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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

ANDREW C. WILSON,

Plaintiff and Appellant,

v.

STATE WATER RESOURCES
CONTROL BOARD,

Defendant and Respondent.

B286641

(Los Angeles County
Super. Ct. No.
BS163435)

APPEAL from a judgment of the Superior Court of
Los Angeles County. Mary H. Strobel, Judge. Affirmed.

Andrew C. Wilson, in pro. per., for Plaintiff and Appellant.

Xavier Becerra, Attorney General, Robert W. Byrne,
Assistant Attorney General, and Eric M. Katz, Deputy Attorney
General, for Defendant and Respondent.

Appellant Andrew C. Wilson (Wilson) appeals from the denial of his petition for administrative writ of mandate in which he sought an order directing respondent State Water Resources Control Board (State Water Board) to set aside water reclamation requirements (WRRs) that were adopted in 2016 pursuant to Water Code section 13523.¹

This appeal presents a narrow question of statutory interpretation: To reach the conclusion that WRRs are necessary to protect public health, safety, or welfare, does section 13523 require the State Water Board to apply the tort-law concept of reasonable care and make specific findings regarding “(1) the degree of likelihood of adverse human health effects due to crop contamination from perchlorate in disinfected tertiary recycled water, (2) the gravity of the resulting injury, and (3) the burden of adequate protections”? We conclude that the statute imposes no such requirement and therefore affirm.

BACKGROUND

In January 2016, the State Water Board announced its intention to approve WRRs authorizing the regulated use of recycled water for nonpotable purposes, including crop and landscape irrigation, dust control, and certain industrial processes.² The purpose of the proposed WRRs was to encourage

¹ All further statutory references are to the Water Code unless otherwise indicated.

² “‘Recycled water’ means water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefor considered a valuable resource.” (§ 13050, subd. (n).) The

recycled water use by viewing it as a valuable resource rather than waste and to streamline the permitting process, including allowing the State Water Board to authorize recycling projects spanning multiple regional water board boundaries.

The State Water Board invited public comment. Wilson, an orange farmer, submitted written comments objecting to the proposed WRRs. He argued that they were “overbroad and allow[ed] the use of recycled water that has not received adequate treatment to be safe.” Specifically, he expressed concern that the proposed WRRs set no limit on the amount of perchlorate in the recycled water authorized for crop irrigation and that the State Water Board’s presumption that recycled water is safe was not based on a reliable assessment of perchlorate’s adverse health effects.³ The State Water Board responded to Wilson’s comments and explained its conclusion that “there is no reason to believe that agricultural irrigation with disinfected recycled water is a perchlorate-health risk[.]”

In June 2016, after holding a public hearing, the State Water Board adopted the WRRs with some revisions not pertinent here. Pursuant to section 13330 and Code of Civil Procedure section 1094.5, Wilson filed a petition for writ of mandate to set aside the WRRs. The trial court denied the petition and entered judgment against Wilson. This timely appeal ensued.

coverage of the WRRs at issue here is specifically limited to treated municipal wastewater.

³ Perchlorate is a synthetic and naturally occurring endocrine disrupting chemical that may be found in disinfectants used to treat wastewater.

DISCUSSION

Wilson argues that, under section 13523, the State Water Board must apply tort-law principles of reasonable care when determining whether WRRs are necessary to protect the public, and that this standard dictates specific inquiries and findings related to the health effects of perchlorate in recycled water. We disagree.

I. Standard of Review

We review issues of statutory construction de novo. (*County of Los Angeles Dept. of Public Social Services v. Civil Service Com. of Los Angeles County* (2019) 35 Cal.App.5th 273, 284.)

II. Rules of Statutory Construction

In interpreting a statute, “[o]ur fundamental task is to determine the Legislature’s intent and give effect to the law’s purpose. [Citation.] We begin by examining the statute’s words “because they generally provide the most reliable indicator of legislative intent.’ [Citation.] If the statutory language is clear and unambiguous our inquiry ends.” [Citation.] In that case, the plain meaning of the statute is controlling, and “resort to extrinsic sources to determine the Legislature’s intent is unnecessary.” [Citation.]” (*Lopez v. Sony Electronics, Inc.* (2018) 5 Cal.5th 627, 633–634 (*Lopez*).) Statutory language is ambiguous if it is susceptible to more than one reasonable interpretation. (*Hubbard v. Coastal Com.* (2019) 38 Cal.App.5th 119, 136 (*Hubbard*).)

