

Rulings on Submitted Motions Related to Cost Allocation for Administrative Record.

The Court having read and considered all of the moving, opposing, and reply materials submitted in regard to allocating the costs of preparing the administrative record in this coordinated proceeding, the matters having been argued and submitted, the Court having issued a ruling from the bench on February 23, 2001, the Court now records the rulings, along with a written explanation for how the Court arrived at these rulings.

The Court first considered whether or not the petitioners in Glenn-Colusa Irrigation District, et al. v. SWRCB (Sacramento County Superior Court No. 00CS00201) should bear a portion of the cost of preparing the administrative record. The Court is satisfied, under the factual scenario present in regard to the petitioners in question, that no portion of the cost of preparing the administrative record should be borne by the petitioners in the Glenn-Colusa action. It does not appear to the Court that, despite the language in Public Resources Code section 21167.6(a), any administrative record would have been required to be prepared for an action the parties were actively working on resolving through a stipulation and order for dismissal. The State Respondents certainly understood this to be the situation and have not sought to have the petitioners in question contribute to the cost of preparing the administrative record. The Court finds Santos v. Civil Service Board of the City of Fresno (1987) 193 Cal.App.3d 1442, readily distinguishable from the facts of the instant case as set out in the Declaration of Andrew Hitchings on file herein. All of the arguments seeking contribution on equitable grounds are fact dependent, and the Court finds that the facts simply do not support having the Glenn-Colusa petitioners bear a portion of the cost of preparing the administrative record.

The Court next considered what the proper cost of preparing the administrative record should be. The record is indisputably large, some 128,970 pages in non-electronic form. River Valley Preservation Project v. Metropolitan Transit Development Bd. (1995) 37 Cal.App.4th 154, makes it clear that staff labor costs may be a properly included cost of preparing the administrative record as long as that cost was both necessarily incurred and reasonable. In River Valley, supra, a less than 4,000 page record cost over \$10,000 to prepare and the court found all the costs claimed by the agency that prepared the record, including staff time to review, organize, and index the administrative record, were necessarily incurred and reasonable. In the instant case, the State Water Resources Control Board now says that it's total cost for preparing the administrative record is \$198,772. Yet in light of the previously distributed letters citing a cost of some \$20,000 less, the State Respondents are not urging the Court to find all \$198,772 as the proper cost. It is also worthy of note that some \$80,000 of the cost was paid to have the original paper record converted to an electronic document. On consideration of the volume of the record and after review of the declarations of Barbara Leidigh and Nick Wilcox, the court finds that the State Water Resources Control Board's necessary and reasonable cost to prepare the administrative record is \$178,735.42.

The Court next considered the proper allocation of the \$178,735.42 cost among the petitioners present. While not urged to by any party, the Court considered what, if any, cost of having the administrative record in electronic format should be reimbursed to the State Water Resources Control Board from funds appropriated to the Judicial Council as a necessary expense under Code of Civil Procedure section 404.8. It appears to the Court that some assessment to reimburse the State Water Resources Control Board is appropriate under the facts present here. The Court would have seriously considered having any traditional paper record converted to electronic format so that I, the coordination trial judge, would be able to electronically search the record. The statute, Code of Civil Procedure section 404.8, clearly contemplates, by the use of the word “reimburse”, situations where an expense that the Court finds necessary may still be paid even though some party, person, or agency has already incurred the expense. Additionally, the record in its current electronic format is easily handled and stored by court staff where the Court would need to dedicate additional significant resources and facilities to handle and store the record if that record were to have been delivered to the Court in the form of 47 boxes containing almost 130,000 pages of record. The Court finds that \$20,000 is an appropriate reimbursement as a necessary expense and directs that \$20,000 be reimbursed to the State Water Resources Control Board from funds appropriated to the Judicial Council for necessary expenses in coordination cases.

The above analysis leaves \$158,735.42 to be allocated among the petitioners. The Court does not find that those petitioners who are claiming only to be interested in Phase 7 should pay less than the other petitioners toward the preparation of the administrative record. The record appears to the Court to be analogous to a very large book which, while it is theoretically and physically possible to separate out one chapter, cannot truly be understood or appreciated without reference to the whole of the book. It appears to the Court that to attempt to manually review the record and create three categories of documents; one that would apply to Phase 7, one that would not apply to Phase 7, and one that might apply, is doomed to generate numerous disputes which will slow the progress of this coordinated case and to generate additional staff time that the State Water Resources Control Board will seek to include in their claimed costs. With two suits over the same State Water Resources Control Board decision brought in the same jurisdiction, with identical petitioners, respondents, and real parties in interest, the Court finds that it would be inequitable to allocate two complete shares against Central Delta Water Agency simply because two cases were filed by that agency. The Court finds Mr. Nomellini’s oral estimate of \$1,000 as the additional cost that would have been incurred to have a second copy of the record lodged in Central Delta Water Agency’s second case to be reasonable. The Court allocates the \$158,735.42 among the petitioners as follows:

- \$18,526.16 to the Central Delta Water Agency petitioners (1/2 to each suit),
- \$17,526.16 to the Anderson case petitioners,
- \$17,526.16 to the San Luis Water District,
- \$17,526.16 to the County of San Joaquin case petitioners,
- \$17,526.16 to the Golden Gate Audubon Society case petitioners,
- \$17,526.16 to the Pacific Coast Fed. of Fishermen’s Associations case petitioners,
- \$17,526.16 to the Santa Clara Water District,
- \$17,526.16 to the State Water Contractors case petitioners, and

\$17,526.16 to Westlands Water District.

The Court recognizes that the Court did not orally announce what the court-approved cost of the administrative record was or how it would be allocated among the petitioners until just after 1:30 p.m. on February 23, 2001, after the 12 noon February 23, 2001 time specified in the Court's November 5, 2000 order for payment of said allocated costs. For any petitioners who have not entered into written agreements with the State Water Resources Control Board, in the form of a stipulation and order, specifying when the above allocated cost of the administrative record should be paid, said allocated costs are payable forthwith. Any petitioners who have entered into written agreements with the State Water Resources Control Board, in the form of a stipulation and order, specifying when the cost of the administrative record should be paid are ordered to pay the allocated costs in accordance with the stipulation and order.

Any objections to the form or content of this order should be filed on or before March 12, 2001, and served by way of a document clearly designated as "Objections to February 26, 2001 Order Re: Rulings on Submitted Motions Related to Cost Allocation for Administrative Record". Once the Court receives and considers the objection(s), the Court will determine whether to overrule the objection(s), grant the objection(s) in whole or in part and modify the order, or set the matter for further hearing on the objection(s). If no objections are received, then this order will become the Court's final order in regard to the matters submitted for decision.

February 26, 2001

Roland L. Candee, Judge
Coordination Trial Judge