

Orange County Superior Court
Department CX104
Civil Complex Center
751 West Santa Ana Boulevard
Building 36
Santa Ana, CA 92701
(714) 568-4817
(714) 568-5190 fax

Fax

To:	David Beckman Michelle Mehta	From:	Pearl Clerk, Department CX104
Fax:	310.434.2399	Date:	August 28, 2008
Phone:		Pages:	13 (Including cover)
Re:	RULING	CC:	

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

•Comments:

Dear counsel:

Re: City of Arcadia v. State Water Resources Control Board

Please review the attached rulings regarding the Motions for New Trial and the Motion to Vacate Judgment.

Thank you!

If fax was not properly received, please call 714-568-4817.

Thank you!

Pearl

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER
MINUTE ORDER**

Date: 08/28/2008

Time: 11:28:10 AM

Dept: CX104

Judicial Officer Presiding: Judge Thierry Patrick Colaw
Clerk: P. Rief

Bailiff/Court Attendant: Allison Hreha

Reporter: None

Case Init. Date: 02/09/2006

Case No: 08CC02974

Case Title: CITIES OF ARCADIA VS STATE WATER
RESOURCES CONTROL BOARD

Case Category: Civil - Unlimited

Case Type: Judicial Review - Other

Event Type: Chambers Work

Causal Document & Date Filed:

Appearances:

MOTION BY INTERVENORS NATURAL RESOURCES DEFENSE COUNCIL, HEAL THE BAY AND SANTA MONICA BAYKEEPER TO SET ASIDE AND VACATE JUDGMENT PURSUANT TO CCP § 663

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on August 8, 2008 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

See attached ruling.

Court orders clerk to give notice.

Date: 08/28/2008
Dept: CX104

MINUTE ORDER

Page: 1
Calendar No.:

THE CITIES OF ARCADIA, BELLFLOWER
CARSON, CERRITOS, CLAREMONT,
COMMERCE, DOWNEY, DUARTE, GARDENA,
GLENORA, HAWAIIAN GARDENS, IRWINDALE,
LAWDALE, MONTEREY PARK, PARAMOUNT,
SANTE FE SPRINGS, SIGNAL HILL, VERNON,
WALNUT, WEST COVINA, and WHITTIER,
municipal corporations, and BUILDING
INDUSTRY LEGAL DEFENSE
FOUNDATION, a non-profit corporation,
Petitioner Plaintiffs

vs.

THE STATE WATER RESOURCES
CONTROL BOARD; and THE CALIFORNIA
REGIONAL WATER QUALITY CONTROL
BOARD, LOS ANGELES REGION, etc.,
et alia,

Respondent Defendants

ORANGE COUNTY SUPERIOR COURT
CASE NO. 06CC02974

NOTICE OF RULING

1. The Motion by Intervenors National Resources Defense Council ["NRDC"], Heal the Bay, and Baykeeper's for an Order setting Aside and Vacating the Court's Judgment pursuant to C.C.P. § 663 is denied.

A. The request by Moving Parties for judicial notice of the Exhibits "A", "B", & "C", briefs filed in other cases is granted, however, judicial notice of the briefs only are granted, not the truth of the content of any declarations attached to those briefs in the court files. Any similar request for judicial notice in Intervenors' Supplemental Brief is similarly granted.

B. The Petitioners' request for judicial notice in support of Petitioners' Supplemental Brief in Opposition to Intervenors' Motion to Set Aside and Vacate is granted as requested.

2. The Clerk shall give Notice.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

<p>CITY OF ARCADIA, et al.</p> <p style="text-align: center;">Plaintiff(s)</p> <p style="text-align: center;">v.</p> <p>STATE WATER RESOURCES CONTROL BOARD, et al.</p> <p style="text-align: center;">Defendant(s)</p>	<p>CASE NUMBER: 06CC02974</p> <hr/> <p>CERTIFICATE OF SERVICE BY MAIL OF MINUTE ORDER, DATED 8-28-08</p>
---	--

I, ALAN SLATER, Executive Officer and Clerk of the Superior Court, in and for the County of Orange, State of California, hereby certify; that I am not a party to the within action or proceeding; that on 8-28-08, I served the Minute Order, dated 8-28-08, on each of the parties herein named by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Postal Service mail box at Santa Ana, California addressed as follows:

