As 2017 comes to a close, let's take a moment to assess the California Supreme Court's most significant environmental law decisions of the year.

There are a large number of decided cases to choose from: as has been true over the past decade, in 2017 the California Supreme Court devoted a substantial portion of its civil docket to cases of interest to environmental lawyers, organizations and the regulated community. With that caveat, here's my list–an admittedly subjective one–of the Court's five most important environmental decisions of 2017:

5. ***Lynch v. California Coastal Commission.*** This regulatory takings case arose after a coastal storm destroyed a seawall built and maintained by coastal landowners in San Diego County. The landowners sought a permit from the California Coastal Commission to rebuild the seawall. The Commission granted the permit, but limited its term to 20 years in order to give the Commission a future opportunity to assess whether sea level rise, increased intensity of coastal storms and other projected impacts of climate change warrant a different regulatory strategy prospectively. The landowners then rebuilt the seawall and simultaneously sued the Commission, claiming the fixed 20-year permit term triggered a compensable taking of their property rights. The Supreme Court unanimously disagreed, concluding that the landowners had forfeited their right to bring their regulatory takings claim when they proceeded to rebuild the seawall. As Justice Carol Corrigan succinctly put it in her decision on behalf of a unanimous Court: "Plaintiffs obtained all the benefits of their permit when they built the seawall. They cannot now be heard to complain of its burdens."

(The *Lynch* decision would have been even more significant had Court proceeded to address the merits of the property owners' takings claim. Many observers had hoped the justices would use the case as a vehicle to determine how much latitude California land use agencies have to address and respond to the looming natural resource, economic and regulatory challenges presented by climate change. Alas, that was not to be. Nevertheless, *Lynch* establishes a forceful precedent that regulatory takings plaintiffs cannot have it both ways.)

4. ***City of San Buenaventura v. United Water Conservation District*** One of the many reasons modern California environmental law is so fascinating is that it draws upon–and inevitably intersects with–so many other areas of public law. *City of San Buenaventura* is a prominent example. The issue was whether a local water district's imposition of a "groundwater pumping charge" on well operators to fund regional water conservation measures violates two voter-enacted state constitutional provisions that limit the authority of state and local governments to collect revenue through taxes, fees and other charges. Specifically, the City of Ventura, which pumps large amounts of groundwater to deliver to

its residential customers, claimed that the district's pumping charge: a) contravened Proposition 218, which requires a vote of the electorate before a local agency can impose a tax, assessment or fee on property "as an incident of property ownership"; and/or b) violated Proposition 26, which similarly requires a public vote before a local government can assess many–but not all–levies, charges and exactions. The Supreme Court unanimously ruled that Proposition 218 was inapplicable to the district's groundwater pumping charge and that the charge likely did not violate the provisions of Proposition 26. (The justices did remand the case to the Court of Appeal to determine whether the city's allocated share of the conservation fees by the district "bear a fair or reasonable relationship to the [city's] burdens on, or benefits received from" the defendant water district's conservation programs.)

The *City of San Buenaventura* decision is significant for two interrelated reasons: many of California's groundwater basins are severely overdrafted, and state water managers are only now belatedly attempting to adopt remedial measures like the conservation efforts that the contested groundwater pumping charge is intended to address. Second, the landmark Sustainable Groundwater Management Act (SGMA) passed by the California Legislature in 2014 requires local governments to organize into Groundwater Sustainability Agencies which are empowered to assess fees on groundwater necessary to fund the GSAs development and enforcement of Groundwater Sustainability Plans over the next few years. *City of San Buenaventura* finds that these groundwater conservation efforts, properly implemented, do not require a popular vote before the GSAs and water districts generally assess the fees on groundwater users and pumpers needed to fund those conservation efforts. That's a big deal.

3. ***California Cannabis Coalition v. City of Upland.*** Like the *City of San Buenaventura* case, *California Cannabis Coalition* is not your typical environmental law case. While it does arise in a burgeoning corner of California land use law–whether and to what extent local governments can ban marijuana dispensaries from their jurisdictions–the case involves the intersection of the aforementioned Proposition 218 (limiting the ability of local governments to increase taxes) and another key state constitutional provision: the scope of California voters' initiative power. Specifically, the City of Upland had in effect a land use ordinance banning medical marijuana dispensaries. Marijuana advocates proposed a local voter initiative to repeal that ban and require that dispensary owners pay the city an annual "licensing and inspection fee" of $75,000. City officials refused to submit the initiative to the voters in a special election, concluding that Proposition 218 required that a vote on the initiative await take place in a subsequent general election. The initiative proponents sued, claiming that the constitutional right of voters to utilize the initiative process trumps

compliance with Proposition 218. The Supreme Court agreed, ruling that Proposition 218 does not restrict the ability of *voters* to impose taxes via the initiative process.

