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Claims Against State Board and Regional Water Boards for Failure to Protect Against Agricultural Water Pollution Were Not Subject to Declaratory and Mandamus Relief

The court of appeal held that, in an action against the State Water Resources Control Board and regional water quality control boards for violations of the State Board's Nonpoint Source (NPS) Policy and the public trust pollution from crop irrigation, plaintiffs failed to state was available. *Monterey Coastkeeper v. Central Coast* 1 (2022).

Monterey Coastkeeper and others filed an action against the State Board and regional water quality control boards regarding water permits issued by the regional boards under the Porter-Cologne Water Quality Control Act (Wat. Code § 13000 et seq.). The claims alleged that the regional boards and State Board had violated the NPS Policy by failing to take measures to address agricultural water pollution. Plaintiffs claimed that the regional boards had failed to issue certain general agricultural orders and individual waste discharge requirements (WDRs) for agricultural discharge and the State Board had failed to take appropriate action when regional boards either adopted or failed to adopt general agricultural orders. Plaintiffs further claimed that the State Board violated the public trust doctrine by failing to avoid or minimize harm associated with agricultural discharges. Plaintiffs sought declaratory relief that the State Board and regional boards must act in accordance with their legal obligations to protect public health and the environment and a writ of mandamus directing the State Board and regional boards to comply with their legal obligations under the NPS Policy and the public trust doctrine. The court held that neither declaratory nor mandamus relief was available for plaintiffs' claims. In response to plaintiffs' request for declaratory relief, the court concluded that such relief was not available because an issue like water pollution from agricultural runoff "cannot be 'solved' by a court decree in a declaratory relief action." The court held that mandamus relief was likewise unavailable because plaintiffs attacked the State Board and regional water boards' exercise of discretion rather than a failure to perform a ministerial duty or a quasi-legislative action. Application of the NPS Policy was a "quintessentially discretionary task" because the regional boards had broad flexibility and discretion in using their administrative tools to fashion NPS management programs. Likewise, the public trust doctrine was an "inherently discretionary doctrine" that was "ill-suited" to traditional mandamus relief, since simply ordering the

State Board to apply the doctrine would be an empty judgment and actually determining whether the State Board is applying the doctrine would require technical expertise.

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