NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

FRIENDS OF THE SANTA CLARA RIVER, Plaintiff and Appellant, v. CASTAIC LAKE WATER AGENCY, Defendant and Respondent.	B164027 (Los Angeles County Super. Ct. No. BS056954)

APPEAL from a judgment of the Superior Court of Los Angeles County, David P. Yaffe, Judge. Affirmed.

Law Office of Alyse M. Lazar and Alyse M. Lazar for Plaintiff and Appellant.

Rossmann and Moore, Antonio Rossmann and Roger B. Moore for Amici Curiae Planning and Conservation League and Citizens Planning Association of Santa Barbara County, Inc., in support of Plaintiff and Appellant.

Horvitz & Levy, Barry R. Levy, William N. Hancock; R. Bruce Tepper; and McCormick, Kidman & Behrens, Russell G. Behrens, H.L. (Mike) McCormick and David D. Boyer for Defendant and Respondent.

INTRODUCTION

This is the second time this case has been before us. On the first appeal we directed the trial court to issue a writ of mandate to set aside certification of respondent Castaic Lake Water Agency's Environmental Impact Report (EIR) because the EIR had been tiered upon a prior EIR that had been found to be infirm by an intervening appellate decision. Upon remand, respondent and appellant Friends of the Santa Clara River agreed a writ of mandate should issue to decertify the EIR but disagreed about whether the trial court should also enjoin the project pending certification of a new EIR. After consideration of documentary evidence and the presentation of written and oral arguments, the trial court rejected appellant's request for an injunction without prejudice to entertaining a renewed request founded on an adequate showing of entitlement to relief. This appeal follows entry of judgment in October 2002.

Appellant attacks the trial court's denial of its request for an injunction on two separate grounds. Appellant first contends the trial court's denial was in derogation of the directions contained in our earlier decision. The contention lacks merit. The clear and unambiguous dispositional language in our opinion granted the trial court the authority to deny in toto the request for an injunction. Appellant next contends the trial court erred on the merits in denying its request. Based upon the record, we find the trial court did not abuse its discretion in implicitly finding

appellant had failed to carry its burden of establishing the predicates for injunctive relief. We therefore affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Respondent purchased from the Kern County Water Agency entitlement to 41,000 acre-feet per year of water. The purchase followed consummation of the Monterey Agreement which changed the allocation between agricultural and urban contractors of entitlements to State Water Project (SWP) water. Respondent approved this purchase after first certifying an EIR. This EIR was "tiered" upon an earlier EIR approving the Monterey Agreement.[1] The Legislature favors tiering to streamline the regulatory process and to avoid unnecessary duplication of effort.

Appellant filed a petition for a writ of mandate in the superior court to compel respondent to set aside its certification of the EIR for the purchase of 41,000 acre-feet per year of SWP water. Appellant advanced various grounds in support of its petition. The superior court denied the petition. Appellant appealed the adverse judgment to this court.

While that appeal was pending, our colleagues in the Third Appellate District concluded the EIR prepared for the Monterey Agreement was inadequate and therefore ordered it decertified. (*Planning & Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, review den. (*PCL*).)

---

1 Tiering "means the coverage of general matters and environmental effects in an environmental impact report prepared for a policy, plan, program or ordinance followed by narrower or site-specific environmental impact reports which incorporate by reference the discussion in any prior environmental impact report and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior environmental impact report." (Pub. Res. Code, § 21068.5.)

We therefore concluded that in the appeal presented to us *PCL* required decertification of respondent's EIR because it had been tiered on the now-decertified EIR for the Monterey Agreement. (*Friends of the Santa Clara River v. Castaic Lake Water Agency* (2002) 95 Cal.App.4th 1373, 1383-1388, review den. (*Friends I.*) We, however, rejected all of appellant's other challenges to respondent's EIR, finding "them to be *without merit*." (*Id.* at p. 1387.) We noted: "[R]espondent may be able to cure the *PCL* problem by awaiting action by the [Department of Water Resources] complying with the *PCL* decision, then issuing a subsequent EIR, supplement to EIR, or addendum to EIR [citations] tiering upon a newly certified Monterey Agreement EIR." (*Id.* at pp. 1387-1388.)