“We may not, under the guise of construction, rewrite the law or give the words an effect different from the plain and direct import of the terms used.” (*California Fed. Savings & Loan Assn.*

v. City of Los Angeles (1995) 11 Cal.4th 342, 349 (*California Fed. Savings*).)

III. Section 13523 Does Not Require the State Water Board to Apply a Reasonable Care Standard and Make Specific Findings Related to the Health Effects of Perchlorate.

Pursuant to sections 13523 and 13528.5, the State Water Board “shall, if in the judgment of the board, it is necessary to protect the public health, safety, or welfare, prescribe [WRRs] for water that is used or proposed to be used as recycled water.” (§ 13523, subd. (a); see also § 13528.5, subd. (a).)⁴ The State Water Board must first “consult[] with and receiv[e] the recommendations of the [California] Department of Public Health and any party who has requested in writing to be consulted,” and hold “any necessary hearing[.]” (§ 13523, subd. (a).) The WRRs must be in conformance with the uniform statewide recycling criteria mandated by section 13521 and codified in California Code of Regulations, title 22, section 60301.050 et seq. (§ 13523, subd. (b).)

Wilson reads into section 13523 a requirement that the State Water Board determine the necessity of WRRs to protect the public based on a tort-law reasonable care standard and, as a result, specifically “determine and weigh the three factual elements of reasonable care: (1) the degree of likelihood of adverse human health effects due to crop contamination from perchlorate in disinfected tertiary recycled water, (2) the gravity

⁴ The text of section 13523 refers to regional water boards rather than the State Water Board. However, under section 13528.5, the State Water Board is authorized to carry out the same duties as the regional boards.

of the resulting injury, and (3) the burden of adequate protections.” The unambiguous, plain language of the statute, which we examine first to gauge legislative intent (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 632–633), does not support the imposition of such a requirement.

Section 13523 is silent regarding the standard that the State Water Board must apply to judge whether WRRs are “necessary to protect the public health, safety, or welfare[.]” (§ 13523, subd. (a).) The State Water Board is required to (1) consult with and receive recommendations from the Department of Public Health and other interested parties, (2) hold necessary hearings, (3) reach the conclusion that the WRRs are necessary for public protection (§ 13523, subd. (a)), and (4) ensure that the WRRs conform to the uniform statewide recycling criteria (§ 13523, subd. (b)). None of these requirements can be interpreted to dictate the application of a reasonable care standard mandating specific inquiries related to perchlorate.

Wilson does not cite any case that has adopted his reading of section 13523 or an analogous statute. Nor does he adequately engage the rules of statutory construction. Rather, his arguments consist of reasons why he believes the statute *should* mandate a reasonable care standard when assessing the necessity of WRRs to protect the public. That such a standard might be good public policy, however, is not the question before us and is not within our power to impose. (See *California Fed. Savings, supra*, 11 Cal.4th at p. 349 [“It is our task to construe, not to amend, the statute”].) Because the statutory language is

unambiguous, the plain meaning controls and our analysis ends. (*Lopez, supra*, 5 Cal.5th at p. 634.)

Wilson’s challenge to the denial of his writ of mandate is dependent on his erroneous construction of section 13523. He does not argue that the State Water Board failed to consult, hold necessary hearings, or conform the WRRs at issue to the uniform statewide recycling criteria. Nor does he engage in the substantial evidence analysis typically applicable to the review of an agency’s findings (*Hubbard, supra*, 38 Cal.App.5th at p. 135), reasoning that “[t]here is no point” given the State Water Board’s application of, in his view, an erroneous standard to assess safety.

Thus, based on our rejection of Wilson’s statutory interpretation and the fact that he presents no other issue for our determination, we affirm.⁵

⁵ Wilson is not without recourse. As the trial court noted, he has the right to “petition a state agency requesting the adoption, amendment, or repeal of a regulation[.]” (Gov. Code, § 11340.6.)

DISPOSITION

The judgment is affirmed. The State Water Board is entitled to its costs on appeal.

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_____, Acting P. J.
ASHMANN-GERST

We concur:

_____, J.
CHAVEZ

_____, J.
HOFFSTADT