3rd Civil No. C024576

COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

PLANNING AND CONSERVATION LEAGUE, a California not for profit corporation, **PLUMAS COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT,** a California public agency; **CITIZENS PLANNING ASSOCIATION OF SANTA BARBARA COUNTY, INC.,** a California not for profit corporation.

Plaintiffs, Appellants and Cross-Respondents

v.

DEPARTMENT OF WATER RESOURCES, a California State Agency,

Defendant, Respondent and Cross-Appellant

CENTRAL COAST WATER AUTHORITY, a Joint Powers Agency,

Defendant and Respondent

KERN COUNTY WATER AGENCY; METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA; ALAMEDA COUNTY WATER DISTRICT; ANTELOPE VALLEY-EAST KERN WATER AGENCY; CRESTLINE-LAKE ARROWHEAD WATER AGENCY; DESERT WATER AGENCY; DUDLEY RIDGE WATER DISTRICT; LITTLEROCK CREEK IRRIGATION DISTRICT; MOJAVE WATER AGENCY; SAN GORGONIO PASS WATER AGENCY; SANTA CLARA VALLEY WATER DISTRICT; TULARE LAKE BASIN WATER STORAGE DISTRICT; SAN GABRIEL VALLEY MUNICIPAL WATER DISTRICT,

Specially Appearing Parties and Respondents.

BRIEF OF ENVIRONMENTAL DEFENSE FUND AS *AMICUS CURIAE* IN SUPPORT OF APPELLANTS

Appeal from the Superior Court of California, County of Sacramento
Honorable Cecily Bond, Judge
Superior Court No. 95CS03216

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ARGUMENT

EDF writes this brief not to provide the Court with additional legal authority on Appellants' behalf, but simply to inform the Court of its belief that the Court's resolution of the pending matter is of the utmost importance to California's aquatic environments.

Affirmance by this Court of the Superior Court's decision would validate the wholesale abdication by the State of California and its Department of Water Resources (Department) of their primary responsibility for the most significant set of changes in the operations, assets, and finances of the State Water Project (SWP) since the early 1960's. It also would validate a conspiracy by the Department and many, but by no means all, of its SWP "contractors" to negotiate in secret an "Accord," one of the primary consequences of which (if not an intended purpose of which) was to short-change the environments affected by the SWP's operations.

I. DWR Negotiated the Monterey Agreement in Private Shortly After Hearing EDF's State Senate Testimony that SWP Reforms Could Help Preserve the Environment

Attached to this brief as Exhibit A is a true copy of written testimony that EDF submitted to the California Senate Committee on Agriculture and Water Resources exactly four months <u>prior</u> to the signing of the so-called Monterey Agreement. That agreement is at the heart of this case.

EDF testified to the Senate Committee, at a public hearing also attended by representatives of most of the Respondents in this case, to the significant

opportunities which SWP refinancing and restructuring held for the protection of California's aquatic environments. Respondents proceeded nevertheless to sign their Agreement, on the basis of their secret negotiations, without any solicitation of public input and without any concern for the opportunities presented in the situation for the protection of California's aquatic environments.

II. The Department of Water Resources Further Limited Meaningful Public Input by Abandoning Its CEQA Responsibilities and by Endorsing a Flawed EIR

Respondents compounded the problem of insufficient public input by delegating the meeting of their legal obligations to analyze the environmental impacts of their Agreement to an obscure minor participant in the Agreement. That agency, the Central Coast Water Authority (CCWA), then proceeded to write draft and final environmental impact reports, paying essentially no regard to the highly important public policy and environmental issues implicated by the Agreement. EDF objected formally to the secrecy of this process and to the flawed environmental analysis, as reflected in our comments on the draft EIR (Final EIR, comments 14 and 29). Neither CCWA nor the Department properly responded to EDF's objections or to similar objections registered by other critics of the Agreement.

III. This Court Must Reverse the Decision Below in Order to Return DWR's Decision Making Process to the Public Forum, where it Properly Belongs

This Court unfortunately is thus faced with a scandal of major proportions. EDF asks that it remedy this scandal by reversing the decision below. Such a reversal would compel the Department (and not the CCWA) to take over the task of

meeting the requirements of the California Environmental Quality Act. Cal. Pub. Res. Code §§ 21000 et seq.. Even more important, such a reversal would create an opportunity for the Monterey Agreement to be reopened and thereby would give the public full opportunity to suggest modifications to the Agreement , which would benefit not only the interests of the Respondent contractors, but the interests of the California public at large.

Dated: 12/94

Respectfully submitted,

THOMAS J. GRAFF

Thomas J. Graff

Attorney for amicus curiae
ENVIRONMENTAL DEFENSE FUND

APPENDIX

EXHIBIT A: Testimony of Environmental Defense Fund on Options for Financing California's Water Projects

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