In regard to further action in the trial court we wrote: "[W]e leave to the trial court's discretion whether to enjoin all or portions of respondent's project pending completion of an adequate EIR. The trial court is in a better position than this court to determine factually the current status of the *PCL* litigation or of a new Monterey Agreement EIR." (*Id.* at p. 1388.)

The dispositional paragraph of our decision read, in relevant part: "The judgment is reversed. The trial court shall issue a writ of mandate vacating the certification of the EIR, shall retain jurisdiction until respondent certifies an EIR complying with CEQA consistent with the views expressed in this opinion, and shall consider such orders it deems appropriate under [Public Resources Code] section 21168.9." (*Id.* at p. 1388.)

Upon remand, the parties agreed the trial court was required to issue a writ of mandate to decertify respondent's EIR. The bone of contention was whether the trial court should also enjoin respondent from proceeding with the project, e.g., the transferring of the entitlement to the 41,000 acre-feet of water per year, pending completion of the new EIR.

Appellant argued: "To allow [respondent] to use any portion of its unstudied 41,000 afy [acre feet per year] entitlement before the EIR analysis is complete will result in **new permanent water connections** that will not be able to be reversed. Once houses are in and the faucets are on, there is no way to turn back. Without the proven need for this water to serve existing users, there is no equitable justification for allowing the use of any portion of the 41,000 afy entitlement in the face of its clear consistency with CEQA policies against pre-approved projects. A fair EIR process requires that project approval not be up and running as a foregone conclusion."

The evidentiary support for this argument is found in a declaration executed in August 2002 by appellant's counsel. The declaration sought to establish respondent would have sufficient water from other sources to supply its existing customers without use of the entitlement. From these factual allegations, appellant argued any use by respondent of the entitlement would necessarily be for new customers and therefore subject to being enjoined. The declaration referenced several attached documents and included allegations grounded upon information and belief. In pertinent part it averred:

> "I am informed that [respondent] has utilized at most 3674 af [acre feet] of the subject 41,000 afy [acre feet per year] water transfer during the past year. Attached is a true copy of CLWA Production Report for 2000, 2001, and half of 2002, and also a DWR Notice to State Water Project Contractors dated May 2002. The reports speak for themselves, and reflect CLWA's use of State Water Project entitlements to its various purveyors. The allocation of SWP water was 65% in the last year, and *petitioner is informed and believes that CLWA expects an even larger allocation in the coming fiscal year to as much as 90%.* The report shows that water use is measured yearly from June to June. It is undisputed that CLWA has a 54,200 afy entitlement to SWP water that is not under any legal cloud and clearly available for use, aside from the 41,000 afy that is the subject of this litigation. Based on a 65% delivery of SWP water, CLWA's

> allocation of its undisputed 54,200 afy totals 35,230 af. The report reflects use of 38,974 af from June 2001 until June 2002; which appears to be only 3674 af more than can be supplied from the 54,200 afy entitlement. It thus appears that CLWA *may have utilized* 3674 af of its allocation from the subject 41,000 af entitlement in the past year. If the SWP allocations increase to 75% or greater, *as is apparently expected,* by doing the math it appears that the 41,000 af water transfer is not needed for existing customers of the CLWA water purveyors while the supplemental environmental review is pending." (Italics added.)

Appellant therefore sought an order enjoining respondent "from any and all use of the 41,000 afy water transfer under the current approvals."

