


CASE UPDATES



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AN AGREEMENT TO TOLL UNDER CEQA REQUIRES THE INPUT AND AGREEMENT OF ALL NECESSARY AND INDISPENSABLE PARTIES

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WHY THIS CASE IS IMPORTANT

Save Lafayette Trees, et. al v. East Bay Regional Park District (Pacific Gas and Electric Company, Real Party in Interest) (1st Dist., Div. 3, 2021), Cal. App. 5th, affirms the long-standing practice that under the California Environmental Quality Act (CEQA), no special notice is required to commence the running of the 180 day statute of limitations. The running of the statute begins when the governmental agency formally involved in the matter, approves a Memorandum of Understanding (MOU), which serves as effective constructive notice to the public. In addition, an agreement between the parties to toll the statute of limitations in a CEQA claim will fail when a necessary and indispensable party to the action is not included and did not sign the tolling agreement. The court ruled that a tolling agreement is a private agreement and not granted by statutory right.

FACTS

Pursuant to a public hearing on March 21, 2017, the East Bay Regional Park District (EBRPD) voted to utilize PG&E funding for "environmental restoration and maintenance" of EBRPD-owned lands in Briones Regional Park and Lafayette Moraga Regional Trail. PG&E agreed to remove 245 trees located dangerously close in proximity to its natural gas pipelines, which posed a safety risk to the public. This removal to protect the safety of the public living near the natural gas lines was requested and completed in accordance with PG&E's Community Pipeline Safety Initiative. In July, 2017, Save Lafayette Trees (SLT), and EBRD mutually agreed to toll the statute of limitations for 60 days. PG&E did not consent or enter into the tolling agreement between Lafayette Trees and EBRD.

In September, 2017, within the 60 day tolling agreement period, but outside of both CEQA's maximum 180 day statute of limitations period and CEQA's 35 day statute of limitations period, SLT filed suit claiming that EBRPD failed to comply with (1) CEQA; (2) the City of Lafayette's Tree Protection Ordinance and EBRPD's own ordinance No. 38, both of which prohibit all persons entering the park from cutting down trees; and (3) for violation of state constitutional due process rights by failing to provide proper public notice regarding the removal of trees near their properties, which deprived them of substantial property rights.

The trial court dismissed SLT's claim as time-barred by the statute of limitations since PG&E was not included in the tolling agreement and dismissed all other allegations as a failure to state a viable claim as a matter of substantive law. The appeals court affirmed on both counts.

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COURT RULED TOLLING AGREEMENT WAS NOT ENFORCEABLE

The Court of Appeals agreed with the trial court's finding that the tolling agreement entered into by the parties to this action was invalid because it did not include the consent and agreement of PG&E. As a necessary and indispensable party to the action, PG&E should have been included in the discussion and signing of the tolling agreement. The court went on to state that as a necessary and indispensable party, PG&E retained the right to assert opposition or agree to waive the statute of limitations. The court looked to *Salmon Protection & Watershed Network v. County of Marin* (2012) 205 Cal.App.4th 195, 204, fn. 6 (SPAWN), for guidance on this matter. In that case the court stated, "The project proponent, the public agency and the party asserting noncompliance with CEQA are the three parties that must agree to toll the limitations period."

The court also commented on the negative practical implications of not including PG&E in the tolling agreement as a real party in interest. The court found, "The CEQA doesn't statutorily authorize tolling agreements, so while the parties can agree to toll any applicable limitations periods, that is not by way of statutory right, but only by private agreement." As such, PG&E was required to be included in the private tolling agreement for it to be valid under these circumstances. Affording PG&E the opportunity to agree or dissent from the tolling agreement was imperative because the purpose of the statute of limitations is "to protect project proponents from extended delay, uncertainty and potential disruption of a project caused by a belated challenge to the validity of the project's authorization." (quoting SPAWN at p. 205) Thus, excluding PG&E from the tolling agreement frustrated the purpose of the statute.

180 DAY STATUTE OF LIMITATIONS OF CEQA BEGAN ON THE DATE THAT THE MOU WAS APPROVED

It is well-established under CEQA that a Memorandum of Understanding (MOU) by a governing board or agency serves as notice to the public of new ordinances, agreements, and other upcoming projects. On March 21, 2017 the EBRPD voted to approve the MOU granting PG&E access to its park lands for the purpose of removing trees growing too closely to the pipelines and resulting in a substantial safety risk to the public. This approval effectively served as constructive notice to the public of these measures. Therefore appellants' argument that the public was not given proper notice of scope and purpose of the tree removal project by PG&E is incorrect and cannot stand.