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Superior Court of California
County of Sacramento
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T. Guzman, Deputy

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

Sierra Club, et al.

Petitioners/Plaintiffs,

vs.

California Department of Water Resources, and Does 1-20,

Respondents/Defendants.

Department Number: 38

Case Number: 34-2020-80003517

FINAL STATEMENT OF DECISION

The California Department of Water Resources' ("DWR") validation action – titled *California Department of Water Resources v. All Persons Interested in the Matter of the Authorization of Delta Program Revenue Bonds, etc.*, Case No. 34-2020-80003517 (formerly Case No. 34-2020-00283112) ("Validation Action") – came on regularly for trial from May 15, 2023, through May 18, 2023, in Department 38 of the above-entitled court, the Honorable Kenneth C. Mennemeier, Jr., presiding.

The parties appeared through counsel, as stated on the record. Following consideration of the evidence admitted, together with the briefing (including post-trial briefing) and arguments of counsel, the Court issued its Tentative Decision on August 25, 2023.[1] The Tentative Decision stated that it was the Court's proposed statement of decision, subject to a party's objection under California Rules of Court, rule 3.1590(g), and that responses to any objections could be filed and served no later than 10 days after the objections are served. (Tentative Decision at p. 31.)

DWR served objections to the Tentative Decision on September 18, 2023. Interested Person Defendants the Metropolitan Water District of Southern California, San Bernardino Valley Municipal Water District, Santa Clarita Valley Water Agency, Coachella Valley Water District, and Mojave Water Agency filed a joinder to DWR's objections on September 19, 2023. Multiple defendants filed an omnibus response to DWR's objections on September 28, 2023.

The Court, having reviewed and considered DWR's objections and the omnibus response, now issues this Final Statement of Decision.

[1] The Tentative Decision was served on August 28, 2023.

I. FACTUAL AND PROCEDURAL HISTORY

The following provides a background concerning the issues the Court is tasked to resolve. Many of the relevant facts in this case are best understood in the context of the legal issues presented; such facts are set forth in the Court's discussion.

A. Introduction

The Validation Action concerns three bond resolutions DWR adopted on August 6, 2020. Those resolutions purport to authorize revenue bond financing as the mechanism by which DWR can finance a combination of expenses it labels as the "Delta Program." (Complaint for Validation (filed 8/12/20), ¶ 1.) DWR defines the term the "Delta Program" in a resolution titled "Delta Program Revenue Bond General Bond Resolution" ("General Resolution"), as follows:

> Delta Program means the environmental review, planning, engineering, design, and, if and when [DWR] determines to be appropriate, acquisition, construction, operation and maintenance of facilities for the conveyance of water in, about and through the Sacramento-San Joaquin Delta, subject to such further specification thereof as [DWR] in its discretion may adopt. Delta Program facilities may include, but are not limited to, water diversion intake structures located on the Sacramento River and a tunnel to convey water to Banks Pumping Plant.

(DWR's Trial Ex. 2, at DWR14[2].)

The design and physical characteristics of any future Delta conveyance facility are not yet determined; DWR has not approved a project for implementation. (Complaint, ¶ 28.) On January 15, 2020, DWR issued a Notice of Preparation, initiating the environmental review process under the California Environmental Quality Act ("CEQA") for a proposed Delta conveyance known as the "Delta Conveyance Project" or "DCP." (Complaint, ¶ 26; SJC Trial Ex. 7.[3]) The CEQA review process for the DCP is ongoing. (See DWR's Opening Br. 28, fn. 14.)[4]

DWR brings the Validation Action under Code of Civil Procedure ("CCP") section 860 and Government Code ("GC") section 17700 to obtain "judicial confirmation of its authority to issue revenue bonds to finance the Delta Program ('Delta Program Revenue Bonds')." (Complaint, ¶ 4.) DWR alleges in its complaint that "the legal validity of th[e proposed] revenue

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[2] For ease of reference, the zeros preceding the cited page number are omitted from all references to DWR's trial exhibits. For example, page number DWR0000014 is cited as DWR14.

[3] The trial exhibits designated with the initials "SJC" were submitted by Defendants County of San Joaquin, County of Contra Costa, Contra Costa County Water Agency, County of Solano, County of Yolo, County of Butte, County of Plumas, and Plumas County Flood Control and Water Conservation District (the "Public Agencies").

[4] On December 21, 2023, DWR announced that it had approved the Delta Conveyance Project and certified the Environmental Impact Report (EIR) required by CEQA.

bond financing mechanism for the Delta Program is the sole subject of th[e] validation action." (Complaint, ¶ 29.)

B. History of California Water Development and Distribution

Much of the factual background concerning California's water development history is undisputed and is taken from DWR's opening trial brief:

> The history of California is famously "written on its waters." (*State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 687 (*SWRCB Cases*).) Nearly 40 years ago, former Presiding Justice John T. Racanelli wrote an opinion that is often referred to simply as "the Racanelli decision" setting forth a good deal of the relevant background. (*United States v. State Water Resources Control Bd.* (1986) 182 Cal.App.3d 82 (*Racanelli*).) It is worth excerpting at length, as the Third District Court of Appeal did in the *SWRCB Cases*. All water use—and hence all economic development—in the state is constrained by "seasonal and geographic maldistribution" of precipitation:
>
>> The history of California water development and distribution is a story of supply and demand. California's critical water problem is not a lack of water but uneven distribution of water resources. The state is endowed with flowing rivers, countless lakes and streams and abundant winter rains and snowfall. But while over 70 percent of the stream flow lies north of Sacramento, nearly 80 percent of the demand for water supplies originates in the southern regions of the state. And because of the semi-arid climate, rainfall is at a seasonal low during the summer and fall when the demand for water is greatest; conversely, rainfall and runoff from the northern snowpacks occur in late winter and early spring when user demand is lower. [Citation.]
>
> (*Racanelli, supra*, 182 Cal.App.3d at p. 98.)
>
> To address this maldistribution, the Legislature conceived of a statewide system of dams and aqueducts, and the [Central Valley Project Act ("CVPA")] was among the results:
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>> In 1933 the California Legislature adopted a plan for transfer of surplus water from the Sacramento River and its northern tributaries to the water-deficient areas of the San Joaquin Valley through construction of a "Central Valley Project": Shasta Dam, the central feature, to store and regulate waters of the Sacramento River; Friant Dam, on the western edge of the Sierra, to divert water from the San Joaquin River to southern regions of the valley; and various other units designed to transfer water from the Sacramento River system to the San Joaquin Valley. (Wat. Code, § 11100 *et seq.*)

(*Racanelli, supra*, 182 Cal.App.3d at p. [98-99].) However, in the midst of the Great Depression, the state was unable to market revenue bonds to fund construction of the Central Valley Project. The federal government took over aspects of the Central Valley Project as a public works project, and its construction began in 1937. [Those facilities are now a major component of the federal "Central Valley Project" owned and operated by the U.S. Bureau of Reclamation.] (*Ibid.*)[[5]][[6]]

Following World War II, California dove back into statewide water planning. In 1951, the Legislature authorized the Feather River and Sacramento-San Joaquin Delta Diversion Projects under the [CVPA], and in particular, [CVPA] section 11260. . . . Despite substantial activity and attention, however, construction of water facilities by the state did not begin until the early 1960's with the passage of the California Water Resources Development Bond Act (commonly referred to as the Burns-Porter Act, Wat. Code, § 12930 *et seq*.). (*In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1154-1155; see also *Warne* [*v. Harkness* (1963)] 60 Cal.2d [579,] 582-583.)

Thereafter, construction of state water system facilities proceeded, resulting in an extensive network of [DWR]-owned and operated facilities, commonly referred to as the State Water Project. Those facilities include the Oroville dam and reservoir storing water on the Feather River (and generating power when the water is released). From there, releases eventually flow into the Sacramento River and continue through the Delta to the Clifton Court Forebay, where some enters the California Aqueduct and Delta Mendota Canal for delivery and use, and more enters the South Bay Aqueduct from Bethany Reservoir for delivery and use in coastal and southern California. [Citation.] Today, the State Water Project consists of facilities authorized by the Burns-Porter Act, the [CVPA], or in some cases both, and serves as a supplemental water supply for approximately two-thirds of all Californians. (*Ibid.*; *Metropolitan Water Dist. of Southern California v. Imperial Irr. Dist.* (2000) 80 Cal.App.4th 1403, 1411, fn. 11; see also *SWRCB Cases, supra*, 136 Cal.App.4th at p. 693.)

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[5] See also *Westlands Water Dist. v. U.S.* (E.D. Cal. 2001) 153 F.Supp.2d 1133, 1142 [discussing the federal government's financing of the Central Valley Project because of the "pervasive unfavorable economic conditions during the Great Depression"].

[6] The Court notes its awareness of the two different meanings people attribute to the term "Central Valley Project," i.e., the subject of the CVPA (see Water Code, § 11104 [defining "project" as used in the CVPA as the "Central Valley Project"]; § 11125 [designating the system of works authorized by the CVPA as the "Central Valley Project"]) versus the federally funded project owned and operated by the U.S. Bureau of Reclamation, and the confusion that may be caused therefrom.