In addition, appellant's counsel averred she had communicated with counsel in the *PCL* case and that as of August 22, 2002, "the *PCL* case remand has not yet been settled or otherwise resolved, and that the Monterey Agreement Implementation Draft EIR to be prepared by the Department of Water Resources (DWR) as required by the *PCL* decision has not yet been published." As for the status of respondent's EIR, the declaration averred that respondent's attorney had informed her "that the agency has not yet published its Draft Supplemental EIR in response to [the Court of Appeal's decision], but that it intends to prepare the EIR itself rather than await the new DWR Monterey Agreement Implementation EIR."

In opposition, respondent asked the trial court to "**issue an order allowing the Transfer of Entitlement to remain intact pending completion of a new EIR.**" In particular, respondent urged that the entitlement was "necessary to satisfy current existing and projected near-term water demand"; that a "decision to set aside the Transfer of Entitlement would cause immediate irreparable harm to the Agency and the water consumers"; and that the Transfer "has been in effect for more than three years, and there is no evidence that the Transfer has resulted in any new or increased significant adverse environmental effects."

Respondent's opposition was supported by a detailed eight-page declaration from Dan Masnada, respondent's general manager. Masnada averred that respondent had already retained consultants to prepare a new EIR and they planned to complete the process by March 2003. A portion of Masnada's declaration directly refuted the allegations made by appellant's counsel about respondent's projected water supply. In pertinent part, Masnada averred:

> "[Counsel's] declaration states that 'CLWA expects an even larger allocation made by DWR in the coming fiscal year to as much as 90%.' . . . *There is no factual basis for this statement.* There have been no indications that CLWA's SWP allocation made by DWR in the coming year will be anywhere near 90%. To the contrary, based on discussions with DWR Operations Control Office Personnel it is likely that the initial 2003 SWP allocation on December 1, 2002 will be approximately 20%, as it was last year. If dry conditions occur next year, the final SWP allocation for 2003 could remain as low as 20%.
>
> [Counsel's] Declaration also states that the CLWA Production Report 'shows that water use is measured yearly from June to June.' . . . This is incorrect. While annual water use can be measured from July to June, available SWP water supply is characterized on a calendar year basis because DWR allocates it on a calendar year basis. *[Her] accounting of water deliveries i[s] flawed.* She has utilized an approach that understates CLWA's current level of demand and projected deliveries to the retail purveyors during 2002. As discussed above, and shown in Exhibit A, CLWA's Final 2001 SWP allocation was 39%. Without the 41,000 AF in 2001, CLWA would have experienced a shortfall of 14,218 AF."

Appellant's reply to respondent's opposition did not include any additional declaration(s). Instead, its reply asserted respondent's "factual information" was "confusingly presented and misleading" and that a portion of Masnada's opinion about SWP allocations for 2003 was "complete conjecture and speculation."

After a hearing in which the parties presented argument and responded to questions from the bench, the trial court issued a writ of mandate ordering respondent to set aside its certification of the 1999 EIR and to certify a new EIR consistent with our opinion in *Friends I.* The trial court rejected appellant's request to enjoin any use of the water entitlement. It ruled: "Petitioner [appellant herein] requests that the Court also prohibit respondent from using any of the 41,000 acre feet of additional water allotted to it from the subject State Water Project. Petitioner contends that the said water will be used to approve new development that will not be able to be reversed if a Final Environmental Impact Report is not certified. Respondent contends that such a prohibition would prevent it from meeting the existing water needs in the area it services. *Both contentions appear to be speculative at this time. Respondent will not be prohibited from using the water to which it is entitled, but petitioner may renew its application for such prohibition based upon evidence of the actual use of such additional water for purposes it considers improper.*" (Italics added.)

