

CERTIFIED FOR PARTIAL PUBLICATION*

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

TWC STORAGE, LLC,

Plaintiff and Appellant,

v.

STATE WATER RESOURCES
CONTROL BOARD et al.,

Defendants and Respondents.

H033228

(Santa Clara County
Super. Ct. No. CV078148)

ORDER MODIFYING OPINION

THE COURT:

It is ordered that the opinion filed herein on June 3, 2010 be modified as follows:

1. On pages 5 and 6, delete the 2nd and 3rd paragraphs of the Discussion section and replace them with the following single paragraph:

The first question is what standard of review we apply to the superior court's decision. Judicial review of the Regional Board's decision by the superior court "extend[ed] to the questions whether the respondent ha[d] proceeded without, or in excess of jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (Code Civ. Proc., § 1094.5, subd. (b).) On appeal, we review the superior court's decision under the

* Pursuant to California Rules of Court, rules 8.1105(b) and 8.1110, this opinion is certified for publication with the exception of sections IIIB and IIIC.

substantial evidence standard of review. (*JKH Enterprises, Inc. v. Department of Industrial Relations* (2006) 142 Cal.App.4th 1046, 1058.) We exercise independent review on the question of whether the Regional Board provided TWC with a fair hearing. (*Rosenblit v. Superior Court* (1991) 231 Cal.App.3d 1434, 1442.)

2. On page 10, line 8, delete the words “and the superior court”
3. On page 10, lines 9 and 10, delete the words “and the superior court”

These modifications do not affect the judgment.

Mihara, J.

WE CONCUR:

Bamattre-Manoukian, Acting P. J.

McAdams, J.