Filed 11/19/10 Goodrich Corp. v State Water Resources Control Bd. CA2/1

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

GOODRICH CORPORATION et al., Plaintiffs and Appellants, v. STATE WATER RESOURCES CONTROL BOARD et al., Defendants and Respondents.	B219855 (Los Angeles County Super. Ct. No. BS121257)

APPEAL from a judgment of the Superior Court of Los Angeles County. James C. Chalfant, Judge. Affirmed.

Gibson, Dunn & Crutcher, Jeffrey D. Dintzer, Elizabeth M. Burnside; Manatt, Phelps & Phillips, Craig A. Moyer, Peter Duchesneau and Benjamin G. Schatz for Plaintiff and Appellant Goodrich Corporation.

Allen Matkins Leck Gamble Mallory & Natsis, Robert D. Wyatt and James L. Meeder for Plaintiffs and Appellants Emhart Industries, Inc., Kwikset Locks, Inc., Kwikset Corporation, and Black & Decker Inc.

Hunsucker Goodstein & Nelson, Philip C. Hunsucker, Brian L. Zagon and Erik S. Mroz for Plaintiff and Appellant Pyro Spectaculars, Inc.

Edmund G. Brown, Jr., Attorney General, Mary E. Hackenbracht, Senior Assistant Attorney General, and Carol A. Squire, Supervising Deputy Attorney General, for Defendants and Respondents.

_____

In 2002, the state began investigating perchlorate contamination of the Rialto-Colton groundwater basin, and in 2005 a proposed cleanup and abate order (CAO) was issued against plaintiffs by a regional water quality control board. After the State Water Resources Control Board (State Board) issued a notice in 2007 that it intended to hold an evidentiary hearing on the proposed CAO, plaintiffs filed a succession of five petitions for writs of mandate challenging various interim or interlocutory orders of the State Board. Each petition sought to halt the State Board's evidentiary hearing on the CAO and requested that the superior court decide in the first instance the issue of whether the State Board should be disqualified from taking action due to alleged improper ex parte communications and the alleged failure to maintain separate prosecutorial and adjudicatory functions.

In 2008, plaintiffs filed a *fourth* petition for a writ of mandate, which was adjudicated in 2009. In a prior appeal involving the fourth petition, we affirmed that part of a February 19, 2009 judgment upholding the trial court's refusal to address the issues of the State Board's disqualification and alleged improper conduct on the ground that plaintiffs had not exhausted their administrative remedies. (*Goodrich Corporation v. State Water Resources Control Board* (June 28, 2010, as modified July 21 and 23, 2010, B215175) [nonpub. opn.] (*Goodrich I*).)[1]

This appeal involves plaintiffs' *fifth* petition for a writ of mandate, filed in June 2009, by which plaintiffs again sought to disqualify the State Board and its members (defendants) and to halt administrative proceedings on the CAO before the State Board.

---

[1] We grant defendants' September 17, 2010 motion for judicial notice and their October 5, 2010 amended motion for judicial notice of our opinion in *Goodrich I*.

Plaintiffs' first three petitions for a writ of mandate, filed in 2007, were brought together in a consolidated second amended petition. In 2008, the trial court struck the disqualification allegations from the 2007 petitions on the ground of failure to exhaust administrative remedies. In plaintiffs' opening brief on appeal in *Goodrich I*, plaintiffs stated that any trial court error as to the three 2007 petitions became moot when, as part of its February 19, 2009 judgment, the superior court voided certain actions of the State Board which had been challenged in the three 2007 petitions. (*Goodrich I*, *supra*, B215175, pp. 11–12, fn. 3.)

On September 23, 2009, the trial court sustained without leave to amend defendants' demurrer to the 2009 petition on the ground that plaintiffs had not exhausted their administrative remedies, and plaintiffs appealed from the judgment of dismissal. We affirm the September 23, 2009 judgment because the trial court correctly determined that the petition was subject to dismissal based on the exhaustion of administrative remedies doctrine.

