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VIA EMAIL & U.S. MAIL
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Tim Regan, Esq.
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State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Re: Comments in Support of Proposed Amendments to California
Code of Regulations Title 23, Division 3, Chapter 6:
Rules Governing Review by State Water Resources Control
Board of Action or Failure to Act by Regional Boards

Dear Mr. Regan and Members of the State Water Resources Control Board:

We respectfully submit the following comments on the proposed amendments to California Code of Regulations, Title 23, Division 3, Chapter 6, which set forth the rules governing review by the State Water Resources Control Board ("State Board") of administrative petitions under Water Code section 13320.

I am a partner with the Environment, Land Use & Natural Resources Group at Alston & Bird LLP, a national law firm with nine offices and over 800 lawyers. This includes three offices and over 100 lawyers in California. We provide a full range of services to domestic and international clients, including environmental regulatory, compliance and litigation services throughout our State.

The comments that follow are generally my own, but also reflect the views of a number of our clients that own or operate facilities in California. These comments also reflect the thoughts of my colleagues within our Environment group in California who, collectively, have decades of experience with environmental matters before California regulatory agencies, including the regional boards and State Board.

We applaud the work of the State Board in confronting the issues addressed by the proposed amendments, and wholly endorse them. In our view, the proposed amendments will provide much-needed certainty for both the regulated community as

well as State and regional board staff, and, at long last, establish a much more definitive time frame for resolving petitions for review.

Our firm routinely represents clients in matters pending before regional boards throughout the State. In some instances, either to reserve rights pending ongoing efforts to resolve disputes with regional board staff, or to challenge determinations made by regional board staff, it is necessary to file a petition for review with the State Board. Over the years, we have filed numerous such petitions, both affirmatively seeking State Board review as well as “placeholder” petitions. For persons and entities subject to regional board investigation or cleanup directives and/or orders, the proposed amendments would help resolve a fundamental shortcoming in existing regulations, which do not specify an “ultimate” deadline for resolving petitions for review.

While we acknowledge and are sympathetic to the toll budget cuts over the past years have had on State Board resources, the resulting backlog of petitions – as the State Board acknowledges in proposing this rule change – has adversely affected the ability of many aggrieved parties to obtain timely administrative review of disputed regional board actions. Since this is a prerequisite step to seeking judicial review under the exhaustion doctrine, the current situation has, without question, adversely impacted the substantive and due process rights of regulated entities. Indeed, due to the perceived futility of the current review process, some clients have simply opted to forego filing a petition for review despite a good faith belief they had been wronged. This, of course, is far from the purpose and intent of the Porter-Cologne Water Quality Control Act framework, which is meant to ensure that regulatory decisions are appropriate and reasonable.

The proposed amendments offer a sensible and reasonable solution to rectify this longstanding dilemma. By specifying the State Board must mail its initial notification within 90 days of receipt of a petition for review – or the pending petition will otherwise be deemed dismissed – petitioners will have the certainty of a final State Board decision at that time or knowing that one will be issued within a maximum of 330 additional days (including a hearing, if scheduled). This helps ensure the right to timely administrative and judicial relief (for parties that elect to pursue this option), which is entirely consistent with the Legislative intent and provisions of Water Code section 13330.

We likewise support the proposed amendments as a means of resolving the State Board’s backlog of pending petitions by establishing staggered timeframes, depending on the original filing date, for mailing the above-referenced notifications. While we would encourage the State Board to consider further expediting these deadlines, as proposed they will at least provide a measure of certainty for parties with pending petitions.

In conclusion, we commend the State Board’s effort to tackle what has been a vexing problem in the implementation of Water Code section 13320 and its corresponding regulations under Title 23, by proposing a “bright line” deadline to

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initially respond to petitions for review. We strongly support adoption of the proposed amendments.

Thank for the opportunity to remark on them.

Sincerely,



Peter A. Nyquist
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