



An environmental impact report need not discuss impacts that are too speculative in nature for proper evaluation or assess economic costs not linked to a physical change in the environment. *County of Butte v. Dept. of Water Resources*, 90 Cal.App.5th 147 (2023).

In 2008, three local government entities challenged the California Department of Water Resources' EIR prepared in connection with the licensure of hydropower activities for the Oroville Dam and have been litigating this issue for the past 15 years. In this latest case, plaintiffs argued that the EIR: (1) failed adequately to consider climate change; (2) failed to properly evaluate economic and public health impacts; (3) wrongly assumed that the Oroville Dam facilities complied with water quality standards; and (4) did not account for potential changes to the State Water Project that could affect the Oroville facilities.



Climate Change

The court rejected plaintiffs' argument that DWR's EIR should have included more discussion of the effect of climate change on the Oroville Dam facilities—particularly the Feather River Basin—over a 50-year licensing period. DWR's analysis was based on multiple, reputable reports detailing the uncertainties in predicting regional climate change, which together supported DWR's conclusion that discussion of potential changes to operations of the dam facilities necessitated by climate change would be speculative. DWR's decision was consistent with CEQA Guidelines § 1545 which provides that, "[i]f, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact."

Economic and Public Health Impacts

Under CEQA Guidelines § 15064(e), an agency must consider the economic effect of a project if the effect contributes to, or is caused by, a physical change in the environment. The court found that DWR's EIR did not need to evaluate economic effects because the plaintiffs were unable to establish a link between any economic effect and a physical change in the environment caused by the project. While DWR's consultant acknowledged that certain dam facilities would need to be replaced and upgraded and calculated capital costs based on that assumption, this did not undermine DWR's finding that the project would not trigger these changes. As to health impacts, the court rejected plaintiffs' contention that DWR failed adequately to evaluate the increased level of mercury in fish resulting from mercury-laden sediment and the Office of Environmental Health Hazard Assessment (OEHHA) found the fish from the Oroville facilities safe to consume.

Water Issues

The court also rejected plaintiffs' claims related to hydrologic studies and water quality. First, the court dismissed the claim that the EIR failed to properly analyze historical hydrologic conditions because plaintiffs had failed to raise these claims during the public comment process. Second, the court held that the EIR's discussion of water quality and designated beneficial uses was adequate, rejecting plaintiffs' contention that the EIR improperly relied on compliance with water quality standards. The EIR made clear that compliance with water quality standards was a necessary part of the licensing procedure and identified the proper agency from which to seek compliance: the State Water Resources Control Board.

State Water Project

The court found plaintiffs' objections to the EIR on State Water Project grounds unpersuasive. DWR properly consulted with federal agencies and obtained biological opinions on impacts to endangered species from changes in the State Water Project before proceeding with its licensure of the dam facilities. While a federal court found both biological opinions inadequate and ordered the agencies to prepare new opinions, DWR acknowledged these developments in its EIR but reasonably concluded that it could not predict the terms of a new biological opinion concerning salmonids and that the terms of a new biological opinion related to Delta smelt would not affect the majority of release requirements from the dam.

Cost of Administrative Record

The court also turned down plaintiffs' challenge to the award of \$675,087 in costs to DWR for preparing the 320,000-page administrative record. The court noted that the record was unusually large, concerned a project spanning more than a decade and took over a year of "intensive and . . . continuous[]" efforts involving hundreds

of DWR employees. Under these circumstances, the amount awarded was not unreasonable, and plaintiffs' claims that DWR purposefully "r[an] up the cost bill" because it disliked them and artificially increased the cost bill to solve budget difficulties were baseless.

Authors



[Kaela Shiigi](#)

Associate

KShiigi@perkinscoie.com [415.344.7064](tel:415.344.7064)

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 the blog](#)