

Conway v. State Water Resources Control Board (March 30, 2015) __ Cal.App.4th __

This case focuses on the question of who's responsible for remediating water pollution at McGrath Lake. CEQA is a sideshow in this brief decision.

The Court of Appeal upheld the total maximum daily load (TMDL) standard set for Lake McGrath as part of a basin plan amendment approved by the Regional Water Quality Control Board. Conway, a landowner who would be subject to compliance with the TMDL remediation requirements, had sued alleging that the Regional Board's TMDL standard was improper because it centered on concentrations of pollutants in lake bed sediment rather than the concentrations in lake water. The Court found that the concentration based TMDL is appropriate.

Conway asserted that the Regional Board failed to comply with CEQA because its certified regulatory program document did not analyze the environmental impacts of dredging the lake bed to remove contaminants. The Court dismissed this argument. The certified regulatory program is the functional equivalent of CEQA and properly analyzed the TMDL. The Court noted that the basin plan amendment does not expressly require dredging or any other method of remediation, but instead "represents a goal for the level of a pollutant in a water body." In light of the fact that the TMDL is not an implementation plan, the Court viewed the certified regulatory program document as a first-tier analysis. "Remediation measures are beyond the scope of the TMDL; thus, beyond the scope of the first tier environmental analysis necessary for a TMDL." If dredging is ultimately chosen as the remediation method, "a full analysis can be made on a second tier."