BACKGROUND

Plaintiffs' petition runs 70 pages and incorporates over 1,000 pages of exhibits. As the demurrer was sustained on the ground of the failure to exhaust administrative remedies, we focus on the allegations pertinent to this issue. We also ignore the legal argument and conclusions set out in the petition, as in reviewing an order sustaining a demurrer, we treat the demurrer as admitting all material facts properly pleaded, but we do not assume the truth of contentions, deductions, or conclusions of law. (*First Aid Services of San Diego, Inc. v. California Employment Development Dept*. (2005) 133 Cal.App.4th 1470, 1476.)

A. Administrative Proceedings and First Four Petitions for Writs of Mandate

In 2005, the Santa Ana Regional Water Quality Control Board (Regional Board) issued a CAO against plaintiffs pertaining to perchlorate contamination in the Rialto-Colton groundwater basin. The Regional Board issued notice that it intended to conduct a hearing on the CAO in May 2006. The hearing set for May was continued to July 2006. Meanwhile, on May 26, 2006, plaintiff Emhart Industries, Inc., and some of the other plaintiffs (Emhart Plaintiffs) filed petitions which sought to disqualify the Regional Board and its prosecutors for alleged improper ex parte contacts and failure to maintain a separation of prosecutorial and adjudicatory functions. The Regional Board canceled its hearing on the CAO and requested that the State Board hold a hearing on the merits of the CAO. Upon a request by the Emhart Plaintiffs, the State Board placed the Emhart Plaintiffs' petitions in abeyance "in hopes that the matter may be worked out between you and the [Regional Board]."

In October 2006, the Regional Board issued an amended CAO, and in January 2007 it set an evidentiary hearing on the amended CAO for March 2007. In November 2006, plaintiffs filed petitions with the State Board for review and an immediate stay of the Regional Board proceedings. On January 30, 2007, the State Board refused to review plaintiffs' petitions on the ground that the petitions were not ripe because there had been no final action on the CAO by the Regional Board. On January 31, 2007, the Regional Board's ad hoc hearing officer resigned.

After the hearing officer's resignation, the State Board, through its acting executive director, issued a notice that it was "considering reviewing this matter on its own motion, including all actions and inactions of the [Regional Board] regarding the perchlorate investigation and remediation in Rialto since the issuance of a cleanup and abatement order on February 28, 2005." The State Board's acting executive director also appointed defendant Tam Doduc, then the chair of the State Board, to act as a hearing officer in the proceeding before the State Board, which was assigned number A-1824.[2]

---

[2] Unspecified statutory references are to the Water Code.

According to the State Board, proceeding A-1824 was brought under sections 13267 and 13304.

Section 13267 provides in pertinent part: "(a) A regional board, in establishing or reviewing any water quality control plan or waste discharge requirements, or in connection with any action relating to any plan or requirement authorized by this division, may investigate the quality of any waters of the state within its region. [¶] . . . [¶] (f) The state board may carry out the authority granted to a regional board pursuant to this section if, after consulting with the regional board, the state board determines that it will not duplicate the efforts of the regional board."

Section 13304 provides in pertinent part: "(a) Any person who has discharged or discharges waste into the waters of this state in violation of any waste discharge requirement or other order or prohibition issued by a regional board or the state board, or who has caused or permitted, causes or permits, or threatens to cause or permit any waste to be discharged or deposited where it is, or probably will be, discharged into the waters of the state and creates, or threatens to create, a condition of pollution or nuisance, shall upon order of the regional board, clean up the waste or abate the effects of the waste, or, in the case of threatened pollution or nuisance, take other necessary remedial action, including, but not limited to, overseeing cleanup and abatement efforts. A cleanup and

In February 2007, the State Board issued notices of public hearings set for March and April 2007. In March 2007, Goodrich Corporation filed a motion requesting that the proceeding be conducted as a formal hearing under the administrative procedures act (Gov. Code, § 11340 et seq.) and that an administrative law judge be assigned to hear the matter. Goodrich's motion was denied. Revised notices of public hearings changed the date of the hearing to August 21, 2007. Thousands of pages of documentary evidence were submitted and the parties intended to call over 100 witnesses at the hearing. The City of Rialto, which had "injected itself into the challenged proceedings as a self-described 'co-prosecutor,'" submitted over 30,000 pages of documents.

