

RESPONSE TO COMMENTS

CONFIRMATION THAT THE “STATE WETLAND DEFINITION AND PROCEDURES FOR DISCHARGES OF DREDGED OR FILL MATERIAL TO WATERS OF THE STATE” (1) ARE IN EFFECT AS STATE POLICY FOR WATER QUALITY CONTROL FOR ALL WATERS OF THE STATE AND (2) SHALL BE APPLIED VIA THE INLAND SURFACE WATERS AND ENCLOSED BAYS AND ESTUARIES PLAN TO ONLY WATERS OF THE UNITED STATES

STATE WATER RESOURCES CONTROL BOARD**RESOLUTION NO. 2021 –**

As described in the table below, the State Water Board received seven comments by the March 8, 2021 noon deadline regarding the proposed Resolution. All written comments are available to view at the State Water Board’s [Public Comment FTP website](https://ftp.waterboards.ca.gov/?u=PCL-FTP&p=8ZHs8m) (<https://ftp.waterboards.ca.gov/?u=PCL-FTP&p=8ZHs8m>). Responses to the comments are below.

Number	Commenter(s)	Submitted by:
1	Defenders of Wildlife Center for Biological Diversity Sierra Club California San Francisco Baykeeper The Bay Institute Save the Bay Audubon California Citizens Committee to Complete the Refuge AquAlliance The Nature Conservancy California Coastkeeper Alliance	Rachel Zwillinger Lisa T. Belenky Brandon Dawson Ben Eichenberg Gary Bobker David Lewis Mike Lynes Carin High Barbara Vlamis Jeanne Brantigan Kaitlyn Kalua
2	O’Laughlin & Paris, LLP on behalf of San Joaquin Tributaries Authority	Valerie Kincaid
3	California Building Industry Association	Nick Cammarota
4	Jeffer Mangels Butler & Mitchell LLP on behalf of California Construction and Industrial Materials Association	Kerry Shapiro
5	General Public	LJ Laurent
6	Department of Transportation – Caltrans	Philip Stolarski
7	California Association of Realtors California Association of Winegrape Growers California Building Industry Association California Business Properties Association California Cattlemen’s Association California Chamber of Commerce California Farm Bureau Federation Western Growers Association	Jeli Gavric Michael Miller Nick Cammarota Rex S. Hime Kirk Wilbur Valerie Nera Kari Fisher Gail Delihant

Comment 1 (Coalition of Environmental Groups)

1. “On behalf of Defenders of Wildlife, Center for Biological Diversity, Citizens Committee to Complete the Refuge, California Coastkeeper Alliance, Sierra Club California, San Francisco Baykeeper, Audubon California, The Bay Institute, Save the Bay, The Nature Conservancy, and AquAlliance, we submit these comments in support of the State Water Resources Control Board’s (‘State Board’) resolution to confirm that the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State (‘Procedures’) are in effect as state policy for water quality control (‘draft resolution’).”
 - a. Response: The commenters’ support of this Resolution and continued support of implementing the Procedures is noted.
2. “In the draft resolution, the State Board indicated that it did not receive public comments specifically addressing the scope of the State Board’s authority under Water Code section 13170 or 13140 or whether the Procedures would continue to be a freestanding policy. While our organizations did not address the issue with particularity, the attached NGO comment letters from 2016, 2017, and 2019 make clear that we understood the Procedures to be a policy.” [footnote omitted]
 - a. Response: Throughout the development of the Procedures, including after the decision to incorporate the Procedures in the water quality control plans for Ocean Waters of California (Ocean Plan) and Inland Surface Waters and Enclosed Bays and Estuaries (ISWEBE Plan), the Procedures were frequently referred to as the “Wetlands Policy.” The “Dredge or Fill Procedures,” which is also commonly used shorthand, highlights the application submittal and review process and the type of discharges regulated, and does not refer to or limit the authority relied upon for adoption.

