

## [Blogs](#)

July 15, 2024

EIR for State Water Project Contract Amendments Upheld



The Third District Court of Appeal upheld the Department of Water Resources' EIR concerning State Water Project contract amendments against multiple CEQA challenges related to impact analysis, project descriptions, and alternative options. *Planning and Conservation League v. Dept. of Water Resources*, 98 Cal. App. 5th 726 (2024).

*The California Aqueduct flows in Palmdale, California, near Godde Hill Road.*

DWR and local government contractors executed contracts in the 1960s concerning the sale, delivery, and use of SWP water. The contracts included an evergreen clause that allowed contractors to continue receiving service following contract expiration with written notice. DWR began negotiating amendments to the contracts in 2013 and proposed amendments to extend the contract to 2085. DWR conducted and certified an EIR for the amendments in 2018, finding that the amendments would have no significant environmental impact. In 2018, DWR filed an action to validate the amendments. Appellants challenged the validation action under CEQA, the Sacramento-San Joaquin Delta Reform Act, the public trust doctrine, and the State Water Code.

## Impact Analysis

First, the court rejected Appellants' challenge to the EIR's determination that the amendments had no significant effect on the environment. The appellants argued that the EIR used the wrong baseline by including the SWP's existing water diversions. Under CEQA Guidelines § 15125, the baseline used for impact analyses must reflect the "physical conditions existing at the time" the analysis starts. The court ruled that for projects with ongoing operations, "the baseline is the environmental setting under the current contract conditions."

Appellants also unsuccessfully argued that the EIR failed to consider impacts of allegedly related state-water projects, resulting in "improper segmentation." An EIR must include analysis of actions that are reasonable

consequences of the project that will change the nature of its environmental effects. The court rejected the segmentation argument, finding that the amendments served an "independent purpose" from the other projects.

Finally, the court held that the EIR sufficiently analyzed direct, indirect, and cumulative impacts. The EIR was not required to consider the impact of 50 more years of SWP operation, as the project baseline already analyzed this information. Additionally, the EIR did not need to analyze direct and indirect impacts of future speculative capital projects stemming from the amendments.

## **Project Descriptions**

The court concluded that none of appellants' arguments concerning the sufficiency of the project description had merit. Appellants argued that the EIR description failed to consider other related water projects, failed to disclose that the contracts would be extended even without amendments, and failed to disclose new financing mechanisms. The courts rejected all three arguments, finding that the evidence from the record did not support the claims and the project description was "accurate and stable."

## **Alternatives Analysis**

The court found the EIR's analysis of seven alternatives to be reasonable. The alternatives were sufficiently different from the amendments and an EIR "need not consider every conceivable alternative." Further, the alternatives not discussed in the EIR that appellants requested failed to address the issues that the project set out to solve.

Similarly, the court rejected the argument that the EIR's no-project alternative was insufficient. CEQA Guidelines require no-project analyses of "conditions that would be reasonably expect to occur" given project denial. Appellants argued that the EIR should have considered that the contracts could have expired without the evergreen clauses being triggered. The Court held that the EIR offered a "plausible vision of the future" because the long-term investment and reliance on the SWP made it reasonably foreseeable that the evergreen clauses would be triggered.

## **Non-CEQA Claims**

Finally, the Court rejected Appellants' non-CEQA claims related to the Delta Reform Act, the Public Trust Doctrine, and Water Code Section 147.5. The amendments did not qualify as a "covered action" under the Delta Reform Act because the Act covers future developments only, and the SWP does not occur in the boundary covered by the Act. Additionally, the amendments had no effect on public trust resources compared to the baseline properly established by DWR. Finally, the Court found that submitting draft amendments to the legislature was sufficient to pass procedural presentation rules found in the Water Code.

## **Authors**

### **Explore more in**

[Real Estate & Land Use](#) [Environment, Energy & Resources](#)

## **Topics**