On March 6, 2007, plaintiffs moved for a stay of the proceedings in A-1824, seeking to halt the proceedings pending discovery and a determination of whether there was compliance with the requirements pertaining to the separation of prosecutorial and adjudicatory functions and ex parte communications. By letter of March 28, 2007, Doduc denied the motion except to the extent that it requested an investigation by the State Board of ex parte communications.

Plaintiffs subpoenaed the State Board for copies of ex parte communications in late March 2007. The State Board resisted the subpoena until the Attorney General's office became involved, and in May 2007, the State Board responded to the subpoena by disclosing additional ex parte communications which occurred after February 2005. The State Board also disclosed in September 2007 a few more ex parte communications which occurred after May 2007.

Meanwhile, in August 2007, plaintiffs filed in the superior court three petitions for traditional and administrative mandate, seeking to stay the administrative proceedings and the issuance of a writ of mandate compelling recusal or disqualification of the State Board and its members. (See fn. 1, *ante*; *Goodrich Corp. v. State Water Resources*

---

abatement order issued by the state board or a regional board may require the provision of, or payment for, uninterrupted replacement water service, which may include wellhead treatment, to each affected public water supplier or private well owner."

Control Bd. et al. (Super. Ct. L.A. County, 2007, No. BS110389); *Emhart Industries, Inc. et al. v. State Water Resources Control Bd. et al*. (Super. Ct. L.A. County, 2007, No. BS110390); *Pyro Spectaculars, Inc. v. State Water Resources Control Bd. et al*. (Super. Ct. L.A. County, 2007, No. BS110391).) Plaintiffs also alleged that the State Board's hearing officer lacked jurisdiction to conduct the hearing on the CAO under section 13320, subdivision (a) because the full State Board did not vote to delegate authority to the hearing officer to conduct the hearing.[3] The three petitions were later consolidated and an amended consolidated petition was filed.

On August 13, 2007, the trial court stayed proceedings before the State Board, but in April 2008, the trial court lifted the stay for the limited purpose of permitting the State Board to comply with section 13320, subdivision (a). In April 2008, the trial court also struck the disqualification allegations from the consolidated petition on the ground of failure to exhaust administrative remedies.

After the stay was lifted on the State Board proceedings, plaintiffs submitted for consideration at the State Board's June 3, 2008 meeting three motions to disqualify the State Board, Doduc, and the State Board's advisory team. At the June 3, 2008 meeting, the State Board adopted an order, WQ 2008-0004, on its own motion, initiating review of the actions of the Regional Board with respect to the proposed CAO under section 13320,

---

[3] Section 13320 provides in pertinent part: "(a) Within 30 days of any action or failure to act by a regional board . . . any aggrieved person may petition the state board to review that action or failure to act. . . . The state board may, on its own motion, at any time, review the regional board's action or failure to act and also any failure to act under Article 3 (commencing with Section 13240) of Chapter 4 [adoption of water quality control plans for region]. [¶] . . . [¶] (c) The state board may find that the action of the regional board, or the failure of the regional board to act, was appropriate and proper. Upon finding that the action of the regional board, or the failure of the regional board to act, was inappropriate or improper, the state board may direct that the appropriate action be taken by the regional board, refer the matter to any other state agency having jurisdiction, take the appropriate action itself, or take any combination of those actions. In taking any such action, the state board is vested with all the powers of the regional boards under this division."

subdivision (a), deferring ruling on plaintiffs' motions until the adjudicative hearing, and ratifying the February 2007 decision of the acting executive director to initiate review.

In July 2008, plaintiffs filed a fourth petition for a writ of mandate (*Goodrich Corp. et al. v. State Water Resources Control Bd. et al*. (Super. Ct. L.A. County, 2008, No. BS115673) seeking to rescind WQ 2008-0004 and to compel the State Board and its hearing officer to recuse themselves from adjudicating the allegations in the CAO.[4] The trial court struck the allegations in the fourth petition pertaining to the issue of the State Board's disqualification or recusal and tried only the issue of whether the State Board had jurisdiction to review the actions or failure to act of the Regional Board. In a February 19, 2009 judgment, the trial court granted only that part of plaintiffs' fourth petition seeking to invalidate the actions of the State Board to assume jurisdiction before June 3, 2008, and those portions of WQ 2008-0004 which ratified nunc pro tunc the actions of the State Board's executive director to commence proceeding A-1824. Pursuant to the February 19, 2009 judgment, a peremptory writ of mandate was issued to the State Board on March 12, 2009.