Comment 2 (SJTA)

1. Comment 1 – “The Notice and the Confirmation Resolution incorrectly refer to Resolution 2019-0015 by truncating the full title. The full title of Resolution 2019-0015 was “Amendment to the Water Quality Control Plan for Ocean Waters of California and the Water Quality Control Plan for [ISWEBE] to Establish a State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State.” (Resolution 2019-0015 [emphasis supplied].) The Notice and Confirmation Resolution improperly eliminate the language that explicitly stated the resolution amended two WQCPs, changing the title to simply, “State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State.” Deleting this language misleads the public and incorrectly reflects the nature of the State Board’s prior action. The purpose of this change appears to be part of the State Board’s effort to rewrite the history of its prior action and to claim, after the act, that it adopted a policy via Resolution 2019-

0015. The State Board did not do so, and the Sacramento Superior Court recognized as much.”

- a. Response: The narrative title of Resolution 2019-0015 is “AMENDMENT TO THE WATER QUALITY CONTROL PLAN FOR OCEAN WATERS OF CALIFORNIA AND THE WATER QUALITY CONTROL PLAN FOR INLAND SURFACE WATERS, ENCLOSED BAYS, AND ESTUARIES OF CALIFORNIA TO ESTABLISH A STATE WETLAND DEFINITION AND PROCEDURES FOR DISCHARGES OF DREDGED OR FILL MATERIAL TO WATERS OF THE STATE.” Resolutions are frequently referred to only by their number for ease of reference. The title of Resolution 2019-0015 refers to where the Procedures were intended to be placed. The title does not specify the authority that was relied upon to adopt Resolution 2019-0015 and does not limit the scope of authority relied upon for the Board’s adoption.
2. Comment 2 – Re: Draft Resolution paragraph 1. “The State Board should reject the Confirmation Resolution and decline to engage in the type of retrospective distortion proposed by staff. The Board cannot confirm *now* that it took an action which it so clearly stated *then* that it was not taking, particularly where such confirmation would directly conflict with the findings and holdings of the Sacramento County Superior Court.”
 - a. Response: Resolution 2019-0015, which adopted the Procedures, cited both Water Code section 13170 (water quality control plans) and 13140 (state policy for water quality control). The State Water Board’s authority to adopt water quality control plans and state policy for water quality control are not interdependent. The State Water Board’s authority under section 13140 is sufficient, by itself, to adopt the Procedures for all waters of the state. The State Water Board’s decision to, in parallel, place the Procedures into the Ocean Plan and ISWEBE Plan did not mean that it abandoned its reliance on section 13140. The State Water Board’s authority to adopt water quality control plans under section 13170 is in addition to, not in lieu of, section 13140. This comment misconstrues the scope of the superior court’s decision in *San Joaquin Tributaries Authority v. California State Water Resources Control Board*.¹ In its petition and complaint, SJTA asserted: “To the extent the Procedures regulate waters of the state not covered by the Clean Water Act (i.e., waters of the state that are not waters of the United States) through a statewide water quality control plan, the Board has exceeded its authority under Water Code section 13170....” (Amended Pet., ¶ 56.) SJTA did not bring a claim that the Procedures were improperly adopted as policy under Water Code

¹ Unless noted otherwise, references to any judicial decisions and the court are references to *San Joaquin Tributaries Authority v. California State Water Resources Control Board*, Case No. 34-2019-80003133, in Sacramento Superior Court.

section 13140. Consequently, as to section 13140, the court held only that the Board may not adopt or amend a water quality control plan pursuant to its section 13140 authority. The court did not rule on the validity of the Board adopting the Procedures as a free-standing policy under section 13140 because such a determination was not necessary to adjudicate the claim at issue. The complete hearing transcript from oral arguments before the Sacramento Superior Court clarifies that the court did not reach this latter issue. (See Tr. 48:2-49:19.) Finally, even if the State Water Board did not adopt the Procedures as policy in April 2019, the Resolution clearly adopts the Procedures as state policy with this action.