This appeal follows.[2]

DISCUSSION

A. THE DIRECTIVE IN *FRIENDS I*

Appellant first contends the trial court misconstrued our directive in *Friends I.* Appellant's position is that our decision gave the trial court the power

---

2 In July 2002, we denied respondent's motion to dismiss the appeal because denial of a *pendente lite* injunction is appealable pursuant to Code of Civil Procedure section 904.1, subdivision (a)(6).

to enjoin either all or part of the project pending certification of a new EIR but that it did not give it the power to decide, as it did in the proceedings it conducted following remand, not to enjoin any part of the project. Appellant relies upon the following language we now italicize from *Friends I*: "Like the court in *PCL, supra,* 83 Cal.App.4th at page 926 and footnote 16, we leave to the trial court's discretion whether to enjoin *all or portions* of respondent's project pending completion of an adequate EIR." (*Friends I, supra,* 95 Cal.App.4th 1373, 1388, italics added.) From that language, appellant argues "the Superior Court was not vested with the discretion to issue no injunction, but only with [the] discretion to issue a full or partial injunction."

Appellant's argument lacks merit because it ignores the clear dispositional language of our opinion which gave the trial court the authority to deny in toto a request for injunctive relief.

"Where a reviewing court has remanded a matter to the trial court with directions '. . . the trial court . . . is bound to specifically carry out the instructions of the reviewing court. . . . [A]ny material variance from the explicit directions of the reviewing court is unauthorized and void.'" (*Coffee-Rich, Inc. v. Fielder* (1975) 48 Cal.App.3d 990, 998.)

The appellate court's directions are determined by "look[ing] first to the dispositional language of the opinion--the language which constitutes the remittitur directions." (*Frankel v. Four Star International, Inc.* (1980) 104 Cal.App.3d 897, 902.) *Only if* the dispositional language is ambiguous and in need of interpretation will that language "be interpreted in light of the reasoning and holdings found in the body of the opinion. [Citations.]" (*Lesny Development Co. v. Kendall* (1985) 164 Cal.App.3d 1010, 1021.)

As set forth earlier, the pertinent portion of the dispositional language in *Friends I* read: "The judgment is reversed. The trial court shall issue a writ of

mandate vacating the certification of the EIR, shall retain jurisdiction until respondent certifies an EIR complying with CEQA consistent with the views expressed in this opinion, *and shall consider such orders it deems appropriate under section 21168.9.*" (*Friends I, supra,* 95 Cal.App.4th 1373, 1388, italics added.) The statutory provision referenced--Public Resources Code section 21168.9--is lengthy and set forth in toto below in footnote 3.[3] The definitive

---

[3] The statute provides:

"(a) If a court finds, as a result of a trial, hearing, or remand from an appellate court, that any determination, finding, or decision of a public agency has been made without compliance with this division, the court shall enter an order that includes one or more of the following:

"(1) A mandate that the determination, finding, or decision be voided by the public agency, in whole or in part.

"(2) If the court finds that a specific project activity or activities will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project, a mandate that the public agency and any real parties in interest suspend any or all specific project activity or activities, pursuant to the determination, finding, or decision, that could result in an adverse change or alteration to the physical environment, until the public agency has taken any actions that may be necessary to bring the determination, finding, or decision into compliance with this division.

"(3) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this division.

"(b) Any order pursuant to subdivision (a) shall include only those mandates which are necessary to achieve compliance with this division and only those specific project activities in noncompliance with this division. The order shall be made by the issuance of a peremptory writ of mandate specifying what action by the public agency is necessary to comply with this division. However, the order shall be limited to that portion of a determination, finding, or decision or the specific project activity or activities found to be in noncompliance only if a court finds that (1) the

(Fn. continued.)

construction of that statute is found in our Supreme Court's opinion in *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376. It concluded that the statute permits but does not require a court to enjoin a project while a new EIR is prepared. (*Id.* at pp. 423-425.) In deciding whether injunctive relief is appropriate, a court is to rely upon "traditional equitable principles." (*Id.* at p. 423.) Given this long-standing construction of section 21168.9,[4] it is clear our dispositional language granted the trial court the option to decline to grant any injunctive relief after it properly considered the pertinent equities. Appellant's argument that the trial court failed to follow our directions by declining to grant equitable relief is therefore without merit.