B. Administrative Proceedings and Fifth Petition for Writ of Mandate

On May 6, 2009, in proceeding A-1824, plaintiffs filed a motion to disqualify the State Board from further action in that proceeding and proffered evidence of numerous alleged improper ex parte communications. The State Board denied the motion.

In response to the March 12, 2009 peremptory writ of mandate, the State Board held a noticed public meeting on May 19, 2009, and adopted Order WQ 2009-0004 (2009 Order). That order rescinded (1) all actions taken in proceeding A-1824 before June 3, 2008, other than the actions to schedule and notice Order WQ 2008-0004, (2) those portions of Order WQ 2008-0004 which attempted to ratify nunc pro tunc the actions of

---

[4] The petition alleged that Tam Doduc was the chair of the State Board and the hearing officer assigned to hear proceeding A-1824. The other members of the State Board in July 2008 were alleged to be Gary Wolff, Arthur G. Baggett, Jr., Charles R. Hoppin, and Frances Spivy-Weber.

the executive director to commence proceeding A-1824 and to appoint a hearing officer in A-1824; and (3) the actions of the hearing officer taken before June 3, 2008.

The 2009 Order delegated to the State Board's executive director, after consultation with the State Board chairperson, the authority to select a hearing officer for proceeding A-1824. In pertinent part, the 2009 Order stated that "this order concerning own motion review is interim in nature and that no final action of the State Water Board will occur until after an evidentiary hearing and until after consideration of a draft order by the full State Water Board in conformance with Water Code section 183."[5]

After the State Board adopted the 2009 Order, the State Board and its members filed their return to the peremptory writ, attaching a copy of the 2009 Order to establish compliance with the peremptory writ.

Our record does not reveal whether a new hearing officer has been appointed to hear proceeding A-1824.

On June 18, 2009, plaintiffs filed their fifth petition for a writ of administrative and traditional mandate against the State Board and its members, the dismissal of which is before us on this appeal.[6] The instant petition challenges the State Board's May 6, 2009 denial of plaintiffs' motion to disqualify the State Board from taking any further action in proceeding A-1824 based on the State Board's alleged improper ex parte communications, bias, and failure to keep separate the adjudicatory and prosecutorial

---

[5] Section 183 provides: "The board may hold any hearings and conduct any investigations in any part of the state necessary to carry out the powers vested in it, and for such purposes has the powers conferred upon heads of departments of the state by Article 2 (commencing with Section 11180), Chapter 2, Part 1, Division 3, Title 2 of the Government Code. [¶] Any hearing or investigation by the board may be conducted by any member upon authorization of the board, and he shall have the powers granted to the board by this section, but any final action of the board shall be taken by a majority of all the members of the board, at a meeting duly called and held. [¶] All hearings held by the board or by any member thereof shall be open and public[.]"

[6] The fifth petition alleged that the chair of the State Board was Charles R. Hoppin, and the members of the State Board were Tam Doduc, Arthur G. Baggett, Jr., and Frances Spivy-Weber.

functions. The petition alleged that plaintiffs "have exhausted their administrative remedies, or are excused from exhausting any available remedies and [the State Board] lacks authority and jurisdiction in the first instance." Plaintiffs also asserted in their petition that if the May 6, 2009 decision of the State Board is allowed to stand, plaintiffs "rights will be adjudicated by a tribunal operating in violation of law and [their] fundamental right to due process; and [plaintiffs] will be forced to defend themselves in proceedings, at substantial cost, only to be overturned in some future proceeding."

C. Demurrer

Defendants (see fn. 6, *ante*) demurred to the petition on the ground that the superior court lacked jurisdiction over the petition because plaintiffs failed to exhaust their administrative remedies. Defendants argued that the State Board's May 6, 2009 order was interlocutory and not subject to judicial review.