(DWR's Opening Br.[7] 15:18-17:14 [fns. omitted]; see also *Warne v. Harkness, supra,* at pp. 583-585 [discussing what comprises the State Water Project and the interaction between the CVPA and the Burns-Porter Act].)

C. The Bond Resolutions

DWR adopted the General Resolution and the First and Second Supplemental Resolutions on August 6, 2020 (collectively "Bond Resolutions"), thereby authorizing the issuance of revenue bonds intended to fund the Delta Program, as defined in the General Resolution. (DWR's Trial Exs. 2, 3, 4.)

The General Resolution establishes the overarching terms and conditions for each series of bonds and defines what bond proceeds may be used for, if and when the bonds are sold. The General Resolution authorizes the issuance of bonds "for the purpose of obtaining funds to pay Delta Program Capital Costs and to refund [DWR's] obligations . . . issued for such purpose." (DWR's Trial Ex. 2, at DWR19.) The General Resolution defines "Delta Program Capital Costs" as:

> the cost and expense of environmental review, planning, engineering, design, and, if and when determined by [DWR] to be appropriate, acquisition and construction of units for the conveyance of water in and about the Sacramento-San Joaquin Delta.

(*Id.* at DWR14.) Bonds issued under the General Resolution are designated generally as DWR's "Delta Program Revenue Bonds." (DWR's Trial Ex. 2, at DWR19.)

The First and Second Supplemental Resolutions authorize the issuance of two series of Delta Program Revenue Bonds, the Series A Bonds and the Series B Bonds, for particular purposes. (DWR's Trial Exs. 3, 4.) The First Supplemental Resolution (Series A Resolution) authorizes the issuance of Series A Bonds solely to pay for or reimburse Delta Program Planning Costs, which are a subset of Delta Program Capital Costs. (DWR's Trial Ex. 3, at DWR55-56.) The General Resolution defines "Delta Program Planning Costs" as:

> [DWR's] costs of environmental review, planning, engineering and design of the Delta Program and all other Delta Program Capital Costs incurred prior to the commencement of the acquisition or construction of Delta Program facilities.

(DWR's Trial Ex. 2, at DWR15.) By definition, Series A Bond proceeds can only be spent on pre-construction costs.

The Second Supplemental Resolution (Series B Resolution) authorizes the issuance of Series B Bonds to pay for Delta Program Capital Costs, which would include acquisition and construction costs of Delta Program facilities after certain conditions are met. (DWR's Trial Ex.

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[7] DWR's opening brief is joined by Interested Person Defendants the Metropolitan Water District of Southern California, San Bernardino Valley Municipal Water District, Santa Clarita Valley Water Agency, Coachella Valley Water District, and Mojave Water Agency (collectively referred to as "Supporting Responding Parties" and/or "Metropolitan Water District"). (Metropolitan Water District's Joinder to DWR's Opening Br., Jan. 13, 2023.)

4, at DWR72-73.) For example, Series B Bonds "may not be issued, unless and until, if ever, [DWR] completes environmental review under [CEQA], for the acquisition, construction, operation and maintenance of new facilities for the conveyance of water in and about the Sacramento-San Joaquin Delta." (*Id.* at DWR72.)

D. Procedural History

DWR filed its complaint in the Validation Action on August 6, 2020 ("Validation Complaint"), the same day it adopted the Bond Resolutions. Several parties filed answers asserting various defenses.

On October 28, 2020, the Sierra Club and other parties (collectively "the Sierra Club") filed a petition for writ of mandate alleging that DWR violated CEQA by adopting the Bond Resolutions ("CEQA Writ"). The Court consolidated the Validation Action and CEQA Writ on February 26, 2021, and designated the CEQA Writ as the lead case. (Min. Order in Case No. 34-2020-00283112, Feb. 26, 2021.) The Presiding Judge also assigned the consolidated cases to Judge Laurie M. Earl for all purposes.

Cross-motions for summary judgment in the CEQA Writ and for summary adjudication on CEQA-related affirmative defenses in the Validation Action were heard by Judge Earl on December 17, 2021. Judge Earl denied the motions filed by the CEQA Writ petitioners and the parties raising CEQA-related defenses in the Validation Action, and granted DWR's cross-motions in an order issued January 4, 2022. Judge Earl's ruling effectively terminated the writ proceeding and CEQA-based affirmative defenses in the Validation Action.

Judge Earl was subsequently elevated to the Third District Court of Appeal, and on April 18, 2022, the consolidated cases were reassigned to Judge Kenneth C. Mennemeier for all purposes. (Min. Order, Apr. 18, 2022.)

On August 23, 2022, the Sierra Club filed a motion for new trial and for reconsideration of Judge Earl's January 4, 2022 ruling. On August 25, 2022, Defendants North Coast Rivers Alliance, Winnemem Wintu Tribe, Institute for Fisheries Resources, Pacific Coast Federation of Fishermen's Associations, and San Francisco Crab Boat Owners Association (collectively "NCRA") filed a motion for summary judgment on their defenses relating to the Delta Reform Act and the Public Trust Doctrine. Also on August 25, 2022, DWR filed a motion for summary adjudication as to the Delta Reform Act and Public Trust Doctrine defenses asserted by NCRA, and Defendant Howard Jarvis Taxpayers Association ("HJTA") filed a motion for summary adjudication regarding whether a specific claim for damages was presented within the scope of the consolidated cases.

The Court denied the Sierra Club's motion for a new trial on November 7, 2022. (Order, Nov. 7, 2022.) On November 21, 2022, the Court granted the Sierra Club's motion for reconsideration but affirmed Judge Earl's order in DWR's favor on the CEQA cross-motions. Also on November 21, 2022, the Court denied HJTA's motion for summary adjudication. (Orders, Nov. 21, 2022.) On December 9, 2022, the Court ruled on NCRA and DWR's cross-motions concerning the Delta Reform Act and the Public Trust Doctrine, granting DWR's motion and denying NCRA's. (Order, Dec. 9, 2022.)

The Court subsequently ordered a briefing and trial schedule for the Validation Action. Trial was held from May 15, 2023 through May 18, 2023, and the Court ordered post-trial supplemental briefing on several issues, which concluded in June 2023.

II. DISCUSSION

A. Standard of Review

A uniform standard of review for validation proceedings brought under CCP sections 860, *et seq*., does not exist. The applicable standard(s) of review depend upon the issues being litigated.

"If a question of law is presented, [the court] undertake[s] a de novo review . . . , including where . . . the question involves the interpretation of statutory or regulatory provisions." (*Dep't of Corrections & Rehab. v. State Personnel Bd.* (2015) 238 Cal.App.4th 710, 716-717.) However, courts give "'variable deference' to agency legal interpretations of statutes and other texts that lie within the agency's administrative jurisdiction." (Asimow, et al., Cal. Practice Guide: Administrative Law (The Rutter Group 2023 update) ¶ 17:14.) "'Variable deference' means that . . . courts often decide to follow the agency's interpretation of an ambiguous text, but the degree of deference that a particular interpretation is entitled to receive is contextual and depends on factors specific to the particular case." (*Ibid.* [emphasis omitted]; see *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7-8; see also *Michaels v. State Personnel Bd.* (2022) 76 Cal.App.5th 560, 567-568 ["[C]ourts show deference to an administrative body's reasonable construction of relevant statutory provisions within its field of expertise."].) No deference is given to an agency's interpretation of unambiguous text, however. (Asimow, *supra,* at ¶ 17:41 [citing *Bonnell v. Medical Bd. of Calif.* (2003) 31 Cal.4th 1255, 1264-1265 and other cases].)

Courts "exercise highly deferential review of the discretionary elements of state or local quasi-legislative decisions." (Asimow, et al., *supra*, at ¶ 17:777; *San Francisco Fire Fighters Local 798 v. City & Cnty. of San Francisco* (2006) 38 Cal.4th 653, 667.) This deferential standard of review "has both a constitutional and an institutional basis." (*San Francisco Fire Fighters Local 798, supra,* at p. 667.) "'[C]ourts exercise limited review of legislative acts by administrative bodies out of deference to the separation of powers between the Legislature and the judiciary, to the legislative delegation of administrative authority to the agency, and to the presumed expertise of the agency within its scope of authority.' [Citation.]" (*Ibid.*; see also *Calif. High-Speed Rail Authority v. Super. Ct.* (2014) 228 Cal.App.4th 676, 699.)

> Although administrative actions enjoy a presumption of regularity, this presumption does not immunize agency action from effective judicial review. A reviewing court will ask three questions: first, did the agency act within the scope of its delegated authority; second, did the agency employ fair procedures; and third, was the agency action reasonable. Under the third inquiry, a reviewing court will not substitute its independent policy judgment for that of the agency . . . . A court will uphold the agency action unless the action is arbitrary, capricious, or lacking in evidentiary support. A court must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.

(*Cal. Hotel & Motel Ass'n v. Indus. Welfare Comm'n* (1979) 25 Cal.3d 200, 212-213 [fns. omitted]; accord *San Francisco Fire Fighters Local 798, supra,* at pp. 667-668.)

