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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

SEP 29 2014

ALAN CARLSON, Clerk of the Court
M. White
M. WHITE

See modification

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE - CIVIL COMPLEX

DELAWARE TETRA TECHNOLOGIES,
INC., a Delaware Corporation,

Petitioner/Plaintiff,

v.

SANTA MARGARITA WATER
DISTRICT, a California Water District;
SANTA MARGARITA WATER
DISTRICT BOARD OF DIRECTORS, and
DOES 1 through 50, inclusive,

Respondents/Defendants.

COUNTY OF SAN BERNARDINO, A
POLITICAL SUBDIVISION OF THE
STATE OF CALIFORNIA; CADIZ, INC.,
A DELAWARE CORPORATION;
FENNER VALLEY MUTUAL WATER
COMPANY, A CALIFORNIA NON-
PROFIT MUTUAL BENEFIT
CORPORATION, AND ROES 51
THROUGH 60, INCLUSIVE.

Real Parties in Interest.

Case No. 30-2012-00576715-CU-WM-CXC

Assigned for All Purposes to the
Honorable Gail A. Andler - Dept. CX101

~~PROPOSED~~ JUDGMENT DENYING
PETITION FOR WRIT OF MANDATE
(SMWD MOU)

Date Transferred: February 28, 2013
Date Originally Filed: June 12, 2012

1 **[PROPOSED] JUDGMENT DENYING PETITION FOR WRIT OF MANDATE**

2 On December 5, 2014, the matter of *Delaware Tetra Technologies, Inc. v. Santa*
3 *Margarita Water District*, Case No. 30-2012-00576715-CU-WM-CXC came on for hearing in
4 Department CX-101 of the above-entitled Court, before the Honorable Gail L. Andler, presiding.
5 Appearances were as noted on the record.

6 The Court, having considered the evidence in the record, and the written and oral
7 arguments of counsel, and receiving additional briefing requested by the Court, the matter was
8 taken under submission.

9 On May 1, 2014, the Court issued its Minute Order in this case, denying the Petition for
10 Writ of Mandate in its entirety and directing Respondents to jointly meet and confer and prepare
11 proposed findings.

12 On May 30, 2014, Respondents filed and served a Proposed Statement of Decision and
13 Judgment.

14 On June 6, 2014, Petitioner filed and served an Objection to the Proposed Judgment for
15 the Court's consideration.

16 On June 16, 2014, Petitioner filed and served an Objection to the Proposed Statement of
17 Decision for the Court's consideration.

18 On August 20, 2014, the Court issued a Minute Order and its Statement of Decision in this
19 case, denying the Petition for Writ of Mandate in its entirety. A true and correct copy of the
20 Court's August 20, 2014 Minute Order and Statement of Decision are attached hereto as Exhibit
21 "A."

22 On August 25, 2014, per the Court clerk's request, Respondents re-filed and re-served the
23 Judgment to conform to the Court's August 20, 2014 Statement of Decision.

24 IT IS ORDERED, ADJUDGED AND DECREED that:

25 (1) Delaware Tetra Technologies, Inc.'s First Amended Petition for Writ of Mandate
26 is DENIED, with prejudice.

27 ~~(2) With respect to the Request for Judicial Notice filed on August 30, 2013 by~~
28 ~~Delaware Tetra Technologies, Inc.:~~

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~~(a) The Request for Judicial Notice of a City of Newport Beach ordinance is [GRANTED/DENIED].~~

~~(b) The Request for Judicial Notice of the Court's July 5, 2013 ruling on the demurrers is [GRANTED/DENIED].~~

~~(3) Respondents and Real Parties in Interests Request for Judicial Notice filed on October 25, 2013 for the Cedar Fair v. City of Santa Clara notice of preparation is [GRANTED/DENIED].~~

~~(4) Delaware Tetra Technologies, Inc.'s Request for Judicial Noticed filed on November 15, 2013 for the Water Purchase and Sale Agreement between Cadiz, FVMWC and SMWD is [GRANTED/DENIED].~~

~~(5) Delaware Tetra Technologies, Inc.'s objections to Respondents' Joint Opposition Brief filed on November 15, 2013 are OVERRULED.~~

(6) Pursuant to Rule 3.1700 of the California Rules of Court, Respondent Santa Margarita Water District and Real Parties in Interest County of San Bernardino, Cadiz, Inc., and Fenner Valley Mutual Water Company shall recover their costs.

