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## State Water Resources Control Board

# NOTICE OF OPPORTUNITY FOR PUBLIC COMMENT AND NOTICE OF PUBLIC HEARING AND CONSIDERATION

### RECISSION OF DECEMBER 1, 2020, ESTABLISHMENT OF THE WATER QUALITY CONTROL PLAN FOR INLAND SURFACE WATERS, ENCLOSED BAYS, AND ESTUARIES OF CALIFORNIA AND CONFIRMATION THAT THE “TOXICITY PROVISIONS” WERE ADOPTED AS STATE POLICY FOR WATER QUALITY CONTROL FOR ALL WATERS OF THE STATE

**NOTICE IS HEREBY GIVEN** that the State Water Resources Control Board (State Water Board) will receive public comments regarding a proposed resolution to rescind the State Water Board’s action to establish the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California and confirm that the Toxicity Provisions were adopted as state policy for water quality control for all inland surface waters, enclosed bays, estuaries, and coastal lagoons of the state.

**NOTICE IS ADDITIONALLY HEREBY GIVEN** that the State Water Board will hold a public hearing to receive oral public input and comments on the proposed resolution, and following the hearing, the State Water Board will consider adoption of the proposed resolution. The public hearing and consideration of adoption meeting will be held as follows:

**Public Hearing and Consideration of Adoption Meeting  
Tuesday, October 5, 2021, at 9:00 a.m.**

Video and Teleconference Only  
No Physical Meeting Location

(Authorized by and in furtherance of Executive Orders N-29-20 and N-33-20)

Video Broadcast: <https://video.calepa.ca.gov/>

Additional information about participating telephonically or via the remote meeting solution will be available at least 10 days before the hearing at the [Remote Meeting page](https://www.waterboards.ca.gov/board_info/remote_meeting/) ([https://www.waterboards.ca.gov/board\\_info/remote\\_meeting/](https://www.waterboards.ca.gov/board_info/remote_meeting/)). This public meeting is currently scheduled to take place via video and teleconference only, but the format may be changed in the future to also allow for in-person attendance. Any person desiring to receive future notices about changes to the date, time, location, or format of the public hearing should sign up for the Lyris e-mail list, as described below.

Additional information on the hearing and consideration of adoption meeting can be found at the [State Water Board’s web site](#).

## BACKGROUND

On December 1, 2020, the State Water Board adopted [Resolution No. 2020-0044](#), “Establishing the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California and Adopting Toxicity Provisions.” Resolution No. 2020-0044 established the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California (ISWEBE Plan), adopted the Toxicity Provisions, and approved and adopted the Substitute Environmental Documentation, which was prepared in accordance with the regulations applicable to the State Water Board’s certified regulatory programs, California Code of Regulations, title 23, sections 3777 through 3779.

On January 26, 2021, the Superior Court in *San Joaquin Tributaries Authority v. California State Water Resources Control Board* issued a judgment and writ “enjoining the State Water Board from applying, via the Water Quality Control Plan for Inland Surface Waters and Enclosed Bays [and Estuaries], the ‘State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State’ adopted by the State Water Board on April 2, 2019, to waters other than those for which water quality standards are required by the Federal Clean Water Act (33 U.S.C. Section 1251 et seq.).”

The Superior Court decision addresses only the scope of the State Water Board’s authority to adopt water quality control plans under Water Code section 13170. It does not restrict the State Water Board’s authority to adopt state policy for water quality control under Water Code section 13140. Accordingly, the Superior Court’s decision did not impair the Water Boards’ authority to regulate water quality for all waters of the state, including waters of the state that are not also waters of the United States, except to the extent that such regulation is via the ISWEBE Plan.

The State Water Board will receive public comments regarding a proposed resolution that rescinds the State Water Board’s action to establish the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California. The proposed resolution confirms that because its December 1, 2020 action relied, in part, on Water Code section 13140, the Toxicity Provisions were adopted as state policy for water quality control for all inland surface waters, enclosed bays, estuaries, and coastal lagoons of the state and confirms that because its December 1, 2020 action relied, in part, on Water Code section 13170, the portions of the Toxicity Provisions that apply to waters for which water quality standards are required by the Federal Water Pollution Control Act and acts amendatory thereof or supplementary thereto (i.e., waters of the United States) will be incorporated into the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California in the future.

The Toxicity Provisions were subject to four written comment periods and numerous opportunities for public participation and the State Water Board will not be reconsidering the substantive provisions of the Toxicity Provisions. Public comment will be limited to the proposed resolution and its attachments (which include the proposed revisions to the Toxicity Provision and proposed revisions to the Staff Report).