B. Request for Judicial Notice

Defendants Tulare Lake Basin Water Storage District, Oak Flat Water District, and the County of Kings (collectively "Tulare") and Defendants Wheeler Ridge-Maricopa Water Storage District, Semitropic Water Storage District, Berrenda Mesa Water District, Lost Hills Water District, West Kem Water District, Buena Vista Water Storage District, Henry Miller Water District, Cawelo Water District, Kern Delta Water District, Rosedale-Rio Bravo Water Storage District, and Tehachapi-Cummings County Water District (collectively "KCWA Member Units") each ask the Court to take judicial notice of several documents.

Those requests are granted. The Court notes that in taking judicial notice of the subject documents, it gives them the weight they deserve (if any), similar to the Court's approach concerning the parties' trial exhibits, as stated on the record at trial.

C. Purpose of a Validation Action and Whether DWR's Bond Resolutions are a Proper Matter for Validation

CCP sections 860, *et seq*. are commonly known as the "Validation Statute." A validation action is a unique proceeding used to secure a prompt judicial determination that certain measures by a public agency, such as the issuance of bonds and contracts involving financing and financial obligations, are valid, legal, and binding. (*Friedland v. City of Long Beach* (1998) 62 Cal.App.4th 835, 842-43.) "Validation actions embody a strong public policy to facilitate a public agency's ability to finance infrastructure for the public good. Recognizing that litigation often impairs a public agency's ability to sell bonds on the capital market, the validation statutes place great importance on the need for a speedy and single dispositive final judgment." (*California High-Speed Rail Authority, supra,* 228 Cal.App.4th at p. 697.) "[T]he application of the validation statutes is not contingent on whether the bonds are ultimately issued at the end of the process. The applicability of the validation statutes is determined at the beginning of the financing process when the contracts . . . required to implement the process are approved." (*California Commerce Casino v. Schwarzenegger* (2007) 146 Cal.App.4th 1406, 1431.) The Validation Statute "must [be] construe[d] so as to effectuate [its] purpose." (*Ibid.*)

CCP section 860 provides: "A public agency may upon the existence of any matter which under any other law is authorized to be determined pursuant to this chapter, and for 60 days thereafter, bring an action . . . to determine the validity of such matter." "Determining whether the [V]alidation [S]tatute[] appl[ies] to a particular agency action is an exercise in cross-referencing." (*Coachella Valley Water Dist. v. Super. Ct.* (2021) 61 Cal.App.5th 755, 768.) Because "their procedures apply to 'any matter which under any other law is authorized to be determined pursuant to [the statute] [citations]," the Court must "look to other statutes to determine the scope of public agency actions that are subject to validation [thereunder]." (*Ibid.*)

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In this case, Government Code section 17700 is the "other law" which authorizes DWR to bring its validation action. Section 17700 provides, in pertinent part:

> (a) The state or any . . . agency . . . may bring an action to determine the validity of its bonds, warrants, contracts, obligations, or evidences of indebtedness pursuant to [the Validation Statute].
>
> (b)
>
> > (1) Any state . . . agency . . . that issues bonds, notes, or other obligations the proceeds of which are to be used to purchase, or to make loans evidenced or secured by, the bonds, warrants, contracts, obligations, or evidences of indebtedness of one or more local agencies, may bring an action to determine the validity of the bonds, warrants, contracts, obligations, or evidences of indebtedness of those local agencies to be purchased by, or used to evidence or secure loans by, the state board, department, agency, or authority pursuant to [the Validation Statute].

A validation action is an *in rem* proceeding; thus, it "operates against property, as distinct from an injunction that operates against persons." (*Friedland, supra,* at p. 843.) "As an *in rem* proceeding, a validation action differs from traditional actions challenging a public agency decision; its effect binds the agency and all other persons." (*Ibid.*; accord *Coachella Valley Water Dist., supra,* at p. 768.) Here, the res DWR seeks to validate is its proposed revenue bond financing mechanism for the "Delta Program" as defined in the General Bond Resolution, i.e., the General Bond Resolution, the First and Second Supplemental Bond Resolutions, and the Series A and B Bonds.

The Court finds, and no party disputes, that the referenced bond financing mechanism is the proper subject of a validation action pursuant to Code of Civil Procedure sections 860, *et seq*., and Government Code section 17700.

D. Whether this Validation Action is Properly Before the Court (Existence of the Res, Venue, and Jurisdiction)

The Validation Statute establishes certain procedural steps by which the plaintiff brings the res "into existence" to be validated and establishes jurisdiction in the Court. The Court discusses these requirements in turn.

1) Existence of the Res

For purposes of the Validation Statute, "bonds, . . . contracts, . . . and evidences of indebtedness *shall be deemed to be in existence upon their authorization*." (Code Civ. Proc., § 864 [italics added].) "Bonds . . . [are] deemed authorized as of the date of adoption by the governing body of the public agency of a resolution or ordinance authorizing their issuance, and contracts [are] deemed authorized as of the date of adoption by the governing body of the public agency of a resolution or ordinance approving the contract and authorizing its execution." (*Ibid.*)

The Court finds that the following res "exists" for purposes of the Validation Statute: the General Bond Resolution, the First and Second Supplemental Resolutions, and the Delta Program Revenue Bonds, including the Series A and Series B Bonds. On August 6, 2020, DWR adopted the General Bond Resolution and the First and Second Supplemental Resolutions, which authorized the issuance of the referenced bonds. (See DWR's Opening Br. 51:18-52:9; DWR's Trial Exs. 1-4.)

2) Venue

The Validation Statute provides that the proper venue for a validation action is "the superior court of the county in which the principal office of the public agency is located." (Code Civ. Proc., § 860.) DWR's principal office is in Sacramento County (see authority cited in DWR's Opening Br. 52:12-15). Therefore, the Validation Action is properly venued in Sacramento County.

3) Notice/Jurisdiction

The form of the summons and the manner of service in a validation action are statutorily prescribed. (Code Civ. Proc., §§ 831, 831.1.) Completion of the required notice establishes jurisdiction over all interested parties. (Code Civ. Proc., § 862.)

CCP section 861 prescribes the proper *manner* of service. It states:

> Jurisdiction of all interested parties may be had by publication of summons [once a week for three consecutive weeks] in a newspaper of general circulation designated by the court, published in the county where the action is pending and whenever possible within the boundaries of the public agency, and in such other counties as may be ordered by the court, and *if there be no such newspaper in any such county or counties then in some adjoining county.* In addition, prior to completion of such publication, the agency shall, to the extent which the court finds reasonably practicable, give notice of the pendency of the proceeding by mail or other means ordered by the court.

(Italics added.)

On August 27, 2020, the Court (the Honorable Christopher Krueger, presiding) approved DWR's proposed Summons in the Validation Action ("Summons") and ordered DWR to serve it by:

- Publishing the Summons in a newspaper of general circulation in each of California's 58 counties, once each week for three consecutive weeks, pursuant to Government Code section 6063 and CCP sections 861 and 861.1;
- Posting a copy of the Summons and Validation Complaint on DWR's website no later than the date of first publication of Summons; and

- Emailing or mailing a Court-Approved Notice to certain persons and entities no later than 20 days after the first publication of Summons.

(Order for Publication of Summons in Validation Action, Aug. 27, 2020 ("Order for Publication").)

DWR contends it "complied with the [Order for Publication] and has filed proof of compliance with the court[,]" citing its Proofs of Publication (which attach affidavits from each publishing newspaper) and the Declaration Re Mailing and Emailing Notice and Publication of Summons in Validation Action. (DWR's Opening Br. 55:6-13.) DWR filed both of these documents on January 10, 2023. In paragraph 8 of the referenced Declaration, Michael Weed avers:

> [DWR] complied with the Order of Publication:
>
> a. [DWR] caused the Summons to be published as directed in the Order for Publication, with publication for Lassen County and Plumas County occurring in the adjoining counties. Due to COVID-19, the publisher of the newspapers of general circulation in those counties (same publisher) was not publishing their newspapers during the applicable time period. As [CCP] Section 861 directs in such a situation, [DWR] published the Summons in the counties that adjoin Lassen County (Modoc and Shasta counties) and Plumas County (Butte, Sierra and Tehama counties), as well as in all other counties in California. (See Proofs of Publication of Summons in Validation Action, filed January [10], 2023.)
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> b. On August 7, 2020, the day after filing the validation action, [DWR] posted a copy of the Summons and validation complaint on its website.
>
> c. On September 1, 2020, [DWR] emailed the Approved Notice to the parties to the Water Supply Contracts, and persons and entities that provided email addresses in the NOP Interested Parties List and the lists maintained by [DWR] related to the [California Water Fix ("CWF")] and [Bay Delta Conservation Plan ("BDCP")], which totaled approximately 8,000 emails.
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> d. On September 10, 2020, [DWR] mailed a copy of the Approved Notice to the parties to the Water Supply Contracts, and persons and entities that provided postal addresses in the NOP Interested Parties List and the lists maintained by [DWR] related to the CWF and BDCP, which totaled more than 14,500 letters.

(Decl. re Mailing & Emailing Notice and Publication of Summons in Validation Action, Jan. 1, 2023.)