Dated: SEP 29 2014

Gail A. Andler
Gail A. Andler
Judge of the Superior Court

THE PARTY ELECTRONICALLY FILING THIS DOCUMENT
IS TO SERVE CONFORMED COPIES ON ALL OTHER PARTIES

1 **PROOF OF SERVICE**

2 I, Tammy Ingram, declare:

3 I am a citizen of the United States and employed in Riverside County, California. I am
4 over the age of eighteen years and not a party to the within-entitled action. My business address
5 is Best Best & Krieger, LLP, 3390 University Avenue, 5th Floor, Riverside, CA 92501. On
6 August 25, 2014, I served a copy of the within document(s):

7 **[PROPOSED] JUDGMENT DENYING PETITION FOR WRIT OF MANDATE**
8 **(SMWD MOU)**

9 by placing the document(s) listed above in a sealed envelope with postage
10 thereon fully prepaid, the United States mail at Los Angeles, California
11 addressed as set forth below.

12 Based on a court order and/or an agreement by the parties to accept service by
13 electronic transmission, I caused the document(s) listed above to be sent to the
14 persons at the electronic notification listed below via OneLegal Online Court
15 Services.

16 *Please see attached service list.*

17 I am readily familiar with the firm's practice of collection and processing correspondence
18 for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same
19 day with postage thereon fully prepaid in the ordinary course of business. I am aware that on
20 motion of the party served, service is presumed invalid if postal cancellation date or postage
21 meter date is more than one day after date of deposit for mailing in affidavit.

22 I declare under penalty of perjury under the laws of the State of California that the above
23 is true and correct.

24 Executed on August 25, 2014, at Riverside, California.

25 _____
26 Tammy Ingram

3 **Service List**

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MUTUAL WATER COMPANY

EXHIBIT A

CASE TITLE: Delaware Tetra Technologies, Inc. vs.
Santa Margarita Water District
SAN FRANCISCO, CA 94104-2857

CASE
30-2012-00576715-CU-WM-CXC

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COUNTY OF SAN BERNARDINO, A
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PROFIT MUTUAL BENEFIT
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THROUGH 60, INCLUSIVE.

Real Parties in Interest.

Case No. 30-2012-00576715-CU-WM-CXC

Assigned for All Purposes to the
Honorable Gail Andler –

STATEMENT OF DECISION

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STATEMENT OF DECISION

I. PROCEDURAL HISTORY

The instant case is one of six separate cases filed challenging separate administrative decisions of the County and SMWD related to the Cadiz Valley Water Conservation, Recovery and Storage Project (Project).

In its First Amended Petition for Writ of Mandate, Tetra alleged five causes of action against Respondent SMWD and Real Parties in Interest County and Cadiz, Inc., including four causes of action asserting CEQA violations. Tetra alleged that approval of the 2012 MOU violated CEQA because SMWD: (1) improperly assumed the lead agency role; (2) improperly relied on a CEQA exemption after finding the MOU approval did constitute approval of a project within the meaning of CEQA; (3) failed to prepare an initial study and/or environmental assessment for approval of the MOU; and (4) improperly deferred environmental analysis of the Project. Tetra further alleged that approval of the 2012 MOU improperly amended and/or violated the Ordinance.

II. FINDINGS

Upon due consideration of the Administrative Record, the trial briefs of the parties, and the oral arguments of counsel, the Court issues the following decision:

A. Factual Background

Cadiz owns 34,000 acres of land in eastern San Bernardino County's Cadiz and Fenner Valleys, overlying extensive groundwater supplies. The Project is a public-private partnership designed to extract and sell groundwater from the basin underlying a portion of the Cadiz and Fenner Valleys. A portion of the groundwater would otherwise flow to the Bristol and Cadiz Dry Lakes, where it would evaporate. Petitioner's salt mining operation at that location would be impacted by the diversion of the groundwater.

In 2010, SMWD entered into an Option Agreement, and Environmental Cost Sharing Agreement (ECSA) with Cadiz for water supply and carry-over storage, and for sharing costs related to CEQA review of the Project.

