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Court nullifies “potential” beneficial uses – Ventura permit workshop cancelled – Recent court action regarding water quality standards may affect stormwater permit programs statewide. The water quality standards for a waterbody include designated *beneficial uses*. Numeric or narrative *water quality objectives* protect these beneficial uses. A beneficial use of body contact recreation (REC-1), for example, has associated numeric objectives for fecal coliform and total coliform. Waters identified as municipal or domestic drinking water supply (MUN) typically have numeric objectives similar or identical to drinking water standards (with variation from Region to Region).

In all Basin Plans, the Regional Water Boards have identified *potential* beneficial uses and generally enforce these potential uses the same as they do current or existing beneficial uses (some uses also may be identified as “anticipated uses”). This practice by the Boards has led to conflicts with permittees who have argued that some potential beneficial uses are very unlikely to ever be realized and result in overly restrictive permit limitations. For example, a concrete flood control channel with intermittent dry weather flow and a torrent in wet weather may be designated with potential uses such as MUN, REC-1, or aquatic habitat, even though these uses are unlikely to occur.

The Orange County Superior Court of California recently addressed this issue and ordered specific corrective actions by the Los Angeles and State Water Boards (writ of mandate). The case resulted from a petition/complaint filed in 2005 by a coalition of 21 southern California cities (Arcadia, Bellflower, etc.) and the Building Industry Legal Defense Foundation against the Los Angeles and State Water Boards (case No. 06CC02974). The Superior Court action (7-2-08):

1. Stops implementation/enforcement of “potential” beneficial uses including in TMDLs and permits:
...it is contrary to law to base Water Quality Standards on “potential” beneficial uses, as such a practice is contrary to the clear and specific requirements set forth in Water Code section 13241(a)
... All standards which apply or are to be applied to Stormwater and established to achieve “potential” beneficial use designations, are hereby declared to be void and shall have no further force or effect.
2. Requires the Los Angeles Water Board to hold a public hearing as part of the triennial review process to “to revise the Standards that apply or are to be applied to Stormwater, such that no “potential” use designations for such Standards remain in the Basin Plan;...”.
3. Requires that the revisions implement requirements for standards “that could reasonable be achieved,” and consider economic impacts on the dischargers as well as other factors including overall demands on waterways (see Water Code sections 13241 and 13000).

The Los Angeles Board cancelled the July 10 workshop on the Ventura Municipal Separate Storm Sewer System (MS4) Permit stating that this was required by the court’s writ of mandate. The draft Ventura permit introduces numeric compliance thresholds for stormwater permits. The court action is likely to be appealed. If upheld by an appellate ruling it may impact stormwater permits statewide and potentially other permits as well. The writ of [mandate](#) is posted. E-mail fkrieger@msn.com for the complaint and judgment.

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