

CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION ONE

Bareilles v. State Water Resources Control Board et al.

Bareilles · No. A171456 · Decided December 16, 2025

SUMMARY

The California Court of Appeal affirmed a judgment sustaining without leave to amend a demurrer to Kenneth M. Bareilles’s petition for writ of mandate. The court held that the State Water Resources Control Board’s discretionary decision under Water Code section 13320 not to review a regional board’s administrative civil liability order is not subject to judicial review. The court rejected Bareilles’s argument that this limitation violates California’s separation of powers doctrine.

CASE DETAILS

COURT	California Court of Appeal, First Appellate District, Division One
WRITING FOR THE COURT	Langhorne Wilson, J.; Banke, Acting P. J.; Smiley, J.
JURISDICTION	California Court of Appeal, First Appellate District, Division One
DECIDED	December 16, 2025
DOCKET	A171456
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a judgment entered after the Sonoma County Superior Court sustained without leave to amend respondents' demurrer to Bareilles's first amended petition for writ of mandate.
STANDARD OF REVIEW	De novo review of the legal issue concerning whether the State Board's discretionary decision not to review the regional board order was subject to judicial review; material factual allegations in the writ petition were accepted as true because the ruling arose on demurrer.
PRECEDENTIAL VALUE	Published and certified for publication; precedential California Court of Appeal opinion.
PARTIES	Kenneth M. Bareilles v. State Water Resources Control Board, et al.

TOPICS

- judicial review of agency action
- exhaustion of remedies
- administrative law
- separation of powers
- statutory interpretation

PRACTICE AREAS

environmental law

administrative law

water quality regulation

appellate procedure

constitutional law

QUESTIONS PRESENTED

1. Whether the State Water Resources Control Board's discretionary decision under Water Code section 13320 not to review a regional water board order on its own motion is subject to judicial review.
2. Whether construing section 13320 and related provisions to preclude judicial review of the State Board's refusal to exercise that discretion violates California's separation-of-powers doctrine.

HOLDINGS

1. The State Water Resources Control Board's decision not to review a regional water board order on its own motion under Water Code section 13320 is not subject to judicial review. Judicial review under Water Code section 13330 concerns the regional board's order, not the State Board's discretionary decision to decline review.
2. Precluding judicial review of the State Board's decision to decline discretionary review does not violate California's separation-of-powers doctrine because the State Board did not exercise quasi-judicial power when it declined to review the administrative civil liability order.

KEY QUOTATIONS

“The ordinary import of ‘may’ is a grant of discretion.” (8)

“By declining to review the ACL order, the State Board has not usurped judicial power. It has not determined Bareilles’s rights or declared law.” (12)

“Because no rights were adjudicated by the State Board in this case, judicial review of the State Board’s decision to decline review of the ACL order was not required under California’s separation of powers doctrine.” (14)

FACTUAL BACKGROUND

Bareilles owned property in Sonoma County that burned in a fire, after which he conducted timber-harvesting activities under a categorical waiver of waste discharge requirements. The regional water board determined that he had discharged waste in violation of the waiver and water-quality regulations, issued cleanup and abatement orders and notices of violation, and ultimately imposed \$276,000 in administrative civil liability. Bareilles failed to petition the State Water Resources Control Board for review within the 30-day statutory period, later requested discretionary review on the State Board's own motion, and the State Board declined to initiate review.

PROCEDURAL HISTORY

A regional water board imposed \$276,000 in administrative civil liability against Bareilles. Bareilles did not timely petition the State Water Resources Control Board for review under Water Code section 13320, later asked the State Board to review the order on its own motion, and the State Board declined. The superior court

sustained respondents' demurrer without leave to amend, denied reconsideration, and entered judgment for respondents. The Court of Appeal affirmed.

DISPOSITION

affirmed

CASES CITED

- Monterey Coastkeeper v. California Regional Water Quality Control Bd., 76 Cal. App. 5th 1 (2022)
- Environmental Law Foundation v. State Water Resources Control Bd., 89 Cal. App. 5th 451 (2023)
- Johnson v. State Water Resources Control Bd., 123 Cal. App. 4th 1107 (2004)
- Monterey Coastkeeper v. Monterey County Water Resources Agency, 18 Cal. App. 5th 1 (2017)
- Holiday Matinee, Inc. v. Rambus, Inc., 118 Cal. App. 4th 1413 (2004)
- People ex rel. Cal. Regional Wat. Quality Control Bd. v. Barry, 194 Cal. App. 3d 158 (1987)
- Sonoma Luxury Resort LLC v. California Regional Water Quality Control Bd., 96 Cal. App. 5th 935 (2023)
- In re Richard E., 21 Cal. 3d 349 (1978)
- In re Mario C., 226 Cal. App. 3d 599 (1990)
- Wasatch Property Management v. Degrate, 35 Cal. 4th 1111 (2005)
- Quackenbush v. 20th Century Insurance Co., 64 Cal. App. 4th 135 (1998)
- TruConnect Communications, Inc. v. Maximus Inc., 91 Cal. App. 5th 497 (2023)
- In re Danielle W., 207 Cal. App. 3d 1227 (1989)
- Mandel v. Myers, 29 Cal. 3d 531 (1981)
- Shapell Industries, Inc. v. Governing Board, 1 Cal. App. 4th 218 (1991)
- Zolly v. City of Oakland, 13 Cal. 5th 780 (2022)
- People ex rel. Lockyer v. Sun Pacific Farming Co., 77 Cal. App. 4th 619 (2000)
- Le Strange v. City of Berkeley, 210 Cal. App. 2d 313 (1962)
- Alborzi v. University of Southern California, 55 Cal. App. 5th 155 (2020)
- East Bay Municipal Utility Dist. v. Department of Public Works, 1 Cal. 2d 476 (1934)
- People v. Bird, 212 Cal. 632 (1931)
- Marin Water etc. v. Railroad Comm., 171 Cal. 706 (1916)
- Stevens v. Superior Court, 75 Cal. App. 4th 594 (1999)