Richard Montevideo, Esq.
Peter J. Howell, Esq.
Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626-1950
Facsimile 714-546-9035

Jennifer F. Novak, Esq.
Michael W. Hughes, Esq.
State of California, Dept. of Justice
Office of the Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1204
Facsimile 213-897-2802

David S. Beckman, Esq.
Michelle Mehta, Esq.
Natural Resources Defense Council, Inc.
1314 Second Street
Santa Monica, CA 90401
Facsimile 310-434-2399

Michael J. Levy, Esq.
State Water Resources Control Board
Office of Chief Counsel
1001 I Street
Sacramento, CA 95814
Facsimile 916-341-5193

ALAN SLATER,
Executive Officer and Clerk of the Superior Court
In and for the County of Orange

DATED: 8-28-08

By: 
P. Rief, Deputy Clerk

CERTIFICATE OF SERVICE BY MAIL

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER
MINUTE ORDER**

Date: 08/28/2008

Time: 11:35:39 AM

Dept: CX104

Judicial Officer Presiding: Judge Thierry Patrick Colaw
Clerk: P. Rief

Bailiff/Court Attendant: Allison Hreha

Reporter: None

Case Init. Date: 02/09/2006

Case No: 06CC02974

Case Title: CITIES OF ARCADIA VS STATE WATER
RESOURCES CONTROL BOARD

Case Category: Civil - Unlimited

Case Type: Judicial Review - Other

Event Type: Chambers Work

Causal Document & Date Filed:

Appearances:

**MOTION FOR NEW TRIAL PURSUANT TO CCP § 657 BY INTERVENORS NATURAL RESOURCES
DEFENSE COUNCIL, HEAL THE BAY AND SANTA MONICA BAYKEEPER**

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on August 15, 2008 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

See attached ruling.

Court orders clerk to give notice.

Date: 08/28/2008
Dept: CX104

MINUTE ORDER

Page: 1
Calendar No.:

THE CITIES OF ARCADIA, BELLFLOWER
CARSON, CERRITOS, CLAREMONT,
COMMERCE, DOWNEY, DUARTE, GARDENA,
GLENORA, HAWAIIAN GARDENS, IRWINDALE,
LAWDALE, MONTEREY PARK, PARAMOUNT,
SANTE FE SPRINGS, SIGNAL HILL, VERNON,
WALNUT, WEST COVINA, and WHITTIER,
municipal corporations, and BUILDING
INDUSTRY LEGAL DEFENSE
FOUNDATION, a non-profit corporation,
Petitioner Plaintiffs

vs.

THE STATE WATER RESOURCES
CONTROL BOARD; and THE CALIFORNIA
REGIONAL WATER QUALITY CONTROL
BOARD, LOS ANGELES REGION, etc.,
et alia,

Respondent Defendants

ORANGE COUNTY SUPERIOR COURT
CASE NO. 06CC02974

NOTICE OF RULING

1. The Court rules on the Motion by Intervenors for a New Trial as follows:

A. The Motion for New Trial under C.C.P. § 657 is denied.

(1) Intervenors' requests for judicial notice as to Exhibits "A" through "R" is granted, however, the Court will not take judicial notice of the truth of the contents of any affidavits or declarations contained therein.

(2) Petitioners' requests for judicial notice as to Exhibits 1, 3 & 4 are granted.

B. The Court is concerned about whether to leave the challenged Standards in effect during reenactment of the review and deliberative process of the next scheduled triennial review or a reopened triennial review. Ordinarily, one would expect that a failure to comply with Water Code § 13000/13241 requirements would invalidate Standards that do not comply with the law. The Court is reluctant to so rule now under the circumstances of this case. The Court is concerned about unintended consequences which cannot be predicted and which may result from immediate halting of all implementation, application and/or enforcement of the Standards in the Basin Plan as applied or to be applied to Stormwater, even with the recent modifications made to the Court's Writ on 1 August 2008.

As aptly stated in *Western Oil and Gas Ass'n v. U.S. EPA* (9th Cir.1980) 633 F.2d 803, 813, "Our intervention into the process of environmental regulation, a process of great complexity, should be accomplished with as little intrusiveness as feasible."

