Blogs
January 18, 2023
California Land Use & Development Law Report

CEQA YEAR IN REVIEW -- 2022

A SUMMARY OF PUBLISHED APPELLATE OPINIONS UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

Introduction

The courts issued 16 published CEQA decisions in 2022, continuing a trend of fewer published opinions than the pattern established in earlier years. The only California Supreme Court opinion, *County of Butte v. Department of Water Resources*, addressed federal preemption of CEQA, a rarely litigated issue.

The most important cases of the year centered on the adequacy of EIRs. The court in *League to Save Lake Tahoe Mountain Area Preservation Foundation v. County of Placer* addressed three hot CEQA topics, finding an EIR's greenhouse gas mitigation measures and energy analysis inadequate, but upholding the EIR's wildfire evacuation analysis.

Several important EIR cases focused on project alternatives. A decision that attracted significant notice - *Save the Hill Group v. City of Livermore* - held that an EIR's discussion of project alternatives was inadequate because it did not explore the possibility of a public purchase of the project site for open space rather than its development for residential use.

In *We Advocate Through Environmental Review v. County of Siskiyou*, the court found the EIR's list of project objectives so closely mirrored the proposed project that it foreclosed identification of a reasonable range of project alternatives. And in *Tiburon Open Space Committee v. County of Marin*, the county had settled federal

litigation over a development site, promising to approve at least 43 residential units. In subsequent CEQA litigation, the court upheld the county's rejection of an alternative allowing fewer than 43 units, concluding that the stipulated judgment in the federal litigation rendered the reduced alternative legally infeasible. Another EIR case answers the question whether an agency may approve a revised project that is a variation on the proposed project and alternatives considered in the EIR. The court held the city did not have to recirculate the EIR because the revised project was simply another permutation of the options that were fully covered by the EIR. *Southwest Regional Council of Carpenters v. City of Los Angeles.* .Finally, in an unusual case, a court held that a landowner could pursue a malicious prosecution action against counsel for unsuccessful CEQA plaintiffs. *Jenkins v. Brandt-Hawley.*

The following summaries identify the key issues in the cases decided in 2022.. Each of these case summaries links to a post on this site the provides a more detailed description of the court's opinion.

Stephen Kostka *and* ***Julie Jones***

CEQA YEAR IN REVIEW -- CASES

A. EXEMPTIONS FROM CEQA

Athletic Field Lighting Project Not Categorically Exempt from CEQA

Saint Ignatius Neighborhood Association v. City and County of San Francisco,
85 Cal. App. 5th 1063 (2022)

The First District Court of Appeal overturned the City of San Francisco's decision that a project to install four permanent 90-foot-tall athletic field lights was exempt from CEQA. The city approved the lighting project deciding it was subject to Class 1 (existing facilities involving negligible expansion) and Class 3 (new construction of small structures) categorical exemptions from CEQA. The city found the project qualified for a Class 1 exemption because it involved negligible or no expansion of the existing use of the facility. The court disagreed, finding the lights would significantly expand the school's nighttime use of the facility from 40-50 to 150 nights per year. The court also ruled the project was not the kind of small improvement that fell within the Class 3 exemption, explaining the project would result in the construction of 90-foot structures significantly taller that the built environment in the area and would, absent mitigation, likely result in significant impacts on light, sound and traffic.

B. ENVIRONMENTAL IMPACT REPORTS

EIR For Martis Valley Project Near Lake Tahoe Rejected on Several Grounds But Air Quality Significance Threshold and Wildfire Evacuation Analysis Complied with CEQA

League to Save Lake Tahoe Mountain Area Preservation Foundation v. County of Placer,
75 Cal. App. 5th 63 (2022)

The court of appeal rejected the EIR for the Martis Valley West specific plan, finding it deficient in several respects, but upheld other EIR analyses – including its air quality significance threshold and its analysis of wildfire evacuation.

The court agreed with plaintiffs that the EIR did not adequately describe Lake Tahoe's existing water quality or analyze an impact of project-induced VMT: roadway abrasives and sediments sent airborne by vehicle tires and then settling into Lake Tahoe. It found the analysis of greenhouse gas mitigation deficient because it required

future developers to show their projects would be consistent with future GHG emission targets adopted by the state because the targets might never exist, and the EIR did not explain how the measure would apply if targets were noy adopted. The court also held that the EIR's analysis of energy impacts was inadequate because it failed to discuss whether the project could increase reliance on renewable energy sources.