## DOCUMENT AVAILABILITY

The proposed resolution under consideration and its attachments are available on the [State Water Board's Toxicity Provisions Program](https://www.waterboards.ca.gov/water_issues/programs/state_implementation_policy/t_x_ass_cntrl.html) page ([https://www.waterboards.ca.gov/water\\_issues/programs/state\\_implementation\\_policy/t\\_x\\_ass\\_cntrl.html](https://www.waterboards.ca.gov/water_issues/programs/state_implementation_policy/t_x_ass_cntrl.html)). You may request a paper copy of the documents by contacting Zane Poulson at [Zane.Poulson@waterboards.ca.gov](mailto:Zane.Poulson@waterboards.ca.gov).

The hearing agenda will be available at least 10 days before the hearing at the State Water Board Calendar page ([https://www.waterboards.ca.gov/board\\_info/calendar/](https://www.waterboards.ca.gov/board_info/calendar/)).

## SUBMISSION OF COMMENTS

The State Water Board will accept both written and oral comments on only the proposed resolution and its attachments (which include the proposed revisions to the Toxicity Provision and proposed revisions to the Staff Report). Comments that are unrelated to the resolution and its attachments, including comments regarding the substantive provisions of the Toxicity Provisions, will not be accepted.

Written comments must be received no later than **12:00 p.m. (noon) on Tuesday, July 27, 2021**, and addressed to:

Jeanine Townsend, Clerk to the Board  
State Water Resources Control Board  
P.O. Box 100, Sacramento, CA 95812-2000 (mail)  
1001 I Street, 24th Floor, Sacramento, CA 95814 (hand delivery)

Please indicate in the subject line: "**Comment Letter – Toxicity Policy.**"

Comments may be submitted electronically (e-mail), by facsimile, U.S. Mail, or courier as described below. Oral comments will be accepted at the October 5, 2021 hearing. Comment letters may be submitted electronically, in PDF text format if less than 15 megabytes in total size, to the Clerk to the Board via e-mail at [commentletters@waterboards.ca.gov](mailto:commentletters@waterboards.ca.gov). If the file is greater than 15 megabytes in total size, submit the comments by fax at (916) 341-5620; address the fax to "Clerk to the Board." U.S. Mail must be received (not postmarked) at the State Water Board offices by the close of the comment period.

Note: Due to COVID-19, all persons hand delivering submittals must first schedule an appointment with staff by contacting [Zane.Poulson@waterboards.ca.gov](mailto:Zane.Poulson@waterboards.ca.gov). All hand delivered submittals must arrive and be dated and time stamped prior to 12:00 p.m. (noon) on Tuesday, July 27, 2021.

## PROCEDURAL MATTERS

At the October 5, 2021 public hearing, there will be no sworn testimony or cross-examination of participants. However, the State Water Board and its staff may ask clarifying questions. At the hearing, participants will be given an opportunity to

summarize and supplement their written materials with oral presentations. Documentary or written evidence (other than a written version of oral comments) will not be accepted into the administrative record at the hearing or thereafter. To ensure a productive and efficient hearing in which all participants have an opportunity to participate, oral presentations may be time limited. For other presentation recommendations, refer to the [State Water Board's Presentation Tips page](https://www.waterboards.ca.gov/board_info/meetings/board_presentations.html) ([https://www.waterboards.ca.gov/board\\_info/meetings/board\\_presentations.html](https://www.waterboards.ca.gov/board_info/meetings/board_presentations.html)).

## WEBCAST INFORMATION

Live video and audio broadcasts of the public hearing and consideration of adoption meeting, for attendees that are solely interested in watching and not participating, will be available via the internet and can be accessed at the [CalEPA Public Meeting Live Webcasts page](#).

## ACCESSIBILITY

Telecommunications Device for the Deaf (TDD) users may contact the California Relay Service at (800) 735-2929 or voice line at (800) 735-2922. A broadcast of the hearing will be available via internet and can be accessed at <https://video.calepa.ca.gov>.


## FUTURE NOTICES

The State Water Board public meeting will be at the time and place noted above. Any change regarding the noticed items will be noticed on the email distribution list. Any person desiring to receive future notices regarding this issue must sign up for the Lyris email distribution list. To sign up for the Lyris distribution email list, access the email List Subscription Form at the web address listed below, click the "Water Quality" tab, select the box for "Freshwater Plans and Policies," provide the required information, and click "subscribe." The subscription form is located on the [State Water Board email subscription page](https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html) ([https://www.waterboards.ca.gov/resources/email\\_subscriptions/swrcb\\_subscribe.html](https://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.html)).

## CONTACT INFORMATION

Questions regarding this notice may be directed to Zane Poulson at [Zane.Poulson@waterboards.ca.gov](mailto:Zane.Poulson@waterboards.ca.gov)

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Date June 25, 2021

  
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Jeanine Townsend  
Clerk to the Board