Defendant Clarksburg Fire Protection District ("CFPD") rejoins in its opening brief that the Court lacks jurisdiction over the Validation Action because DWR failed to publish the Summons in Lassen and Plumas Counties in accordance with the Court's August 27, 2020 Order for Publication. CFPD argues:

> [O]n its own initiative, without permission from the court, DWR did not publish notice of the Summons in the Counties [o]f Lassen and Plumas. DWR made no[] attempt to substitute any form of notice, much less reasonable notice, to interested parties located in Lassen and Plumas Counties.
>
> DWR failed to obtain the permission of the Court to deviate from the Court's Order on Publication, by asking the Court to forego[] service by publication in Lassen and Plumas Counties. In doing so, DWR caused the Court to lose jurisdiction of the Validation Action.

(CFPD's Opening Br. 4:21-5:4.)

DWR replies:

> CFPD asserts that [DWR] did not obtain the Court's "permission" to publish the summons in adjoining counties. [Citation.] [DWR] did not need to seek "permission" to publish the summons in the counties adjoining Lassen and Plumas counties because Section 861 and the Order for Publication already addressed the circumstance [DWR] confronted and directed [DWR] to do exactly as it did. [Citations.]
>
> Next, CFPD asserts that [DWR] made "no attempt to show that it used alternative means to give notice to potential interested persons in Lassen and Plumas Counties by alternate means." [Citation.] Again, no "alternate means" were needed because [DWR] complied with the Order for Publication and the Validation Statute by publishing the summons in adjoining counties.

(DWR's Reply Br. 84:19-85:5, see also *id.* at 83:5-9, 83:16-11, 84:12-16.)

In CFPD's reply brief, it asserts for the first time that DWR "further failed to properly serve summons as required by Section 861, and as ordered by the Court[,]" because the evidence submitted by DWR for its purported publication in Alpine County fails to meet the requirements for Proof of Publication. (CFPD's Reply Br. 4:4-6, 4:20-22.) Specifically, CFPD states:

> The evidence submitted by DWR for purported publication in the County of Alpine fails:
>
> 1. To comply with Code of Civil Procedure § 2015.5 inasmuch as the statement is not a declaration,
>
> 2. Failed to state the dates of the purported publication, and
>
> 3. Failed to state the newspaper (Tahoe Daily Tribune; published in the State of Nevada) was any kind of a newspaper of general circulation in the County of Alpine.
>
> Having failed to show service by publication in the County of Alpine, DWR has further failed to properly serve summons as required by Section 861,

> and as ordered by the Court. The Court, therefore, lacks jurisdiction of the Validation Complaint.

(CFPD's Reply Br. 4:12-22.)

Since CFPD challenged the sufficiency of DWR's proof of publication as to Alpine County for the first time in its reply brief, on June 8, 2023, the Court asked DWR to file a supplemental brief concerning its service by publication in Alpine County. (Minute Order, June 8, 2023.) The Court also allowed CFPD to file a supplemental responsive brief. (*Ibid.*; see also Minute Order, June 23, 2023 [extending time for CFPD to file a responsive supplemental brief].)

In its June 8, 2023 Minute Order asking for supplemental briefing, the Court noted that the Alpine County Superior Court website states that Alpine County does not have a weekly adjudicated newspaper of general circulation established within the county, and permitted the parties to address in their supplemental briefs if the Court may take judicial notice of whether Alpine County had a newspaper of general circulation at the time DWR published the Summons in the Validation Action. (Minute Order, June 8, 2023.)

DWR filed a supplemental brief on June 16, 2023, in which it asserts, *inter alia*:

> CFPD misses the mark when it argues that the evidence of publication for Alpine County is defective. Even if the affidavit from the Tahoe Daily Tribune were found to be defective—which it is not—and the Court were to disregard it, the record shows that publication of summons for Alpine County was proven by other means as well. Alpine County did not have a newspaper of general circulation when [DWR] published the Summons . . . . [DWR] published the Summons in every county adjoining Alpine County and filed proof thereof. Publication of summons in any single adjoining county fully satisfies notice requirements when no newspaper of general circulation is available in a county. (Civ. Proc. Code, § 861.) Evidence already in the record proves such publication in all five adjoining counties.

(DWR's Suppl. Br. 3:12-20, June 16, 2023.) DWR asks the Court to take judicial notice of the fact that the County of Alpine did not have an adjudicated newspaper of general circulation at the time it published the Summons in the Validation Action, and cites to archived webpages from the Alpine County website which so state. (*Id.* at 4:18, 5:6-25; see Affidavit of Nathaniel E Frank-White ¶¶ 1-7, Ex. A,[8] attached as Ex. 1 to the Suppl. Decl. of Michael Weed, June 22, 2023.)

CFPD filed a responsive supplemental brief on June 30, 2023 (along with objections to evidence DWR submitted in support of its supplemental brief). In essence, CFPD argues that DWR was required to return to the Court to seek a modification to the Order for Publication to satisfy service by publication in Lassen, Plumas, and Alpine Counties; it could not satisfy its service obligations by publishing in adjoining counties (or otherwise) without permission from the Court. (CFPD's Resp. to DWR's Suppl. Br. 3:15-4:4.) CFPD does not dispute in its response that Alpine County lacked an adjudicated newspaper of general circulation when DWR published the Summons.

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[8] The Court overrules each of CFPD's evidentiary objections to this affidavit. (See CFPD's Objs. to June 15, and June 22, 2023 Decls., at 4:6-7:12, June 30, 2023.)

Here, the Court finds that DWR has shown the Court has jurisdiction over the Validation Action. The Court takes judicial notice of the fact that Alpine County lacked an adjudicated newspaper of general circulation when DWR published the Summons. (Evid. Code, § 452, subd. (h) ["Judicial notice may be taken of . . . [f]acts . . . that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."].) Lassen and Plumas Counties also did not have an adjudicated newspaper of general circulation at the relevant time due to COVID-19. (Decl. re Mailing & Emailing Notice and Publication of Summons in Validation Action ¶ 8, Jan 1, 2023.) Accordingly, DWR was permitted under CCP section 861 and the terms of the Order for Publication (which expressly stated that publication was to be done *pursuant to CCP section 861*) to effectively serve these counties by publishing in some adjoining county. DWR's January 10, 2023 Proofs of Publication establish that it did. The plain language of section 861 provides that "[j]urisdiction of all interested parties may be had" by such publication in adjoining counties. Neither the statute nor the Order of Publication required DWR to seek the Court's approval before doing so.

For the stated reasons, the Court has jurisdiction over the Validation Action and may decide its merits.

E. Whether DWR Has Authority under the CVPA to Authorize the Proposed Revenue Bond Financing Mechanism to Finance the Delta Program

To enter judgment in DWR's favor in the Validation Action, the Court must find that DWR has the requisite authority to adopt the Bond Resolutions and issue the Series A and B Bonds. Here, DWR's purported authority for its revenue bond financing is the CVPA, specifically section 11260 and sections 11700, *et seq*. (See, e.g., DWR's Opening Br. 8:2-4, 8:14-22, 10:18-22, 10:26-11:9.)

Accordingly, the parties agree that DWR's case-in-chief includes resolution of the following two issues:

1. "Whether [DWR] has the authority to plan, and if and when appropriate acquire and construct conveyance facilities of the Delta Program as defined in and pursuant to the terms of the Bond Resolutions as a further modification of the [unit] described in the reports cited by Section 11260 of the [CVPA]"; and

2. "Whether [DWR] has the authority to issue the Bonds to finance the costs of planning, and if and when appropriate acquiring and constructing, such conveyance facilities as defined in and pursuant to the terms of the Bond Resolutions."

(Annotated Further Case Management Statement 4:6-26, May 11, 2023.)

The Court addresses these issues in turn.

1) Whether DWR Has the Authority to Plan, Acquire, and Construct Conveyance Facilities of the Delta Program as Defined in and Pursuant to the Terms of the Bond Resolutions as a Further Modification of the Feather River Project Unit under the CVPA

The Key Statute – Section 11260 of the Water Code. The CVPA established "the Central Valley Project" (Water Code, §§ 11100-11985), which "consists of the units provided for in [Chapter 2 of the CVPA[9]]." (Water Code, § 11201.) "The construction of the project is a single object and the units thereof collectively constitute one project." (Water Code, § 11200.)

The CVPA identifies most of the project's "units" by name, a brief description of what the unit comprises, and its purpose. For example, sections 11205 through 11209 concern the Shasta Dam unit. Section 11205 states the facilities which comprise that unit, and section 11207 discusses its purposes. (See also Water Code, §§ 11215-11216 [the Contra Costa Conduit unit].)

The Legislature enacted the section pertinent here – section 11260 – in 1951. (It also amended that section several times in the 1950s.) Section 11260 designates the Feather River and Sacramento-San Joaquin Delta Diversion Projects (together, the "Feather River Project") as a "unit" under the CVPA.[10] That section of the CVPA is unique in that it does not itself name or describe the unit it creates. Rather, it establishes the Feather River Project as a unit of the CVP by referring to three publications. As last amended in 1959, section 11260 states:

> The units set forth in [the] publication of the State Water Resources Board entitled "Report on Feasibility of Feather River Project and Sacramento-San Joaquin Delta Diversion Projects Proposed as Features of the California Water Plan," dated May, 1951, as modified in the publication of the Division of Water Resources entitled "Program for Financing and Constructing the Feather River Project as the Initial Unit of the California Water Plan," dated February, 1955, and including the upstream features set forth in Chapter VI of the 1955 report, except the features on the south fork of the Feather River, and as further modified by the recommendations contained in Bulletin No. 78 of the Department of Water Resources, entitled "Preliminary Summary Report on Investigation of Alternative Aqueduct Systems to Serve Southern California," dated February, 1959, and *subject to such further modifications thereof as the Department of Water Resources may adopt*, and such units or portions thereof may be constructed by the department and maintained and operated by it to such extent and for such period as the department may determine, as units of the Central Valley Project separate and apart from any or all other units thereof.

