

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING SESSION – OFFICE OF CHIEF COUNSEL
NOVEMBER 16, 2010**

ITEM 7

SUBJECT

CONSIDERATION OF THE ADOPTION OF AMENDMENTS TO CALIFORNIA CODE OF REGULATIONS, TITLE 23, DIVISION 3, CHAPTER 27 (COMMENCING WITH SECTION 3720) RELATING TO THE IMPLEMENTATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970.

DISCUSSION

The California Environmental Quality Act of 1970 (CEQA) authorizes the Secretary for Natural Resources to certify that State regulatory programs that meet certain environmental standards are exempt from CEQA Chapters 3 and 4 – the requirements for preparing environmental impact reports, negative declarations, and initial studies. Under Chapters 3 and 4, a lead agency is required to prepare an initial study to determine if a project will have a significant effect on the environment, and then prepare an environmental impact report if it finds significant effects, a negative declaration if there are no significant effects, or a mitigated negative declaration if the project has significant effects, but revisions would avoid or mitigate those effects. Each certified regulatory program (CRP) must still undergo a meaningful review of its cumulative environmental effects; however, the relevant substitute environmental documentation (SED) is prepared under the lead agency's own regulations, which courts have deemed the "functional equivalent" of the traditional CEQA process for environmental review and public comment.

With respect to the State and Regional Water Boards, the Secretary for Natural Resources has approved the Water Quality Control (Basin)/208 Planning Program as a CRP, which includes all water quality control plans, state policies for water quality control, and all components of California's water quality management plan as defined in Code of Federal Regulations, title 40, sections 130.2(k) and 130.6.

The State Water Board has determined that it is appropriate to amend its existing CEQA regulations, including those that concern CRPs, to ensure consistency with (1) statutory revisions to CEQA that have occurred since the regulations were last updated; and (2) various court decisions that have further interpreted CEQA with respect to CRPs. Moreover, these regulatory amendments help eliminate ambiguity and provide additional clarity such that they are easier and more efficient for staff of the State and Regional Water Boards to implement. The principal substantive changes to the existing regulations include clarifying the roles among the State and Regional Water Boards when acting as lead or responsible agency; requiring early public consultation prior to the review of draft SED; and setting forth the processes for preparing a draft SED, the submittal of public comments on the draft SED, agency approval of a final SED, and the issuance of a notice of decision. In addition, the State Water Board is revising the suggested Environmental Checklist to make it more consistent with the checklist adopted by the Natural Resources Agency.

POLICY ISSUE

Should the State Water Board adopt the proposed regulations?

FISCAL IMPACT

None

REGIONAL BOARD IMPACT

Adoption of the proposed regulations will make it easier and more efficient for regional board staff to adopt amendments to water quality control plans.

STAFF RECOMMENDATION

The Board should adopt the order.

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STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2010-

ADOPTING REGULATIONS IMPLEMENTING THE
CALIFORNIA ENVIRONMENTAL QUALITY ACT OF 1970,
CALIFORNIA CODE OF REGULATIONS, TITLE 23, DIVISION 3, CHAPTER 27

WHEREAS:

1. Under Public Resources Code section 21080.5 of the California Environmental Quality Act of 1970 (CEQA), the Secretary of the Natural Resources Agency is authorized to certify that certain state regulatory programs that meet specific environmental standards are exempt from certain provisions of CEQA.
2. The Secretary of the Natural Resources Agency has certified the following regulatory program of the State Water Resources Control Board (State Water Board) and regional water quality control boards: The Water Quality Control (Basin)/208 Planning Program, which includes all water quality control plans, state policies for water quality control, and all components of California's water quality management plan as defined in Code of Federal Regulations, title 40, sections 130.2(k) and 130.6.
3. As required by CEQA, the State Water Board adopted regulations setting forth the rules and procedures that apply to environmental review and public comment for actions taken by the State and Regional Water Boards for their certified regulatory programs.
4. The State Water Board has determined that it is appropriate to amend its existing CEQA regulations, including those that concern certified regulatory programs. The State Water Board has proposed to adopt, amend, and repeal regulations commencing with Section 3720 of Title 23, Division 3, Chapter 27 of the California Code of Regulations.
5. On January 1, 2010, the State Water Board published and distributed a Notice of Proposed Rulemaking, Initial Statement of Reasons, and the text of the proposed regulations.
6. The 45-day public comment period ended on February 17, 2010. During the 45-day period, the State Water Board received seven written comments. A public hearing was also held on February 17, 2010, where one person made oral comments. Responses to all timely comments received on the proposed regulations are contained in the [Final Statement of Reasons](#).
7. After the 45-day comment period ended, the State Water Board made modifications to the proposed regulations. Because the modifications were not major, a new 15-day comment period was noticed on August 24, 2010, where the State Water Board distributed a Notice of Proposed Modifications, and the text of the proposed modifications, for public review and comment. During the 15-day comment period, which ended on September 8, 2010, the State Water Board received five written comments. Responses to all timely comments received on the proposed modifications are contained in the Final Statement of Reasons.

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8. After the 15-day comment period ended, the State Water Board made three minor changes to [subsection 3779\(d\)](#) of the proposed regulations. These changes do not require any additional notice or public comment period, and are addressed in the Final Statement of Reasons.

THEREFORE, BE IT RESOLVED THAT:

The State Water Board:

1. Adopts the [proposed regulations](#) for inclusion in Title 23, Division 3, Chapter 27 of the California Code of Regulations;
2. Repeals existing sections 3760, 3761, 3764, and 3782 of Title 23, Division 3, Chapter 27 of the California Code of Regulations; and
3. Authorizes the Executive Director or designee to submit the proposed regulations, as approved, and the administrative record for this action to the Office of Administrative Law (OAL) for filing with the Secretary of State.
4. Directs the Executive Director or designee to make minor, non-substantive modifications to the regulations, if during the OAL approval process, OAL determines that such changes are needed for clarity or consistency, and inform the Board of any such changes.

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 November 16, 2010.

Jeanine Townsend
Clerk to the Board