In opposition, plaintiffs maintained that they had exhausted their administrative remedies and that the 2009 Order was a final decision or order subject to review by a petition for a writ of mandate pursuant to section 13330, subdivisions (a) and (c).[7] They

---

[7] Section 13330 provides in pertinent part: "(a) Not later than 30 days from the date of service of a copy of a decision or order issued by the state board under this division, other than a decision or order issued pursuant to Article 7 (commencing with Section 13550) of Chapter 7, any aggrieved party may file with the superior court a petition for writ of mandate for review thereof. [¶] (b) Any party aggrieved by a final decision or order of a regional board for which the state board denies review may obtain review of the decision or order of the regional board in the superior court by filing in the court a petition for writ of mandate not later than 30 days from the date on which the state board denies review. [¶] (c) If no aggrieved party petitions for writ of mandate within the time provided by this section, a decision or order of the state board or a regional board shall not be subject to review by any court. [¶] (d) Except as otherwise provided herein, Section 1094.5 of the Code of Civil Procedure shall govern proceedings for which petitions are filed pursuant to this section. . . ."

Code of Civil Procedure section 1094.5 provides in pertinent part: "(a) Where the writ is issued for the purpose of inquiring into the validity of any *final administrative order or decision* made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts

argued that the order was final with regard to the delegation of authority to the State Board's executive director to select a hearing officer in proceeding A-1824. Plaintiffs also claimed that, even without the benefit of section 13330, their petition fell within exceptions to the exhaustion doctrine where the agency lacks jurisdiction over the dispute (*Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072 (*Coachella Valley*)) or where the case presents important questions of constitutional law or public policy governing agency authority (*Public Employment Relations Bd. v. Superior Court* (1993) 13 Cal.App.4th 1816 (*Public Employment Relations Bd.*)).

In their reply memorandum, defendants argued that "[r]eading Water Code section 13330(a) in the manner [plaintiffs] posit would allow innumerable interim administrative orders and decisions to be prematurely litigated. Nothing has changed since the [superior court's] previous rulings requiring [plaintiffs] to raise and exhaust their claims through the [administrative] evidentiary process before they may initiate judicial review of allegations of bias and procedural deficiencies." Defendants also stated that plaintiffs "misleadingly assert the State Board 'rejected' their disqualification motion. [Plaintiffs] are wrong. The State Board never considered the merits of the disqualification motion, but explicitly declined to consider the motion, properly requiring the motion to be heard during the evidentiary proceeding. In essence, [plaintiffs] are once again asking this court to review their self-serving, one-sided bias allegations without allowing the State Board the opportunity to conduct its evidentiary process."

After oral argument on the demurrer, the trial court issued an order sustaining the demurrer without leave to amend. The trial court's written ruling stated that the petition was "barred as a matter of law because [plaintiffs] have not exhausted their administrative remedies. The [2009] Order, adopted in compliance with the peremptory writ, is interlocutory by its own terms. It was undertaken as a preliminary step in

---

is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury." (Italics added.)

commencing the administrative process. The Order evidences the commencement of an administrative process, which will eventually result in a final decision of some kind that is amenable to judicial review. At that time, the State Board will issue a decision on the proceeding. [Plaintiffs] are legally required to defer initiating any action to review the administrative process until they have exhausted their administrative remedies, which as a matter of law cannot occur until the State Board has issued a final decision or order as contemplated by Water Code section 183. [See fn. 5, *ante*.] Until [plaintiffs] have exhausted their administrative remedies, the court has no jurisdiction to consider any of their claims."

The trial court also rejected plaintiffs' contention that section 13330, subdivision (a) (see fn. 7, *ante*) permits judicial review of interim or interlocutory decisions of the State Board. The trial court disagreed with plaintiffs' argument that the use of the word "final" in section 13330, subdivision (b) (which refers to a "final decision or order of a regional board") and the lack of the word "final in section 13330, subdivision (a) (which refers to "a decision or order issued by the state board") indicates a legislative intent that an aggrieved party may file a writ petition challenging *interim or interlocutory* orders of the State Board. The court stated that section 13330 "plainly contemplates that only final decisions will be reviewed, and does not provide for piecemeal judicial review of every step of the process. . . . [Section 13330, subdivision (d)] invokes CCP [Code of Civil Procedure] section 1094.5 as the manner for review of these decisions and orders. CCP section 1094.5(a) provides for administrative mandamus from final administrative orders or decisions. Thus, it is clear that section 13330 contemplates a fully developed administrative record and final (not interlocutory) decision." (Fn. omitted.)

