

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MONTEREY

SECURITY NATIONAL GUARANTY, INC.

Plaintiff,

Case No. M 51797

Vs

ORDER AFTER SUBMISSION

MONTEREY PENINSULA WATER
MANAGEMENT DISTRICT, et al.,

Defendant.

Security National Guaranty, Inc's. motion for peremptory writ of mandate came on for hearing April 25, 2002. The petition seeks an order from the court setting aside the Monterey Peninsula Water Management District's (District) decision denying Petitioner's application for a water distribution permit. The application sought permission to install water hookups to service a 495 unit mixed development project located on the coast in Sand City on land historically used for sand mining. In denying the permit the District made certain findings. Among other things, it found that the project will create or contribute to an overdraft by exacerbating declining groundwater levels in the Seaside Basin and this would adversely affect the ability of existing systems to provide water to present users and may adversely impact the quality of groundwater in the Basin.

Petitioner asserts initially that the court should conduct its review under the "independent judgment" standard by which the court applies its own judgment to the evidence. (CCP sec. 1094.5 (c)).

Respondent contends that, under the facts present here, the correct rule requires the court to invoke the substantial evidence standard in determining if the District abused its discretion. Under this latter criterion, the District's action may only be set aside if the court determines that the decision is not supported by substantial evidence in light of the whole record. (CCP sec. 1094.5 (b)).

A court's selection of the proper standard must be made on a case-by-case basis. Preservation of purely economic interests which do not preclude all reasonable use of one's land generally does not implicate vested rights. Here, the District's decision does not result in the Petitioner being prevented from all reasonable use of its land. The decision simply refuses to authorize this particular distribution system. The court finds that the appropriate standard requires review for abuse of discretion under sec. 1094.5 (b). *Davis v. Calif. Coastal Zone Conservation Com.* (1976) 57 Cal.App. 3d 700.

Petitioner asserts that as an owner of overlying land it has the right to take water from the ground underneath for the use on its land within the Basin or watershed; it is based on the ownership of the land and is appurtenant thereto. (*City of Barstow v. Mojave Water Agency* (2000) 23 Cal. 4th 1224). Petitioner notes that some of the water extracted from the Seaside Basin is distributed to non-overlying owners by the Cal Am water Co. These non-overlying landowners are referred to as appropriators. California law gives overlying owners rights to the underlying water that is paramount to any claim by appropriators. Petitioner again cites to *Barstow* for the proposition that even when water is scarce, appropriators are not entitled to draw any ground water until all overlying owners have drawn what they need for reasonable beneficial uses on their overlying land. *Barstow* p. 1241.

Petitioner also contends that the District's vote denying the permit was invalid because findings were adopted after its vote. Petitioner argues a decision of the district must be based upon findings and that requirement necessitates the findings be in place prior to taking any action.

Respondent District refutes Petitioner's arguments and states that it simply denied Petitioner's application to build a *water distribution system*, and that it did not allocate any water rights. In evaluating the application for the distribution permit, or multiple hookups, the District did evaluate relevant considerations concerning potential overdraft, declining groundwater levels in the Basin, overall effect on other water users and the quality of the groundwater in the Basin, particularly the potential for seawater intrusion.

The thrust of Petitioner's position is that, as an overlying owner, it has the absolute right to the use of its underlying water as long as it is for a reasonable purpose. Its presently planned use happens to be for a mix of commercial, residential and public facilities. The practicalities of operating these different uses require multiple water connections. Furthermore, the District's definition of a "water distribution system" is so broad that, for all practical purposes, it requires the District's approval for essentially any proposed water use. (District Rules and Regulations, Rule 11). Since Cal Am's water distribution customers include some appropriators (non-overlying users), Petitioner's position is that it is service to these users that must be cut back or terminated if there are concerns about Basin overdraft or seawater intrusion. The District raised no issues with the design or mechanics of Petitioner's system. It was simply a water use decision.

DISCUSSION

The Monterey Peninsula Water Management District is charged by law with managing groundwater supplies on the Monterey Peninsula. Specifically, as it relates to this case, the law requires that prior approval from the District must first be obtained before one may create a water distribution system.

The "reasonable beneficial" purpose for which an overlying owner may extract groundwater does not simply describe a project that, in the abstract, seems appropriate. What is a reasonable beneficial use is not defined solely by what an overlying owner finds to be an economically desirable use of his land. "Reasonable" connotes a consideration of all relevant factors. What is a reasonable use of water depends upon the circumstances of each case including the ever increasing need for conservation of water in this state. Locally, water is a very limited resource. No one can have a protectible interest in the unreasonable use of water. (Barstow, p 1242).

City of Barstow, upon which Petitioner primarily relies, involved dairy and alfalfa farmers who, despite being overlying landowners, were forced to cut back on their historical water use to conform to the terms of a settlement agreement requiring apportionment among other water users without regard to their individual water rights. The case does not hold that water rights derived from overlying ownership of land require a regulatory board to give approval to a system that will distribute that ownership to multiple new owners.

Respondent's decision simply denied Petitioner's application to distribute water to multiple new users. It did not restrict Respondent's own use of its water. As

Respondent points out, there is nothing in the District's decision that attempts to restrict the use of water in some way that does not require a water distribution system, such as a conference center, hotel or restaurant.

At the October 26, 2000 hearing the District Board considered the staff's draft findings and denied Petitioner's application. The court finds that these draft findings supplied the Board with the information necessary to provide a basis for its action. The fact that more formal findings were thereafter formulated did not detract from the validity of the Board's original action. The issue now before the court is whether substantial evidence supports the District's decision.

One of these findings discusses the probable overdraft condition that has existed in the Santa Margarita Formation of the Seaside Basin since 1995 and the adverse effect this could have on the Paso Robles Formation from which Petitioner will extract its water. Although the geology is not completely understood, staff reports describe how the natural migration of water between strata raises concerns over continued viability of conditions within the entire Basin. The record supports the existence of potential adverse direct and cumulative environmental effects associated with the project. Although no overdraft has been formally declared to date, recent physical evidence suggests that the basin is being stressed. Mitigation measures, although offering promise, cannot be guaranteed to be implemented or successful at the present time.

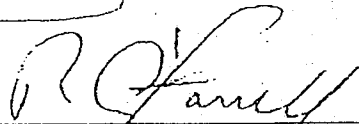
The findings further discuss how the coastal location of Petitioner's well(s), along with the amount of water the project requires will present an unacceptable risk of seawater intrusion and thereby adversely impact existing water users. The cumulative effect of Petitioner and Cal Am pumping from the Paso Robles aquifer is presently

unknown and should be the subject of additional investigation. Should the anticipated withdrawal of water in the amount required for Petitioner's project as presently designed require future mitigation measures, the difficulties that would be encountered in enforcing these measures against multiple users is potentially greater than that experienced when dealing with a single user.

For these reasons the court finds that there is substantial evidence upon which the Board could rely in denying Petitioner's application. Although Petitioner points to evidence in the record that favors its position that there is little risk of overdraft or saltwater intrusion, there also exists a substantial evidentiary basis in the administrative record to support the District's decision that suggests otherwise. The majority of the voting Board members having so found, and their decision having substantial evidentiary support in the administrative record, the court may not set aside that determination.

The Petition for Writ of Mandate is DENIED.

Dated: May 29, 2002


 HON. ROBERT O'FARRELL
 Judge of the Superior Court