

A Recent Ruling Involving Unlined Landfills Highlights the Pitfalls of Relying on Categorical Exemptions under CEQA

Key Points

- As litigation under the California Environmental Quality Act (CEQA) continues to drive lengthier and costlier environmental reviews, the use of "categorical exemptions" can provide a quick and efficient path towards CEQA compliance – *but only if the exemption is legally sound and defensible.*
- California's Fifth District Court of Appeal recently published *Los Angeles Department of Water and Power v. County of Inyo* (Cal. Ct. App., Aug. 17, 2021, No. F081389), which provides important guidance regarding the use of categorical exemptions under CEQA.
- The opinion invalidated the Class 1 exemption for unlined landfills, and the court provided important guidance on how to define "existing facilities" more generally.
- The court's ruling on issue exhaustion highlights the importance of following CEQA's procedural requirements, as non-compliance with CEQA's public notice provisions will allow challenges to proceed that would otherwise be precluded if the issue was not raised with the lead agency prior to a project being approved.

Background:

Since the 1950s, Inyo County has operated various landfills on properties owned by the Los Angeles Department of Water and Power (LADWP). In 2015, the County initiated permitting to expand three unlined landfills at LADWP-owned sites (the Bishop-Sunland Landfill, Independence Landfill, and Lone Pine Landfill). In 2017, the County initiated condemnation proceedings to acquire title to the Bishop-Sunland Landfill, based in part on the County's view that LADWP, through its leases with the County, was interfering with the County's interactions with CalRecycle and other state regulators. LADWP opposed condemnation, in part based on its allegations that the County had historically been lax in its landfill operations. If left unchecked, its operations could pose a significant threat to the Owens Valley watershed and groundwater that supplies the Los Angeles Aqueduct. Like most land-use conflicts in California, CEQA served as the legal battleground for LADWP and Inyo County to engage in the County's ongoing lease dispute and



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proposed condemnation. Six months after the County adopted the Resolution of Necessity for the condemnation proceedings, LADWP filed a writ challenging the Resolution on the grounds that the County improperly relied on the Class 1 CEQA exemption.

Class 1 Categorical Exemption:

Under CEQA, categorical exemptions allow public agencies to streamline environmental review for certain projects by eliminating the need to prepare an initial study or environmental impact report if the proposed project is part of a list of classes of projects that have been determined not to have a significant effect on the environment. Specifically, the Class 1 exemption for "existing facilities" allows public agencies to find that certain projects are exempt from CEQA if they generally consist of changes to existing facilities that involve negligible or no expansion of the existing or former use. Here, the dispute centered on whether a landfill was an "existing facility" under the Class 1 CEQA exemption. Rather than merely relying on previous case law, the court performed a detailed analysis of the plain language of the Class 1 exemption, the legislative history of amendments to the Class 1 exemption, and the legislative intent behind exemptions generally, which provide a framework for determining when certain *classes* of projects should be deemed exempt under CEQA. Ultimately, the court ruled that the Class 1 exemption does not apply to unlined landfills as a matter of law, based on the previous case law holding that landfills were not "facilities"; the court further noted that subsequent revisions to the CEQA Guidelines did not result in changes to the Class 1 definition in response to the prior court's reasoning. In addition, the court noted that unlined landfills carry water quality and other associated risks, and therefore do not qualify as a class of projects that may be deemed exempt from CEQA review. This reasoning thus provides a workable framework for determining when other projects with an ambiguous set of "facilities" may qualify for the Class 1 CEQA exemption.

Procedural Rules Matter in CEQA Cases:

CEQA includes a myriad of public notice, posting, and reporting requirements. Procedural rules must be strictly followed in order for exemption determinations to be upheld. For example, under the exhaustion principle, all CEQA claims must ordinarily be raised before the public agency takes action to approve a project. However, if CEQA exemptions are not referenced in the public notice of the meeting to consider the project, or if no public meeting is held to consider the project, the exhaustion rule does not apply. In the present case, the County did not list any CEQA exemptions in its public notice discussing the Resolution of Necessity. Accordingly, LADWP was allowed to raise CEQA claims in its lawsuit that it did not initially present to the County, based on the court's finding that the County's notice was insufficient. The County also did not file a Notice of Exemption after approving its Resolution of Necessity; the statute of limitations for challenging the Resolution of Necessity was therefore extended from 35 to 180 days. Allowing LADWP an extra five months to prepare its lawsuit and to include claims that otherwise would have been precluded likely affected the outcome of this case.

In addition to providing guidance on the use of the Class 1 exemption and procedural mechanics, this case serves as a strong reminder that CEQA exemptions should be carefully reviewed and vetted; otherwise, they may run counter to their intent of streamlining review by creating more legal exposure to public agencies and developers, and bringing agencies and developers back to square one if an exemption determination is overturned.

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