As Legal Planet colleague Ethan Elkind noted in an earlier post analyzing *California Cannabis Coalition*, the decision has important consequences for a wide array of future land use, environmental and transportation projects. He aptly observes:

> "The potential result is that any citizen, nonprofit or business group that wants to place a special tax measure or fee on the ballot for something like a new school or transit line may only need a simple majority voter approval, provided they can get enough signatures for their measure. And unless barred by some other law, I gather there's nothing stopping agency representatives or elected leaders in their individual capacities from sponsoring these campaigns in ways that essentially amount to the city, county, or agency sponsoring the measure themselves…
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> At a time when California is struggling to reduce emissions from the transportation sector due to growing commutes from the lack of housing and transit near jobs, this decision could be significant for finally allowing locals the flexibility they need to fund these investments. Under *California Cannabis Coalition vs. City of Upland*, local government finance for a host of environmentally significant projects, from parks to transit to infill housing infrastructure, may have just gotten easier to pass."

2. *Friends of the Eel River v. North Coast Railroad Authority.* Continuing a pattern over the past decade, the California Supreme Court's most significant environmental law decisions in 2017 concerned the California Environmental Quality Act (CEQA). *Friends of the Eel River* raised a CEQA issue not previously addressed by the justices: whether, and in what circumstances, CEQA is preempted by federal law. The specific issue in *Friends of the Eel River* was whether CEQA's application to publicly-owned railroad projects in California is trumped by the federal Interstate Commerce Commission Termination Act (ICCTA). In a 6-1 decision authored by Chief Justice Tani Cantil-Sakauye, the Court held that while CEQA's application to *privately*-owned railroad projects in California is preempted by ICCTA, CEQA continues to apply to at least some publicly-owned and operated railroad projects.

As I commented in an earlier post, the majority opinion in *Friends of the Eel River* is less

than a model of clarity. But it is unquestionably an important decision–especially with respect to CEQA's application to another, larger and more controversial public railroad project: California's High Speed Rail initiative. And the question of federal preemption of CEQA's application to public railway projects is far from settled: the U.S. Court of Appeals has pending before it another CEQA preemption case involving…California's High Speed Rail project. And federal regulators responsible for implementing the ICCTA have opined administratively that this federal law does indeed preempt CEQA.

1. *Cleveland National Forest Foundation v. San Diego Association of Governments.* In my opinion, 2017's most consequential environmental law decision was another complex CEQA case. *Cleveland National Forest Foundation* involved the adequacy of an environmental impact report prepared by the San Diego Association of Governments (SanDAG) in conjunction with that entity's adoption of a regional transportation plan for the San Diego metropolitan area. That plan, in turn, was mandated under SB 375, landmark climate change legislation requiring unprecedented linkage between California transportation and land use planning efforts, with the overarching goal of reducing the state's aggregate greenhouse gas emissions. (One of the many reasons this decision is so important is that it's the Supreme Court's first opportunity to address SB 375.)

As Legal Planet colleague Sean Hecht recounts in an earlier and more detailed post on the *Cleveland National Forest Foundation* decision, the justices issued something of a split opinion. On the one hand, the Court's 6-1 decision finds SanDAG's EIR to be legally adequate. At the same time, the justices spend considerably time and effort discussing the overarching need of CEQA documents to make a thorough and good faith effort to address the impacts of climate change. And the decision also makes clear that climate change analysis under CEQA is an evolving science–the depth and sophistication of climate change analysis required in a current CEQA document likely exceeds that of the 2011 SanDAG EIR. Inasmuch as the intersection of climate change impacts and CEQA will be an increasingly crucial aspect of CEQA analysis prospectively, *Cleveland National Forest Foundation* is required reading for CEQA attorneys, planners and scholars.

(One postscript: in a sense, the most important California Supreme Court case of 2017 is the one the justices decided not to decide. *California Chamber of Commerce v. California Air Resources Board* was a challenge to the legality of the Board's cap-and-trade program, a key element of CARB's multifaceted strategy to reduce California's greenhouse gas emissions. Early in 2017, the California Court of Appeal in Sacramento rejected the regulated community's state constitutional challenge to CARB's cap-and-trade program, ruling that CARB's auctioning of GHG emission allocations is not a "tax" within the meaning of California's Proposition 13, and therefore not subject to the measure's two-thirds vote

requirement by the California Legislature. Industry petitioned the Supreme Court for review of that decision, but the justices denied review this past summer. Had the justices agreed to hear the case, it would have kept CARB's cap-and-trade program under a cloud of doubt and political controversy. But with the Court of Appeal's now-final decision upholding the constitutionality of the cap-and-trade program, that uncertainty was eliminated and a political consensus quickly emerged, allowing the state Legislature to reaffirm the cap-and-trade program and extend it through 2030 via a statute passed earlier this year.)

2017 demonstrates that the California Supreme Court remains the nation's most influential state court when it comes to environmental law and policy.

Next up: 2017's most important environmental law decisions from the U.S. Court of Appeals for the Ninth Circuit.