

CALIFORNIA COURT OF APPEAL, THIRD APPELLATE DISTRICT

Environmental Law Foundation v. State Water Resources Control Board; Protectores del Agua Subterranea v. State Water Resources Control Board; Monterey Coastkeeper et al. v. State Water Resources Control Board et al.

Environmental Law Foundation · No. C093513 · Decided March 17, 2023

SUMMARY

The California Court of Appeal, Third Appellate District, affirmed judgments denying petitions for writs of mandate challenging State Water Resources Control Board Order WQ 2018-0002. The order regulates waste discharges from irrigated agricultural lands in the Eastern San Joaquin River Watershed and establishes monitoring, reporting, and management-practice requirements. The court rejected claims that the order violated California’s Nonpoint Source Policy and Antidegradation Policy.

CASE DETAILS

COURT	California Court of Appeal, Third Appellate District
JURISDICTION	California Court of Appeal, Third Appellate District
DECIDED	March 17, 2023
DOCKET	C093513
DISPOSITION	affirmed
PROCEDURAL POSTURE	Consolidated appeals from judgments of the Sacramento County Superior Court denying petitions for writs of administrative mandate challenging State Water Resources Control Board Order WQ 2018-0002.
STANDARD OF REVIEW	Questions of law concerning the interpretation and application of the Nonpoint Source Policy and Antidegradation Policy are reviewed independently. In administrative mandamus proceedings, the trial court independently reviews factual findings under the weight-of-the-evidence standard, while the Court of Appeal reviews the trial court's factual determinations for substantial evidence. The court gives an agency's interpretation of its own regulation considerable weight when the agency has a scientific or technical interpretive advantage, but does

	not defer to an interpretation that conflicts with clear language and purpose.
PRECEDENTIAL VALUE	Published and certified for publication; precedential California Court of Appeal opinion.
PARTIES	Environmental Law Foundation, Protectores del Agua Subterranea, Monterey Coastkeeper et al. v. State Water Resources Control Board, East San Joaquin Water Quality Coalition, Central Valley Regional Water Quality Control Board et al., San Joaquin County Resource Conservation District et al., East San Joaquin Water Quality Coalition et al.

TOPICS

environmental law administrative law judicial review of agency action standard of review
appellate procedure

PRACTICE AREAS

environmental law administrative law water quality regulation administrative mandate

QUESTIONS PRESENTED

1. Whether the order's use of aggregated and anonymized management-practice and nitrogen data violated key element four of the State Water Board's Nonpoint Source Policy.
2. Whether the order provided sufficient feedback mechanisms under key element four of the Nonpoint Source Policy.
3. Whether the order's ten-year recordkeeping requirement violated the Nonpoint Source Policy's commentary concerning permanent records.
4. Whether the overall regulatory program adequately described management practices and other program elements under key element two of the Nonpoint Source Policy.
5. Whether the evidence supported findings that the program was highly likely to attain water-quality requirements and that representative receiving-water monitoring was appropriate.
6. Whether the State Water Board complied with the Antidegradation Policy by making findings concerning maximum benefit to the people of the state, beneficial uses, and water-quality standards, and whether it improperly distinguished *Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Board*.

HOLDINGS

1. The order's use of aggregated and anonymized management-practice implementation data and nitrogen data does not violate key element four of the Nonpoint Source Policy.

2. The order provides sufficient feedback mechanisms under key element four of the Nonpoint Source Policy.
3. The order's requirement that growers and the Coalition retain relevant records for ten years does not violate the Nonpoint Source Policy.
4. The overall regulatory program, consisting of the order and the planning and reporting activities required by it, adequately describes the management practices and other program elements expected to be implemented under key element two.
5. The State Water Board made the findings required by the Antidegradation Policy, and substantial evidence supported the finding that the order's authorized degradation was consistent with the maximum benefit to the people of the state.

KEY QUOTATIONS

“The State Water Board, in implementing the Nonpoint Source Policy, could reasonably construe the comments to key element four as a recommendation that the plan or system by which the Coalition collects information “should be” reproducible and available to the public, while the underlying information need not be.” (28)

“The best that current science can do, so far as the administrative record reveals, is to connect nitrate discharges to groundwater at the township-level. The Order does this and more.” (37)

“Section 13360 is a shield against unwarranted interference with the ingenuity of the party subject to a waste discharge requirement; it is not a sword precluding regulation of discharges of pollutants.” (44)

FACTUAL BACKGROUND

Order WQ 2018-0002 regulates waste discharges from approximately one million acres of irrigated agricultural land in the Eastern San Joaquin River Watershed. It requires growers participating in the East San Joaquin Water Quality Coalition to implement management practices, prepare farm evaluations and irrigation and nitrogen management plans, report nitrogen-application data, and comply with monitoring and corrective-management requirements. The order uses aggregated and anonymized data, representative receiving-water monitoring, and a ten-year recordkeeping period to address groundwater and surface-water pollution while accounting for growers' confidentiality concerns and the practical difficulties of regulating diffuse nonpoint-source discharges.

PROCEDURAL HISTORY

The State Water Board adopted Order WQ 2018-0002 in February 2018, establishing general waste discharge requirements and monitoring, reporting, management-practice, and recordkeeping requirements for irrigated agricultural operations in the Eastern San Joaquin River Watershed. The appellants filed separate petitions for writs of mandate, which the trial court consolidated; the court allowed the East San Joaquin Water Quality Coalition and others to intervene, denied the petitions after briefing and argument, and entered judgments for the respondents. The appellants timely appealed, and the Court of Appeal affirmed.

DISPOSITION

affirmed

CASES CITED

- Asociacion de Gente Unida por el Agua v. Central Valley Regional Water Quality Control Board, 210 Cal.App.4th 1255 (2012)
- Monterey Coastkeeper v. California Regional Water Quality Control Board, 76 Cal.App.5th 1 (2022)
- Monterey Coastkeeper v. State Water Resources Control Board, 28 Cal.App.5th 342 (2018)
- County of Sacramento v. State Water Resources Control Board, 153 Cal.App.4th 1579, 1583
- Department of Finance v. Commission on State Mandates, 1 Cal.5th 749, 756 (2016)
- League of Wilderness Defenders/Blue Mountains Biodiversity Project v. Forsgren, 309 F.3d 1181, 1184 (9th Cir. 2002)
- Oregon Natural Resources Council v. U.S. Forest Service, 834 F.2d 842, 849 n.9 (9th Cir. 1987)
- Hoitt v. Department of Rehabilitation, 207 Cal.App.4th 513, 522
- Lusardi Construction Co. v. California Occupational Safety & Health Appeals Board, 1 Cal.App.4th 639, 645
- Fukuda v. City of Angels, 20 Cal.4th 805, 817, 824
- Building Industry Assn. of San Diego County v. State Water Resources Control Board, 124 Cal.App.4th 866, 879
- Kucera v. Lizza, 59 Cal.App.4th 1141, 1152
- Boam v. Trident Financial Corp., 6 Cal.App.4th 738, 745 n.6
- United States v. Marcucci, 299 F.3d 1156, 1159 (9th Cir. 2002)
- Conservatorship of O.B., 9 Cal.5th 989, 1006 (2020)
- In re Yolanda L., 7 Cal.App.5th 987, 992
- Tahoe-Sierra Preservation Council v. State Water Resources Control Board, 210 Cal.App.3d 1421, 1438
- Oiye v. Fox, 211 Cal.App.4th 1036, 1049
- People v. Jeffers, 43 Cal.3d 984, 1000