In any event, appellant engages in a crabbed interpretation of one phrase in our opinion to argue the trial court had no discretion to deny a request for

---

> portion or specific project activity or activities are severable, (2) severance will not prejudice complete and full compliance with this division, and (3) the court has not found the remainder of the project to be in noncompliance with this division. The trial court shall retain jurisdiction over the public agency's proceedings by way of a return to the peremptory writ until the court has determined that the public agency has complied with this division.
>
> "(c) Nothing in this section authorizes a court to direct any public agency to exercise its discretion in any particular way. Except as expressly provided in this section, nothing in this section is intended to limit the equitable powers of the court."

4 See also *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1456 ["Section 21168.9, as construed by the Supreme Court in *Laurel Heights,* merely grants a reviewing court the authority to stay all activity or use of a project until an agency certifies a proper EIR; it does not require it to do so. [Citation.] The court in *Laurel Heights* relied upon traditional equitable principles in deciding that injunctive relief there was not appropriate."].

injunctive relief. The sentence in which the phrase is found began with a specific reference to the *PCL* opinion: its dispositional language found at page 926, including footnote 16. That language included the same direction found in our dispositional language: the direction the trial court shall make any such orders it deems appropriate under section 21168.9. Footnote 16 read: "We earlier declined to stay implementation of the Monterey amendments and transfer of the Kern Fan Element. Consequently, the project was permitted to proceed pending disposition of this appeal. The record does not reflect the current status of the project and, in the absence of such information, we shall issue no orders concerning further implementation of the project. The trial court, acting under the authority provided by Public Resources Code section 21168.9, is the more appropriate forum to consider and rule upon requests *to enjoin all or portions of the project pending* the completion of administrative and judicial proceedings necessitated by our opinion." (*PCL, supra,* 83 Cal.App.4th 892, fn. 16 at p. 926, italics added.) Just as the *PCL* court did not intend to limit the trial court's authority by requiring it to enjoin at least a portion of the project, neither did we. We, as did the *PCL* court, were simply describing the types of requests that might be made, e.g., requests for a partial or full injunction. We did not intend to divest the trial court of its power to deny a request for injunctive relief if it either concluded that the moving party had failed to establish the predicates for relief or that, given the equities, relief was not required.

B. DENIAL OF INJUNCTIVE RELIEF

Appellant next contends: "The Superior Court's decision regarding injunctive relief was an abuse of discretion, because there is no factual basis to support the decision." (Bold omitted.) We disagree.

A decision to grant or deny a request for injunctive relief rests within the trial court's discretion. Its order will not be reversed on appeal unless an abuse of discretion is shown. It is, of course, the appellant's burden to establish an abuse of discretion. (*Cohen v. Board of Supervisors* (1985) 40 Cal.3d 277, 286.) "A trial court will be found to have abused its discretion only when it has exceeded the bounds of reason or contravened the uncontradicted evidence. [Citation.]" (*Lubavitch Congregation v. City of Long Beach* (1990) 217 Cal.App.3d 1388, 1391.)

It was appellant's burden as moving party in the trial court to establish the predicates for injunctive relief. In particular, Public Resources Code section 21168.9, subdivision (a)(2) requires the court to first find that a "specific project activity . . . will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project" and that such activities "could result in an adverse change or alteration to the physical environment" before an injunction will issue. The trial court found appellant's claim of irreparable harm--new permanent water connections that will not be able to be reversed--to be speculative. In other words, it concluded appellant had failed to discharge its burden of proof.[5] However, it specifically left open the opportunity for appellant

---

5 To a certain extent, appellant relies upon four documents not presented to the trial court to support its contention of abuse of discretion. Three of those documents were prepared after the trial court entered judgment in October 2002. Each document is a portion of a report prepared for respondent. Prior to the submission of briefing, we granted appellant's request to take judicial notice of these documents.