In contrast, the court upheld the EIR's analysis of the project's impact on emergency response and evacuation plans during a wildfire citing the project's creation of multiple evacuation and emergency access routes, a shelter-in-place location, and a detailed project-specific emergency plan. It also upheld the EIR's analysis of cumulative impacts to forest resources, finding the projected tree loss due to the specific plan was consistent with the county's 1994 projection of regional forest loss, which the county had found to be less-than-significant. In finding the analysis adequate, the court also rejected the argument that future tree loss from climate change was a cumulative "project." And, in a particularly noteworthy ruling, the court determined the EIR was not required to use the Tahoe Regional Planning Agency's significance threshold to analyze the impact of project-induced VMT on Lake Tahoe Basin air quality. The court concluded that while TRPA was a trustee agency under CEQA, the county was entitled to rely on the air pollution control district's significance threshold instead of TRPA's given that the air district's threshold was supported by substantial evidence.

CEQA Challenges to EIR's Biological and Emergency Evacuation Analyses Rejected

Save North Petaluma River and Wetlands v. City of Petaluma,
(1st Dist. Case No. A163192 (Nov. 14, 2022, publication order Dec. 13, 2022)

The court of appeal denied CEQA challenges to the EIR for an apartment project, holding that analysis of biological impacts need not be based on surveys conducted in the same year the city issued its notice of preparation of the EIR. Plaintiffs asserted that an EIR must describe site conditions as they existed in the same year as the notice of preparation is circulated and challenged the EIR's baseline for analysis of impacts to biological resources because no studies had been conducted at that time. The court rejected this claim, citing cases holding that CEQA does not mandate a uniform, inflexible rule for determination of the existing conditions baseline. The EIR's description of existing biological conditions was drawn from site visits, studies, and habitat evaluations over a seven-year period and nothing in either the record or in plaintiffs' briefs suggested that on-site biological conditions had changed during this period. The court also upheld the EIR's analysis of potential impacts to emergency evacuation during flood or wildfire, finding the EIR's analysis of this issue was amply supported by evidence in the record relating to the project's siting in relation to flood and wildlife hazard areas, the location of evacuation routes, and the fire department's confirmation that it did not have significant concerns about flood or fire access and egress.

EIR Invalidated for Failure to Analyze Potential Public Acquisition of Residentially Zoned Land

Save the Hill Group v. City of Livermore,
76 Cal. App. 5th 1092 (2022)

The EIR for a residential project was found legally inadequate because its discussion of project alternatives did not analyze the possibility that public funds might be used to acquire the land for open space. The project site was zoned residential and was the last remaining undeveloped area in that area of the city. The 32-acre site housed numerous special-status plant and animal species; was adjacent to a wetlands preserve; and was hydrologically connected to a unique alkali sink. During the city's approval process, project opponents commented that the site should be preserved as open space rather than developed for housing. In response to the opponent's CEQA suit, the city argued that, as a threshold matter, the plaintiffs had not linked their request for site preservation to the EIR or its alternatives analysis during the city's approval process. They had not, the city argued, presented to the city the "exact issue" they raised in court, and therefore had failed to exhaust available administrative remedies. The court concluded the city was adequately alerted that project alternatives were at

issue, largely based on exchanges between city council members and the city attorneys, and that it was clear from the record that specific comments by the opponents would not have affected the city's decision.

On the merits of the claim, the court held that the EIR's analysis of the No Project Alternative was inadequate because it did not explore the possibility of public acquisition - even though the site was eligible for such acquisition through two settlement funds specifically earmarked for acquisition of environmentally sensitive lands in the project vicinity. In addition, the court noted, the city had previously acquired other property to preserve habitat and avoid residential development, using these same funding sources. The EIR was fatally flawed, the court concluded, because the existence of these funding sources was "just the sort of information CEQA intended to provide those charged with making important, often irreversible, environmental choices on the public's behalf." The court also addressed claims relating to mitigation measures, and in one noteworthy ruling upheld a measure requiring compensatory mitigation for species impacts at another location even though the city's general plan already called for preservation of the entire area, because the mitigation measure required a permanent easement along with an endowment for restoration and management.

