

Ruling on Submitted Matter, State Water Resources Control Board Cases

San Joaquin River Group Authority et al's motion to dismiss for failure to join the United States Bureau of Reclamation as a necessary and indispensable party came on regularly for hearing on January 19, 2001. Following oral argument the Court took the matter under submission. Having considered the moving papers, five sets of opposing papers, the reply papers and the oral argument, the Court rules as follows.

The motion to dismiss is denied.

Moving parties seek dismissal of five of the eleven cases included in this coordinated action. They contend that San Francisco Superior Court cases # 309539, 311502, 311499, 311507, and Alameda County Superior Court case # 825585-9 should be dismissed pursuant to Code of Civil Procedure section 389.

The underlying pertinent facts are essentially undisputed. The United States Bureau of Reclamation ("Bureau") is named as a real party in interest in each of the five actions at issue. The Bureau has indicated that it does not intend to waive sovereign immunity for purposes of actively participating in this coordinated case leaving this Court without any ability to obtain jurisdiction over the Bureau, a federal agency. In these circumstances, the Court must determine whether the Bureau is a necessary and indispensable party under Code of Civil Procedure section 389 requiring the Court to dismiss the five above-cited actions.

The Court has no doubt that the Bureau is a necessary party within the meaning of Code of Civil Procedure section 389(a). The Bureau has an interest relating to the subject of the action and is so situated that the disposition of the action in the Bureau's absence may, as a practical matter, impair or impede the Bureau's ability to protect that interest. With the Bureau a necessary party, the Court must proceed to analyze whether the Bureau is an indispensable party so as to require that the five suits be dismissed pursuant to Code of Civil Procedure section 389(b) for failure to join an indispensable party. A significant consideration in this regard is the effect that the 1998 amendments to Water Code section 1126 have on the inquiry. The parties have cited and the Court knows of no authority on point on this issue. It appears that it is a matter of first impression.

Both the language and the legislative history of the changes to Water Code section 1126 lead to the conclusion that section 1126 is applicable in the instant case. The 1998 changes were the direct result of the deprivation of a legal forum that similarly-situated petitioners faced in *County of San Joaquin v. State Water Resources Control Board* (1997) 54 Cal.App.4th 1144. The language in section 1126 does contain a phrase "in and of itself" which interjects a certain amount of ambiguity into the law and requires this Court to look at the legislative intent for a proper interpretation of the law. The legislature expressed a clear intent in Water Code section 1126(a) that all issues relating to state water law decided by the State Water Resources Control Board be reviewed in state courts. The legislature also expressed its intent that the court assert jurisdiction and

exercise discretion to fashion appropriate remedies pursuant to section 389 of the Code of Civil Procedure to facilitate the resolution of state water rights issues in state courts.

The Court then interprets section 1126(e) in light of this intent. Section 1126(e) provides, inter alia, that the election by the United States, or any agency thereof, not to be a party shall not, *in and of itself*, (emphasis added) be the basis for dismissal pursuant to Section 389 of the Code of Civil Procedure or any other provision of law. The court is not persuaded by the contention that the effect of section 1126(e) compels a determination that the Bureau cannot be an indispensable party. The language “in and of itself” precludes such a determination. However, the Court is persuaded that it must take into consideration sections 1126(a) and (e) as it balances the factors set forth in section 389(b).

The section 389(b) factor most at issue in the history of the changes to Water Code section 1126 was the absence of an adequate remedy. Here, it is clear, as conceded by moving parties, that petitioners will be deprived of a remedy. Moving parties’ attempt to discount this fact is not persuasive. It is precisely the wrong that the legislature sought to redress. That fact is entitled to great weight. In order to balance this, it appears to the Court that serious prejudice to the necessary party must be shown before dismissal is ordered. No such showing is made here. Significantly, the Bureau itself has not come before the Court to assert that it will be prejudiced. Moving parties assert prejudice to the Bureau’s existing water rights in conclusory fashion. State respondents contend that the prejudice is slight in light of the nature of the Central Valley project and its close relationship with state water law. The Court believes that the State respondents are accurate in claiming that by shaping an appropriate remedy the Court can minimize any prejudice.

The Court finds the opposition persuasive. In equity and good conscience, the Court determines that the matters should go forward without the Bureau’s participation. The Court has considered not just the presence or absence of the four factors listed in section 389(b), but also the inequity of dismissing five suits and proceeding with the others, many of which also have named the Bureau as a real party in interest. On this record, the Bureau is not an indispensable party. Dismissal is not required.