Appellant wants to use this information to show respondent is improperly representing to third parties it is entitled to the 41,000 acre-feet per year of water. Appellant argues this is proof of the irreparable harm it is suffering because the trial court declined to enjoin respondent.

Our prior grant of appellant's motion for judicial notice does not require us to consider these documents. "Although a reviewing court may take judicial notice of

(Fn. continued.)

to renew its claim "based upon evidence of the actual use of such additional water for purposes it considers improper."

Distilled to its essence, appellant's present position is nothing more than an argument the trial court was required to credit the allegations in its counsel's declaration which allegedly supported its request for injunctive relief. That is, appellant would have us find that no reasonable judge could have found its evidentiary showing insufficient. We cannot make that finding.

The evidence on this issue was conflicting. As set forth above, Masnada's declaration directly contradicted some of the allegations made by appellant's counsel. Given the (purported) deficiencies Masnada pointed out in counsel's declaration, the fact that much of counsel's declaration was based upon information and belief, and appellant's failure to file a reply declaration addressing those points with its reply memorandum, the trial court was well within its discretion to conclude that *at that point in time* appellant had failed to make the requisite showing.

Appellant argues such a conclusion is insupportable because the trial court also found respondent's trial court contention to be speculative. Not so. Appellant

---

matters not before the trial court, . . . the reviewing court need not give effect to such evidence. 'Having taken judicial notice of such a matter, the reviewing court may or may not apply it in the particular case on appeal. The effect to be given to matters judicially noticed on appeal, where the question has not been raised below, depends on factors that are not evidentiary in character.' [Citation.]" (*Doers v. Golden Gate Bridge etc. Dist.* (1979) 23 Cal.3d 180, 184, fn. 1.)

In this instance, given that (1) these documents essentially constitute "new evidence" in support of appellant's request for injunctive relief and (2) the trial court explicitly anticipated appellant would renew its request before it, we decline to consider the documents on this appeal.

If appellant wishes to renew a request for injunctive relief, it can bring these documents to the trial court's attention.

is conflating two distinct points respondent made in the trial court. First, based upon a claim of irreparable harm, respondent had affirmatively sought an order that the transfer of entitlement remain in effect until the new EIR was completed. Second, respondent refuted the factual allegations about its water sources contained in the declaration executed by appellant's counsel. The trial court's finding of speculation was directed at the first point: respondent's claim it would suffer irreparable harm if the trial court denied its request for an order that the transfer remain in effect until the EIR was completed. The finding of speculation was not directed at the second point: respondent's discrete refutations of appellant's allegations. The trial court could reasonably find respondent had failed to meet its burden to establish the predicate for the relief it sought but could also reasonably find that the portions of Masnada's declaration set forth above were sufficient to show appellant's claim for relief was likewise subject to serious question and therefore grounded in speculation. We therefore reject appellant's claim that "[r]espondent's entire argument that there was no abuse of discretion is incorrectly based on evidence that the lower court determined was mere speculation, not fact."[6] (Fn. omitted.)

Lastly, we address an argument raised in the amici brief jointly filed by the Planning and Conservation League and the Citizens Planning Association of Santa

---

6 Appellant cites to various comments the court made as well as questions it posed during the hearing as proof that the court grounded its decision either in facts unsupported by the evidence or on legal principles inapplicable to the case. This approach is in error. A contextual reading of the transcript of the hearing indicates the court's questions and comments were intended to gather information, to focus the parties' arguments, and to test the strength of the parties' respective positions. The "bottom line" is whether the trial court abused its discretion in finding appellant had failed to discharge its burden to establish the predicates for injunctive relief. As explained above, the court did not so abuse its discretion.

Barbara County, Inc. in support of appellant. Amici are two of the environmental organizations that were the prevailing parties in *PCL, supra,* 83 Cal.App.4th 892.