The trial court also determined that plaintiffs had not established an exception to the exhaustion requirement under *Coachella Valley*, noting that it had "previously ruled that [plaintiffs] cannot meet this standard, and cannot seek judicial review of their bias and discrimination claims until the State Board has conducted its review and issued a final decision."

On appeal from the judgment of dismissal, plaintiffs make two main contentions: (1) the trial court improperly read a "finality" requirement into section 13330, subdivision (a) because its plain language permits judicial review of an interlocutory or interim order of the State Board, including the 2009 Order; and (2) exhaustion of administrative remedies is excused under *Coachella Valley* because plaintiffs have a strong legal argument that the State Board acted illegally and there is a significant public interest in obtaining an early judicial resolution of the issue of the State Board's disqualification. We review both of these issues de novo. (*Barner v. Leeds* (2000) 24 Cal.4th 676, 683 [issues of statutory construction]; *Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 536 [application of exhaustion of remedies doctrine].)

DISCUSSION

A. Section 13330, subdivision (a)

Because "we do not construe statutes in isolation; rather, we construe every statute with reference to the whole system of law of which it is a part, so that all may be harmonized and anomalies avoided" (*Coachella Valley*, *supra*, 35 Cal.4th at p. 1089), and because the Legislature is deemed to be aware of statutes and judicial decisions already in existence when it enacts and amends statutes (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1096), we set out the law pertaining to the doctrine of exhaustion of administrative remedies.

"It is now firmly established in this state that a litigant must invoke and exhaust an administrative remedy provided by statute before he may resort to the courts. . . . [T]here is no substantial difference, insofar as the necessity for resort to administrative review is concerned, between an erroneous order and one which, it is claimed, is being executed in violation of statutory authority." (*United States v. Superior Court* (1941) 19 Cal.2d 189, 194.) "[I]t lies within the power of the administrative agency to determine in the first instance, and before judicial relief may be obtained, whether a given controversy falls within the statutory grant of jurisdiction. [Citations.] And even where the statute sought to be applied and enforced by the administrative agency is challenged upon constitutional

grounds, completion of the administrative remedy has been held to be a prerequisite to equitable relief." (*Id.* at p. 195.)

"The general rule of exhaustion 'forbids a judicial action when administrative remedies have not been exhausted, even as to constitutional challenges . . . .' [Citation.] However, '. . . if the remedy provided does not itself square with the requirements of due process the exhaustion doctrine has no application.' [Citation.] Due process, though, 'does not require any particular form of notice or method of procedure. If the [administrative remedy] provides for reasonable notice and a reasonable opportunity to be heard, that is all that is required. [Citations.]' [Citation.]" (*Bockover v. Perko* (1994) 28 Cal.App.4th 479, 486.)

"'A decision attains the requisite administrative finality when the agency has exhausted its jurisdiction and possesses "no further power to reconsider or rehear the claim."' [Citation.] Finality may be defined either expressly in the statutes governing the administrative process or it may be determined from the framework in the statutory scheme. [Citation.] Until a public agency makes a 'final' decision, the matter is not ripe for judicial review." (*California Water Impact Network v. Newhall County Water Dist.* (2008) 161 Cal.App.4th 1464, 1485 (*Newhall County*).) "The doctrine of exhaustion of administrative remedies is a closely related concept to finality. The policy reasons behind the two doctrines are similar. The exhaustion doctrine precludes review of an intermediate or interlocutory action of an administrative agency. [Citation.] A party must proceed through the full administrative process 'to a final decision on the merits.' [Citation.] Each step in the administrative proceeding cannot be reviewed separately, any more than each ruling in the trial of a civil action may be separately reviewed by a separate appeal. Administrative proceedings should be completed before the issuance of a judicial writ. The rule is not a matter of discretion; compliance is a jurisdictional prerequisite to judicial review." (*Newhall County*, at p. 1489.)

"The principal purposes of exhaustion requirements include avoidance of premature interruption of administrative processes; allowing an agency to develop the necessary factual background of the case; letting the agency apply its expertise and

exercise its statutory discretion; administrative efficiency and judicial economy." (*Newhall County, supra,* 161 Cal.App.4th at p. 1489.)

