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City of Burbank v. State Water Res. Control Bd., 108 P.3d 862 (Cal. 2005)

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The court affirmed the district court's holding that Arizona statutes do not require a physical diversion for a valid appropriation of in-stream water rights. The ADWR thus had the authority to issue permits for instream water rights under Arizona law.

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City of Burbank v. State Water Res. Control Bd., 108 P.3d 862 (Cal. 2005) (holding that regional water quality boards may not consider economic factors to justify restrictions that are less stringent than federal standards, and therefore publicly operated waste water treatment facilities must comply with the federal Clean Water Act, but California law allows regional water quality boards to consider economic factors when deciding whether to make pollutant restrictions in a waste water discharge permit more stringent than federal law requires).

Three publicly owned treatment plants discharge wastewater under National Pollutant Discharge Elimination System ("NPDES") permits issued by the Los Angeles Regional Board. Together the Donald C. Tillman and Los Angeles-Glendale Water Reclamation Plants, owned and operated by the City of Los Angeles, and the Burbank Water Reclamation Plant, owned and operated by the City of Burbank ("Cities"), process and release hundreds of millions of gallons of sewage each day. The treated wastewater released is sufficiently safe for watering crops and human contact. California's State Board and nine Water Quality Control Boards ("Boards") are responsible for coordinating and controlling California's water quality. Prior to 1998, the Boards enforced effluent limitations and standards under the federal Clean Water Act by issuing NPDES permits containing broad statements of desirable water quality goals. This controversy arose in 1998 when the Board sought to replace the narrative water quality criteria with specific numeric pollutant concentrations.

The Cities filed petitions for writs of administrative mandate in Superior Court, alleging the Board failed to comply with Sections 13241 and 13263 of California's Porter-Cologne Act ("Act"), requiring Boards to consider the economic burden on Cities having to substantially reduce the pollutant content of their discharged wastewater. Additionally, the Cities claimed that compliance with the numeric pollution restrictions would collectively increase their treatment costs by $68.7 million per year. The Board responded that sections 13241 and 13263 do not require Water Quality Control Boards to consider compliance costs when issuing a NPDES permit that restricts the pollutant content of discharged water. The trial court stayed the contested pollutant

restrictions. The Board appealed, and the Court of Appeal of California reversed.

In deciding whether Boards must consider a wastewater treatment facility's compliance costs when issuing a NPDES permit, the Supreme Court of California examined the statute governing the Board's issuance of wastewater permits, the Act. Section 13263 of the statute prescribes water quality requirements of wastewater discharge, and makes express reference to the provisions of Section 13241. Section 13241 lists several factors regional boards shall consider in establishing water quality objectives, including economic considerations. The court found the plain language of Sections 13263 and 13241 indicated the Legislature's intent that the regional boards consider the cost of compliance when setting effluent limitations in a wastewater discharge permit.

However, the court further analyzed Sections 13263 and 13241 within the context of the Act's statutory scheme. Enacted shortly after the adoption of the Federal Water Pollution Control Act Amendments, the Court found that Section 13377 specifies that water discharge permits issued by California's regional boards must meet the federal standards set by federal law. Moreover, under Article VI of the United States Constitution ("Supremacy Clause"), a state law that conflicts with federal law is without effect. Thus, the Court concluded that California law cannot authorize what federal law forbids.

Because California's Porter-Cologne Act and federal law require regional boards to comply with federal clean water standards, and because the Supremacy Clause requires state law to yield to federal law, regional boards may not consider economic factors to justify restrictions that are less stringent than federal standards require. Rather, wastewater treatment plants must comply with federal clean water standards regardless of cost. However, California law allows regional boards to consider economic factors when deciding whether to make pollutant restrictions in a wastewater discharge permit more stringent than federal law requires. The court remanded the matter as to whether the numeric pollutant restriction set out in the NPDES permits meet or exceed the requirements of the federal Clean Water Act, and whether the Boards should have complied with Sections 13241 and 13263 of the Porter-Cologne Act by considering economic factors.

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Coshow v. City of Escondido, No. D045382, 2005 Cal. App. LEXIS 1484 (Cal. Ct. App. Aug. 17, 2005) (holding there is no violation of a fundamental constitutional right when the Safe Drinking Water Act regulates drinking water standards, and that the City's choice of hydrofluorosilicic acid is a function of the legislature, and fluoridation is not forced medication so there is no violation of the right to privacy or bodily integrity).