Amici first inform us that in May 2003--seven months after the trial court entered judgment in this matter--the superior court in Sacramento approved a settlement agreement entered into by the parties in the *PCL* case. Pursuant to that agreement, work has commenced on a new EIR in regard to the Monterey Agreement and related issues. The settlement agreement recognizes that the transfer underlying this lawsuit is "'subject to pending litigation in the Los Angeles Superior Court following remand from the Second District Court of Appeal'"; that "'jurisdiction with respect to that litigation should remain in the [Los Angeles Superior Court]'"; and that "'nothing in this settlement agreement is intended to predispose the remedies or other actions that may occur in that pending litigation.'"

Amici argue the trial court abused its discretion in denying appellant's request for injunctive relief because the court ignored "the specific directions of *Friends I*" that its determination on interim relief should be based upon the status of the *PCL* litigation and the new statewide EIR to be prepared for the Monterey Agreement.[7] As support for that proposition, Amici cites us to the last two paragraphs of our opinion in *Friends I.* There, after concluding that other than the *PCL*/tiering issue all of appellant's complaints about the EIR were meritless, we wrote: "This suggests that respondent may be able to cure the *PCL* problem by awaiting action by the DWR complying with the *PCL* decision, then issuing a subsequent EIR, supplement to EIR, or addendum to EIR [citations] tiering upon a newly certified Monterey Agreement EIR. Appellant itself so suggests. [¶] Like the court in *PCL, supra,* 83 Cal.App.4th at page 926 and footnote 16, we leave to

---

7 Appellant raised this point in the trial court and its opening brief.

the trial court's discretion whether to enjoin all or portions of respondent's project pending completion of an adequate EIR. The trial court is in a better position than this court to determine factually the current status of the *PCL* litigation or of a new Monterey Agreement EIR." (*Friends I, supra,* 95 Cal.App.4th 1373, 1387-1388.)

Amici misapprehend our directions to the trial court. As explained above, those directions are found in the dispositional language of our opinion. That language directed the trial court, inter alia, to "consider such orders it deems appropriate under [Public Resources Code] section 21168.9." (*Ibid.*) That section grants the trial court broad powers to fashion equitable relief. (See fn. 3, *ante*, and accompanying text at pp. 10-12.) Amici's argument that the exercise of said discretion was to be based upon the status of either the *PCL* litigation or the new EIR for the Monterey Agreement is at odds with the clear dispositional language we employed. The two paragraphs in our opinion upon which amici rely were merely suggestions as to how respondent could proceed and a statement that in exercising its discretion whether to grant equitable relief pending completion of a new EIR for this project, the trial court could ascertain, and if it so chose, rely upon the status of the *PCL* litigation and new Monterey Agreement EIR.

In any event, the parties' papers in the trial court informed it of what was then the current status of both the *PCL* litigation and the new Monterey Agreement EIR and the issue was discussed at the hearing. Nothing in the record suggests the court did not consider those facts in rendering its decision, a decision that was properly framed by the specific prayers for relief each party advanced in the trial court. To a large extent, amici's position is nothing more than an attempt to reargue the motion and to do so based upon events that occurred after judgment was rendered. Because the *PCL* litigation settled *after* the trial court entered its judgment, that settlement and the status of the preparation of the new Monterey Agreement EIR are matters that can be brought to the attention of the trial court if

appellant seeks to renew its request for injunctive relief. Lastly, in order to forestall any unnecessary future litigation, we hasten to add that nothing stated in this opinion is to be construed to be an indication as to how the trial court should rule in any further proceeding(s) on any specific issue(s).

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

VOGEL (C.S.), P.J.

We concur:

HASTINGS, J.

CURRY, J.

R. Bruce Tepper
1880 Century Park East
Suite 200
Los Angeles, CA 90067-1602

Division 4
Friends of the Santa Clara River
v.
Castaic Lake Water Agency
B164027