

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
CENTRAL

MINUTE ORDER

Date: 11/07/2007

Time: 10:00:00 AM

Dept: C-71

Judicial Officer Presiding: Judge Ronald S. Prager

Clerk: Kathleen Sandoval

Bailiff/Court Attendant: H. Zaragoza

ERM:

Reporter: Peter C. Stewart

Case Init. Date: 09/01/2006

Case Title: FRIENDS OF ROSE CANYON vs CITY OF SAN DIEGO

Case No: GIC871984

Case Category: Civil - Unlimited

Case Type: Toxic Tort/Environmental

Event Type: Motion Hearing (Civil)

Moving Party: FRIENDS OF ROSE CANYON, SAN DIEGO AUDUBON SOCIETY, SAN DIEGO COASTKEEPER,
ENDANGERED HABITATS LEAGUE

Causal Document & Date Filed: Motion for Attorney Fees, 08/16/2007

Appearances:

The Court, having taken the above-entitled matter under submission on 11/07/2007 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

RULING AFTER ORAL ARGUMENT: The Court rules on petitioners Friends of Rose Canyon, San Diego Audobon Society, San Diego Coastkeeper, and Endangered Habitats League's (collectively "Petitioners") motion for attorney fees and costs as follows:

Based upon the arguments of the parties presented at the hearing, the Court affirms its tentative ruling.

Petitioners request the following: (1) \$268,330.00; total lodestar, (2) \$7,950.00; CLG 1.5 Enhancement, (3) \$75,729.00; SMW 1.3 Enhancement, (4) \$30,036.00; Costs, and (5) \$68,173.00; Attorney Fees motion. Thus, Petitioners ask for a total of \$450,218.00.

A successful party is entitled to attorneys' fees if: (1) the action resulted in enforcement of an important right affecting the public interest; (2) the action conferred a significant benefit on the general public or a large class of persons, and (3) the necessity and financial burden of private enforcement make the award appropriate. (Code Civ. Proc. §1021.5; Woodland Hills Residents Assn., Inc. v. Los Angeles (1979) 23 Cal.3d 917, 933 (hereafter "Woodland Hills").)

Successful Parties. "[A]n award of attorney fees may be appropriate where 'plaintiffs' lawsuit was a catalyst motivating defendants to provide the primary relief sought....' [Citation] A plaintiff will be considered a 'successful party' where an important right is vindicated 'by activating defendants to modify their behavior.'" (Graham v. DaimlerChrysler Corp. (2004) 34 Cal.4th 553, 567 (hereafter "Graham").) Furthermore, [w]hen action is taken by the defendant after plaintiff's lawsuit is filed the chronology of events may permit the inference that the two events are causally related." (Californians for Responsible Toxics Mgmt. v. Kizer (1989) 211 Cal.App.3d 961, 968.) Here, respondent City of San Diego ("City") adopted Resolution R-301787 by the San Diego City Council ("City Council") on August 1, 2006, which authorized the Mayor to proceed with the Regents Road Bridge Alternative ("the Bridge") and eliminate an alternative project, the Genesee Avenue Widening Alternative ("Genesee Alternative"). (Keeth Declaration, ¶4 and Exhibit A.) On August 4, 2006, the City filed a Notice of Determination ("NOD"), indicating that the City had approved a "project" under the California Environmental Quality Act ("CEQA"). (Ibid.) On September 1, 2006, Petitioners filed a verified petition for writ of mandate challenging the City's project approval of August 1, 2006. (Id. at ¶6.) In October 2006, the parties entered into settlement discussions. (Id. at ¶¶7, 15-24 and Exhibit D.) On February 6, 2007, the City lodged the administrative record with the Court. (Id. at ¶17.) On March 27, 2007, the City adopted Resolution R-302497, which rescinded the City's prior approval of the Bridge and deletion of the Genesee Alternative. (Id. at ¶31 and Exhibit R.) On May 8, 2007, the parties stipulated to a dismissal without prejudice. (Id. at ¶¶33-34.) In addition, Petitioners provided evidence that they insisted that the City must rescind its original resolution approving the implementation of the project (Keeth Declaration, ¶¶8, 15, 21, 23, 25), that the City Council considered Petitioners' settlement offer on at least three occasions and hired outside counsel to evaluate the case and settlement options (Id. at ¶¶16, 19-20, 24), and that the City's counsel worked closely with

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Petitioners' counsel to ensure that the superseding resolution would serve to effectively moot the merits of Petitioners' case. (Id. at ¶¶27-30, 32.)

Criteria for Fee Award. Petitioners met the other criteria for a fee award under section 1021.5 for the reasons stated below.

Important Right Affecting the Public Interest. A suit brought to enforce CEQA and other environmental statutes "involve important rights affecting the public interest." (San Bernadino Valley Audobon Society, Inc. v. County of San Bernadino (1984) 155 Cal.App.3d 738, 754 and Rich v. City of Benicia (1979) 98 Cal.App.3d 428, 435.) Here, Petitioners sought to overturn the City's adoption of the Bridge and removal of the Genesee Alternative because the City's approval was premised on inadequate environmental review. (Petition for Writ of Mandate ("Petition"), ¶¶4, 42-49.) More specifically, Petitioners presented evidence that the City failed to adequately analyze or mitigate numerous potentially significant impacts to biological resources, hydrology and water quality, noise, and traffic. (Keeth Declaration, ¶3, AR 14:7684-726, 14:8078-15:8291, 15:8296-417, 8675-96.)

