



*In case you missed it...*

## **AEP's Legal and Legislative Update**

### **California Supreme Court rules regarding greenhouse gas analyses in Center for Biological Diversity v. Department of Fish & Wildlife**

On November 30, 2015, the California Supreme Court issued its ruling in *Center for Biological Diversity v. Department of Fish & Wildlife*, Sup Ct. Case No. S217763 (the decision is available [here](#)). The case involved a challenge to an EIR that assessed impacts of a conservation plan and other environmental plans and permits for the Newhall Ranch Specific Plan project, a large, mixed-use development. The Supreme Court found:

1. While using greenhouse gas significance criteria of whether the project was consistent with statewide emission reduction goals is acceptable, the EIR's conclusions of no significant impact were not supported by "reasoned explanation based on substantial evidence."
2. Mitigation measures calling for the capture and relocation of the Stickleback, a fully protected species under the California Fish & Game Code, themselves constituted a "taking" prohibited under the Code.
3. Under the facts at hand, Plaintiff's exhausted their administrative remedies by raising certain claims after the public comment period but during an optional comment period on the final EIR.

For additional commentary and analysis of the Supreme Court's conclusions, we note the following articles:

- Best Best & Krieger, LLP, [California Supreme Court Decision Regarding Newhall Ranch Development Could Significantly Impact Developments](#) (December 2, 2015)

## **Stay tuned! California Supreme Court ruling expected to resolve "CEQA in reverse" dispute**

The California Supreme Court's decision regarding *California Building Industry Association v. Bay Area Air Quality Management District*, Sup. Ct. Case No. S213478 is expected on or before January 2, 2016. There, the Supreme Court is expected to answer under what circumstances, if any, does CEQA require an analysis of how existing environmental conditions will impact future residents or users (receptors) of a proposed project. This question is commonly referred to as "CEQA in reverse" due to the established contention that CEQA should examine impacts of projects on the environment, and not the impacts of the environment on the project (or users/occupants thereof).

The case was granted review by the Supreme Court after the court of appeal in the first district rejected a CEQA challenge to a local air district's published significance thresholds for assessing air pollution impacts. The air district had first adopted the thresholds in 1999 to provide guidance to Bay Area public agencies in their analysis of air pollution impacts. In 2009, the district proposed changes to the thresholds in its revised "CEQA Air Quality Guidelines" to address new information about the effects of small particulates, toxic air contaminants, and greenhouse gases. The changes prompted concerns among housing advocacy groups and public agencies that application of the proposed thresholds would hamper development of housing in urban infill locations.

The court of appeal declined to address the claim that the new thresholds were contrary to established case law by treating impacts of existing air pollution on a proposed project's occupants as an impact on the environment, prompting the review by the California Supreme Court.

## **OPR releases discussion draft of Appendix G changes in response to AB 52**

California's Office of Planning and Research (OPR) released a discussion draft of proposed changes to Appendix G of the CEQA Guidelines checklist incorporating tribal cultural resources as required by [Assembly Bill 52](#) (Gatto, 2014). The discussion draft is available [here](#). A public workshop regarding the proposed changes will be held on December 11, 2015 from 2:00 – 5:00 PM at the CalEPA Building in the 2nd Floor Coastal Hearing Room (1001 I Street, Sacramento, CA 95812). Comments may be submitted to OPR at [CEQA.Guidelines@resources.ca.gov](mailto:CEQA.Guidelines@resources.ca.gov) by 5:00 PM on Friday, December 18, 2015. Please see the OPR website [here](#) for additional details.

We strive to keep our members with up-to-date information on matters important to environmental professionals. The latest information from the Legal and Legislative Review Committee can always be viewed on AEP's [CEQA and Public Policy Program webpage](#).

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