SUPERIOR COURT OF CALIFORNIA
COUNTY OF MARIN

DATE: 02/10/17 TIME: 1:30 P.M. DEPT: E CASE NO: CV1004866

PRESIDING: HON. PAUL HAAKENSON

REPORTER: CLERK: S. HENDRYX

PETITIONER: SALMON PROTECTION AND WATERSHED NETWORK

vs.

RESPONDENT: COUNTY OF MARIN, ET AL

NATURE OF PROCEEDINGS: NOTICE OF MOTION – AND MOTION FOR INJUNCTIVE RELIEF [PETR] SALMON PROTECTION AND WATERSHED NETWORK

RULING

Petitioner Salmon Protection and Watershed Network's (SPAWN) second request for injunctive relief pending the County's completion of the SEIR's cumulative impact analysis of the San Geronimo watershed portion of the 2007 County Wide Plan, is denied. (Code Civ. Proc. § 526(a).)

Citing changed conditions since the Court of Appeal decision overturning the issuance of an injunction similar to that requested here, Petitioner again requests this court to issue an order enjoining the County "from approving and granting approval for any application for development on any parcel located . . . within the Stream Conservation Area . . . in the San Geronimo Valley" pending certification of the required SEIR.

Petitioner relies on the County's approval of a permit to build a residence upslope from the San Geronimo Creek in Woodacre (the Murray Project) as an example of new conditions occurring since the Court of Appeal's decision. The Murray Project is the subject of a separate CEQA petition for Writ of Mandate seeking declaratory and injunctive relief brought by Turtle Island Restoration Network, the parent organization of Petitioner SPAWN. (Case No. 1603455, filed 9/21/2016.

Based on the cited evidence of ongoing proceedings and potential proceedings arising out of the Stream Conservation Area (SCA), Petitioner asserts that an injunction "is necessary to prevent a multiplicity of proceedings" (Code Civ. Proc. § 526 (b)(2)). Petitioner argues that denying an injunction would encourage costly and time-consuming piecemeal challenges to each permit approval, resulting in numerous individual actions that would clog the courts.

(MPA p. 12) Indeed potential ongoing litigation out of the SCA is a fair consideration for the court. However, such consideration does not overcome the compelling reasons to deny injunctive relief.

First, the property owners of subsequent projects referred to in by Petitioner (and the owners of other yet unknown projects) are not included here and are unable to state the harm or hardship they would suffer upon the issuance of an injunction. Such consideration was cited by the Court of Appeal as a basis for overturning the prior injunction. The San Geronimo Valley property owners' lack of "opportunity to address the impact and advisability of such an injunction," was one reason the Court of Appeal cited for reversing this court's grant of similar injunctive relief. There is no change as to such consideration here.

Secondly, Petitioner has not shown the likelihood of irreparable harm. The 1994 CWP remains in effect and the County's review of development permit applications under that General Plan must also proceed pursuant to CEQA standards. Refusal in enjoin future development approvals would not result in damage to the environment.

Petitioners are not without a remedy since they can and have challenged the County's compliance with CEQA in approving specific projects within the San Geronimo Valley SCA, as they are currently doing in the related action, *Turtle Island Restoration Network v. County of Marin, et al.* (Civ. No. 1603455)(the Murray action). In that action, the property owners, James and Matthew Murray, have been joined as real parties in interest.

Third, Civil Code section 3423, subdivision (d), and Code of Civil Procedure section 526, subdivision (b)(4), provide that an injunction cannot be granted to prevent the execution of a public statute, by officers of the law, for the public benefit. Such provisions do not bar judicial action where the invalidity of the statute is shown. (*Financial Indem. Co. v. Superior* Court (1955) 45 Cal.2d 395, 402; *Conover v. Hall* (1974) 11 Cal.3d 842, 850.) (*National Shooting Sports Foundation, Inc. v. State* (2016) 6 Cal.App.5th 298, 306–07.) Here, the County's review of development applications seems to involve the execution of a public statute by officers of the law, for the public benefit. The County can lawfully review development applications under the operative 1994 CWP general plan in compliance with CEQA (as noted by the District Court of Appeal). Thus, an injunction as requested by Petitioner -- to enjoin all applications pending completion of the SEIR without any suggestion that the 1994 CWP is invalid --, seems to be prohibited.

Finally, the court recognizes Petitioner's frustration prompting the instant request for injunctive relief. The time to complete the mandated SEIR has been significant. Petitioner is undoubtedly seeking the court's assistance in expediting the County's compliance. While the issuance of an injunction as requested here is not the legally appropriate means to that end, the court shares Petitioner's desire to expedite the completion of the SEIR. To that end, the court will more strenuously encourage the County to expedite the process and will make more detailed inquiry as to the cause of delay. Appearances are required on February 10, 2017 at 1:30 PM for Status Report regarding compliance with the Writ.

Parties must comply with Marin County Superior Court Local Rules, Rule 1.10(B) to contest the tentative decision. In the event that no party requests oral argument in accordance with Rule 1.10(B), the prevailing party shall prepare an order consistent with the announced ruling as required by Marin County Superior Court Local Rules, Rule 1.11.