EIR for Water Ditch to Pipeline Conversion Adequately Described Project and Impacts to Resources

Save the El Dorado Canal v. El Dorado Irrigation District,
75 Cal. App. 5th 239 (2022)

The EIR for a water ditch to underground pipeline conversion project withstood challenges to the project description and impacts analysis. The court of appeal held that the project description sufficiently disclosed the importance of the existing ditch to stormwater runoff and the EIR adequately analyzed impacts to hydrology, biological resources, and wildfire risks. The project involved replacing a three-mile portion of a ditch with a pipeline to prevent water loss and improve water quality. The District approved an alternative that would abandon its easements for maintenance, but the ditch would remain intact to convey stormwater runoff consistent with its current flow capacity. Appellants challenged the approval, contending that the EIR's project description omitted the important fact that the existing ditch was the "only drainage system" for the watershed and that the EIR failed to properly analyze impacts to hydrology, biological resources, and wildfire risks.

The court held that the project description adequately described the importance of the existing ditch to the local watershed and clearly disclosed that the approved alternative would result in abandonment of the maintenance easement along the existing ditch. The court also held that the EIR adequately analyzed the project's environmental impacts. First, regarding hydrology, the court held that speculation that a property owner might intentionally fill the ditch and the purported risk the ditch would become clogged due to lack of maintenance was adequately addressed in the EIR, which explained that property owners had an incentive to monitor the ditch to prevent flooding and avoid potential civil liability. Likewise, the court found that a disagreement between the irrigation district and CDFW regarding the impact to riparian habitat was fully disclosed and reasonably addressed. Finally, the court ruled that the EIR more than adequately addressed claims the ditch had been used as a water source for firefighting with evidence to the contrary and also reasonably concluded that minor infrastructure like the ditch would have little to no impact during major wildfires.

Court Upholds EIR for Kern River Diversion and Storage Project

Buena Vista Water Storage District v. Kern Water Bank Authority,
76 Cal. App. 5th 576 (2022)

The court of appeal held that the EIR for a public water authority's river diversion and water storage project adequately described the unadjudicated waters to be diverted from the Kern River and adequately analyzed impacts to water rights and groundwater supply. The Kern Water Bank Authority applied to the State Water Resources Control Board for a new appropriative right to divert and store 500,000 acre-feet per year in wet years

and prepared and certified an EIR for a water supply reliability project using existing infrastructure. The Buena Vista Water Storage District, a senior water rights holder, sought a writ of mandate to set aside the EIR and diversion permit. The court first held that the EIR's description of the hydrologic conditions under which diversions would occur satisfied CEQA's requirement that environmental analysis be based upon a clear, stable and finite project description. For similar reasons, the court rejected the argument the EIR was required to quantify the amount of water existing senior water right holders are entitled to divert reasoning that nothing in CEQA required that the project description include an inventory of existing appropriated water rights in the water source. Last, the court of appeal ruled that the EIR's analysis of water supply impacts was sufficient notwithstanding the absence of a quantification of existing water rights. The EIR had properly used historical measurements of actual diversions as the baseline against which to evaluate impacts on water supply and concluded based on this evidence that water would be available for the project about 18 percent of the time. The EIR's conclusion that no mitigation would be required because diversions would only occur when surplus water was available was thus adequately supported by evidence in the record. The project' impacts associated with groundwater storage and recovery was also found adequate; the EIR analyzed effects upon groundwater withdrawals compared to baseline conditions and concluded that there would be no increased withdrawals or lowering of the water table and disclosed that maximum groundwater recovery volumes in dry years would not exceed the quantities of water diverted and banked when surplus water was available for storage.

EIR Recirculation Not Required Although Final Version of Approved Project Was Not Specifically Evaluated in EIR

Southwest Regional Council of Carpenters v. City of Los Angeles,
76 Cal. App. 5th 1154 (2022)

The court of appeal held that despite revisions to a mixed-use development project, the project description in the EIR was "accurate, stable, and finite;" an opportunity for public comment on the finally approved project was not required under CEQA. The city circulated two draft EIRs for public review and comment. After it issued the final EIR for the project, city staff recommended approval of a new alternative -- a revised project not described in the draft or final EIRs, which was a modified version of an alternative that was included in the EIR. In response to the claim the EIR's project description was inadequate, the court ruled that because the project remained a mixed-use commercial/residential project on a defined project site throughout the process, and the only changes involved its "residential to commercial footprint," the city did not violate CEQA's requirement of an "accurate, stable, and finite" project description. Further, while there had been no opportunity for public comment on the project as approved through the EIR process, CEQA does not specifically require an opportunity for public comment on the project as it is finally approved by describing it in a revised draft EIR. The public was given five months and multiple public hearings to comment on the revised project which was sufficient to satisfy CEQA's informational requirements. Furthermore, recirculation of the EIR was not required because the revised project was not "considerably different from other alternatives previously analyzed" in the draft EIR.