3. Comment 3 – Re: Draft Resolution paragraph 2 (“ . . . if a court determines that the State Water Board’s April 2, 2019 action was not sufficient to adopt state policy for water quality control for all waters of the state, this resolution expressly adopts the Procedures as state policy . . .”). “This provision recognizes the State Board’s proposed action may violate the Water Code generally, but more specifically the Writ of Prohibition and Judgment. Further, the Court already considered and rejected the State Board’s argument that the Procedures were adopted as state policy as discussed above. Accordingly, if the State Board wishes to adopt the Procedures as a policy, it must follow the appropriate procedures for doing so, which it is not doing at this time.”
 - a. Response: This identified statement in the Resolution is not a concession that the Board’s April 2, 2019 action was insufficient to adopt state policy for water quality control. Instead, it establishes in the alternative that the Procedures are at least a state policy for water quality control by adoption of this Resolution. As discussed in the response to SJTA’s comment 2, the court did not rule on whether the Board did or could adopt the Procedures as policy under section 13140 because this question was not raised by SJTA’s petition and complaint.
4. Comment 4 – Re: Draft Resolution paragraph 3 (supersede any conflicting provisions in regional water quality control plans). “The SJTA recommends the State Board strike Paragraph 3 in its entirety.”
 - a. Response: No change was made in response to this comment. The comment selectively quotes from the transcript from oral arguments before the Sacramento Superior Court. A complete copy of the transcript was made available on the State Water Board’s website with this Responses to Comments document. When reading the entirety of the exchange, it is clear that because the scope of the State Water Board’s policy authority was not before the court, the court was neither prohibiting nor sanctioning the Board’s ability to implement the Procedures as state policy for water quality control. (Tr. 39:2-42:3.) When asked whether the tentative order foreclosed the Board from independently adopting the Procedures as a state policy for water quality control under Water Code section 13140, the court stated that was not an issue before the court and the court was not

directing the Board what could be adopted as a policy. (Tr. 39:4-17.) The court expressly stated that it was not ruling on whether the Procedures could be adopted as state policy for water quality control. Consistent with *WaterKeepers Northern California v. State Water Bd.* (2002) 102 Cal.App.4th 1448, 1460, state policy for water quality control may supersede regional water quality control plans. Like the Toxics Standards Implementation Policy at issue in *WaterKeepers*, the Procedures were adopted with the stated purpose of establishing a standardized approach for permitting discharges of dredged or fill material to waters of the state; in accordance with the State Water Board's express intent, the Procedures supersede regional water quality control plans to the extent of any conflict.

5. Comment 5 – re: Draft Resolution paragraph 5(a) (revisions to the cover page). “The State Board’s initial naming of Resolution 2019-0015—“Amendment to the Water Quality Control Plan for Ocean Waters of California and the Water Quality Control Plan for [ISWEBE] to Establish a State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State”—was deliberate and accurate in that the Board amended two WQCPs following a conscious decision to convert a draft policy into WQCP amendments. The State Board cannot change the nature of that action by simply revising the cover page to the Procedures. If the State Board desires to adopt the Procedures as statewide policy, it must follow all appropriate processes required by the Water Code. The act of changing the title is a futile effort to change its prior action and is insufficient to comply with the Writ of Prohibition. Moreover, the revised title still indicates that the policy will be incorporated into the WQCP for ISWEBE. The Superior Court explicitly rejected this approach.”
 - a. Response: The revisions to the cover page are necessary to more accurately describe the action that the Board has taken. The cover page of the Procedures refers to where the Procedures were intended to be placed. The cover page does not specify the authority that was relied upon to adopt the Procedures and does not limit the scope of authority relied upon for the Board’s adoption. As is relevant to this comment, the Board adopted the Procedures as an amendment to the ISWEBE Plan on April 2, 2019. As explained in footnote 1 to the Procedures as adopted on April 2, 2019, however, the Board clearly stated that the actual incorporation of the Procedures into the ISWEBE Plan would occur at a future date. (This was necessary because the full ISWEBE Plan did not exist as of April 2, 2019.) The comment incorrectly asserts that that incorporation of the Procedures into the ISWEBE Plan contravenes the court’s order. The revisions state that the inclusion into the ISWEBE Plan is only for waters of the United States, which is consistent with the court’s decision.
6. Comment 6 – re: Draft Resolution paragraph 5(b). “The State Board should reject this proposal to incorporate the Procedures into the ISWEBE for waters of the