(Italics added.)

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[9] Chapter 2 includes sections 11200 through 11295.

[10] The Feather River Project was funded by the State of California and is owned and operated by the State as part of the State Water Project. (*State Water Resources Control Bd. Cases, supra,* at p. 693.)

The Three Reports. Section 11260 refers to three reports, dated May 1951, February 1955, and February 1959. As a review reveals, the reports describe the Feather River Project in two distinctly different fashions. They describe the project in terms of some its specific features and component parts. For example, the 1951 Report identifies the following "major features" of the Feather River Project:

> (a) a dam on the Feather River 1.7 miles below the junction of the North and Middle forks of the stream and 5.5 miles above the City of Oroville in Butte County, (b) power plant at the dam, (c) afterbay dam and power plant 4.5 miles below the main dam and one mile above the City of Oroville, (d) the Delta Cross-Channel, and (e) an electric power transmission line from the power plants to a substation near Bethany in San Joaquin County.

(DWR's Trial Ex. 5, at DWR117.)

In addition, the reports describe the project by reference to its purposes and objectives. For example, the 1951 Report's "Introduction" says the report will set forth "[t]he nature and extent of the project works required … for the storage, conservation, conveyance and utilization of water for beneficial purposes, including flood control, irrigation and other purposes, and the production and transmission of electric power." (DWR's Trial Ex. 5, at DWR97.) Regarding those "beneficial purposes," the report announced generally: "It is apparent … that in any plan for the ultimate development and utilization of the water resources of the State, water must be transferred from the areas of surplus water supply to the areas of deficiency." (*Id.*, at DWR107.) The Sacramento River Basin was recognized as an area of surplus, and specifically the Feather River. (*Ibid.* [referring to the Sacramento River Basin]; *id.,* at DWR98 ["The Feather River is the most important tributary of the Sacramento River."]; and *id.,* at DWR101 ["The Feather River … represents one-fifth of the runoff of the entire Sacramento River Basin; and a substantial part of the surplus waters that may be developed over and above local needs could be made available for exportation to areas of deficient water supplies."].) The 1951 Report also provided some geographic specificity of purpose, contemplating that "the Oroville Reservoir of the Feather River Project [would be] operated to supplement the water supply available from other sources in the Sacramento-San Joaquin Delta so as to furnish a continuous supply to [Santa Clara and Alameda counties and southerly to the lands on the west side of the San Joaquin Valley and to areas south of the Tehachapi Mountains]." (DWR's Trial Ex. 5, at DWR115; see also *id.,* at DWR118, DWR121, and DWR129.) The report contemplated a mechanism for conveying water from the Sacramento River to the San Joaquin River delta. (*Id.*, at DWR150 [discussing a "Delta Cross Channel"].)

In simple terms, the 1951 Report makes clear that a principal purpose of the Feather River Project was to capture and store surplus water from the Sacramento River's "most important tributary" (DRW's Trial Ex. 5, at DWR98) – the Feather River – so that it could be conveyed to Bay area counties (Alameda and Santa Clara), the west side of the San Joaquin Valley, and certain areas in southern California.[11]

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[11] The 1951 Report also acknowledged federal legislation, which authorized the Central Valley Project as a federal undertaking. (DWR's Trial Ex. 5, at DWR108-115.) The report quoted 1937 federal legislation, which declared the purposes of "the entire Central Valley project" to include "controlling floods, providing for storage and for delivery of the stored waters thereof, for the reclamation of arid and semiarid lands …, and other beneficial uses …." (*Id.*, at

The 1955 publication is titled "Program for Financing and Constructing the Feather River Project as the Initial Unit of the California Water Plan" ("1955 Report"). (DWR's Trial Ex. 6, at DWR295.) The 1955 Report revises certain features of the Feather River Project that are described in the 1951 Report and includes additional features. (DWR's Trial Ex. 6.) It states that the project's purposes "are for flood control and irrigation in the Sacramento Valley, electric power generation[,] and furnishing Feather River water for firming surplus waters existing in the Sacramento-San Joaquin Delta, in most years, to provide a water supply to areas of water deficiency on the west side of the San Joaquin Valley in Fresno, Kings and Kern Counties, to [the] South San Francisco Bay area in Alameda, Santa Clara, and San Benito Counties, and to Southern California." (*Id.* at DWR310.) It reiterates the project's "ultimate objective" is "making available the greatest possible yield of water for export to areas of deficient supply." (Trial Ex. 6, at DWR320.)

The 1955 Report also described a contemplated "Delta Cross Channel," which was to be a feature of the Feather River Project. (*Id.* at DWR311.) The report contemplated:

> The Delta Cross Channel would convey water flowing down the Sacramento River to the westerly channels of the San Joaquin Delta, from which channels the water would flow to the intake channel to the project pumps.
>
> The inlet of the Delta Cross Channel would be located near Isleton from which point a channel would be excavated from the Sacramento River to Georgiana Slough, which in turn would be enlarged to its confluence with the Mokelumne River. The water would then be conveyed through the channel of the Mokelumne River to the San Joaquin River.

(*Id.*) The 1955 Report includes maps of the Feather River Project and several of its proposed features, including the Delta Cross Channel. It is undisputed that the Delta Cross Channel was never constructed.

The 1959 publication is titled "Preliminary Summary Report on Investigation of Alternative Aqueduct Systems to Serve Southern California," ("1959 Report"). As suggested by its title, the 1959 Report primarily discusses alternative aqueduct locations. (DWR's Trial Ex. 7.)

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DWR110.) To be clear, it cannot be said that, when Congress declared the purposes underlying its 1937 legislation (*ibid.*), it was speaking on behalf of California's Legislature. But, the 1951 and 1955 reports indicate that it was well understood that federal and state authorities would have to coordinate closely in their respective operation of the federal Central Valley Project and the State Water Project. (*Id.*, at DWR 113 ["The operation of the works is to be coordinated and integrated with the operation of the existing features of the Central Valley Project."]; DWR's Trial Ex. 6, at DWR310 ["The Oroville Reservoir would be operated coordinately with the Shasta and Folsom Reservoirs of the Central Valley Project."]; *id.*, at DWR325 ["a very close coordination of the two projects will be required to accomplish their respective purposes without waste of water"].)

The "Delta Program". Invoking the authority conferred by section 11260, DWR proposes to "modify" the Feather River Project. DWR labels its proposed modification as the "Delta Program." As stated earlier, DWR describes its proposed modification – and defines the term it has chosen for that modification – as follows:

> Delta Program means the environmental review, planning, engineering, design, and, if and when [DWR] determines to be appropriate, acquisition, construction, operation and maintenance of *facilities for the conveyance of water* in, about and through the Sacramento-San Joaquin Delta, subject to such further specification thereof as [DWR] in its discretion may adopt. Delta Program facilities may include, but are not limited to, water diversion intake structures located on the Sacramento River and a tunnel to convey water to Banks Pumping Plant.

(DWR's Trial Ex. 2, at DWR14 [italics added].)

From this definition, two observations stand out. First, the definition consists of two sentences. The first is worded broadly and generically. It does not identify any specific facilities to be modified, nor does it identify any specific public work to be constructed. In contrast, the second sentence refers to potential structures, but does so merely for illustrative purposes (i.e., the facilities "may include").

The second observation of note is that, with reference to the contemplated water conveyance facilities, the definition imposes no apparent limitations. It restricts neither the direction nor the purpose of the contemplated water conveyance. Stated conversely, the definition would appear to confer on DWR nearly infinite authority as to the direction, purposes, and objectives of any water conveyance facilities, as they would be subject to "such further specification … as DWR may in its discretion adopt."

All of this fostered a robust debate between the parties, as the Court next discusses.