C. Accordingly, pursuant to C.C.P. § 662 the Court vacates the judgment and writ filed on 2 July 2008 in the interests of justice, and a new judgment will be entered that follows the "remand without vacatur" procedure, i.e. that allows Respondents to use the Standards pending review by Respondents, Intervenors, or Petitioners.

D. Respondents shall prepare an amended judgment and writ consistent with this Order within ten (10) days of this Order. The amended writ should essentially remain in the form of the 2 July 2008 writ, however, the provisions of paragraphs (3) & (4) shall be excised in conformance with this nature and intent of this Order. Appropriate modifications to the judgment at paragraphs 2. (c), (d), and the last sentence of paragraph 3. should be made.

2. The Clerk shall give Notice as soon as possible and in any event before 29 August 2008

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

<p>CITY OF ARCADIA, et al.</p> <p style="text-align: center;">Plaintiff(s)</p> <p style="text-align: center;">v.</p> <p>STATE WATER RESOURCES CONTROL BOARD, et al.</p> <p style="text-align: center;">Defendant(s)</p>	<p>CASE NUMBER: 06CC02974</p> <hr/> <p>CERTIFICATE OF SERVICE BY MAIL OF MINUTE ORDER, DATED 8-28-08</p>
---	--

I, ALAN SLATER, Executive Officer and Clerk of the Superior Court, in and for the County of Orange, State of California, hereby certify; that I am not a party to the within action or proceeding; that on 8-28-08, I served the Minute Order, dated 8-28-08, on each of the parties herein named by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Postal Service mail box at Santa Ana, California addressed as follows:

Richard Montevideo, Esq.
Peter J. Howell, Esq.
Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626-1950
Facsimile 714-546-9035

Jennifer F. Novak, Esq.
Michael W. Hughes, Esq.
State of California, Dept. of Justice
Office of the Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1204
Facsimile 213-897-2802

David S. Beckman, Esq.
Michelle Mehta, Esq.
Natural Resources Defense Council, Inc.
1314 Second Street
Santa Monica, CA 90401
Facsimile 310-434-2399

Michael J. Levy, Esq.
State Water Resources Control Board
Office of Chief Counsel
1001 I Street
Sacramento, CA 95814
Facsimile 916-341-5193

ALAN SLATER,
Executive Officer and Clerk of the Superior Court
in and for the County of Orange

DATED: 8-28-08

By: 
P. Rief, Deputy Clerk

CERTIFICATE OF SERVICE BY MAIL

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER
MINUTE ORDER**

Date: 08/28/2008

Time: 11:39:13 AM

Dept: CX104

Judicial Officer Presiding: Judge Thierry Patrick Colaw
Clerk: P. Rief

Bailiff/Court Attendant: Allison Hreha

Reporter: None

Case Init. Date: 02/09/2006

Case No: 06CC02974

Case Title: CITIES OF ARCADIA VS STATE WATER
RESOURCES CONTROL BOARD

Case Category: Civil - Unlimited

Case Type: Judicial Review - Other

Event Type: Chambers Work

Causal Document & Date Filed:

Appearances:

**MOTION FOR NEW TRIAL BY RESPONDENTS STATE WATER RESOURCES CONTROL BOARD
AND CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD, LOS ANGELES REGION**

There are no appearances by any party.

The Court, having taken the above-entitled matter under submission on August 26, 2008 and having fully considered the arguments of all parties, both written and oral, as well as the evidence presented, now rules as follows:

See attached ruling.

Court orders clerk to give notice.

Date: 08/28/2008

MINUTE ORDER

Page: 1

Dept: CX104

Calendar No.:

THE CITIES OF ARCADIA, BELLFLOWER
CARSON, CERRITOS, CLAREMONT,
COMMERCE, DOWNEY, DUARTE, GARDENA,
GLENDDORA, HAWAIIAN GARDENS, IRWINDALE,
LAWDALE, MONTEREY PARK, PARAMOUNT,
SANTE FE SPRINGS, SIGNAL HILL, VERNON,
WALNUT, WEST COVINA, and WHITTIER,
municipal corporations, and BUILDING
INDUSTRY LEGAL DEFENSE
FOUNDATION, a non-profit corporation,
Petitioner Plaintiffs

vs.

