

STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION--DIVISION OF WATER QUALITY
JUNE 16, 2005

ITEM 13

SUBJECT

~~PUBLIC HEARING REGARDING~~ CONSIDERATION OF A RESOLUTION TO ADOPT THE WATER QUALITY CONTROL POLICY FOR ADDRESSING IMPAIRED WATERS: REGULATORY STRUCTURE AND OPTIONS (POLICY)

DISCUSSION

Section 303(d) of the federal Clean Water Act (CWA) requires states to identify waters that do not meet applicable water quality standards and prioritize these waters for the purposes of developing Total Maximum Daily Loads (TMDLs) [40 Code of Federal Regulations 130.7(b)(6)(i)].

California Water Code (CWC) section 13191.3(a) requires the State Water Resources Control Board (SWRCB) to prepare guidelines to be used by the SWRCB and Regional Water Quality Control Boards (RWQCBs) for developing and implementing TMDLs and the TMDL Program. Included with these proposed guidelines is a proposed Policy ([Attachment 1](#)), which describes the process by which the SWRCB and RWQCBs establish TMDLs and provides the regulatory structure and options for addressing impaired waters. CWC section 13191.3(b) also requires SWRCB to consider the consensus recommendations adopted by the Assembly Bill 982 Public Advisory Group (PAG) when developing the guidelines. PAG was established in 2000 to assist in the evaluation of SWRCB's water quality programs' structure and effectiveness as it relates to the implementation of section 303(d) of CWA.

In December 2003, SWRCB issued a draft Policy and a draft Guidance for Addressing Impaired Waters in California (Guidance Document) ([Attachment 2](#)) for public comment. Revisions to the drafts and a response to comments were prepared. A hearing notice on the Policy and the Guidance Document was sent to the RWQCBs on November 2, 2004 and was sent to the public on November 23, 2004. The goal of this Policy is to provide the regulatory options available to SWRCB and the RWQCBs in adopting and implementing TMDLs. The Guidance Document contains the supporting documentation for the Policy and provides a structured approach in developing regulatory programs to address impaired waters in California. Following a February 2, 2005 public hearing, a "Preface" was added to the document to further clarify SWRCB's intent as well as several clarifications. The changes are minor and non-substantive.

The Policy and the Guidance Document are not subject to California Environmental Quality Act (CEQA) because they do not constitute a "project." Section 15378 of title 14 of the California Code of Regulations specifies that the term "project" refers to an action that has the potential to result in a direct or a reasonably foreseeable indirect physical change in the environment. "Project" does not include continuing administrative or maintenance activities, such as "general

policy and procedure making.” Further, section 15308 categorically exempts from CEQA actions taken by a regulatory agency to assure the maintenance, restoration, enhancement, or protection of the environment "where the regulatory process involves procedures for protection of the environment." Adoption of the Policy and the Guidance Document has no potential to result in any foreseeable direct or indirect change on the environment. The drafts merely document and formalize existing procedures to implement TMDLs, based upon existing law, regulations, and practice. While the application of the Policy or the Guidance Document in any specific instance to establish a TMDL or TMDL implementation plan may well constitute a "project," formally documenting the procedures to be employed when doing so does not.

POLICY ISSUE

Should SWRCB adopt the Policy in accordance with the Staff Recommendation below?

FISCAL IMPACT

Work associated with the Policy, if adopted, will be accomplished by SWRCB and the RWQCBs with budgeted resources.

RWQCB IMPACT

Yes, all RWQCBs.

STAFF RECOMMENDATION

That SWRCB:

1. Approves the final Guidance Document.
2. Adopts the Policy.
3. Authorizes the Executive Director ~~or designee~~ to submit the Policy to the Office of Administrative Law for approval.

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 2005-

ADOPTION OF THE WATER QUALITY CONTROL
POLICY FOR ADDRESSING IMPAIRED WATERS:
REGULATORY STRUCTURE AND OPTIONS (POLICY)

WHEREAS:

1. Section 303(d) of the federal Clean Water Act (CWA) requires states to identify waters that do not meet applicable water quality standards and prioritize such waters for the purposes of developing Total Maximum Daily Loads (TMDLs) [40 Code of Federal Regulations 130.7(b)(6)(1)].
2. Section 13191.3(a) of the California Water Code (CWC) requires the State Water Resources Control Board (SWRCB) to prepare guidelines to be used by SWRCB and the Regional Water Quality Control Boards (RWQCBs) in listing, delisting, developing, and implementing TMDLs pursuant to section 303(d) of the federal CWA [33 United States Code (USC) section 1313(d)].
3. The California Assembly Bill 982 Public Advisory Group (PAG) was established in 2000 to assist in the evaluation of SWRCB's water quality programs' structure and effectiveness as it relates to the implementation of section 303(d) of CWA [33 USC section 1313(d)] and applicable federal regulations.
4. CWC section 13191.3(b) also requires SWRCB to consider the consensus recommendations adopted by PAG when preparing the guidelines.
5. SWRCB issued the draft Policy (Attachment 1) and draft Guidance for Addressing Impaired Waters in California (Guidance Document) (Attachment 2) for public comment in December 2003 and issued revised documents for public comment in November 2004.
6. SWRCB, in compliance with CWC section 13147, held a public hearing in Sacramento, California on February 2, 2005 on the Policy and carefully considered all testimony and comments received. A "Preface" was added to the document to further clarify the SWRCB's intent as well as several clarifications. The changes are minor and non-substantive.
7. SWRCB finds that adoption of the Policy and the Guidance Document is not subject to the California Environmental Quality Act (CEQA) because it is not a "project" as defined in section 15378 of title 14 of the California Code of Regulations (CCR). Furthermore, even if it was a project, section 15308 of title 14 of the CCR categorically exempts from CEQA actions taken by a regulatory agency to assure the maintenance, restoration, enhancement, or protection of the environment "where the regulatory process involves procedures for

Draft

~~January 24, 2005~~
Revised June 6, 2005

protection of the environment." Adoption of the Policy and the Guidance Document has no potential to result in a foreseeable direct or indirect change on the environment. The drafts merely document and formalize existing procedures to implement TMDLs, based upon existing law, regulations, and practice. While the application of the Policy or the Guidance Document in any specific instance may well constitute a "project," formally documenting the procedures to be employed does not.

8. The regulatory provisions of the Policy do not become effective until they are approved by the Office of Administrative Law.

THEREFORE BE IT RESOLVED THAT:

The SWRCB:

1. Approves the final Guidance Document.
2. Adopts the Policy.
3. Authorizes the Executive Director to submit the Policy to the Office of Administrative Law for approval.

CERTIFICATION

The undersigned, Clerk to the Board, does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on June 16, 2005.

Debbie Irvin
Clerk to the Board