Significant Benefit on a Large Class of Persons. This criterion focuses on the results obtained in the action. (Woodland Hills, supra, 23 Cal.3d at p. 939.) Actions that advance statutory environmental goals have been held to provide significant public benefits under section 1021.5. (Friends of B St. v. City of Hayward (1980) 106 Cal.App.3d 988, 994.) Here, Petitioners' actions benefited both: (1) the public by ensuring that the goals and purposes of CEQA are not thwarted; and (2) a large class of persons living and recreating in and around the area of Rose Canyon, who would otherwise suffer the impacts noted above.

Necessity and Financial Burden. This criterion focuses on whether there was a need for private enforcement and whether the financial burden of the legal victory transcends any tangible interest of the Petitioners in the outcome of the action. (Woodland Hills, supra, 23 Cal.3d at p. 941.) Here, Petitioners filed suit to ensure that the City complied with CEQA (Petition, ¶¶4, 42-49; Keeth Declaration, Exhibit A; See also Woodland Hills, supra, 23 Cal.3d at p. 941.) Petitioners are nonprofit organizations that exist to protect and promote the environmental and natural resources in the San Diego region. (Petitioners' Memorandum of Points and Authorities ("Petitioners' P&A", pp. 18-19.) To block a fee award, courts have established that a non-pecuniary interest must be "specific, concrete and significant and these attributes must be based on objective evidence." (Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Supervisors (2000) 79 Cal.App.4th 505, 516.) Moreover, the interest must be "of sufficient strength and specificity to prompt an individual to pursue vigorously a suit notwithstanding a substantial financial burden in doing so." (Id. at p. 514 and Bowman v. City of Berkeley (2005) 131 Cal.App.4th 173, 181-182.) Here, the fact that some of Petitioners' members use and enjoy Rose Canyon is not sufficient. Thus, Petitioners do not have "no personal or financial" stake in the outcome. (Id. at ¶13, Hinton Declaration, ¶5, Reznik Declaration, ¶5, Beck Declaration, ¶5.) In addition, Petitioners' resources and fundraising capabilities are irrelevant, as section 1021.5 "does not make financial status of the prevailing party the criteria for awarding fees." (AFL-CIO v. Employment Development Dept. (1979) 88 Cal.App.3d 811, 822 and Citizens Against Rent Control v. City of Berkeley (1986) 181 Cal.App.3d 213, 231.)

Attorney Fees. Petitioners' spent a significant amount of time commenting on the DEIR and FEIR prior to the City's adoption of Resolution R-301787. (Hooper Declaration, ¶9; Keeth Declaration, ¶¶3, 18), prosecuting the merits of this case (Id. at ¶¶7, 17-18, 20, 43), and in settlement discussions with the City (Hooper Declaration, ¶¶8, 10, Exhibit A and Keeth Declaration, ¶¶7, 10, 15-16, 18-21, 24, 26-29, 32-34, and Exhibit L). In addition, Petitioners' counsel spent approximately 79.2 hours preparing for this motion. (Hooper Declaration, ¶24 and Gonzalez Declaration, ¶18.) Petitioners also presented evidence that they tried to minimize costs where feasible. (Hooper Declaration, ¶18-19 and Keeth Declaration, ¶43(a), (c)-(d), 44, and Gonzalez Declaration, ¶15).

The hourly rates of \$250 to \$400 per hour are reasonable, as they are well within the range of market rates for attorneys of similar experience in southern California. (Brandt-Hawley Declaration, ¶9, Hooper Declaration, ¶¶20-21, and Gonzalez Declaration, ¶16; See also Petitioners' P&A, p. 23.)

The expenses are also reasonable. The vast majority of the expenses were incurred to retain technical consultants to comment on the City's EIR (i.e., \$16,771.00). (Hooper Declaration, ¶27 and Exhibit B.) The remaining expenses include filing fees, and costs for the administrative record, facsimiles, photocopying, overnight delivery, Westlaw services, and travel to a mandatory settlement meeting, status conference, and hearing on the motion to consolidate. (Id. and Gonzalez Declaration, ¶22.)

A multiplier of is appropriate where, as here, Petitioners' counsel took on a significant financial risk in pursuing this litigation. More specifically, they took the case on a partially contingent basis and with the understanding that its recovery of fees was fully contingent on settlement or a court award. (Hooper Declaration, ¶¶25-26 and Gonzalez Declaration, ¶¶20-21.) To date, SMW has only received \$126,305.00 in attorney fees or about half of what counsel earned as set forth by the lodestar amount. (Hooper Declaration, ¶25.) CLG has received no fees and only reimbursement for the out of pocket costs forwarded on Petitioners' behalf. (Gonzalez Declaration, ¶20.) Finally, the time counsel devoted to the case could not be spent on other matters. (Hooper Declaration, ¶26.)

Based on the foregoing, the motion is GRANTED. Petitioners shall be awarded the fees with the above noted multipliers and costs.

IT IS SO ORDERED.

Ronald S. Prager

Judicial Officer Presiding: Judge Ronald S. Prager