United States. The Procedures are written to apply to all waters of the state. Incorporating the Procedures (as written) into the ISWEBE for only waters of the United States will create significant confusion amongst the regulated community. As noted in Comment 8 below, there are numerous references to waters of the state throughout the Procedures. Indeed, the State Board has repeatedly stated that the intent of the Procedures was to cover all waters of the state, including those outside of federal jurisdiction. Without guidance from the Board as to how the Procedures are intended to apply through the ISWEBE, or absent specific revisions to the Procedures, the Procedures should be *removed* from the ISWEBE, not further incorporated into it.”

- a. Response: The court affirmed that the Procedures may be incorporated into the ISWEBE Plan for waters of the United States. As stated in the Resolution, appropriate incorporation of the Procedures into the ISWEBE Plan to regulate waters of the United States will be addressed at a future State Water Board meeting.
7. Comment 7 – re: Draft Resolution paragraph 5(d) (revision to page 2 of the staff report). “The State Board cannot rewrite the history of its action through a revision to a staff report after the fact, particularly where that staff report was deemed an integral part of the Board’s decision-making process in adopting Resolution 2019-0015, and where the proposed revision to the report would undermine the findings and holdings of the Superior Court.”
- a. Response: The reference in the staff report “to convert the policy into a plan amendment” referred to where the Procedures were intended to be placed. This sentence has been misconstrued as stating the State Water Board’s intention to abandon Water Code section 13140 as a source of authority for adopting Resolution 2019-0015. Because this language was subject to misinterpretation, it is appropriate for the State Water Board to adopt more precise revised language.
8. Comment 8 – re: Draft Resolution paragraph 5(e). “This proposed action is unlawful and will not satisfy the Sacramento County Superior Court’s Writ of Prohibition for several reasons.”
- a. Response: The Resolution was revised to identify the specific revisions to the Staff Report as Attachment 2. The revisions are not an impermissible amendment to a water quality control plan because the amendments to the Procedures only revise the cover page and one footnote to clarify the scope of the Procedures to be included in the ISWEBE Plan consistent with the court’s decision. The language does not alter any of the substantive requirements of the Procedures. The procedural requirements to amend a water quality control plan were satisfied. Notice was given in compliance with Water Code, section 13244. The version of the Procedures as amended and adopted with this Resolution shall be used for state policy for water quality control, the Ocean Plan, and the ISWEBE.

9. Comment 9 – re: Draft Resolution paragraph 8. “There are several problems with this direction. First, it is unclear because the Procedures have already been incorporated into the ISWEBE. The Judgment directs the State Board to ensure that the Procedures do not apply to non-federal waters, which would require the State Board set aside its previous amendment of the ISWEBE to include the Procedures, as they apply to state and federal waters. Second, the State Board takes the position that the Procedures were never physically included in the ISWEBE because the State Board never published the ISWEBE with the Procedures. The failure to publicly circulate the ISWEBE does not mean the State Board did not amend the ISWEBE. As previously noted, the action of Resolution 2019-0015 was the amendment of the ISWEBE. Further, the State Board had already begun implementing the Procedures after amending through the ISWEBE. Third, as previously noted above, the future potential action of staff does not assist the State Board in properly complying with the writ by April 7, 2021. Paragraph 8, and the concept that the failure to publish the Procedures in the ISWEBE means that it was not amended, should be deleted as internally inconsistent and not consistent with the action taken by the State Board.”
 - a. Response: See responses to SJTA’s comments 5 and 6.

