
California Supreme Court Courthouse, San Francisco

[This is the third and final installment in a series of posts highlighting the most significant environmental law decisions of 2020. Earlier this week, I profiled the key 2020 environmental rulings by the U.S. Supreme Court and the U.S. Court of Appeals for the Ninth Circuit. This post concludes the series with an examination of the California Supreme Court's most consequential environmental law decisions this year.]

Truth be told, 2020 was an atypically light year when it comes to environmental law in the California Supreme Court. Indeed, this past year saw the Supreme Court decide the fewest number of environmental law-related cases in the past 15+ years. I believe that 2020 represents a statistical aberration rather than the start of any long-term trend, and that we can once again expect a larger output of environmental cases from the justices in 2021 and future years.

Nevertheless, the California Supreme Court decided several consequential environmental cases in 2020:

Protecting Our Water and Environmental Resources v. County of Stanislaus. The *County of Stanislaus* case was likely the California Supreme Court's most significant environmental law decision of 2020. It arose under the California Environmental Quality Act (CEQA). The specific issue was whether groundwater well permits issued by a county are exempt from environmental review under CEQA. The Supreme Court granted review in *County of Stanislaus* to resolve a conflict between two California Courts of Appeal that had reached contrary answers to that question.

Stanislaus County had for many years adhered to a blanket policy that its review and approval of applications for new well drilling permits were exempt from CEQA.

The County did so based on its view that consideration of such permit application involves no exercise of discretion by county officials, and that the issuance of well permits was therefore a ministerial action. Critically, ministerial state and local government actions are statutorily exempt from CEQA's environmental review process. A local environmental group sued to challenge the County's blanket exemption, arguing that county issuance of well drilling permits does involve the exercise of discretion and therefore always requires CEQA review. (The backstory is that in recent, drought-stricken years, many farmers and urban water users in Stanislaus County and other regions of California drilled many new and deeper groundwater wells to substitute for unavailable surface water supplies; that practice severely over-drafted groundwater aquifers, which in turn created numerous environmental problems including land subsidence and salt water intrusion/contamination of those aquifers.)

A unanimous California Supreme Court rejected the absolutist positions of both the County and environmental plaintiffs. Rather, the justices concluded, the need for CEQA review of well drilling applications "depends on the circumstances" of the particular permit under consideration. The Court offered some guidance as to when local government consideration of well drilling permits triggers the need for environmental review under CEQA. In doing so, the justices dismissed the County's argument that requiring CEQA review would increase both the costs and delays in well permitting, declaring that "CEQA cannot be read to authorize the categorical mischaracterization of well construction permits simply for the sake of alacrity and economy."

Groundwater over-drafting–greatly exacerbated by local governments' rubber-stamp approval of private well drilling permits–is a major environmental and public health problem in California. For that reason, the Supreme Court was correct in rejecting the County's blanket practice of exempting well drilling permits from CEQA review. At the same time, the justices' adoption of yet another "it depends"/fact-specific CEQA standard in *County of Stanislaus* continues a trend in numerous recent Supreme Court CEQA decisions. That, in turn, makes the application of CEQA increasingly complex and uncertain for CEQA attorneys, their clients and lower courts.

Abbott Laboratories v. Superior Court. *Abbott Laboratories* is not an environmental case per se. But it involved an important question for environmental lawyers regarding the scope of public prosecutors' authority to enforce California's Unfair Competition Law (UCL), California Business & Professions Code section

17200. The specific issue in *Abbott Laboratories* was whether county district attorneys possess the authority to prosecute alleged violations of the UCL that occur outside the borders of their county.

That legal question split California's law enforcement community. The state Attorney General, the California District Attorneys Association and some D.A.s argued in friend-of-the-court briefs filed with the Supreme Court that district attorneys lack the authority to prosecute parties for harms occurring outside their counties. But other district attorneys, led by Orange County's, along with a coalition of city attorneys and the League of California Cities, argued that local prosecutors can exercise statewide prosecutorial jurisdiction under the UCL.

In another unanimous decision, the Supreme Court agreed that district attorneys could indeed exercise statewide jurisdiction under the UCL.

The UCL is an important arrow in public prosecutors' environmental enforcement quiver. Over the years, prosecutors pursuing environmental violations have frequently added causes of action under the UCL to their underlying environmental statutory claims because the UCL often provides enhanced civil penalty authority, an extended statute of limitations, and other advantages.

The net effect of the Supreme Court's *Abbott Laboratories* decision is to expand significantly the ability of government prosecutors to enforce California's environmental laws effectively. Environmental pollution and wrongdoing often do not follow local government borders. The Supreme Court's decision in *Abbott Laboratories* recognizes that fact.

Weiss v. People ex rel. Department of Transportation.. In still another unanimous decision, the Supreme Court resolved a nettlesome issue of eminent domain law: do the formal statutory procedures governing eminent domain cases brought by government agencies to acquire private property for government use apply to *inverse* condemnation lawsuits as well? (The latter doctrine involves claims by private property owners that government conduct that physically damages or reduces the economic value of their property can seek monetary compensation from the government.)

California's Eminent Domain Law is an exceedingly arcane and complex statute. Applying that statute to cases of alleged physical damage to private property by government action or "regulatory takings" of private property would seem to be the

equivalent of attempting to place a square peg into a round hole. The *Weiss* decision provides welcome clarity to both eminent domain and inverse condemnation law. In doing so, the justices also reached the correct result.