DWR's Position. DWR contends that planning and constructing a Delta water conveyance facility as described in the Delta Program is within the discretion and authority the Legislature provided DWR in section 11260 to modify the unit described therein, i.e., the Feather River Project. (DWR's Opening Br. 10:7-22; see also *id.* at 32:13-14 ["[The] Court should find the Delta Program facilities to be a modification authorized by section 11260."].) DWR states:

> The Delta water conveyance facilities described in the General Resolution's definition of Delta Program would be a "further modification" of what was formerly known as the Feather River Project Aqueduct, which included a Delta Cross Channel to move water from the Sacramento River to pumping facilities planned in the south Delta – a modification [that] section 11260 expressly delegates to [DWR's] sole discretion. *The contemplated Delta Program facilities would serve the same function as the facilities discussed in the section 11260 reports, namely, to conserve and transport water from the Feather River watershed and the Sacramento River to Department pumping facilities in the south Delta that would lift water into the South Bay Aqueduct to serve the Bay Area and into what is now called the California Aqueduct, and onto service areas throughout the southern half of the state*. [Citations.] Thus, under the express language of section 11260, [DWR] has the discretion to approve a Delta

> conveyance facility as described in the definition of Delta Program as a further modification of both the Delta Cross Channel described in the 1951 and 1955 Reports and the California Aqueduct (formerly called the Feather River Project Aqueduct).
>
> The discretion to modify facilities under section 11260 necessarily means that *the modified facilities need not exactly mirror the facilities previously contemplated in the 1950's Reports*. In section 11260, *the Legislature included no limitation on the nature of the "modifications" [DWR] may adopt, other than the implicit requirement that the modifications relate to facilities described in the referenced reports*. (Wat. Code, § 11260.) *That deferential standard easily is met here: the function and purpose are the same – to conserve and preserve water quality when transporting it to [DWR] service points south and west of the Delta.* That the section 11260 Reports variously described plans for diverting and conveying water from the Sacramento River via a "Delta Cross Channel" in combination with the natural channels of the Delta to then-planned pumps in the south Delta, whereas the Delta Program may involve a tunnel and new intake facilities to move water to existing State Water Project facilities in the south, does not change this *fundamental identity of function and purpose*.
>
> . . . .
>
> The Legislature delegated to [DWR] the authority and discretion to adopt "further modifications" to the [unit] described in the section 11260 reports, and the conveyance facilities encompassed by the Delta Program are well-within that "modification" authority. Stated with the applicable legal standard in mind, [DWR] certainly has not acted arbitrarily and capriciously in concluding that Delta water conveyance facilities as contemplated in the Delta Program are within the "further modification" authority the Legislature delegated to [DWR] in section 11260. [Citations.]

(DWR's Opening Br. 36:26-38:12 [fn. omitted] [italics added].)

The Defendants' Opposition. Several Defendants[12] contend that DWR acted outside the scope of its delegated authority under section 11260 in adopting the Bond Resolutions. For example, the Public Agencies argue:

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[12] The Public Agencies; Tulare; KCWA Member Units; and Defendants County of Sacramento, Sacramento County Water Agency, and City of Yuba City (collectively "Sacramento County") each filed a trial brief arguing that DWR exceeded its section 11260 authority in adopting the Bond Resolutions. CFPD joins Sacramento County's opening brief. (CFPD's Opening Br. 6:1-10, Feb. 23, 2023.) The Public Agencies join Tulare, KCWA Member Units and Sacramento County's opening briefs. (Public Agencies' Joinder in Trial Brs., Feb. 23, 2023.) The Sierra Club joins Tulare and Sacramento County's opening briefs. (Sierra Club's Joinder in Response Brs., Feb. 23, 2023.) Defendant South Delta Water Agency ("SDWA") joins the Public Agencies' opening brief. (SDWA's Notice of Joinder, Feb. 23, 2023.)

> Even though DWR's action portrays the operative Delta conveyance for the "Delta Program" in its resolutions as still unknown, it insists that the new conveyance would only be a further modification of the historic, never implemented "Delta Cross Channel" mentioned in the 1950s water reports cited in Water Code section 11260. [Citation.] DWR also argues that the CVPA places "no limitation" on its power to make modifications or additions "related" to covered facilities . . . . [Citation.]
>
> However, it is clear that the 1950s reports DWR relies on do not describe any facilities peripheral to, or under, the Delta for conveyance. [Citation.] . . .
>
> . . . .
>
> . . . [A] proposed modern Delta conveyance, such as the Delta Conveyance Project [citation] [cannot] in any sense be deemed only a "further modification thereof" of the Delta Cross Channel under Water Code section 11260. DWR provides no evidence showing otherwise . . . . The contrary argument of its counsel is certainly not entitled to deference. … "Thereof," in this context, refers to the historically limited authorized units discussed in the three reports. (See *MCI Telecomms. Corp. v. AT&T Co*. (1994) 512 U.S. 218, 227 ("modify" connotes "moderate change").)[[13]]
>
> In short, if the Delta conveyance could be stretched into being considered a "modified" Delta Cross Channel, it could be stretched into anything . . . .

(Public Agencies' Opening Br. 27:23-29:26.)

Sacramento County relatedly argues that a conveyance facility under the Delta Program could not be a further modification of the Feather River Project because the Delta Cross Channel was ultimately rejected as a feature thereof. Sacramento County states: "DWR has not shown that the Delta Program is a further modification of any other Delta facility associated with the CVP[A]. Thus, the Delta Program is not a unit [under] the [CVPA]." (Sacramento County's Opening Br. 15:14-16:7.)

Sacramento County further argues that DWR does not offer an interpretation of "further modification thereof," as used in section 11260, that is supported by canons of statutory construction or citations to case law. (Sacramento County's Opening Br. 16:16-17.) Sacramento County asserts:

> Water Code section 11260 and other provisions of the [CVPA] do not define "further modification" . . . . DWR's interpretation of a statute is a legal opinion and not subject to a deferential standard of review. [Citation.] Moreover, legislative delegation of discretionary authority is not equivalent to carte blanche authority. [Citation.]

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[13] KCWA Member Units also argue that the term "modified" as used in section 11260 "should be construed to mean only modest changes, not fundamental one[s]." (KCWA Member Units' Opening Br. 10:15-20.)

> . . . DWR invents [a] "discretionary standard" for evaluating the Delta Program as a "further modification" of the Feather River Project - i.e., whether the "function and purpose" of the Feather River Project and the Delta Program "are the same...." [Citation.] There is no explanation or evidentiary support offered for why "function and purpose" is a relevant factor – let alone the only factor – in determining whether the Delta Program is a "further modification" of the facilities described in the [1950s' publications] in compliance with Water Code section 11260, other than mere deference to the agency's discretion. [Citation.]
>
> Even if this Court finds that DWR's "function and purpose" standard is the only relevant factor for determining whether the Delta Program is a "further modification" [under section 11260], DWR's statement of the function and purpose of the Delta Program is not supported by evidence in the record. The statement of function and purpose of the Delta Program does not align with the statement of the function and purpose of the Feather River Project. The 1955 Report contains a clear statement of the proposed purposes of the Feather River Project:
>
>> [F]lood control and irrigation in the Sacramento Valley, electric power generation[,] and furnishing Feather River water for firming surplus waters existing in the Sacramento-San Joaquin Delta, in most years, to provide a water supply to areas of water deficiency on the west side of the San Joaquin Valley in Fresno, Kings and Kern Counties, to [the] South San Francisco Bay area in Alameda, Santa Clara, and San Benito Counties, and to Southern California.
>
> ([DWR's Trial Ex. 6, at DWR310]; see also [DWR's Trial Ex. 5, at DWR113], [DWR's Trial Ex. 7, at DWR515-516] [containing consistent statements of project purposes].) DWR does not provide a clear statement of the purpose of the Delta Program. The Bond Resolutions state the purpose of the Delta Program only as "for the conveyance of water in, about and through the Sacramento-San Joaquin Delta." ([DWR's Trial Ex. 2, at DWR14].) DWR's Opening Brief embellishes the statement of purpose, adding that the Delta Program is intended "to conserve and preserve water quality when transporting it to [DWR] service points south and west of the Delta[.]" ([DWR's] Opening Br. 37:20-22.) However, the statement of purpose in the Opening Brief is entirely that of DWR's lawyers in this litigation; there is no language concerning the preservation of "water quality" of the Delta in the Bond Resolutions. Regardless, the stated purposes of the Feather River Project do not include "water quality." [Citations.] DWR's conclusion that the Delta Program described in the General Bond Resolution is a "further modification" of what was formerly the Feather River Project Aqueduct is therefore not supported by evidence on the record that shows that the "function and purpose" of the Delta Program and Feather River Project Aqueduct are the same.

(Sacramento County's Opening Br. 16:10-18:8 [fns. omitted].)

Like Sacramento County, Tulare argues that DWR's interpretation of section 11260 is unsupported by canons of statutory interpretation. Tulare asserts: "Well-known principles of statutory construction militate against this Court accepting the DWR's interpretation of section 11260. The Supreme Court has made clear that interpretation of a statute is an issue of law for the Court to decide." (Tulare's Opening Br. 14:17-20.) Tulare states:

> According to principles of statutory construction, the words of the statute must be read to give meaning to each other and *each word* must be given meaning. [Citation.] The word "thereof" cannot be read out of the statute. Further, the words "modifications thereof" must be interpreted to refer to modifications *of the projects outlined in the* [*1950s' publications*] *specifically identified in section 11260* . . . . The clause "and subject to such further modifications thereof" is required to be interpreted as applying to the preceding description of the authorized units. [Citation.]
>
> The current DCP[14] is not a "modification" of any part of the [Feather River Project unit under the CVPA], [described] in the [1950s' publications]. It is an entirely new and different project.
>
> . . . .
>
> The original *cross-channel* proposals in the 1951 or the 1955 Reports were not projects anywhere near the size, scope and expense of the proposed DCP. . . .
>
> The DWR's conflation of the Feather River Project and the California Aqueduct Project to suggest that the DCP is "comparable" to any former proposed Delta Cross-Channel [citation], is simply not well-taken. The historical documents make clear that the DCP is a completely new and different "unit" . . . that is not comparable in scope, engineering or purpose to any variant of the Delta Cross-Channel identified in the 1951 and 195[5] Reports and it is not simply a "modification" of the proposed projects that the Legislature approved when it originally enacted section 11260 or approved the later amendments to that section.

