

Concerned McCloud Citizens v. McCloud Community Services District (Jan. 31, 2007)
147 Cal.App.4th 181

The McCloud Community Services District (CSD) and Nestle Waters North American entered into a 50-year agreement for the sale and purchase of up to 1,600 acre feet of spring water annually. Under the agreement, there is an initial 5 year contingency period during which Nestle will evaluate the feasibility of using the springs and begin siting and design work for a bottling plant. The contingency period would be used to acquire any necessary permits, and complete CEQA documentation. The agreement provided that neither party was bound to the agreement “until District’s compliance with CEQA is completed and there is no possibility of a challenge pursuant to CEQA.” Concerned McCloud Citizens brought suit against the CSD on grounds that this agreement should have been subject to CEQA review before it was signed. The trial court agreed and set aside the agreement.

The Court of Appeal reversed. After examining the role of CEQA and the definition of “project,” the Court concluded that this agreement did not constitute a project under CEQA. At the same time, the “ultimate purchase and sale” of the water to Nestle (including all the related infrastructure improvements) would be a CEQA project.

The Court found that the contract between the CSD and Nestle does not grant Nestle a vested right of use of the project. In fact, it is conditional and commits the CSD to sell water only if the described terms (including CEQA compliance) are successfully completed. The Court views the agreement as: “as temporarily holding in place a set of pre-agreed financial terms between the parties, while conceptually outlining a proposal for a project to be subjected to and conditioned upon full environmental review.”

While recognizing that the CSD is favorably disposed to the ultimate success of the project, the Court found that the agreement “does not preclude [the CSD] from considering a full range of options depending on subsequent CEQA review” and the agreement does not legally bind the CSD to the project. Furthermore, the agreement clearly shows that no specific physical project is being considered. So, at the current stage of project design, preparation of an EIR would be premature and any analysis of potential effects “would be speculative and essentially meaningless.”