

Public Trust Alliance Comments RE late admission of “CEQA Documents” to Public Hearing on Petition to Change Place of Use in Water Project permits and justifying Exemption from Environmental Analysis by “current drought emergency.”

As a “Protestant” and participant in this proceeding, we object to the admission of these documents under the title “CEQA Documents” when there is such a clear intent to avoid just the kind of responsible analysis that the California Legislature requires before the implementation of projects like the suggested long term changes in place of use of our State’s waters.

On the fourth straight day with substantial rainfall that might accumulate to constitute one of the wetter Mays on record, we have a hard time seeing how the public interest is served by consideration of these documents, or the rushed State Board action that is suggested on the basis of a no longer existing “drought emergency.” Petitioners’ credibility was waning with April rains, and then these particular papers appeared perhaps long enough before the present storm system to preserve dignity, but now we all know there is just no good reason for rushing these changes this year. The wet weather brings an opportunity to plan public responses more carefully and deliberately. Let’s use it that way.

We now again have time to plan for future drought banks the way it should have been done from the beginning: look at what is known about various hydrologies and evaluate possible environmental impacts in the light of day. Don’t wait for another “emergency” to benefit perceived “clients” while neglecting the broader class of state beneficiaries of the public trust that has always been inherent in the rights sought to be adjusted. Project Operations need to be re-evaluated as if multiple years of “drought” could occur, as indeed they will. But we already knew all of this years ago.

Without some sort of statement from the State Board about the types of interests they are bound to protect and defend, and the kinds of behavior that will be regulated, similar actions will be attempted at the next “emergency.” We hope that this experience can be used by all parties to shape more robust and resilient California water policies and avoid the very predictable errors that occur under “emergency” pressures.

The public values protected by CEQA overlap those protected by the public trust doctrine. Both sets of values, and the institutions entrusted with their protection, suffer when exemptions are inappropriately sought and actions taken to benefit limited private interests sometimes at great public cost. Let’s try to avoid those public costs with more responsible planning that actually looks at some fundamental problems before adjusting time-tested institutions for short term convenience.

We are concerned that any Board proceeding adjusting rights seems to renew claims to legitimacy of the rights affected. In an over-appropriated system such as California, even more damage is done when the changes aren’t subjected to analysis required by law. Board hearings, where “evidence” is presented over timely and

appropriate objection can become the basis for irresponsible public action and inappropriate expectations on behalf of the regulated community. Even at times when the Legislature locks itself into paralysis, the fiduciary duties of the State Water Resources Control Board, the public's trustee in this case, preclude that option and require prudent and affirmative action.

CEQA requires analysis of public action under current environmental conditions. Speculation about a possible "emergency," made at a time when future conditions were unknown is an inappropriate standard on which to base approval of a project of undefined scope. Fundamental issues including whether perennial crops should be planted in areas served by junior and legally interruptible water supplies have to be addressed. There is no public interest served by inappropriately extending the time under which fuzzy math is acceptable. CEQA imposes a higher standard of conduct from public decision-makers than that.

The Public Trust Alliance seeks to advocate responsible conduct on behalf of the real owners of California waters: this and future generations of all Californians. This is not a proper subject for legal sophistry. It is exactly the constellation of interests the State Board was created to supervise. Claims to private "rights" are extended too far when Counsel for contractors suggests that protests have been "abandoned" when they don't present a case in chief before the Board, and this theory is posed immediately after his own decision not to call his own scheduled witnesses.

If these "CEQA Documents" are accepted without reference to current environmental conditions, exactly the situation referred to in my initial policy statement will have come to pass: we will be proceeding by adopting the legal standard of a banana republic.

Thanks for this opportunity to comment on the late admission of these "CEQA Documents" and their lack of substance.

Sincerely,
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