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WATER LAW - CALIFORNIA

Los Angeles Waterkeeper v. State Water Resources Control Board

Court of Appeal, Second District, Division 1, California - June 2, 2023 - Cal.Rptr.3d - 2023 WL 3774587

Environmental-advocacy organization filed petitions for writs of mandate against state water resources control board and regional water quality control board, alleging that boards violated duty under California Constitution and Water Code by permitting four publicly owned treatment works (POTWs) to discharge treated wastewater without evaluating whether quantities discharged were reasonable or whether treated wastewater could be recycled or otherwise put to better use, and that regional board issued permits without making findings required under California Environmental Quality Act (CEQA).

Boards demurred. The Superior Court sustained demurrer as to regional board but overruled demurrer as to state board. Following bench trial, the Superior Court entered judgment for organization, issued writs of mandate, and awarded organization attorney fees. State board appealed and organization cross-appealed.

The Court of Appeal held that:

- Regional board had no duty to prevent purportedly unreasonable discharge of treated wastewater;
- Assuming state board had duty to prevent waste and unreasonable use of water, organization failed to allege that state board acted in derogation of duty and thus failed to state claim for mandamus; and
- CEQA did not require regional board to make findings regarding environmental impacts of wastewater discharge permits and whether there were feasible alternatives or mitigation measures.

Regional water quality control board had no duty, under section of California Constitution concerning conservation of water, to prevent purportedly unreasonable discharge of treated wastewater from four publicly owned treatment works (POTWs); regional board's role in state water law was to regulate water quality, and although Water Code broadly delegated to state water resources control board "the adjudicatory and regulatory functions of the state in the field of water resources" and power to "take all appropriate proceedings or actions...to prevent waste [and] unreasonable use" of water, nothing in Water Code granted regional board equivalent powers or suggested that regional board's role in regulating water quality included regulation of wasteful or unreasonable use of water.