

TENTATIVE ruling for 5/11/2005,
Department 71, the Honorable Ronald S. Prager presiding.
Case Number GIC843343

The Humane Society of the United States, et al., Plaintiffs

v.

City of San Diego et al., Defendants

TENTATIVE RULING: The Court rules on plaintiffs request for a temporary restraining order ("TRO") as follows:

A trial court considers two factors when deciding whether to grant injunctive relief: (1) the interim harm that the applicant will sustain if the injunction is denied as compared to the harm to the defendant if the injunction issues; and (2) the likelihood of success on the merits at trial. See Choice-In-Education League v. Los Angeles Unified School Dist. (1993) 17 Cal. App. 4th 415, 422. Furthermore, when a court is asked to stay a public agency's decision made after a noticed public hearing, the moving party must make a higher showing of irreparable injury because "[t]here is a general rule against enjoining public officers or agencies from performing their duties. See Tahoe Keys Property Owners Assn. v. State Water Resources Control Bd. (1994) 23 Cal. App. 4th 1459, 1471. "[T]o support a request for such relief the plaintiff must make a significant showing of irreparable injury." Ibid.

The motion is DENIED, as Plaintiffs have failed to show that they would suffer irreparable harm if the TRO is denied. Thus, it is not necessary for the Court to determine whether Plaintiffs are likely to prevail on the merits.

Plaintiffs contend that the irreparable harm in this case is that, "[p]ersistent disturbances by humans also may cause harbor seals to abandon particular haul-out sites permanently," thus eliminating Plaintiffs' ability to view, photograph, and enjoy seals at this location forever. In support of their motion, Plaintiffs provided the affidavits of three experts, David L. Lavigne, Naomi A. Rose, Sharon B. Young. Although their affidavits indicate that they are qualified to express opinions about harbor seals, the affidavits of Lavigne and Young also show that they have no personal experience with the site and the seals in question. Based on their experience, they opine that disturbance of harbor seals by humans may have several deleterious effects. See Lavigne Affidavit, ¶¶8-21 and Young Affidavit, ¶¶3-8. Neither discusses the effect of a rope barrier or Children's Pool Beach. The affidavit of Rose states that she has "followed and responded as needed to the situation with the harbor seals at Children's Pool Beach (CPB) in La Jolla for the last ten years" and opines that replacement of the rope barrier with the accompanying explanatory signs at Children's Pool Beach is necessary." See Rose Affidavit, ¶¶4-6.

On the other hand, Defendants have provided the declaration of Doyle A. Hanan in support of their opposition to Plaintiffs' motion. Like the experts noted above, Hanan's declaration indicates that he is qualified to express opinions about harbor

seals. Unlike Lavigne and Young, Hanan has extensive personal experience with the site and seals at issue here. See Hanan Declaration, ¶5. According to Hanan, the harbor seals at Children's Pool Beach are "unusually tolerant to human contact" and "did not react to human behavior that normally would disturb harbor seals." Id. at ¶11. He also opines, "the presence of the advisory rope is not critical to the survival of the harbor seals present at Children's Pool or the harbor seal population as a whole." Id. at ¶17.

Given Hanan's personal experience with the site and seals at issue coupled with his professional qualifications, the Court concludes that his declaration should be accorded much greater weight for the purposes of determining the issue of harm. Based on the foregoing, Plaintiffs have failed to meet their burden as to this issue of harm.

IT IS SO ORDERED.