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U.S. Court of Federal Claims Rules for Northern California Power Agency and California Cities

August 18, 2022 | Scott H. Strauss, Lisa G. Dowden, Peter J. Hopkins, Jeffrey A. Schwarz, Amanda C. Drennen

Spiegel & McDiarmid LLP attorneys achieved another milestone in a lawsuit brought by the Northern California Power Agency ("NCPA") and the cities of Redding, Roseville and Santa Clara, California, to recover overcharges imposed on them by the U.S. Bureau of Reclamation under the Central Valley Project Improvement Act ("CVPIA").

NCPA and the cities buy hydroelectric power generated by the Bureau's Central Valley Project ("CVP") in California and pay prices that include an allocated share of the CVP's capital costs. Since Congress first authorized CVP development in the 1930s, the Bureau has performed several interim cost allocation studies, most recently in the 1970s. The studies allocated CVP costs among the project's water and power contractors and those project purposes (such as flood control) that are funded by the federal government. To develop annual water and power rates, the Bureau updates the allocations every year and applies them to current plant balances.

To help fund efforts to mitigate the CVP's environmental impact, the CVPIA imposes additional charges on CVP water and power contractors. It caps water user charges and ties them to the amount of water delivered each year. It also requires that, to the greatest extent possible, CVPIA charges must be assessed in the same proportion, on a ten-year average basis, as water and power users' respective allocations for repayment of CVP capital costs.

NCPA and the Cities sued the United States in 2014, alleging that the Bureau violated the CVPIA proportionality requirement and instead charged power contractors excessive amounts to make up for reduced collections from water users in drought years. The Court of Federal Claims dismissed the suit, finding that the proportionality requirement was not binding. *N. Cal. Power Agency v. United States*, 139 Fed. Cl. 74 (2018).

NCPA hired Spiegel & McDiarmid to appeal, and in November 2019 the U.S. Court of Appeals for the Federal Circuit reversed the decision. The court held that the CVPIA's proportionality limit is binding and remanded for the trial court to quantify the overcharge damages. *N. Cal. Power Agency v. United States*, 942 F.3d 1091 (Fed. Cir. 2019). In January 2020, the Bureau published a final cost allocation for the CVP.

On remand, plaintiffs and the United States disagreed about how to calculate the proportional charges the Bureau should have levied. Plaintiffs argued for measuring proportionality using the cost allocations that were in effect during the relevant historical periods. The United States contended that the historical allocations were in error and should be revised to remove certain costs from the amounts allocated to water users. Each side moved for summary judgment, asking the court to rule that its method was correct.

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In an August 18, 2022 opinion, the court agreed with NCPA and the cities and granted their motion. Under the plaintiffs' approach endorsed by the court, plaintiffs' damages for fiscal years 2008 through 2020 are expected to exceed $81 million.

Spiegel attorneys Lisa Dowden, Jeff Schwarz, Scott Strauss, Peter Hopkins, Amber Martin Stone and Amanda Drennen represented NCPA and the cities. Jeff Schwarz argued the appeal before the Federal Circuit and the summary judgment motions on remand.

The August 18 decision is linked below.

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