The same principles of finality and exhaustion of remedies apply whether relief is sought by a petition for a writ of traditional mandate or administrative mandate. (*Newhall County, supra,* 161 Cal.App.4th at p. 1485.) The exhaustion doctrine applies even where the administrative remedy is couched in permissive statutory language. (*Id.* at p. 1489.)

Although subdivision (a) of section 13330 does not specify whether the "decision or order issued by the state board" must be final, we conclude that finality is required by construing subdivision (a) of section 13330 not in isolation but in the context of subdivision (d) of the statute and by construing the statute in light of the exhaustion of administrative remedies doctrine. In doing so, we adopt the interpretation that leads to the more reasonable result. (*Robson v. Upper San Gabriel Valley Municipal Water Dist.* (2006) 142 Cal.App.4th 877, 884–885.)

In this case, plaintiffs' petition for a writ of mandate was filed pursuant to subdivision (a) of section 13330 to challenge the State Board's decision to take up the matter of the proposed CAO on its own motion under Water Code section 13320. The proceeding before the State Board was a continuation of a matter previously pending before the Regional Board. As stated in the State Board's 2009 Order, the 2009 Order is interim in nature and does not constitute a final action of the State Board; final action would occur after an evidentiary hearing and after consideration of a draft order by the full State Board.

The requirement in subdivision (d) of section 13330 that Code of Civil Procedure section 1094.5 govern judicial review of petitions filed under section 13330 (see fn. 7, *ante*) is an indication that the Legislature intended that the decisions and orders for which review is permitted under subdivision (a) of section 13330 be *final*. Code of Civil Procedure section 1094.5 requires a "final administrative order or decision" for judicial review under that section.

And a construction of section 13330, subdivision (a) as requiring a final decision or order of the State Board is more reasonable than a construction permitting judicial review of interim or interlocutory administrative orders. In enacting and amending section 13330, the Legislature is presumed to have been aware of the long-standing judicial decisions setting out the exhaustion of administrative remedies doctrine and the concept of finality. The Legislature is also presumed to have been aware of the provisions of Code of Civil Procedure section 1094.5. It would be unreasonable and an anomaly to interpret section 13330, subdivision (a) as permitting judicial review of interim and interlocutory orders because the Legislature would have been acting in derogation of the long-standing exhaustion of administrative remedies doctrine and ignoring a key requirement of Code of Civil Procedure section 1094.5.

To support their construction of section 13330, subdivision (a) as permitting judicial review of interim or interlocutory orders of the State Board, plaintiffs rely on *Schutte & Koerting, Inc. v. Regional Water Quality Control Bd*. (2007) 158 Cal.App.4th 1373 (*Schutte*) and *Phelps v. State Water Resources Control Bd*. (2007) 157 Cal.App.4th 89 (*Phelps*). But the cases are not on point. In *Phelps*, the State Board did not challenge the petition for a writ of mandate on exhaustion of remedies grounds and it was not an issue in the case. And section 13330 was not at issue; rather, the issue was whether the petition for a writ of mandate was time-barred under the 30-day rule of section 1126, subdivision (b), providing for the filing of a petition for a writ of mandate "not later than 30 days from the date of final action by the [State Board]." (§ 1126, subd. (b).) The court in *Phelps* determined that the petition was so barred.

Schutte also is inapposite because that case held that a party proceeding under section 13330, subdivision (b) to challenge a regional board order issued without a hearing need not return to the regional board for a hearing after the party unsuccessfully petitioned the State Board for review under section 13320, subdivision (a). The court explained: "Because section 13330(b) requires exhaustion of administrative remedies before the State Board, but is silent with respect to exhaustion of any remedies before the Regional Board, we conclude that a party who is aggrieved by a final decision or order of

a regional board, and who has exhausted its administrative remedies before the State Board and has acted within the time limits specified in that section, may obtain judicial review without seeking or obtaining a hearing before the Regional Board. Accordingly, we also conclude the court committed reversible error by denying appellants' writ petition on the ground the Regional Board did not hold an administrative hearing relating to the challenged . . . order." (*Schutte, supra,* 158 Cal.App.4th at p. 1387.)

Schutte thus involves judicial review of a *final order* of a regional board sought by a party who exhausted its administrative remedies before the State Board under subdivision (b) of section 13330, and sheds no light on the issue in this appeal, which is whether judicial review under subdivision (a) of section 13330 requires a *final* decision or order of the State Board.

