

COURT OF APPEAL CLARIFIES WATER SUPPLY ANALYSIS REQUIRED FOR NEW DEVELOPMENT PROJECTS

The First District Court of Appeal has issued a significant decision clarifying the scope of groundwater sufficiency analysis required in Water Supply Assessments (WSA) under SB 610 (specifically Water Code section 10910(f).) In *O.W.L. Foundation v. City of Rohnert Park*, the Court of Appeal reversed the lower court's decision to overturn a WSA prepared for six development projects contemplated in Rohnert Park's General Plan. The trial court had ruled that the WSA failed to analyze groundwater pumping by all users in an entire groundwater basin.

The Court of Appeal found that "nothing in the plain language of section 10910(f)(5) refers to or requires a basin-wide study of past and future pumping by all users." Rather, the Court found, section 10910(f)(5) requires only "some consideration of conditions in the relevant groundwater basin in connection with determining whether there is sufficient water to supply the project." Further, it noted that, "as a practical matter, requiring a water supplier to collect data on pumping throughout a groundwater basin would impose an enormous if not impossible burden on the water supplier, particularly given the brief time frame required to complete a WSA." Echoing the Supreme Court's earlier ruling in *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova*, the Court of Appeal concluded its analysis of the purpose of section 10901(f) by stating that "requiring a water supplier to conduct a basin-wide groundwater analysis at the earliest stages of the planning process would, in effect, demand a level of certainty about water supplies in the WSA that is required, if at all, at a much later point in the land use planning and approval process."

The *O.W.L.* decision also includes helpful guidelines for the consideration of groundwater sufficiency in WSAs, holding that there is no "particular analytic method for assessing groundwater sufficiency" and so "local water suppliers must have discretion to make technical and practical determinations about the appropriate geographical area to support a WSA." The Court then reviewed the City's WSA to determine if there was adequate evidentiary support for the boundaries of the study area for the WSA's groundwater analysis. Though it cautioned that "it is not enough simply to assert that an expert's 'independent review' confirms the propriety of the study area," the Court found that record before the City demonstrated that its selection of the study area was based on "analysis of empirical data rather than unsupported assumption."

Finally, the *O.W.L.* decision also affirms the Second District's ruling earlier this year in *California Water Impact Network v. Newhall County Water District*, finding that though due to the unusual procedural posture of *O.W.L.*, the Court of Appeal had fundamental jurisdiction over the dispute, "as a general matter, we agree with C-WIN that the adequacy of a WSA is not subject to judicial challenge until after a lead agency has certified an EIR and approved a project."

Andrew B. Sabey and R. Chad Hales of Cox Castle & Nicholson provided Amici Curiae briefing to the Court of Appeal in support of the appellants on behalf of Burbank Housing and the Non-Profit Housing Association of Northern California. Anne Mudge and Sarah Owsowitz of Cox Castle & Nicholson represented the developer in the C-WIN case cited favorably by this court.

If you have any questions regarding this alert, please contact:

Michael H. Zischke at 415.262.5109 or mzischke@coxcastle.com
Anne E. Mudge at 415.262.5107 or amudge@coxcastle.com
Sarah E. Owsowitz at 415.262.5122 or sowsowitz@coxcastle.com

Clark Morrison at 415.262.5113 or cmorrison@coxcastle.com
Tamar C. Stein at 310.284.2248 or tstein@coxcastle.com