the Poseidon desalination plant. Following



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Coastkeeper Alliance filed suit alleging that the Commission 1) failed to assume the role of lead agency and prepare a subsequent, rather than supplemental, EIR and 2) engaged in improper "piecemealing" of the environmental review by only analyzing one part of the project -- the proposed changes to it -- rather than the desalination plant project as a comprehensive whole. The court found that the Commission's decision to prepare a supplemental EIR was reasonable because the project changes, considered in the context of the project as a whole, would require only minor additions or modifications to the 2010 EIR to address them. Alliance's related argument, that the Commission was required to assume the role of the lead agency and prepare a

subsequent EIR, also failed because it turned on an illogical theory: that when subsequent CEQA review is required for a project, a responsible agency must step in as the lead agency and prepare a single "updated EIR" that covers "the project as a whole." The court explained that this theory cannot be squared with the provisions of CEQA and the Guidelines that allow preparation of a "supplemental EIR" that augments the analysis in a prior EIR. On the second claim, the court found the Commission did not improperly piecemeal the project by only considering the changes to the project, because the rule barring piecemeal review does not extend to situations in which CEQA review for the entire project was already completed and the project is later changed due to circumstances that were not foreseen at approval. The changes considered in the Commission's EIR were proposed in response to new State Water Resources Control Board standards for desalination plants that were not foreseeable when the 2010 EIR was certified. CEQA procedures limiting the scope of further environmental review were designed to address such a situation. Relatedly, the court did not find that the Commission engaged in piecemealing by failing to evaluate a new water distribution system the county water district was considering. CEQA requires that an EIR evaluate not just the project as proposed for approval, but also any future expansion of the project or other action that is a reasonably foreseeable consequence of the project and that will likely change the scope or nature of the project or its environmental effects. The court concluded, however, that it was not reasonably foreseeable that the water distribution system would change from what was reviewed in the 2010 EIR. Further, a useful environmental analysis could not be produced in any event since the particulars of any new distribution system were unknown.

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