Comment 3 (CBIA)

1. The California Building Industry Association (CBIA) – “The adoption of the Procedures as proposed by the draft resolution now includes a requirement that the Procedures are somehow consistent with the state goal of providing a decent home and suitable living environment for every Californian. It is unclear how the Procedures were determined to be consistent with California’s housing availability and affordability goals. If the State Water Resources Control Board is relying in part on Water Code Section 13142 as its authority to adopt the Procedures, we would appreciate the Board to identify where in the Procedures there is a discussion regarding housing and how the Procedures are consistent with the goal of providing a decent home for every Californian.”
 - a. Response: Water Code section 13142 states that the principles, guidelines, and objectives of a state policy for water quality control shall be consistent with the state goal of providing a decent home and suitable living environment for every Californian. This section does not, however, require that the State Water Board include a specific type of discussion regarding a policy’s effect on housing. Moreover, any such discussion does not need to be contained in the Procedures itself. To the extent that the Board is required to discuss the Procedures’ consistency with housing goals, the State Water Board did in fact consider the Procedures’ effect on housing during Board meetings and workshops, in response to comments, and in the Staff Report.

During the written comment periods in 2016 and 2017, several comments raised issues about cost of compliance, including for housing projects. The State Water Board's response to comments explained that, in developing the Procedures, staff evaluated the change in permitting across the state as a whole. Whereas some regions would see a reduced permitting process, and others would experience increases in permitting processes, it balanced out as a whole across the state. Responses to comments also indicated that the Procedures would streamline and clarify section 401 permitting in California, thereby reducing overall costs of section 401 permitting. The issue of costs is also addressed in the 2019 response to comment #71.2. One 2017 comment letter from the Business Coalition included a cost analysis (comment #8.14); the State Water Board responded: "The comment's estimated additional costs do not accurately reflect current practices at the Water Boards for processing applications to discharge dredged or fill materials or the level of effort that would be required under the Procedures. In addition, the Procedures have been revised in a way that change some of the underlying assumptions presented in this analysis."

Several sections in the Staff Report, such as costs (Section 11) and population and housing (Section 8.13), also discuss housing considerations. In Section 11, which examined certifications that were previously issued, the Staff Report noted for three residential development projects that the prior review "May not be consistent with requirement for alternatives analysis (AA) and selection of LEDPA," and costs may have gone up. Section 11 of the Staff Report also contains additional information regarding costs. Section 8.13 of the Staff Report also concluded that there would be no impact on "population and housing" because leaving more aquatic resources areas undisturbed would not affect population growth and housing. It acknowledges that the Procedures could shift projects to upland areas, but those potential effects would need to be analyzed during the project-specific CEQA analysis because project details are not currently known. See section 8.13 for additional detail.

Public Board meetings and workshops also included specific discussions of the impacts on housing. Specifically, at the January 22, 2019 Board workshop, there was a discussion about the Governor's directive regarding affordable housing and staff's analysis regarding the Nationwide Permit alternatives analysis exemption and anticipated effects. Using the same data that was used to prepare the January 28, 2019 Staff White Paper, staff analyzed whether modifying the alternatives analysis exemption requirements to allow a larger impact area of up to 0.5 acres

would affect a significant number of projects, including housing projects. The February 6, 2019 staff workshop also included a discussion of the prior converted cropland exemption and its potential to impact conversion of agricultural land to housing. The March 5, 2019 workshop included a comment regarding Nationwide Permit 29, which covers residential developments and other comments regarding the cost of building housing. A number of comments referenced the impacts of the Procedures on housing at the April 2, 2019 adoption meeting.

In summary, in adopting the Procedures, the State Water Board considered impacts to housing, and the Procedures are consistent with the goal of providing a decent home and suitable living environment for every Californian.

