

## Court of Appeal Finds CEQA Does Not Apply To An Agency's Declared Water Emergency

In *Central Basin Municipal Water District v. Water Replenishment District of Southern California* (December 10, 2012), the Second Appellate District affirmed a judgment finding that the California Environmental Quality Act (CEQA) does not apply when a water replenishment district declares a water emergency.

### Background

The CEQA action is a challenge to Water Replenishment District of Southern California's (WRD) declaration of a "water emergency" in the Central Groundwater Basin. Under the terms of a 1991 judgment that governing the Central Basin (the Judgment), a water emergency may be declared by WRD when the Central Basin resources risk degradation. The Judgment established the water rights of numerous entities and imposed a "physical solution," described as "an equitable remedy designed to alleviate overdrafts and the consequential depletion of water resources." The Judgment reserves continuing jurisdiction to the court.

The Central Basin Municipal Water District (CBMWD) challenged the declared water emergency under CEQA, arguing there are environmental consequences that may result in significant environmental effects from increased pumping of carryover rights and the extended time in which pumpers could replace over-extracted water.

### Analysis

In the published portion of the opinion, the Second Appellate District found CEQA inapplicable for two reasons. First, the court found that the declaration of a water emergency by itself has no environmental impact and therefore is not a "project" within the meaning of CEQA. It reasoned that the only role of the public agency was to declare the water emergency and it is irrelevant if other provisions of the Judgment may trigger significant environmental effects. Second, the court found that WRD had no discretion to alter the terms of the Judgment even if it prepared an Environmental Impact Report (EIR) and determined that the carryover and delayed replacement would have significant environmental effects. Even if the declaration of the water emergency should be viewed together with its consequences,

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WRD's decision was ministerial and the preparation of an EIR would have been a futile act. CEQA does not apply to ministerial actions -- actions in which the agency is not permitted to shape the process to address environmental concerns.

Further, the court found that even if CEQA were applicable, it is trumped by the "physical" solutions of the court-ordered Judgment governing the Central Basin. It reasoned that a physical solution is an equitable decree designed to implement the constitutional mandate to maximize the beneficial use of water and prevent unreasonable use. (Cal. Const., art. X, § 2.) Citing to *Hillside Memorial Park & Mortuary v. Golden State Water Co.* (2011) 205 Cal.App.4th 534, the court reasoned that where an existing judgment is in place establishing a physical solution to a water rights issue, the public agency has no judgmental controls to exercise. The power to act in these circumstances is reserved to the court.

## Conclusions and Implications

When an agency's discretion and ability to act are circumvented or limited by a judgment, decree or other judicial action, CEQA may be limited in a number of ways. Agencies should take a close look to see if the decision at issue is a "project" within the meaning of CEQA, and whether the decision constitutes a "ministerial" action where CEQA is inapplicable. Further, an agency implementing "physical solutions" from a court-ordered judgment may trump the requirements of CEQA.

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