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Bldg. Indus. Ass'n of San Diego County v. State Water Res. Control Bd., 22 Cal. Rptr. 3d 128 (Cal. Ct. App. 2004)

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subject to the landowners' respective royalty interests. The court reversed the trial court's order of summary judgment and remanded for entry of summary judgment in favor of the landowners.

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Bldg. Indus. Ass'n of San Diego County v. State Water Res. Control Bd., 22 Cal. Rptr. 3d 128 (Cal. Ct. App. 2004) (holding the State Water Board or a regional water board may impose municipal storm sewer control measures more stringent than federal Clean Water Act standards).

The Clean Water Act ("CWA") prohibits pollutant emissions from "point sources" unless the party discharging the pollutants obtains a National Pollution Discharge Elimination System ("NPDES") permit. The Environmental Protection Agency ("EPA") or a state with a federally approved water quality program may issue an NPDES permit. In 1987 Congress amended the CWA to add provisions concerning NPDES permits for storm sewer discharges. The California Regional Water Control Board, San Diego Region ("Regional Water Board"), issued a comprehensive municipal storm sewer permit governing nineteen local public entities. The Regional Water Board included in the permit prohibitions concerning municipal storm sewer discharges. The permit prohibited municipalities from discharging pollutants not reduced to the "maximum extent practicable" and from discharging pollutants which cause the receiving water body to exceed the applicable water quality standard.

The Building Industry Association of San Diego County ("Building Industry"), an organization representing the interests of construction-related businesses, filed an administrative challenge with the California Water Resources Control Board ("State Water Board"). The Building Industry argued that the permit violated federal law because it allowed the State Water Board and the Regional Water Board to impose municipal storm sewer control measures more stringent than the federal standard. The federal standard only required that municipalities reduce discharged pollutants to the maximum extent practicable. The Building Industry argued that under federal law, the "maximum extent practicable" standard is the exclusive measure that may be applied to municipal storm sewer discharges, and a regulatory agency may not require a municipality to comply with a state water quality standard if the required controls are more stringent than the "maximum extent practicable" standard.

The State Water Board rejected the Building Industry's appeal. Next, the Building Industry brought an action in the Superior Court of San Diego County against the Water Boards, challenging the Regional Water Board's issuance of the permit and the State Water Board's de-

nial of the Building Industry's administrative challenge. The trial court held that the Building Industry failed to meet its burden establishing that the State Water Board abused its discretion in approving the permit, or that the permit requirements were "impracticable under federal law or unreasonable under state law." The Building Industry appealed to the California Court of Appeal, Fourth Appellate District.

In reviewing the trial court's legal determinations, the court conducted a de novo review. The court acknowledged that the statutory language of section 1342(p)(3)(B)(iii) of the CWA was susceptible to more than one reasonable interpretation. The court looked to the legislative history, public policy, and administrative construction of the section to determine its meaning. The court held that the language in section 1342(p)(3)(B)(iii) allowed the EPA, or an approved state agency permitted to issue NPDES permits, to impose appropriate water pollution controls in addition to those that come within the definition of "maximum extent practicable." The court found that Congress did not intend to bar the EPA or state agency from imposing a more stringent water quality standard if the agency, based on its expertise and technical factual information, and after the required administrative hearing procedure, found this standard to be a necessary and workable enforcement mechanism to achieving the goals of the CWA. Therefore, the court found the NPDES permit did not violate federal law and the water boards had the authority to include a permit provision requiring compliance with the more stringent state water quality standards. Accordingly, the court affirmed the superior court's decision.

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Cent. Delta Water Agency v. State Water Res. Control Bd., 124 Cal. App. 4th 245 (2004) (holding permits for appropriation of water that did not specify actual uses, amounts, or places of use were speculative and insufficient to satisfy requirements of the California Constitution, the California Water Code, and the California Environmental Quality Act).

Central Delta Water Agency, CCRC Farms, LLC, Plan Tract Farms, the County of San Joaquin, San Joaquin County Flood Control and Water Conservation District, and several Reclamation Districts (collectively "districts") challenged permits issued by the State Water Resources Control Board ("Board") for a wetlands project to divert water into reservoirs that would be constructed on two islands for later rediversion and sale to potential purchasers. In issuing the permits, the Board did not require the proponents of the project, Delta Wetlands Properties ("DW"), to specify amounts, nature of, impacts of, or beneficial use of water sold. As such, the permits defined beneficial use generally to include "domestic, irrigation, municipal, industrial, and fish and wildlife" uses, but did not include environmental conse-