Comment 4 (CalCIMA)

1. “For the reasons set forth below, it is our opinion that the State Board’s effort to ‘confirm’ the applicability of the Procedures exceeds its authority under Water Code section 13140. . . . We urge the State Board to halt its current course of action. Implementing the Procedures as a state policy would exceed the State Board’s statutory authority under the Water Code and is contrary to the plain language of the Judgment in *San Joaquin Tributaries Authority v. California State Water Resources Control Board*.”
 - a. Response: See response to SJTA’s comment letter, comment 2. The issue of whether the State Water Board adopted the Procedures as a state policy for water quality control under Water Code section 13140 was not presented in the litigation. Although the court’s decision included general statements regarding state policy for water quality control, including that the policies and plans include different elements, the court did not hold that the Procedures could not be adopted as state policy for water quality control under Water Code section 13140. During oral arguments, the court made it clear that because the scope of the State Water Board’s policy authority was not before the court, the court was neither prohibiting or sanctioning the Board’s ability to implement the Procedures as state policy for water quality control. (Tr. 39:2-42:3.) When asked whether the tentative order forecloses the Board from independently adopting the Procedures as a state policy for water quality control under Water Code section 13140, the court stated that was not an issue before the court and the court was not directing the Board what could be adopted as a policy. (Tr. 39:4-17.) The Resolution is consistent with the court’s decision, which was specifically limited to implementation via the ISWEBE Plan.

Further, the comment misinterprets the relevance of *WaterKeepers Northern California v. State Water Bd.* (2002) 102 Cal.App.4th 1448 to this action. The *WaterKeepers* court explained that under its authority to adopt state policy for water quality control the State Water Board did not have the ability “to frame effluent requirements to reflect the technological limits for detection in discharge samples.” (*Id.* at 1461.) The question at issue was whether the “minimum level” provision in the Toxics Standards Implementation Policy, which is the lowest level of concentration in a sample that can be accurately quantified, effectively substituted for the effluent limitation in compliance determinations. (*Id.* at 1457.) The discussion cited by the comment simply rejects an interpretation of the minimum level provision that would impose technological considerations onto water-quality based effluent limitations and is not relevant to the Procedures. *WaterKeepers* is relevant, however, in its recognition that the Toxics Standards Implementation Policy was adopted pursuant to the State Water Board’s “statutory role of overseeing the activities of the Regional Boards.” (*Id.* at 1460.) “The stated purpose of the Toxics Standards Implementation Policy was ‘to establish a standardized approach for permitting discharges of toxic pollutants ... that promotes statewide consistency’ and therefore the policy ‘[supersedes] basin plan provisions.’” (*Id.*) Unlike water quality control plans, state policy for water quality control does not automatically supersede any regional water quality control plans to the extent of any conflict, but state policy for water quality control may supersede regional water quality control plans, on a case-by-case basis. Like the Toxics Standards Implementation Policy at issue in *WaterKeepers*, the Procedures were adopted with the stated purpose of establishing a standardized approach for permitting discharges of dredged or fill material to waters of the state; in accordance with the State Water Board’s express intent, the Procedures supersede regional water quality control plans to the extent of any conflict.

Comment 5 (LJ Laurent)

1. Commentary and summary of the recent decision in *Sweeny et al. v. California Regional Water Quality Control Bd.*
 - a. Response: This comment is outside the scope of the notice and therefore no response is required.

Comment 6 (Caltrans)

1. Comment – “the court rejected your argument that Water Code section 13140 provides a basis to apply the Procedures to waters of the state which are not covered by the Clean Water Act. We therefore are interested in further explanation concerning the basis for the Resolution’s change to regulating under state policy, in contravention of the court’s rationale. To that end, what policy

mechanism under section 13140 would allow the Board to take this action to implement the Procedures?”