1 SMWD and the County entered into a June 2011 Memorandum of Understanding (2011
2 MOU) pursuant to CEQA Guidelines section 15051(d). The 2011 MOU established that SMWD
3 would be lead agency, and that the Project's groundwater extractions would be subject to the
4 County's Ordinance. By entering into the 2011 MOU, SMWD agreed to a limited waiver of its
5 immunity by voluntarily submitting the groundwater extractions to the County for review under
6 the Ordinance.

7 One method of complying with the Ordinance is to qualify for an "exclusion" from the
8 permitting requirements for groundwater withdrawals. The Ordinance excludes well operators
9 from permitting requirements if: (1) the operator has developed a [GMMMP] approved by the
10 County consistent with County guidelines; and (2) the County and the operator have executed a
11 memorandum of understanding that requires sharing of groundwater monitoring data and ensures
12 implementation and enforcement of measures set forth in the GMMMP.

13 In May 2012, the County, SMWD, and Cadiz negotiated and entered into an MOU to
14 frame the County's future GMMMP review process under the Ordinance. In connection with
15 consideration of the 2012 MOU, SMWD staff advised SMWD's Board of Directors that "[b]y
16 adoption of the MOU, the District is not committing to project approval. The District will still
17 have the opportunity to review the GMMMP and the Final EIR, prior to consideration for project
18 participation." SMWD approved the MOU at the May 11, 2012 Engineering Committee Meeting
19 and three days later filed a Notice of Exemption (NOE) with the State Office of Planning and
20 Research, stating that the MOU was exempt from CEQA because it did not constitute an
21 "approval" of a "project" under CEQA or the Guidelines.

22 **B. Conclusions**

23 **1. First Cause of Action**

24 The Court finds that SMWD should not have been designated the lead agency for the
25 Project. CEQA's underpinnings of accountability and stewardship support the conclusion that the
26 County should have instead served as lead agency. The County was in the best position to
27 objectively balance the benefits and risks of the project rather than the purchaser of the water,
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1 SMWD . However, based on the applicable law, the Court is unable to conclude that the failure to
2 designate the County as Lead Agency, without more, constitutes a CEQA violation where the
3 SMWD may be considered to have a substantial claim to be the lead agency. *PCL*, 83
4 Cal.App.4th at 904–907; Guidelines §15051(a)&(d); Pub. Resources Code, §21067; Gov. Code,
5 §§53091(d)–(e), 53096; see *Central Delta Water Agency v. State Water Resources Control Bd.*
6 (2004) 124 Cal.App.4th 245.

7 Furthermore, as discussed below, the Court finds that the 2012 MOU did not constitute a
8 commitment by the County to approve a project and therefore CEQA does not apply to the
9 County’s decision to enter the MOU. Accordingly, the Court finds for Respondents and against
10 Tetra on the First Cause of Action.

11 **2. Second Cause of Action: SMWD’s Determination that the 2012 MOU**
12 **Was Exempt From CEQA Review Was Appropriate**

13 The Court finds that SMWD’s decision to enter into the 2012 MOU did not constitute an
14 “approval” of a “project” requiring CEQA review for the following reasons. Applicable law and
15 the record confirm that the MOU was a conditional agreement that did not commit either the
16 County or SMWD to a definite course of action and could not, by itself, result in any potential
17 physical environmental impacts because the MOU is not a physical component of the Project.
18 *Save Tara*, 45 Cal.4th 116, 139; *Cedar Fair*, 194 Cal.App.4th 1150, 1161–66; Pub. Resources
19 Code, §§21000(a), 21065, 21080; Guidelines §15378(a), (c). The 2012 MOU’s purpose was “to
20 establish a process for completing a GMMMP that comports with the County Ordinance and
21 CEQA.” 2:7 (MOU §4(b)). The 2012 MOU merely defined the parameters of the approval to be
22 sought from the County under the Ordinance and set forth the process for how the completion of
23 the details of the GMMMP would be accomplished. 2:6–7 (MOU §3). While the 2012 MOU
24 provided the framework for development of the GMMMP, which defined specific Project
25 activities that would have potential physical impacts, the MOU itself had none.

