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Commc'ns Relay Corp. v. County of Los Angesles, 30 Cal.Rptr.3d 1 (Cal. Ct. App. 2005)

Kate Brewer

tential for causing or contributing to the violation of water quality standards, the State Board concluded that the Regional Board complied with the CWA in assessing that a NPDES permit requires a WQBEL.

The trial court denied the environmental groups' mandate petition on issues two and three noting that three administrative agencies – the Regional Board, the State Board, and the EPA – all reviewed and approved the regulation of dioxins in the Refinery's permit. The legislature charged these agencies with overseeing the NPDES permit program in California and the administrative record supported their findings, analysis, and conclusions. Thus, the permit's compliance schedule did not violate the CWA, the antibacksliding provisions, or the implementing regulations.

The CWA's general prohibition on backsliding disallows a permit containing less stringent effluent limitations than the comparable effluent limitations in the previous permit. Here, the administrative agencies determined the proper effluent limitations were not comparable. Thus, the court found the less stringent guidelines in the subsequent permit do not violate the CWA's guidelines on antibacksliding.

During the TMDL preparation, the Refinery's permit allowed it to discharge waste at current levels, which were not a significant source of the dioxin problem. After the TMDL is determined, the Refinery will be required to comply with the new regulations or reduce the dioxin discharge to zero. The environmental groups argued that this schedule of compliance was invalid for four reasons. First, the trial court could construe the 1995 basin plan to adapt to interpretations of existing standards due to the Whole Effluent Toxicity Control Policy ("WET Policy") and three administrative agencies approved the schedule of compliance. Second, the trial court held that the schedule of compliance does not violate the CWA, as contended by the environmental groups. Again, the trial court determined the WET Policy authorized a schedule of compliance for revisions of an existing water quality standard. Third, the environmental groups argued the 10-year schedule of compliance is invalid, but the trial court concluded that a schedule of compliance can have a life longer than its corresponding permit. Finally, the trial court determined the schedule of compliance is valid because it fits within statutory and regulatory definitions.

The Superior Court affirmed the trial court's evaluation of the two remaining issues. Thus, the court ruled against the environmental groups on all three issues.

Tracy M. Talbot

Commc'ns Relay Corp. v. County of Los Angeles, 30 Cal.Rptr.3d 1 (Cal. Ct. App. 2005) (holding that a state statute authorized only licensed water well contractors to construct water wells).

Property owners in Malibu, California applied for permits from Los Angeles County ("County") to drill water wells on their respective properties. The County refused to issue the permits, stating only licensed contractors could obtain permits to drill water wells under the Water Code § 13750.5 ("Code"). The relevant portion of the Code states, "[n]o person shall undertake to dig, bore, or drill a water well . . . unless the person . . . possesses a C-57 Water Well Contractor's License." The property owners filed a petition for writ of mandate with the Los Angeles County Superior Court to compel the County to issue the permits, arguing they were exempt from the C-57 licensing requirement under the Contractors' State License Law § 7044(a) ("License Law"). The License Law governs contractor licensing, such as the C-57 license, and provides an exemption for persons that build on their own property without the use of a contractor. The trial court rejected the property owners' argument, reasoning that the License Law did not provide an exemption to specific license requirements under other statutes, such as the C-57 license requirement under the Code, and denied the property owners' writ of mandate. The property owners appealed the decision to the California Court of Appeal for the Second District.

The issue on appeal was whether the License Law provided an exemption for owner-builders to the licensing requirement of the Code. The court looked at the express language of the Code and found it to be clear and unambiguous because it did not provide any exemption to the requirement that well builders possess a C-57 license. The property owners argued that, in the building and construction context, the word "undertake" in the Code "connotes an agreement with another person," and therefore the Code did not apply to them because they did not make an agreement with a contractor. The court rejected the argument, reasoning the statutory language of the Code did not support the property owners' definition.

The property owners next argued that the court must use License Law to interpret the portion of the Code that discussed a C-57 contractor license because the License Law governs such licenses. Since the License Law provides an exemption for owner-builders to the licensing requirement, the property owners alleged they were exempt from the C-57 licensing requirement. The court denied the argument, noting the legislative purpose behind the Code was to "protect the public health and welfare by preventing underground water from being contaminated due to improperly constructed or abandoned water wells." The legislature enforced this intent by requiring that only qualified persons build water wells. The court found that the purpose of the Code could not be effectuated if the License Law exemption was incorporated into the Code.

Lastly, the court rejected the property owners' argument that the court should read the License Law exemption into the Code because

the Department of Water Resources issued a regulation incorporating the License Law exemption into the Code. The court reasoned the legislature failed to incorporate the regulation into later amendments to the statute, and an administrative agency's interpretation of a statute cannot enlarge the scope of a statute.

The court held the Code required builders of water wells to possess a C-57 license, and upheld the decision of the trial court denying the property owners' petition for a writ of mandate.

Kate Brewer

Sierra Club v. W. Side Irrigation Dist., 128 Cal.App.4th 690 (Cal. Ct. App. 2005) (holding a city does not need to consider allocations of water rights from two separate irrigation districts jointly for purposes of the California Environmental Quality Act).

The Sierra Club brought suit against two California irrigation districts, the West Side Irrigation District and the Banta-Carbona Irrigation District, (collectively "Districts") alleging the Districts' decision to assign water rights to the City of Tracy ("City") violated the California Environmental Quality Act ("CEQA"). In 1993, the City adopted a general plan for directing future development, which predicted the City's population would quadruple over a twenty-year period. The general plan calculated the City would need an additional 29,000 acre-feet of water to sustain the projected growth. In 2001, as part of the City's plan to obtain the additional 29,000 acre-feet, the City negotiated with two separate irrigation districts for water rights. Both districts assigned 5,000 acre-feet to the City on the condition that all parties comply with CEQA. In 2002, both districts decided not to prepare environmental impact reports ("EIR") and instead issued negative declarations.

The Sierra Club claimed the assignments were sufficiently related to require a joint EIR, and that the Districts' decisions to issue negative declarations violated CEQA. The trial court ruled the Sierra Club failed to prove the projects would have a significant impact on the environment, and therefore a joint EIR was not required. The Sierra Club appealed the decision to the California Court of Appeals for the Third District.

On appeal, the Sierra Club argued the two water assignments were one project for purposes of CEQA, and therefore the parties had to prepare one joint EIR. The court disagreed and ruled that the assignments were two separate projects and entirely independent of each other. Specifically, the court noted that the Districts did not contemplate the second project as a future part of the first project, and that the District required approval from different agencies for each project.

Next, the Sierra Club argued the Districts failed to analyze the effect of the assignments as cumulative impacts and therefore violated