- a. Response: No change was made in response to this comment. See response to SJTA’s comment letter, comment 2. As set forth in section 13140, the State Water Board “shall formulate and adopt state policy for water quality control.” The requirements for adopting such a policy are set forth in Water Code, Division 7, Chapter 3, article 3. The State Water Board complied with all applicable requirements in adopting Resolution 2019-0015 and has again complied with all applicable requirements for this Resolution.
2. “Additionally, how does the State Water Board plan to consider and address the perspective of the court that separate sections of the Water Code differentiate between the State Water Board’s authority to adopt state policy for water quality control under Water Code section 13140, and the court’s finding that the same section does NOT contemplate state-level water quality control plans? Is the State Water Board considering that the revised Procedures may also be subject to a court challenge?”
 - a. Response: No change was made in response to this comment. The State Water Board’s authority to adopt water quality control plans and state policy for water quality control are not interdependent, and the Water Code sets forth different procedural requirements for both actions. But the court did not reach any conclusions regarding the proper scope of a state policy for water quality control because the issue was not presented in the petition and complaint.
 3. How will written comments received by March 8 and oral comments in the public meeting April 6 be addressed, incorporated, and made available to stakeholders prior to the State Water Board taking action on the resolution of these issues?
 - a. Response: The written comments are available on the FTP site listed above. These responses to written comments were provided at least ten days in advance of the Board’s consideration of adoption via the State Water Board’s website and applicable lyrics lists. Oral comments will also be accepted at the April 6, 2021 hearing, which is open to the public. After the opportunity to submit oral comments at the April 6, 2021 hearing, if there are any oral comments that were not also raised in the written comments, oral responses will be provided during the hearing.
 4. What is the timeline associated with the State Water Board’s process for making the Procedures a stand-alone policy? Are any additional Procedural or legal steps necessary to pass the resolution? As a result of the State Water Board’s proposed changes to the Resolution, is it required to undergo a review by Office of Administrative Law? If not, why not? Will there be additional public review? Are there additional products the State Water Board will produce to facilitate passage of this Resolution?

- a. Response: The requirements for adopting such state policy for water quality control are set forth in Water Code, Division 7, Chapter 3, article 3. The State Water Board complied with all applicable requirements in adopting Resolution 2019-0015 and has again complied with all applicable requirements for this Resolution. No additional documents are necessary to prepare for adoption of this Resolution, nor is additional public review required. This Resolution, including the revisions to the Procedures and staff report, will be submitted to the Office of Administrative Law for review and approval and to include a concise summary of the Procedures in California Code of Regulations, tit. 23, Division 3, Chapter 22.
5. Has the State Water Board received comments or feedback on the Resolution from the Regional Water Quality Control Boards (Regional Boards)? If so, are you able to share any information about the comments that you received from the Regional Boards, in particular those regarding the apparent change of the cited authority from relying on Water Code section 13170 to relying on Water Code section 13140 to implement the Procedures? How have these comments or questions, if any, been addressed by the State Board?
 - a. Response: In compliance with Water Code, section 13147, the State Water Board provided advance notice to the Regional Boards of applicable hearings in 2016 and 2017 as well as 60 days' notice of the April 6, 2021 hearing. The State Water Board worked closely with the Regional Water Boards during the development and implementation of the Procedures and plans on continuing that work. The Regional Boards have not provided any comments regarding the Resolution.
6. "Caltrans is focused on its need for predictability in planning. Our question is whether the Regional Boards will be implementing the Procedures consistently statewide. If Regional Boards were to view the Procedures as anything less than binding regulation, the Regional Boards could be in a position to choose to implement only certain parts of the Procedures, resulting in the lack of uniformity the State Water Board is attempting to avoid. Caltrans may have additional challenges related to effective and efficient project planning if the Procedures are implemented in an unpredictable manner."
 - a. Response: As state policy for water quality control, the Procedures have regulatory effect. (See Gov. Code, § 11353.) As set forth in Water Code, section 13146, state offices, departments and boards, in carrying out activities which affect water quality shall comply with state policy for water quality control. As set forth in the Resolution, the State Water Board "[d]etermines that it is appropriate for the Procedures, as state policy for water quality control, to supersede any conflicting provisions in regional water quality control plans because one of the primary objectives of the Procedures was to establish procedures for regulation of discharges of dredged or fill material to all waters of the state, including those outside of federal jurisdiction. Superseding is also necessary to establish a uniform

regulatory approach for all waters of the state and to strengthen regulatory effectiveness and improve consistency across all Water Boards. Because Water Code, section 13146 requires State offices, departments, and boards, which includes Regional Water Boards, to comply with state policy for water quality control, superseding any conflicting provisions in regional water quality control plans will improve clarity regarding the Procedures' applicability."

