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City of Rancho Cucamonga v. Reg'l Water Quality Control Bd. for the Santa Ana Region. 38 Cal. Rptr. 3d 450 (Cal. Ct. App. 2006)

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the environmental impacts from the original PS Plan. The court affirmed the lower court's decision.

Michael S. Samelson

City of Rancho Cucamonga v. Reg'l Water Quality Control Bd. for the Santa Ana Region, 38 Cal. Rptr. 3d 450 (Cal. Ct. App. 2006) (holding that municipalities are required to obtain and comply with a federal regulatory permit limiting the quantity and quality of water runoff that can be discharged from these storm sewer systems, and holding: (1) wastewater discharge permit did not exceed federal requirements to necessitate analysis of economic factors, and (2) there is no statutory right to a "safe harbor" provision to be included as a term of the permit).

The National Pollutant Discharge Elimination System ("NPDES") is part of the federal Clean Water Act and is the primary means for enforcing effluent limitations and standards under the Clean Water Act. The NPDES sets out the conditions under which the federal Environmental Protection Agency or a state with an approved water quality control program can issue permits for the discharge of pollutants in wastewater. In California, wastewater discharge requirements established by the regional boards are the equivalent of the NPDES permits required by federal law.

The City of Rancho Cucamonga ("Cucamonga") filed a petition for writ of mandate to challenge the procedure under which the Regional Water Quality Control Board for the Santa Ana Region ("Regional Board") issued a 2002 municipal storm sewer permit, the conditions imposed by permit, and the expense of permit requirements. The Superior Court of San Bernardino County granted the Regional Board's motion to strike and denied Cucamonga's petition for writ of mandate. Cucamonga appealed to the Court of Appeal of California, Fourth Appellate District, Division Two, pleading that the Regional Board acted illegally and in excess of their jurisdiction in developing, adopting, and implementing the 2002 wastewater discharge permit.

The Regional Board issued the first NPDES permit for Cucamonga in 1996 based on a Report of Waste Discharge ("ROWD") prepared by Cucamonga. The 1996 permit proposed inspections of industrial and commercial sources; policies for development and redevelopment; better public education; and implementation of a monitoring program. It offered a commitment to reduce pollutants to the "maximum extent practicable." In 2000, Cucamonga submitted another ROWD to renew their NPDES permit. The 2000 ROWD proposed continuing to implement and develop water quality management and monitoring programs. Based on the 2000 ROWD, the Regional Board staff created the disputed 2002 permit.

First, Cucamonga contended that the Regional Board failed to consider economic factors when implementing the 2002 permit based on a California Supreme Court holding in *City of Burbank v. State Water Resources Control Bd.* that when a regional board is considering whether to make the pollutant restrictions in a wastewater discharge permit more stringent than federal law requires, California law allows the board to take into account economic factors, including wastewater discharger's cost of compliance. This argument failed because Cucamonga provided no evidence that the 2002 permit exceeded federal requirements, and there was evidence that the Regional Board took into account economic factors when implementing the 2002 permit.

Secondly, Cucamonga asserted that the 2002 permit violated § 402(k) of the Clean Water Act. This assertion stated that the 2002 permit does not include "safe harbor" language. "Safe harbor" language would provide that if Cucamonga was in full compliance with the permit conditions, it could not be found in violation of Clean Water Act. The trial court held that there was no statutory right to a "safe harbor" provision to be included as a term of the permit, and this court affirmed.

The court affirmed the decision of the trial court, holding that the 2002 permit's conditions and requirements were appropriate and properly adopted.

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Mojave Water Agency v. Vernola, No. E032749, 2005 Cal. App. Unpub. LEXIS 9866, (Ct. App. Cal., Oct. 27, 2005) (affirming the Superior Court's denial of a motion to vacate as void an earlier judgment imposing a physical solution to an over-drafted basin on overlying pumpers who defaulted by failing to prove their water rights during the litigation).

In 1990 the City of Barstow and the Southern California Water Company (collectively "Barstow") filed an action against the City of Adelanto, the Mojave Water Agency ("MWA") and other upstream producers regarding the overdraft of the Mojave River Basin and its damaging impact on Barstow's water supply. MWA filed an amended cross-complaint naming water producers within the Basin as cross-defendants and requesting that the court apportion water rights among them. During a stay in the litigation, attorneys and engineers for water producers throughout the basin met and negotiated a proposed physical solution to the overdraft problem. Most of the parties stipulated to a judgment incorporating the physical solution and imposing the solution on non-stipulating parties. The Vernolas were part of a group of cross-defendants who did not stipulate to the proposed judgment and physical solution ("Cardozo Group").