THE STATE WATER RESOURCES
CONTROL BOARD; and THE CALIFORNIA
REGIONAL WATER QUALITY CONTROL
BOARD, LOS ANGELES REGION, etc.,
et alia,

Respondent Defendants

ORANGE COUNTY SUPERIOR COURT
CASE NO. 06CC02974

NOTICE OF RULING

1. The Court rules on the Motion by Respondents for a New Trial as follows:

A. The Motion for New Trial under C.C.P. § 657 is denied.

(1) The Petitioners' objections to the declarations of Ms. Purdy, Ms. Egoscue, and Ms. Novak are sustained.

(2) The Respondents' request for judicial notice is granted for purposes of this motion only.

B. The Court is concerned about whether to leave the challenged Standards in effect during reenactment of the deliberative process of the next scheduled triennial review or a reopened triennial review. Ordinarily, one would expect that a failure to comply with Water Code § 13000/13241 requirements would invalidate Standards that do not comply with the law. The Court is reluctant to so rule now under the circumstances of this case. The Court is concerned about unintended consequences which cannot be predicted and which may result from immediate halting of all implementation, application and/or enforcement of the Standards in the Basin Plan as applied or to be applied to Stormwater, even with the recent modifications made to the Court's Writ on 1 August 2008.

As aptly stated in *Western Oil and Gas Ass'n v. U.S. EPA* (9th Cir.1980) 633 F.2d 803, 813, "Our intervention into the process of environmental regulation, a process of great complexity, should be accomplished with as little intrusiveness as feasible."

C. Accordingly, pursuant to C.C.P. § 662 the Court vacates the judgment and writ filed on 2 July 2008 in the interests of justice, and a new judgment will be entered that follows the "remand without vacatur" procedure, i.e. that allows Respondents to use the Standards pending review by Respondents, Intervenors, or Petitioners.

D. Respondents shall prepare an amended judgment and writ consistent with this Order within ten (10) days of this Order. The amended writ should essentially remain in the form of the 2 July 2008 writ, however, the provisions of paragraphs (3) & (4) shall be excised in conformance with this nature and intent of this Order. Appropriate modifications to the judgment at paragraphs 2. (c), (d), and the last sentence of paragraph 3. should be made.

2. The Clerk shall give Notice as soon as possible and in any event before 29 August 2008

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE, CENTRAL JUSTICE CENTER**

<p>CITY OF ARCADIA, et al.</p> <p style="text-align: center;">Plaintiff(s)</p> <p style="text-align: center;">v.</p> <p>STATE WATER RESOURCES CONTROL BOARD, et al.</p> <p style="text-align: center;">Defendant(s)</p>	<p>CASE NUMBER: 06CC02974</p> <hr/> <p>CERTIFICATE OF SERVICE BY MAIL OF MINUTE ORDER, DATED 8-28-08</p>
---	--

I, ALAN SLATER, Executive Officer and Clerk of the Superior Court, in and for the County of Orange, State of California, hereby certify; that I am not a party to the within action or proceeding; that on 8-28-08, I served the Minute Order, dated 8-28-08, on each of the parties herein named by depositing a true copy thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Postal Service mail box at Santa Ana, California addressed as follows:

Richard Montevideo, Esq.
Peter J. Howell, Esq.
Rutan & Tucker, LLP
611 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626-1950
Facsimile 714-546-9035

Jennifer F. Novak, Esq.
Michael W. Hughes, Esq.
State of California, Dept. of Justice
Office of the Attorney General
300 South Spring Street, Suite 1702
Los Angeles, CA 90013-1204
Facsimile 213-897-2802

David S. Beckman, Esq.
Michelle Mehta, Esq.
Natural Resources Defense Council, Inc.
1314 Second Street
Santa Monica, CA 90401
Facsimile 310-434-2399

Michael J. Levy, Esq.
State Water Resources Control Board
Office of Chief Counsel
1001 I Street
Sacramento, CA 95814
Facsimile 916-341-5193

ALAN SLATER,
Executive Officer and Clerk of the Superior Court
In and for the County of Orange

DATED: 8-28-08

By: 
P. Rief, Deputy Clerk

CERTIFICATE OF SERVICE BY MAIL