

The California Supreme Court (and Court of Appeal) – August 5, 2022

by Faisal Zubairi, Jill Gutierrez, and Jessica M. Leano

The California Supreme Court issued the following decisions:

County of Butte v. Department of Water Resources, et al., No. S258574: California's Department of Water Resources (DWR) operates the "Oroville Facilities," an interrelated group of public works in Butte County. Operation of a dam, reservoir, or hydroelectric power plant requires a license from the Federal Energy Regulatory Commission (FERC). For decades, California has also required public entities seeking licensing of state-owned and state-operated hydroelectric projects, such as DWR, to conduct environmental review under the California Environmental Quality Act (CEQA).

Here, DWR prepared an environmental impact report (EIR) under CEQA in connection with its application for renewal of its 50-year license to operate the Oroville Facilities. DWR relied on the EIR as part of a "settlement agreement" reached in connection with the FERC process. The "settlement agreement" refers to the agreement reached at the conclusion of the extensive FERC process between the various stakeholders regarding the license terms, which becomes the "centerpiece" of the license application and becomes the basis for the FERC's "orderly and expeditious review" in setting the terms of the license.

Butte and Plumas Counties (the Counties) filed writ petitions challenging the sufficiency of the EIR under CEQA, and initially sought to enjoin DWR's operation of the facilities, as well as other relief. The trial court found DWR's EIR adequate. The Counties appealed. The Court of Appeal did not reach the merits of the Counties' CEQA claims, instead finding their actions in part preempted by the Federal Power Act (FPA) and otherwise premature to the extent they challenged the Water Board certification, which had not yet issued. In 2019, the California Supreme Court granted the Counties' petitions for review and transferred the matter to the Court of Appeal with directions to reconsider its decision in light of *Friends of the Eel River v. North Coast Railroad Authority*, 3 Cal. 5th 677 (2017). On remand, the Court of Appeal held that the FPA completely preempts the

Related People

- Faisal Zubairi
- Jill Gutierrez
- Jessica M. Leano

Related Capabilities

- Environmental
- Educational Publishing, Technology & Services
- Appellate

Counties' challenge to the environmental sufficiency of the settlement agreement.

The California Supreme Court affirmed in part and reversed in part. First, the Court held the Counties' CEQA claims were in fact preempted to the extent they attempted to unwind the terms of the settlement agreement reached through the carefully established federal process and to the extent they sought to enjoin DWR from operating the Oroville Facilities under the proposed license. The Court reasoned that the FERC has sole jurisdiction over disputes concerning the licensing process employed here, and the requested injunction would be akin to the "veto power" prohibited by *First Iowa Coop. v. Federal Power Comm'n*, 328 U.S. 152, 164 (1946).

But, the California Supreme Court held the Court of Appeal erred in finding the Counties' CEQA claims entirely preempted. The Court left the door open for the Counties to challenge the environmental sufficiency of the EIR more generally, insofar as a compliant EIR could still inform the state agency concerning actions that would not encroach on the FERC's jurisdiction. The Court therefore reversed in part and remanded for further consideration of the Counties' remaining claims, largely unaddressed by the Court of Appeal's decision, and for resolution of any open questions such as whether there are procedural or other bars to those claims.

In a concurring and dissenting opinion, Chief Justice Cantil-Sakauye and Justice Corrigan indicated they would affirm the Court of Appeal decision and conclude the Counties' challenge was completely preempted.

The full opinion, including the concurring and dissenting opinion, is available [here](#).

Brennon B. v. Superior Court of Contra Costa County, et al., No. S266254: The Court considered whether plaintiff, a young man with developmental disabilities, could sue a public school district (the District) under the Unruh Civil Rights Act (also known as the "Unruh Act") for claims that he was repeatedly sexually assaulted by other students and by a school-district staff member.

The trial court sustained the District's demurrer to the Unruh Act claim without leave to amend, concluding that the District was not a "business establishment" within the meaning of the Unruh Act. Thereafter, the Court of Appeal issued a published opinion concluding that the trial court had not erred, and denied the petition for writ of mandate. Plaintiff petitioned the California Supreme Court for review. Despite the fact that the parties had already settled, the California Supreme Court granted review "to decide two issues of continued statewide importance": (1) whether a public school district is a "business establishment" for purposes of the Unruh Act (or, if not, whether Unruh Act remedies are still available because they have been incorporated into the relevant provisions of the Education Code); and (2) even if a school district is not a "business establishment," whether it can nevertheless be sued under the Unruh Act where the alleged discriminatory conduct is actionable under the Americans with Disabilities Act (ADA).

The California Supreme Court held the District was not a "business establishment" for

purposes of the Unruh Act when it provided educational services to plaintiff, and also that the Legislature did not intend by the 1998 amendment to the Education Code to treat public school districts as “business establishments” under the Unruh Act. The Court also rejected plaintiff’s alternative contention that even if not acting as a business establishment under subdivision (b) of section 51 of the Unruh Act, a school district can still be sued for discrimination by virtue of subdivision (f) of that section, which makes violations of the ADA violations of the Unruh Act. Finally, because the case was settled, and because the operative complaint had not pleaded claims under the Education Code, the Court refused to reach plaintiff’s alternative (but related) theory that Unruh Act remedies were incorporated by the amendments to the Education Code.

The full opinion is available [here](#).