26 The Court further finds that the 2012 MOU does not commit SMWD to a definite course
27 of action because it contains many conditions that must be fulfilled before the MOU may become
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1 effective, including future compliance with CEQA and the ability to modify mitigation measures,
2 consider alternatives, deny the project, and modify the MOU if needed as a result of CEQA
3 compliance. 2:4, 6, 7 (MOU, Recital G, §§3(b)&(d), 4(a)&(b)); 3:20; see *Cedar Fair*, 194
4 Cal.App.4th at 1165, 1170–74 (court found that approval of a detailed term sheet for a football
5 stadium, which was approved after NOP issued for stadium Draft EIR, was not a CEQA project
6 because the term sheet did not commit a city to a definite course of action or rule out any
7 mitigation measure or alternative). In addition to the express terms of the 2012 MOU, the
8 circumstances surrounding the SMWD’s May 11, 2012 approval, set forth in the administrative
9 record, affirm that the MOU merely establishes a framework and was not an “approval” of a
10 “project.” 3:23–25 (May 11, 2012 staff memorandum); 6:66, 68; 765:47736–37.

11 Accordingly, the Court finds for Respondents and against Tetra on the Third Cause of
12 Action.

13 **3. Third Cause of Action: CEQA Did Not Require SMWD To Prepare an**
14 **Initial Study With Regard to the 2012 MOU**

15 This Cause of Action is substantially the same as the Second and Fourth Causes of Action
16 and therefore this Court incorporates its findings here. Because SMWD’s approval of the 2012
17 MOU was not a “project” requiring CEQA review, SMWD did not fail to conduct an initial study
18 and/or environmental assessment before approving the MOU. Therefore, the Court finds for
19 Respondents and against Tetra on the Third Cause of Action.

20 **4. Fourth Cause of Action: SMWD Did Not Defer Environmental**
21 **Analysis When It Approved the 2012 MOU**

22 This Cause of Action is substantially the same as the Second and Third Causes of Action
23 and therefore, this Court incorporates its findings from the Second and Third Causes of Action
24 here. Because SMWD’s approval of the 2012 MOU was not a “project” requiring CEQA review,
25 SMWD did not improperly defer environmental analysis. Therefore, the Court finds for
26 Respondents and against Tetra on the Fourth Cause of Action.
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5. Fifth Cause of Action: The MOU Did Not Improperly Amend the County's Groundwater Management Ordinance Nor Did It Violate the Ordinance

The Ordinance does not require that the 2012 MOU and GMMMP be approved in any particular order, as the plain language of the Ordinance includes no such requirement. 122:11314 (Ord. § 33.06552(b)). Therefore, approval of the 2012 MOU before consideration of the GMMMP, which was still under development, was appropriate and complied with the Ordinance. 2:6 (MOU §3(a)&(b)); 3:23-25, 39. Further, the 2012 MOU fulfilled the Ordinance's only two requirements pertaining to groundwater MOUs: first, that the parties share groundwater monitoring information and data and coordinate their efforts to monitor groundwater resources in the County; and second, that the measures identified in any County-approved groundwater management, monitoring and mitigation plan will be fully implemented and enforced. 2:7, 8 (MOU §§3(h), 4(a), 7). The Ordinance does not require the MOU to set *any* substantive parameters for groundwater extraction, provided that it meets the foregoing requirements. 122:11314 (Ord., §33.06552(b)).

The Court finds that the MOU was consistent with the Ordinance. Groundwater extractions are excluded from the Ordinance by well operators that (1) enter into an enforceable MOU with the County; and (2) institute a County-approved GMMMP that is consistent with County Guidelines. 122:11314 (Ord. § 33.06552(b)). The Ordinance unambiguously states that it "shall not apply to any well" that qualifies under the Ordinance's exclusion provisions. *Id.* Though the decision to approve a GMMMP or grant an exclusion was not yet before the County when the 2012 MOU was approved, the MOU was intended to satisfy the first element of the Ordinance's exclusion provisions. 2:4, 7 (MOU Recitals F, H, and § 4(a)). Where a well operator proceeds under an exclusion, the Ordinance's definitions are not controlling. See 2:7 (MOU § 4(a)); 122:11314 (Ord. § 33.06552(b)). The Court is not persuaded that the 2012 MOU is inconsistent with California groundwater law and its concepts of "temporary surplus," "overdraft," and "safe yield." Overdraft and the amount of temporary surplus available in a

