

Court of Appeal Upholds Water Boards' Analysis of Economic Considerations Regarding Los Angeles County MS4 Permit



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The case

involved the National Pollutant Discharge Elimination System permit issued to 86 municipal entities in Los Angeles County that operate municipal separate storm sewer systems (commonly referred to as MS4s). The Los Angeles Regional Water Quality Control Board issued the permit in November 2012, and the State Water Resources Control Board upheld the permit with modifications in June 2015. The permit included numeric effluent limitations rather than effluent limitations based on best management practices. The City of Duarte, one of the MS4 permittees, filed a petition for writ of mandate, asserting that the regional and state water boards did not sufficiently consider the costs of compliance with the permit. When imposing pollutant restrictions that are more stringent than the requirements of the federal Clean Water Act, a regional water board must consider a list of factors set forth in Water Code section 13241. These factors include economic considerations. The court of appeal held that the regional and state water boards sufficiently considered economic considerations before issuing the permit. (The court assumed, without deciding, that the water boards were required to consider the factors in Water Code section 13241 because the permit imposed restrictions that were more stringent than federal law.) The regional board had prepared an economic analysis of the permit's requirements prior to its issuing the permit, and the permit included 11 findings regarding economic considerations. Among other things, these findings recognized that the permit would impose additional compliance costs that would be highly variable among permittees, provided data on compliance costs for existing MS4 programs and on households'

willingness to pay for improvements in water quality, identified potential funding sources for permittees' compliance costs, and described the costs of not regulating MS4 discharges. The court concluded that the water boards explained their reasoning and acted well within their discretion in their analysis of economic considerations. The court rejected the City of Duarte's contention that the water boards were required to do a more detailed analysis of compliance costs for each permittee.

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