Comment 7 (Coalition of Building and Agricultural Groups)

1. "It is apparent from that ruling, and the transcript of the hearing on SJTA's writ petition, that there is some question about the State Water Board's legal authority to confirm or re-adopt the Procedures as State policy under Water Code section 13140." "Our organizations share the concerns expressed by the Court as well as the precedential nature of taking this step outside of the context of duly-adopted water quality control plans under Water Code section 13170. That is, in sidestepping the limitations imposed by the Court, the State Water Board may be stretching its policy authority beyond that established by the Legislature, thereby and undermining the intended role of the regional water quality control boards, and water quality control plans, in the overall regulatory structure."
 - a. Response: See response to SJTA's comment letter, comment 2.
2. "Now that the one-year anniversary of the effective date of the Procedures is upon us, we request that staff begin that process. In so doing, we view it as critical that (i) staff solicit formal public comment on implementation issues, which public comments should be reflected in the first annual report, and (ii) a workshop on the identified issues be held with the State Water Board itself following completion of the report."
 - a. Response: This comment is outside the scope of the notice and therefore no response is required. As noted in the comment, Resolution 2019-0015 directed staff, "in consultation with stakeholders, to provide annual progress reports to the Board regarding implementation issues, including updates regarding application processing timelines and environmental performance measures." The State Water Board has provided several

updates on implementation issues in the Executive Director's Report,² including updates on public training, application guidance materials, and climate change analysis guidance. The State Water Board has had to adjust its anticipated public outreach efforts due to the ongoing coronavirus public health emergency but remains committed to engaging with stakeholders. For example, instead of in-person public trainings, a public training webinar on the Procedures is available on the State Water Board's website. In addition, staff has continued to respond to inquiries regarding the Procedures and tracked implementation issues by developing performance measures. Stakeholders are welcome to provide input on implementation issues directly to staff or via the State Water Board's Procedures email AskDredge@waterboards.ca.gov. State Water Board staff will continue to work with stakeholders on implementation issues and update the Board accordingly.

3. "Second, we have concerns regarding language in the draft resolution authorizing the Executive Director to make 'minor, non-substantive' modifications to the Procedures where he or she determines it is needed for 'clarity or consistency.' . . . "We acknowledge that Resolution 2019-005 provided to the Executive Director the authority we are objecting to now but, given that we are a year into implementation and are awaiting a public process to address any issues as described above, we believe that paragraph 6 of the draft resolution (pp. 7-8) should be stricken."
 - a. Response: No change was made in response to this comment. As the commenter acknowledges, the language in the Procedures was heavily negotiated in a protracted public process. The Resolution authorizes only minor, non-substantive revisions and any such revisions would not affect the meaning of the language in the Procedures. State Water Board staff will reach out to stakeholders if any such revisions are found to be necessary.

² See Executive Director Reports:

[January 21, 2020](https://www.waterboards.ca.gov/board_info/exec_dir_rpts/2020/ed_rpt_012120.pdf)

(https://www.waterboards.ca.gov/board_info/exec_dir_rpts/2020/ed_rpt_012120.pdf),

[Feb. 18, 2020](https://www.waterboards.ca.gov/board_info/agendas/2020/feb/final_edrpt_021820.pdf)

(https://www.waterboards.ca.gov/board_info/agendas/2020/feb/final_edrpt_021820.pdf),

[April 21, 2020](https://www.waterboards.ca.gov/board_info/exec_dir_rpts/2020/final_edrpt_042120.pdf)

(https://www.waterboards.ca.gov/board_info/exec_dir_rpts/2020/final_edrpt_042120.pdf

), [May 19, 2020](https://www.waterboards.ca.gov/board_info/agendas/2020/may/051920_11_edrpt.pdf)

(https://www.waterboards.ca.gov/board_info/agendas/2020/may/051920_11_edrpt.pdf),

and [June 16, 2020](https://www.waterboards.ca.gov/board_info/agendas/2020/jun/061620_9_edrpt.pdf)

(https://www.waterboards.ca.gov/board_info/agendas/2020/jun/061620_9_edrpt.pdf).