
LAWSUITS FILED OR PENDING

**ENVIRONMENTAL GROUPS FILE SUIT AGAINST SAN FRANCISCO
CHALLENGING HETCH HETCHY RESERVOIR**

Restore Hetch Hetchy (Restore) has filed suit asserting that maintaining and operating the O’Shaughnessy Dam and Hetch Hetchy Reservoir (Hetch Hetchy) is an unreasonable method of diverting water from the Tuolumne River in violation of Article X, § 2 of California’s Constitution. Restore asserts there are feasible alternatives to the continued operation of Hetch Hetchy, and further claims the costs of dismantling Hetch Hetchy, developing alternative water supplies, and replacing lost power generation are reasonable when weighed against the claimed benefits of removing Hetch Hetchy. [See, *Restore Hetch Hetchy v. City and County of San Francisco*, Tuolumne Superior Court]

Restore and Background

Restore is, according to its website, an organization with the mission:

...to return the Hetch Hetchy Valley in Yosemite National Park to its natural splendor while continuing to meet the water and power needs of all communities that depend on the Tuolumne River. (<http://www.hetchhetchy.org/about>)

Restore has taken a multi-pronged approach to achieve its mission, including by introducing a 2012 ballot initiative in San Francisco to evaluate draining Hetch Hetchy and returning the Hetch Hetchy Valley to pre-dam conditions. The initiative lost at the ballot box.

On April 21, 2015, Restore filed a petition in Tuolumne County Superior Court and asserted the City and County of San Francisco’s and the San Francisco Public Utilities Commission’s (collectively, San Francisco) operation of Hetch Hetchy violates Article X, § 2 of California’s Constitution. The petition seeks declaratory relief and a writ of mandate ordering San Francisco to prepare an engineering and financing plan for altering the method of diversion of water

within the Hetch Hetchy Valley such that Hetch Hetchy Reservoir could be removed and the natural flow levels of the Tuolumne River through the Hetch Hetchy Valley could be restored.

The Complaint: Alleging an Unreasonable Method of Diversion

Restore claims that Hetch Hetchy operations violate Article X, § 2—which requires “that the waste or unreasonable use or unreasonable method of use of water be prevented”—because in 2015:

...[o]perating a dam and reservoir in an iconic glacial carved valley within Yosemite National Park is not...a reasonable method of diverting water for municipal uses.

The petition generally argues that what is considered a reasonable method of diversion changes over time, and that “[w]hat may have been reasonable in 1918 or 1930s may not be reasonable in light of current social values.” The complaint does not however, appear to identify the change in social values that might render Hetch Hetchy unreasonable. On these grounds, however, Restore seeks a declaratory judgment that San Francisco’s operation of the Hetch Hetchy is an unreasonable method of diversion pursuant to Article X, § 2 of the California Constitution.

Restore also asserts a novel legal argument that Article X, § 2 requires that water be put to “the greatest number of beneficial uses which the supply can yield” without regard to the utility of each of those uses. Restore specifically claims that current Hetch Hetchy operations serve “only two beneficial uses—municipal water supply and electrical power generation” and “unnecessarily eliminates uses rather than maximizes the greatest number of beneficial uses of the Tuolumne River.” Under Restore’s analysis, a greater number of beneficial uses would be served if Hetch Hetchy’s operations ceased, including “aesthetic, scenic, fish & wildlife habitat, fishing, recreational, and preservational beneficial uses.”

Alternatives and Costs

To offset loss of municipal supply and power generation that would result from ceasing Hetch Hetchy operations, Restore suggests certain alternatives. Specifically, to replace municipal supply without affecting San Francisco's demands, Restore suggests: (1) an intertie to San Francisco's conveyance system downstream from Hetch Hetchy at an estimated cost of \$56 to \$63 million; (2) additional groundwater investments (including a groundwater bank at an estimated cost of \$244 million); (3) additional surface storage at an unknown cost; (4) increased San Francisco water recycling at an unknown cost. The cost of additional impacts from ceasing Hetch Hetchy operations include increased water treatment (\$387 million), generating supplemental power supply (\$669 million), and breaching the O'Shaughnessy Dam (\$374 million).

Against these costs, Restore balances \$44 billion and \$113 billion in claimed "existence value" of a restored Hetch Hetchy Valley. While the specific calculations are not stated in the complaint, Restore asserts this figure includes:

...individuals' strong desires to be able to visit a restored Hetch Hetchy Valley in the future,

to realize their ecological ethics, their altruism toward others and the environment, and the desire to benefit future generations.

Restore further notes that "Yosemite Valley is struggling to satisfy the growing demands of the estimated 2.5 million annual visitors from all over the world who journey to Yosemite Valley to marvel at its natural wonders" which is a "testament to the future popularity of the Hetch Hetchy Valley and the immense value that park visitors would bestow on the valley."

Conclusion and Implications

In effort to achieve its goals of returning the Hetch Hetchy Valley to pre-dam conditions, Restore has asserted the broad legal requirement of Article X, § 2 to prevent unreasonable methods of diverting water. San Francisco's responsive pleading is due May 21, 2015. This action raises a number of novel legal issues that will bear close attention as the case moves forward. The complaint is available online at: <http://www.scribd.com/doc/263315639/Restore-Hetch-Hetchy-Lawsuit-Against-San-Francisco#scribd> (David E. Cameron, Meredith Nikkel)

Reprinted with permission from the California Water Law & Policy Reporter, Copyright © 2015-2016, Argent Communications Group. All rights reserved.

Further copying requires additional written consent:

P.O. Box 506, Auburn, CA 95604; E-mail: reporters@argentco.com."