EIR's Statement of Project Objectives Was Unduly Narrow

We Advocate Through Environmental Review v. County of Siskiyou,
78 Cal. App. 5th 683 (2022)

The EIR for a water bottling plant in Siskiyou County withstood challenges to the project description and impacts analysis, but the court held the EIR's stated project objectives were unreasonably narrow, and the county should have recirculated the EIR in light of significant new information about project emissions.

Siskiyou County granted permits to Crystal Geyser Water Company to reopen a bottling plant that had ceased operations under prior ownership. The court first rejected plaintiffs' claim that the county's EIR provided a

misleading description of the project. The county properly considered the project as a whole, disclosed its limited approval authority, offered groundwater extraction estimates based on substantial evidence, and evaluated the maximum pumping that would be allowed. The court also rejected multiple challenges to the EIR's evaluation of environmental impacts, mitigation measures and their enforcement, dismissing many of those claims as unsubstantiated.

The court agreed, however, that the county should have recirculated the EIR based on the addition of significant new information about project greenhouse gas emissions, even though the EIR's ultimate conclusions about the impact remained unchanged. It also concluded that the EIR had defined the project objectives in an impermissibly narrow manner. Although the EIR listed eight objectives, that list essentially described the project's purpose as operating the plant as proposed, a constricted description which precluded the proper consideration of project alternatives.

C. RESPONSIBLE AGENCIES

Responsible Agency Under CEQA Must Make Express Findings as to Each Potentially Significant Impact Identified in Lead Agency's EIR

We Advocate Through Environmental Review v. City of Mt. Shasta,
78 Cal. App. 5th 629 (2022)

The court of appeal held that the City of Mount Shasta, a responsible agency, violated CEQA by approving a wastewater permit for the reopening of a water bottling plant without making specific findings as to each potentially significant impact identified in the EIR that was associated with its permit, as required by Pub. Res. Code section 21081. The city's determination there were "no unmitigated adverse environmental impacts relating to the alternate waste discharge disposal methods" was insufficient to comply with CEQA. The County of Siskiyou served as the lead agency and prepared an EIR for the bottling plant (see discussion of *We Advocate Through Environmental Review v. County of Siskiyou*, above) and the city served as one of several responsible agencies. The court rejected the city's contention that a responsible agency need only make findings under section 21081 when the EIR identifies significant, unmitigated environmental impacts. Instead, to comply with section 21081 for each significant impact identified in the EIR relating to the wastewater permit, the city was required to find either that significant impacts identified in the EIR had been mitigated or avoided; that measures necessary for mitigation were within the responsibility and jurisdiction of another public agency and had been, or could and should be, adopted by that other agency; or that specific economic, legal, or other considerations made mitigation infeasible.

D. SUBSEQUENT AND SUPPLEMENTAL ENVIRONMENTAL REVIEW

No Further Environmental Review Needed for Subdivision That Was Consistent with Approved Specific Plan

Citizens' Committee to Complete the Refuge v. City of Newark,
74 Cal. App. 5th 460 (2022)

The Court of Appeal found that a development project that was consistent with a previously approved specific plan was not required to prepare a new EIR because changes to the project did not significantly increase its environmental impacts. The court of appeal held that a subdivision map approved nine years later was exempted from further CEQA review under Government Code section 65457 because it was consistent with the specific plan, which had a certified EIR.

The court rejected plaintiffs' claim the city's determination that none of the changes to the project, which included use of rip-rap to reduce erosion, would significantly increase the project's impacts on the harvest mouse beyond those addressed in the EIR. While plaintiffs alleged further study was needed because use of rip-rap would increase rat predation, they failed to point to any supporting evidence in the record. The court also rejected the argument that the project risked exacerbating the effects of sea level rise on the environment because of the interaction of the project with wetlands in the area, finding that these dynamics were not new in relation to the project. The time to address them, if at all, was in connection with the original EIR. Plaintiffs' argument that a hydrology report's reliance on adaptive management to address flooding of the project from sea-level rise was improper deferral of mitigation also failed. Because sea level rise was not an impact on the environment caused by the project, the proposed adaptive response was not mitigation that was required to comply with CEQA.