(Tulare's Opening Br. 9:5-10:26.)

DWR's Reply. DWR replies that the standard it has articulated for evaluating what constitutes a "further modification" of the facilities described in the three reports cited in Section 11260 is appropriately tied to the CVPA, whereas Defendants do not offer an alternative standard that has a basis in the Act. (DWR's Reply Br. 17:23-18:26.) DWR argues:

> Section 11260 itself imposes no standard or boundary on [DWR's] discretion, authorizing without limitation "such further modifications thereof as [DWR] may adopt . . . ." (Wat. Code, § 11260.) [DWR] recognizes, however, that Section 11260 exists within the broader [CVPA], in which the Legislature did articulate

[14] Tulare explains in its reply brief that it discusses the "DCP" (i.e., the Delta Conveyance Project, as defined in Section I(A) above) in its briefing rather than the "Delta Program" because the term "Delta Program" lacks "any real project description" in the Bond Resolutions. (Tulare's Reply Br. 2:3-3:4.)

> the standard on which [DWR] should base its discretionary decisions, including decisions as to "further modifications" under Section 11260 – that [DWR] determine "in its judgment[,]" the actions that are "necessary, convenient, or expedient" to accomplish or effectuate the "purposes and objects of" the CVPA. [Citations.] In the specific context of Section 11260, then, it is certainly reasonable (and not arbitrary and capricious) for [DWR] to conclude in its judgment that the "purposes and objects" of the Act will be accomplished and effectuated where modified facilities serve the same general "function and purpose" as the facilities to be modified. [Citation.]
>
> . . . [T]he standards Opponents offer to contest [DWR's] authority under Section 11260 are variously based on relative project scope, size, cost, feasibility and similar subjective, arbitrary and, under the plain language of the [CVPA], irrelevant criteria as to what in their view constitutes a permissible modification.
>
> . . . .
>
> . . . Section 11260 imposes no such limitation on [DWR's] "further modification" authority, and there is none to be found elsewhere in the [CVPA], other than the appropriate benchmark [DWR] discussed above and in its Opening Trial Brief, namely, that in [DWR's] judgment the modifications would serve the same functions, purposes and objects as the facilities described in the Reports. [Citation.]

(DWR's Reply Br. 18:2-19:9, 22:16-21.)

DWR further replies that the conveyance facilities described in the General Resolution's definition of the Delta Program would be a valid "further modification" of the facilities described in section 11260. DWR states:

> Opponents fundamentally misconstrue the facilities described in the [1950s'] Reports, as well as the "further modifications" [DWR] is evaluating within the Delta Program. [The Feather River Project] encompassed essentially the entirety of what is now commonly known as the State Water Project, the facilities of the state water system that conserve, store and transport water to the 29 local agencies that purchase water from [DWR] (Contractors), facilities that stretch from Oroville Dam in the north to the California Aqueduct and appurtenant transportation and delivery facilities below the Delta and into various parts of the Bay Area and central and southern California. [Citations.] The Delta Cross Channel was described as a component of those facilities, providing a Delta conveyance function to move water from the north, through the Delta, to the south Delta. [Citations.] Its importance here is that it demonstrates that in developing the expansive conservation and conveyance facilities described in the Reports as the Feather River Project . . . [DWR] has always contemplated a facility properly categorized as a Delta conveyance facility. . . .
>
> If [DWR] ultimately approves a water conveyance facility as described in the definition of the Delta Program (it has not yet done so), [it] will be adopting "further modifications" to the facilities described in the Reports, which from the

outset contemplated the necessity to transport water across the Delta in one or another manner. [DWR] does not need to establish that a conveyance facility with a tunnel is a "mere" or "modest" modification of the Delta Cross Channel. Section 11260 gives [DWR] authority to make "such further modifications" to all the facilities described in the Reports (i.e., the entire Feather River Project) "as [DWR] may adopt . . ." (Wat. Code, § 11260.) Even if the Reports had not described a Delta Cross Channel, [DWR's] delegated discretion under Section 11260 is broad enough to authorize a Delta conveyance facility as a modification of the entire Feather River Project system. . . .

. . . .

. . . The Feather River Project described in the [1950s'] Reports is, as discussed above [citation], a massive set of facilities developed to conserve and transport water for beneficial uses from Oroville Dam in the north to delivery points in the Bay Area and across central and southern California, necessarily moving water by some method and path through, across, around, or under the Delta on its way to delivery points below the Delta. [Citations.] The Delta Program facilities, as stated in the General Resolution, would conserve and transport water originating upstream of and in the Delta to points south of the Delta so it could be used for beneficial purposes, just like the water to be conserved and transported by the Feather River Project facilities described in the Reports. [Citations.] Conserving and moving water from above to below the Delta for beneficial use in other areas of the state is an "alignment" of function and purpose, established for evidentiary purposes by the plain terms of the General Resolution and the Reports. At minimum, [DWR's] determination is well within the discretion the Legislature delegated to [DWR] to decide what actions "in its judgment" will "accomplish" and "effectuate" the "purposes and objects" of the [CVPA]. [Citations.] [DWR's] determination to that effect is certainly not palpably unreasonable as a matter of law given its broad discretion and authority under the [CVPA] and Section 11260. [Citation.]

Put plainly, [DWR] is considering in the Delta Program a water conveyance facility that would move the same water, from the same place, to the same aqueduct and delivery facilities, all for the same purposes as the Feather River Project and the existing State Water Project facilities. [Citations.][[15]] The method used to move that water from north to south, whether through, around or under the Delta, is a determination that resides within [DWR's] legitimate discretion.

(DWR's Reply Br. 20:19-21:25, 28:22-29:23 [italics added].)

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[15] The Court notes that here, DWR cited to, *inter alia,* its trial exhibit 16. DWR withdrew said exhibit (described in its index of exhibits as "Official Statement, July 29, 2020, State of California Department of Water Resources Central Valley Project Water System Revenue Bonds, Series BB, Series BC") during trial.

The Issue. The parties' arguments raise an issue of statutory interpretation. Specifically, the parties call into question the meaning of the phrase "further modifications thereof," as that phrase is used in section 11260.

DWR claims that, in using those words, the Legislature authorized DWR to modify the Feather River Project. DWR also claims that, in authorizing the "Delta Program," it merely invoked that statutory delegation of authority.

For their part, the Opposing Defendants acknowledge that section 11260 authorized DWR to modify the Feather River Project. They contend, though, that DWR's delegated authority is not infinite, and that DWR defines the "Delta Program" so broadly as to exceed the scope of its delegated authority.

The issue is: Does the Delta Program, as DWR defines it, constitute a mere "modification" of the Feather River Project, within the scope of DWR's statutorily delegated authority? Or, is the Delta Program defined so broadly that it constitutes something more than a "modification" and therefore falls outside the scope of DWR's delegated authority?

Applicable Principles of Statutory Interpretation. Statutory interpretation is an issue of law. The Court's overriding purpose in construing any statute is to adopt the construction that best gives effect to the Legislature's intended purpose. In determining that intended purpose, the Court follows settled principles. The Court first considers the words of a statute, as the most reliable indicator of legislative intent. In so doing, the Court gives the words their usual and ordinary meaning, viewed in the context of the statute as a whole, keeping in mind the statutory purpose. (*Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1183-84.) Both the legislative history of the statute and the wider historical circumstances of its enactment may be considered in ascertaining legislative intent. (*Garcia v. Superior Court* (2006) 137 Cal.App.4th 342, 348.) A litigant, though, may not make a "fortress out of the dictionary." (*Del Cerro Mobile Estates v. City of Placentia* (2011) 197 Cal.App.4th 173, 183.)

When the language of a statute is ambiguous – that is, when the words of the statute are susceptible to more than one reasonable meaning, given their usual and ordinary meaning and considered in the context of the statute as a whole – courts consult other indicia of the Legislature's intent, including such extrinsic aids as legislative history and public policy. If there is no ambiguity, courts presume the Legislature meant what it said and the plain meaning of the statute governs. (*Union of Medical Marijuana Patients, Inc.*, 7 Cal.5th at p. 1184.)

It has also been suggested that, when courts construe statutes, they do so "with a dollop of common sense." (*Garcia*, *supra*, 137 Cal.App.4th at p. 348.)

The Court's Analysis. The Court begins its analysis by considering the meaning of the word "modification," as used in section 11260, viewed in the context of the CVPA as a whole.

