

State Water Resources Control Board

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COURTS SIDE WITH WATER BOARDS ON TWO WATER QUALITY CASES
Courts of Appeal in San Diego and Riverside hand important victories to state's efforts to protect and enhance water quality

SACRAMENTO - In separate cases yesterday, two appellate courts issued decisions allowing the state to pursue programs necessary to protect streams, rivers, and beaches from trash and urban runoff. A Court of Appeal based in Riverside unanimously upheld the Santa Ana Regional Water Quality Control Board's storm water permit for San Bernardino County. A San Diego-based Court of Appeal threw out 9 of 10 challenges to the Los Angeles Regional Water Quality Control Board's landmark trash reduction plan.

The two opinions are just the latest in a series of recent court decisions upholding the water boards' authority to reduce pollutants in storm water. "It was a great day for water quality," said State Water Board Chair Tam Doduc. "These decisions reaffirm the water boards' ability to require programs that actually improve water quality. The results will be cleaner streams, rivers, and beaches and better protection of Californians' health and environment."

In *City of Rancho Cucamonga v. Regional Water Quality Control Board-Santa Ana Region* (E037079), the Court of Appeal rejected a broad challenge to the Santa Ana Water Board's 2002 storm water permit for San Bernardino County. The U.S. Environmental Protection Agency has identified storm water and urban runoff as a serious threat to human health as well as to aquatic life and habitat.

The 2002 permit requires construction sites and developments to take actions to prevent rainwater and other runoff from becoming polluted and leaving the site. Diverting some storm water to vegetated areas and allowing it to soak into the soil meet requirements. Also, the permit requires municipalities to inspect businesses that have been identified as a significant source of storm water pollution. The storm water inspections allow authorities to identify and work with businesses to comply with municipal storm water ordinances.

The City of Rancho Cucamonga broadly challenged the permit and the water boards' authority to issue the permit. Both the trial court and the Court of Appeal rejected all the city's challenges. The courts both found the permit lawful. In particular, the courts upheld the permit's requirements that the city's programs be written to achieve water quality standards. Water quality standards identify the levels of pollutants that may exist in water without adversely affecting human health, fish, wildlife or other values.

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"We're glad the court recognized the importance of protecting water quality and controlling urban runoff," said Carole Beswick, Chair of the Santa Ana Water Quality Control Board. "This decision validates the approach the board has taken to regulate these threats to water quality. Our approach has already proven to be effective throughout the region."

In *City of Arcadia v. State Water Resources Control Board* (D043877), the Court of Appeal upheld the basis of the Los Angeles Water Board's novel trash reduction program. The court's decision also requires the regional water board to revise its environmental analysis.

Each year thousands of tons of trash wash through storm drains, down the Los Angeles River, into the estuary, and the Pacific Ocean. Coastal waters off Los Angeles County are among the nation's most intensively used by swimmers, boater, surfers and for sports fishing. To address the problem the Los Angeles Regional Water Quality Control Board adopted a 14-year program that will eliminate trash in the Los Angeles River. The program will require efforts by cities, the County of Los Angeles, and others to reduce trash through enhanced street sweeping, litter law enforcement, nets at the end of storm drains, and trash capture devices.

A coalition of 22 cities challenged the trash reduction plan. On Thursday, a Court of Appeal in San Diego tossed most of the challenge. Responding to the cities' repeated claim that eliminating trash in the river is impossible, the court stated "A zero limit on trash within the meaning of the Trash TMDL is attainable because there are methods of deemed compliance with the limit. The record does not show the limit is unattainable" The court also overturned many aspects of a lower court decision that would have frustrated the water boards' ability to improve water quality in the state's most polluted water bodies.

"Trash is an enormous problem in our waters," said David Nahai, Chair of the Los Angeles Water Board. "It kills and maims fish and wildlife, and it is unsightly. The court rejected the plaintiffs' efforts to tie the water boards' hands and to derail efforts to eliminate trash in our region's waters."

The Los Angeles Water Board adopted the trash reduction program in 2001. The plan was required by a provision of the Federal Clean Water Act that is designed to address the nation's most polluted waters. When a state identifies a water as impaired by pollution, it must develop a total maximum daily load. In other words, it must identify how much pollution can be present without adversely affecting the uses of the water. In 2002, California had over 679 water bodies impaired with pollution and requiring total maximum daily loads. As a result of a lawsuit brought by Heal the Bay and other environmental groups, a federal court had ordered the development of a trash reduction program.

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The Court of Appeal decision does require the Los Angeles Water Board to revise the environmental document accompanying the trash reduction program. The process will require the Los Angeles Water Board to analyze potential issues with air and soil based on how the cities and county anticipate complying with the trash reduction program. "It is a technical fix that the board can readily address," said Jon Bishop, executive officer for the Los Angeles Water Board. "The important aspect of the court's decision is that it upheld our core authority to require these important and necessary trash reductions."

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