

## State Water Board Registrations of Small Water Diversions Are Ministerial and Exempt from CEQA



ects and  
QA.  
7 (1st

The

Water Rights Permitting Reform Act of 1988 created a streamlined process for a person to acquire a right to divert a small amount of water from a stream into a storage facility for domestic or certain other uses. To obtain this right, a person must register the use with the State Water Board, pay a fee, and put the water to reasonable and beneficial use. The registration form requires the person's contact information; details about the proposed water use, diversion, and storage; a certification that the person has provided the information to the California Department of Fish and Wildlife (CDFW) and will comply with any conditions imposed by CDFW; and a copy of any such conditions. The registration is deemed completed, and the person obtains the right to appropriate water, when the State Water Board receives a substantially compliant registration form and the fee. The State Water Board has designated this registration process to be exempt from CEQA as a ministerial decision. In this case, the petitioners challenged the State Water Board's acceptance of a registration form that allegedly contained false information. The petitioners claimed that the State Water Board violated CEQA by accepting the registration without conducting environmental review. The trial court and the court of appeal agreed with the State Water Board that the registration process is ministerial and exempt from CEQA. CEQA applies to public agencies' discretionary projects, whereas ministerial projects are exempt from CEQA. A discretionary project

requires an agency to exercise judgment or deliberation in deciding whether to approve an activity. In contrast, ministerial projects involve little or no personal judgment by the public official as to the wisdom or manner of carrying out a project. An agency's action is discretionary if the law governing its decision to approve a project gives it authority to require changes that would lessen the project's environmental effects; if not, the project is ministerial. The court of appeal held that the registration process was ministerial because the State Water Board lacked authority to impose conditions on an individual registration to reduce its environmental effects. The court explained that the State Water Board's role in reviewing a registration form for compliance essentially amounts to applying a checklist of fixed criteria. The court rejected the petitioners' argument that the registration process was discretionary because CDFW had authority to impose conditions to ameliorate the environmental impacts of water diversions. The court noted that the State Water Board must accept any conditions imposed by CDFW and has no authority to modify or shape those conditions. The court explained that the discretionary authority of one agency (CDFW) could not be imputed to a different agency (the State Water Board). The court also rejected the petitioners' argument that the State Water Board had discretion to deny the registration based on the alleged false information on the registration form. The court explained that the test was not whether an agency has discretion "in a colloquial sense" to deny a project, but whether the agency has legal authority to impose environmentally beneficial changes as conditions on the project. Here, the State Water Board had no such authority. The petitioners also argued that the State Water Board's acceptance of the registration violated CEQA because it did not meet the program requirements. The court disagreed. The court explained that the petitioners essentially claimed that the State Water Board made an erroneous ministerial decision by misapplying fixed criteria to the facts and by making factual determinations that were not supported by substantial evidence. But, the court held, that argument could not be a basis for a CEQA claim because "CEQA does not regulate ministerial decisions—full stop."

Blog series

## **California Land Use & Development Law Report**

California Land Use & Development Law Report offers insights into legal issues relating to development and use of land and federal, state and local permitting and approval processes.

[View the blog](#)