

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

MURRAY KELSOE,

Plaintiff and Appellant,

v.

CALIFORNIA STATE WATER  
RESOURCES CONTROL BOARD,

Defendant and Respondent.

A113967

(Alameda County

Super. Ct. No. HG 04184281)

**ORDER MODIFYING OPINION  
AND DENYING REHEARING**

The opinion in this matter, filed July 20, 2007, is herein modified as follows:

1. On page 9, the third sentence of the third paragraph is modified to read:

“But that requirement is qualified by subdivision (d)(3)(B), which applies to a specific subset of Fund claimants: as here pertinent, those claimants who (1) did not have a permit required prior to January 1, 1990, and (2) submit a claim on or after January 1, 1994.”

2. On page 10, the first sentence of the third paragraph is modified to read:

“It appears from the Board’s own decision in this case that plaintiff may have been unaware of the permit requirement prior to January 1, 1990.”

3. On page 10, the third sentence of the third paragraph is modified to read:

“Thus, it appears that plaintiff may fall under the provisions of subdivision (d)(3)(B), and the Board should determine from all of the evidence whether plaintiff is entitled to a permit waiver to render him eligible for a claim against the Fund.”

4. On page 11, the following footnote is added at the end of the first full paragraph:

“We stress that our ruling is limited to the particular facts of this case, in which a UST owner paid thousands of dollars into the Fund over a period of substantial compliance—from 1994 onward—and was then told he is ineligible for Fund reimbursement because he did not have a permit prior to January 1, 1990. Other factual scenarios are not before us.”

This modification does not affect the judgment.

The petition for rehearing is denied.

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Marchiano, P.J.

**Trial Court:** Alameda County Superior Court

**Trial Judge:** Honorable Steven A. Brick

**Attorneys:**

Silicon Valley Law Group, Jeffrey S. Lawson for Plaintiff and Appellant.

Bill Lockyer and Edmund G. Brown, Jr., Attorneys General, Mary E. Hackenbracht, Senior Assistant Attorney General, John Davidson, Supervising Deputy Attorney General, Michael W. Neville, Deputy Attorney General, for Defendant and Respondent.

Peter J. Niemiec; Downey Brand, Steven H. Goldberg, Nicole E. Granquist for Southeast Towing and Salvage Inc. as Amicus Curiae on behalf of Plaintiff and Appellant.

Hinson & Gravelle, Douglas A. Gravelle for Hinson & Gravelle as Amicus Curiae on behalf of Plaintiff and Appellant.

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