CEQA Review Not Required for Water Allocations That Were Part of Earlier Project

County of Mono v. City of Los Angeles,
81 Cal. App. 5th 657 (2022)

A CEQA challenge to water allocations by the City of Los Angeles and its Department of Water and Power were barred by the statute of limitations because the allocations were made under leases approved years earlier.

In 2010, the city approved a set of substantially identical leases covering about 6,100 acres of land owned by the city in Mono County. The leases specified that any water supplied by the city to the leased premises was "conditioned upon the quantity in supply at any given time," The city's determination that the leases were categorically exempt from CEQA was not challenged. Over the eight-year period following approval of the leases, the city provided varying amounts of water to lessees on an annual basis. The city then sent lessees copies of a proposed new form of lease under which the city would, from time to time, provide "excess water" for spreading on the leased land. It also notified lessees that it was performing an environmental evaluation of the proposed "dry leases" and that the 2010 leases would remain operative in holdover status until environmental review was completed. Mono County filed suit contending the city failed to conduct CEQA review before deciding upon the 2018-19 allocation, which it alleged amounted to a "new reduced water project," either on its own or as part of the proposed Dry Leases.

Based on the history of water allocations under the 2010 leases, the court of appeal found no indication that the 2018-19 allocation represented "a turning point toward a low-water policy or Proposed Dry Leases." The court also dismissed the county's claim that the city was engaging in de facto implementation of proposed new leases before completing CEQA review. The 2018-19 allocation was both within the city's authority under the 2010 leases and consistent with its prior allocation practices.

Because Mono County's suit was filed years after the approval of the 2010 leases, it was time-barred. The fact that the 2018-19 allocation was a discretionary decision did not remove it from the ambit of the project approved as part of the 2010 leases, as those leases plainly gave the city authority to make such subsequent discretionary decisions.

E. CEQA LITIGATION

Meritless CEQA Suit Warranted Malicious Prosecution Claim Against Attorney

Jenkins v. Brandt-Hawley,
No A162852 (1st Dist., Dec 28, 2022)

The court of appeal held that an attorney's actions in filing and prosecuting a meritless challenge to construction of a single-family home supported a claim for malicious prosecution. The underlying lawsuit challenged permits issued by the Town of San Anselmo allowing the Jenkins family to demolish a small home and accessory cottage and to build a new home and detached studio on their property. The petition for writ of mandate alleged that the town had violated CEQA, its Municipal Code, and its general plan. After a hearing on the petition, the trial court upheld the town's actions. The Jenkinses subsequently filed a complaint for malicious prosecution against petitioners' attorney and law firm. The defendants responded with a motion to strike the complaint under the "anti-SLAPP" statute asserting the claims in the underlying case amounted to protected speech on a matter of public concern. The court of appeal upheld the trial court's decision denying the motion, finding the Jenkinses had shown a probability they would prevail on their claim for malicious prosecution.

The underlying lawsuit had been decided in the Jenkinses' favor; the evidence showed that probable cause to file the underlying lawsuit was absent; and the record contained abundant evidence that the attorney for the plaintiff knew the claims in the petition were "untenable." In its concluding observations, the court rejected suggestions in several amicus briefs that CEQA litigation should be essentially insulated from malicious prosecution claims because CEQA is too uncertain and complicated to support such a claim, finding no basis for such a "carve out." The court also pointed to its opinion in another CEQA case, Tiburon Open Space Committee v. County of Marin (2022) 78 Cal.App.5th 700 (summarized below), in which it described the possible misuse of CEQA actions and the harm they can cause as "a formidable tool of obstruction." The suit against the Jenkinses, the court observed, had "nothing to do with environmental protection and everything to do with the privacy and aesthetic design concerns of several of the Jenkinses neighbors."