The statute does not define the term. So, the Court looks elsewhere for a definition. "When interpreting a statute, courts appropriately refer to dictionary definitions to ascertain the ordinary, usual meaning of a word." (*Merced Irrigation Dist. v. Superior Court* (2017) 7 Cal.App.5th 916, 926-27.) The edition of the dictionary to be consulted is the one current when the Legislature adopted the statute in question. (*Id.* at p. 927.) In the 1950s, when the Legislature adopted and amended section 11260, a well-regarded legal dictionary provided this

definition: "MODIFICATION. A change; an alteration which introduces new elements into the details, or cancels some of them, but leaves the general purpose and effect of the subject matter intact." (Black's Law Dict. (3d ed. 1933) p. 1198; Black's Law Dict. (4th ed. 1951) p. 1155.) These were the existing editions of Black's Law Dictionary shortly before Water Code section 11260 was first enacted in 1951 and during its amendments in 1956, 1957, and 1959. That definition – circa 1951 – suggests that, in using the word "modifications" in section 11260, the Legislature did not intend to delegate to DWR unlimited authority to modify the Feather River Project unit. (*Merced Irrigation Dist., supra,* at p. 927 ["If one assumes that the Legislature was aware of the dictionary definition of a term when it passed the bill in question, then the edition of the dictionary to be consulted is the one current when the Legislature adopted [the bill]."].)

The Court has also considered whether case law provides any guidance. The parties cite – and the Court has found – no case interpreting the term "modification" in any California statute. The parties did, though, find a United States Supreme Court decision that interpreted the term "modify" in a federal statute. In that case, the court held that the word "modify … has a connotation of increment or limitation." (*MCI Telecomms. Corporation v. American Telephone & Telegraph Company* (1994) 512 U.S. 218, 225 ("*MCI Telecommunications*").) To reach that conclusion, the court considered a multitude of dictionary definitions. (*Ibid.*) The court also held that to determine whether a change "is minor or major depends to some extent upon the importance of the item changed to the whole." (*Id.* at p. 229.)[16]

The Court recognizes, though, that merely finding and examining dictionary definitions does not complete the analysis. "In seeking the meaning of a statute it is not enough simply to look up dictionary definitions and then stitch together the results. Instead, the court must discern the sense of the statute, and therefore its words, in the legal and broader culture." (*Garcia, supra,* 137 Cal.App.4th at p. 351.) The meaning of a word or phrase often can be determined by reading the language at issue "in light of the statutory scheme and other statutory provisions relating to the same subject matter." (*Merced Irrigation Dist.*, *supra*, 7 Cal.App.5th at p. 932.)

Here, section 11260 refers to three reports, issued by DWR and one of its predecessor agencies (i.e., the State Water Resources Board). Those reports discuss many of the component parts and facilities of the Feather River Project. But, they also discuss the project in terms of its objectives, purposes, and effects. The project was to divert water from the Sacramento River Delta "westerly to Santa Clara and Alameda counties and southerly to the lands on the west side

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[16] Seeing a decision from the United States Supreme Court might tempt an inferior court simply to defer to that court's ruling and, for example here, to merely adopt that court's interpretation of the word "modify." Analytically, though, doing so here would be a mistake – for at least two reasons. First, that case is materially distinguishable. The issue there – regarding the meaning of the word "modify" – arose under a different statute, within a different statutory scheme, adopted by a different legislative body, for a different administrative agency. Second, although United States Supreme Court decisions typically (and deservedly) receive considerable deference, it is important to remember that, for state statutes, the most definitive interpretation comes from the state's highest appellate court – not from the United States Supreme Court. This principle is recognized by no less than the United States Supreme Court itself. (*Montana v. Wyoming*, 563 U.S. 368, 378, fn. 5 (2011) ["[t]he highest court of each State . . . remains 'the final arbiter of what is state law'"].) The California Supreme Court recently reminded us of this. (*Adolph v. Uber Technologies, Inc.*, 14 Cal.5th 1104, 1119 (2023) ["we are not bound by the high court's interpretation of California law"].)

of the San Joaquin Valley and to areas south of the Tehachapi Mountains." (DWR Trial Ex. 5, at DWR115; see also *id.,* at DWR129, DWR224.) The purpose was not only flood control, but also to secure Feather River run-off "as a firming supply to waters now available in the Sacramento-San Joaquin Delta in the winter months of most years, for possible exportation to the Santa Clara Valley, San Joaquin Valley, and to southern California." (*Id.*, at DWR117-118.) The "ultimate objective" was "making available the greatest possible yield of water for export to areas of deficient supply." (DWR's Trial Ex. 6, at DWR320; see also *id.,* at DWR310 [the "proposed purposes" of the project were "flood control and irrigation in the Sacramento Valley, electric power generation[,] and furnishing Feather River water for firming surplus waters existing in the Sacramento-San Joaquin Delta, in most years, to provide a water supply to areas of water deficiency on the west side of the San Joaquin Valley in Fresno, Kings and Kern Counties, to [the] South San Francisco Bay area in Alameda, Santa Clara, and San Benito Counties, and to Southern California"].)

DWR's definition of the Delta Program ignores this articulation of the project's objectives and purposes, and thereby leaves the door open – at least theoretically – for DWR "in its discretion" to approve water conveyance facilities that would serve purposes separate and apart from those set forth in the three reports.[17]

To this point, DWR argues that, just as the Evidence Code creates a presumption that public officials perform their official duties "regularly" (Evid. Code, § 664), so too should the Court presume that DWR will, in the future, use bond proceeds only to move water "from north to south or in some other way that [would] be consistent with the overarching purpose of the Feather River Project." (DWR's Objections to Tentative Statement of Decision (filed 9/18/23), at p.12, fn. 5.) Evidentiary presumptions don't work that way; they operate retrospectively, not prospectively.

Regarding the conveyance facilities that would comprise the Delta Program, DWR also contends that, contrary to statements in the proposed Statement of Decision, "the definition of the 'Delta Program' … identifies both 'the direction' those facilities would convey water and the 'source' from which it would be conveyed." (DWR's Objections 10:20-22.) To support that proposition, DWR directs attention to the second sentence of its two-sentence definition of the "Delta Program." As noted above, that sentence is written in terms that make it merely illustrative, not restrictive.

DWR also implores the Court to consider section 11126 of the Water Code, which provides: "The construction, operation, and maintenance of the project as provided for in this part is in all respects for the welfare and benefit of the people of the State, for the improvement of their prosperity and their living conditions, and the provisions of this part shall therefore be liberally construed to effectuate the purposes and objects thereof." (DWR Objections 13-16.) The Court acknowledges that statute, but finds it inapplicable. This statute does not give DWR carte blanche to do as it wishes. For DWR to act, it must have delegated authority. Although the Legislature plainly delegated broad authority to DWR, it did not delegate infinite authority. This

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[17] For example, in its discretion, might DWR authorize facilities for the purpose of diverting Feather River water from the Sacramento Delta to the upper levels of the Sierra Nevada mountain range for the purpose of facilitating the operation of ski resorts? Common sense suggests not. The articulated objectives and purposes of the Feather River Project suggest not. But nothing in DWR's definition of the "Delta Program" hints at any such limitation.

statute does not authorize the court to construe section 11260 so liberally as to confer upon DWR authority that the Legislature did not delegate to it.

In plain words, the problem with DWR's definition of the "Delta Program" is that its definition is untethered to the objectives, purposes, and effects of the Feather River Project unit of the CVPA.

2) Whether DWR Has the Authority to Issue the Series A and Series B Bonds to Finance the Costs of Planning, Acquiring, and Constructing Conveyance Facilities as Defined in and Pursuant to the Terms of the Bond Resolutions

Water Code section 11700 authorizes DWR to issue revenue bonds "[f]or the purpose of providing money and funds to pay the cost and expense of carrying out any of the objects and purposes of [the CVPA]." (Water Code, § 11700.) Thus, the parties agree that DWR's authority to adopt the Bond Resolutions and issue the Series A and Series B Bonds to finance the Delta Program is dependent on the Delta Program's existence as a modification of the Feather River Project unit under the CVPA. (See DWR's Opening Br. 8:19-22 ["The [CVPA] authorizes [DWR] to issue revenue bonds, and specifically the Bonds authorized in the Bond Resolutions, to fund the costs of planning, constructing, and operating the *units designated under the* [*CVPA*] . . . ." (italics added)].) Since DWR lacks the authority to adopt the Delta Program – as DWR defined the "Delta Program" in the General Resolution – as a "further modification" of the Feather River Project unit under the CVPA, it necessarily follows that DWR lacks the authority to issue revenue bonds to finance the Delta Program.

III. CONCLUSION

For these reasons, the Court finds that DWR exceeded its delegated authority when it adopted the Bond Resolutions, which purported to authorize the issuance of the Delta Program Revenue Bonds. In light of its ruling, the Court need not reach the additional arguments raised by the parties in the Validation Action.

The Court emphasizes that its ruling on the validation issues is quite narrow. The Court's ruling focuses intensely on the fact that, in the General Resolution, DWR defined the term "Delta Program" in terms that leave its reach untethered to the objectives and purposes of the Feather River Project.

The Court will enter Judgment consistent with both this Statement of Decision and the Court's prior rulings.[18]

Date: January 16, 2024

Kenneth C. Mennemeier, Jr.

The Honorable Kenneth C. Mennemeier
Judge of the Superior Court of California,
County of Sacramento

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18 The Court is mindful that, on January 5, 2024, the Third District Court of Appeal issued its decision in *Planning and Conservation League v. Department of Water Resources* (2024 DJDAR 272). The Court sees nothing in that decision that bears directly on the issues before the Court here.