Accordingly, we conclude that section 13330, subdivision (a) requires that the decision or order of the State Board be final for purposes of the exhaustion of administrative remedies doctrine. The 2009 Order is not final, and thus is not subject to judicial review under section 13330, subdivision (a).

B. *Coachella Valley*

"The doctrine requiring exhaustion of administrative remedies is subject to exceptions. [Citation.]" (*Coachella Valley, supra,* 35 Cal.4th at p. 1080.) Under one exception, "exhaustion of administrative remedies may be excused when a party claims that 'the agency lacks authority, statutory or otherwise, to resolve the underlying dispute between the parties.' [Citations.]" (*Id.* at pp. 1081–1082.) An exception related to the issue of agency jurisdiction is "where important questions of constitutional law or public policy governing agency authority are tendered." (*Public Employment Relations Bd., supra,* 13 Cal.App.4th at p. 1827 [exception found not to apply; rather, exhaustion of administrative remedies doctrine was relied upon to uphold trial court's enforcing agency's subpoenas for witnesses to appear at an agency hearing and judicial deference was required to permit agency to resolve constitutional issues in the first instance].)

"In deciding whether to entertain a claim that an agency lacks jurisdiction before the agency proceedings have run their course, a court considers three factors: the injury

or burden that exhaustion will impose, the strength of the legal argument that the agency lacks jurisdiction, and the extent to which administrative expertise may aid in resolving the jurisdictional issue." (*Coachella Valley*, *supra*, 35 Cal.4th at p. 1082.)

We addressed this issue in connection with *Goodrich I* and believe that our analysis in *Goodrich I* is equally applicable in this appeal. We conclude that the instant petition also does not meet the *Coachella Valley* exception to the exhaustion doctrine.

As to the first *Coachella Valley* factor, the injury or burden of exhaustion, there is no cognizable injury or burden under this factor merely because additional time and effort would be consumed by pursuing the matter before the administrative agency. (*Coachella Valley*, *supra*, 35 Cal.4th at p. 1082.)

With respect to the factor of the strength of the legal argument that the agency (the State Board) lacks jurisdiction to issue an order with respect to the CAO, plaintiffs rely upon alleged defects in proceedings before the State Board, including the State Board's failure to rule on their disqualification motions, as well as the State Board's alleged failure to make requisite findings under section 13320, subdivision (c) (see fn. 3, *ante*). But these are matters the hearing officer or the State Board may address and resolve in connection with the evidentiary hearing. These alleged defects in the proceedings are capable of being cured by the agency and do not militate in favor of an exception to the exhaustion of administrative remedies doctrine.

As to the third factor of agency expertise, plaintiffs argue in conclusory fashion that the State Board has no expertise on the law governing disqualification. But there is no factual basis for this claim because it is unknown how often the State Board has confronted and decided similar claims in the past. And the State Board presumably has some background and expertise in its own proceedings and will be able to conduct a factual analysis of whether the State Board members engaged in any conduct which would require their disqualification. Thus, plaintiffs do not persuade us that this case falls within the *Coachella Valley* exception to the exhaustion doctrine.

We conclude that the trial court properly sustained the demurrer on the ground of failure to exhaust administrative remedies. Because we have already addressed plaintiffs

argument pertaining to the State Board's compliance with section 13320, subdivision (c) (set out in part II.B. of plaintiffs' reply brief) and determined that this argument does not establish any trial court error, defendants' motion to strike that argument in plaintiffs' reply brief is moot. Also moot is the defendants' August 13, 2010 motion for judicial notice of portions of the record in *Goodrich I*. Accordingly, we deny both of the foregoing motions as moot.

DISPOSITION

The judgment is affirmed. Defendants' September 17, 2010 motion and October 5, 2010 amended motion for judicial notice of our opinion in *Goodrich I* are granted. Defendants' August 13, 2010 motions for judicial notice and to strike argument B in plaintiffs' reply brief are denied as moot. Defendants are entitled to costs on appeal.

NOT TO BE PUBLISHED.

MALLANO, P. J.

We concur:

ROTHSCHILD, J.

CHANEY, J.