Attorneys' Fees May Be Awarded When a CEQA Lawsuit Was a Substantial Contributing Factor or a Significant Catalyst that Motivates the Agency to Abandon the Project

Department of Water Resources Environmental Impact Cases,
79 Cal. App. 5th 556 (2022)

Several public agencies, environmental organizations, and other interested parties filed multiple lawsuits challenging the Department of Water Resources' EIR and approvals for the California WaterFix project, a proposal to improve the state's water supply infrastructure by constructing two tunnels that would convey water from Sacramento River to pumping stations in the southern Sacramento–San Joaquin Delta. The cases were coordinated for trial, and while the coordinated proceeding was pending, the Governor announced he did not support the WaterFix proposal and directed DWR to consider an alternative plan. A short time later, DWR decertified the EIR and rescinded its project approvals. The plaintiffs filed motions for attorneys' fees, claiming they were successful parties in the litigation under the "catalyst" theory -- that the litigation motivated DWR to provide all of the relief they were seeking without the need for a court decision. The trial court denied a fee award, concluding that the Governor's directive was as an "external superseding cause" of DWR's decision to abandon the project. The court of appeal held, however, that the trial court had applied the wrong legal standard. Under the proper standard, to receive a fee award under the catalyst theory, the plaintiff need not show the lawsuit was the only cause of the defendant's change in policy; instead, a showing the lawsuit was a substantial contributing factor or a significant catalyst motivating the change is sufficient.

City Did Not Contract Away Its Police Power or Abdicate Its Duties Under CEQA by Approving Project as Required by Stipulated Federal Court Judgments

Tiburon Open Space Committee v. County of Marin,
78 Cal. App. 5th 700 (2022)

In two stipulated federal-court judgments, one entered in 1976 and another entered in 2007, the county agreed to approve development of a minimum of 43 residential units on 110 acres in order to resolve a protracted dispute over development of the land. The court rejected petitioner's claims that the county had contracted away its police powers by stipulating to the judgments and abdicated its duties under CEQA by approving a 43-unit project. The court upheld the county's determination that a less intense 32-unit alternative was legally infeasible under CEQA, based on the fundamental rule that "that the scope of environmental review must be commensurate with an agency's retained discretionary authority, including any limitations imposed by legal obligations." Under this rule, project alternatives that conflict with the agency's legal obligations are infeasible and need not be considered under CEQA. Finding no basis for rejecting the stipulated judgments, the court held that the county was legally bound to comply with them.

CEQA Claim Barred by Statute of Limitations Under COVID Emergency Rule

Committee for Sound Water v. City of Seaside,
79 Cal. App. 5th 389 (2022)

The court of appeal held that a writ petition asserting potential CEQA violations concerning the Campus Town project, a development project approved by the City of Seaside, was untimely because it was filed after the fixed end date of the COVID 19-related tolling period established the Judicial Council's Emergency Rule 9(b). As originally adopted on April 6, 2020, Emergency Rule 9 tolled all statutes of limitation for civil causes of action until 90 days after the Governor lifted the state of emergency related to the COVID-19 pandemic. Subsequently, the Judicial Council amended Emergency Rule 9 to set a fixed end date of August 6, 2020 for all claims subject to statutes of limitations of 180 days or less. Plaintiff did not file its petition until September 1, 2020. The court of appeal rejected the plaintiff's argument that Emergency Rule 9 unconstitutionally "truncated" their time to file suit, as CEQA statutes of limitations are extremely short, and the amended rule still gave plaintiff an extension of over two months to timely file its writ petition.

F. FEDERAL PREEMPTION

Federal Power Act Does Not Entirely Preempt Application of CEQA to Relicensing of Hydroelectric Facilities

County of Butte v. Department of Water Resources,
13 Cal. 5th 612 (2022)

Two counties challenged the sufficiency of the EIR prepared by the California Department of Water Resources for the relicensing of hydroelectric power facilities owned by the state and operated by DWR. The court of appeal concluded that the Federal Energy Regulatory Commission's exclusive licensing authority over hydroelectric plants under the Federal Power Act preempted application of CEQA to the project. The California Supreme Court held, however, that while challenges to the EIR were preempted to the extent the relief requested would interfere with FERC's licensing authority or DWR's ability to operate its facilities under the license, that did not mean that application of CEQA to the project was entirely preempted. Instead, DWR had discretion under California law to prepare an EIR for the purpose of informing its decision-making about its options relating to the proposed terms of the license and mitigation measures it might impose in response to the project's environmental impacts, as long as doing so would not hamper FERC's exercise of its jurisdiction or encroach on its licensing authority.

Topics

CEQA
Blog series

California Land Use & Development Law Report

California Land Use & Development Law Report offers insights into legal issues relating to development and use of land and federal, state and local permitting and approval processes. View posts by topic. Subscribe ?

View the blog