

**PROPOSED AMENDMENTS TO THE CALIFORNIA CODE OF REGULATIONS
TITLE 23. WATERS. DIVISION 3. STATE WATER RESOURCES CONTROL BOARD
CHAPTER 6. RULES GOVERNING REVIEW BY STATE BOARD OF
ACTION OR FAILURE TO ACT BY REGIONAL BOARD**

NOTICE OF PROPOSED RULEMAKING

FEBRUARY 2014

**STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD**

NOTICE OF PROPOSED RULEMAKING

TITLE 23. STATE WATER RESOURCES CONTROL BOARD

The State Water Resources Control Board (State Water Board) proposes to adopt the amended regulations described below after considering all comments, objections, and recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The State Water Board proposes to amend Sections 2050, 2050.5, and 2051 of Chapter 6 of Division 3 of Title 23, of the California Code of Regulations. Chapter 6 governs the procedures under which the State Water Board may review a petition challenging an action or failure to act by a regional water quality control board. The proposed amendments provide a process by which petitions will be deemed dismissed if the State Water Board fails, within specified timeframes, to provide a notification that responses to the petition may be filed with the State Water Board. The proposed amendments also make clarifying changes to the sections referenced above.

WRITTEN COMMENT PERIOD

Any person may submit written comments relevant to the proposed regulatory action to the State Water Board. The written comment period closes at 5:00 p.m. on April 30, 2014. The State Water Board will only consider written comments received at the State Water Board offices by that time. Submit comments to:

Tim Regan
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812
Telephone: (916) 341-5172
E-mail address: tim.regan@waterboards.ca.gov

Comments may also be hand-delivered to 1001 I Street, 22nd Floor, Sacramento, CA 95814, or faxed to (916) 341-5199.

To receive future correspondence from the State Water Board regarding this rulemaking, interested persons must either (1) subscribe to the electronic mailing list named "Regulations-General" on the internet at http://www.waterboards.ca.gov/resources/email_subscriptions/swrcb_subscribe.shtml or (2) request to receive future correspondence in hard copy by writing to Tim Regan at the above postal address or e-mail address. Interested persons should act as soon as possible to ensure they receive all items of future correspondence. Future correspondence will be sent in hard copy only to those persons who have requested hard copies.

PUBLIC HEARING

The State Water Board has not scheduled a public hearing on the proposed action. However, interested parties may make a written request for a hearing no later than fifteen (15) days prior to the close of the written comment period.

AUTHORITY AND REFERENCE

Section 1058 of the California Water Code authorizes the State Water Board to adopt the proposed regulations, which would implement, interpret, or make specific the following State statute: Water Code section 13320.

INFORMATIVE DIGEST

Water Code section 13320 provides that within 30 days of a regional water quality control board's action or failure to act under specified sections of the Water Code, an aggrieved person may petition the State Water Board to review that action or failure to act. The State Water Board has adopted a regulation (23 Cal. Code Regs. § 2050.5, subd. (b)), which provides that the State Water Board will review and act on a petition within 270 days of mailing a notification that responses to the petition may be filed with the State Water Board, or the petition will be deemed dismissed by operation of law. However, neither the Water Code nor the State Water Board regulations specify how long the State Water Board may take to determine whether to mail the notification. The proposed amendments will specify that the State Water Board must either mail the notification within 90 days of receipt of the petition, or the petition will be deemed dismissed by operation of law.

If the State Water Board does not mail the notification within 90 days, the proposed amendments further specify that the petition be deemed dismissed by operation of law unless a petition is being held in abeyance pursuant to subdivision (d) of section 2050.5. For petitions received by the State Water Board before the effective date of the proposed amendments that are not being held in abeyance and for which the State Water Board has not mailed the notification, the proposed amendments provide either 120 days, 240 days, or one year from the effective date of the proposed amendments to mail the notification, depending on when the State Water Board received the petition. If the State Water Board does not mail the notification within the 120 day, 240 day, or one year period, the proposed amendments provide that the petition will be deemed dismissed by operation of law.

The State Water Board also proposes a minor clarification to the regulation that governs incomplete petitions that are not amended by the petitioner in a timely manner (23 Cal. Code Regs. § 2051, subd. (b)). The current regulation states that the petition shall be dismissed. The use of the term "dismissed" improperly suggests that the petitioner may then seek judicial review of the regional water quality control board's action. "Deemed withdrawn" is more appropriate in this context, because the petitioner failed to file a complete petition. It would not be appropriate to allow the petitioner to seek judicial review in this circumstance, since the petitioner failed to exhaust its administrative remedy by filing a complete petition.

POLICY STATEMENT OVERVIEW/BENEFITS OF PROPOSED AMENDMENTS

The State Water Board has the discretion to either review or dismiss petitions filed pursuant to Water Code section 13320. The number of petitions received by the State Water Board each year has increased significantly since the State Water Board adopted its petition regulations

over 30 years ago. In the last several years, the State Water Board has lacked the resources to process every petition quickly. As a result, many petitioners lack certainty about whether the State Water Board will dismiss their petition or adopt an order upholding, setting aside, modifying, or remanding the regional water quality control board's action or failure to act, or directing the regional water quality control board to take some action. The proposed amendments will provide this certainty, so that petitioners can choose whether to seek judicial review of a regional water quality control board order or decision under Water Code section 13330. The Board has evaluated whether or not the proposed regulations are inconsistent or incompatible with existing state regulations and has concluded that these are the only regulations dealing with petitions challenging an action or failure to act by a regional water quality control board. Therefore, the proposed regulations are neither inconsistent nor incompatible with existing state regulations.

DISCLOSURES REGARDING THE PROPOSED ACTION

The State Water Board has made the following determinations:

- Mandate on local agencies and school districts: No new mandate to local agencies or schools is proposed.
- Cost or savings to any State agency: None.
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.
- Other non-discretionary cost or savings imposed on local agencies: None.
- Cost or savings in Federal funding to the State: None.
- Significant statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.
- Potential cost impact on private persons or directly affected businesses: The State Water Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing costs: None.

RESULTS OF THE ECONOMIC IMPACT ANALYSIS

Adoption of these amendments will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; (3) affect the expansion of businesses currently doing business within California; or (4) affect worker safety or the environment. Adoption of these amendments will have a positive effect on the health and welfare of California residents because the proposed amendments will provide certainty to California residents about whether the State Water Board will dismiss a petition or adopt an order upholding, setting aside, modifying, or remanding a regional water quality control board's action or failure to act, or directing the regional water quality control board to take some action.

SMALL BUSINESS DETERMINATION

The State Water Board has determined that the proposed amendments do not affect small business. It will not affect small business because this procedural regulatory change does not directly regulate small business: it does not require reports, does not affect costs, etc.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(13), the State Water Board must determine that no reasonable alternative it considered or that has otherwise been identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The State Water Board invites interested persons to present statements or arguments with respect to alternatives to the proposed amendments at any hearing that may be requested or during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action may be directed to:

Tim Regan, Esq.
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812
Telephone: (916) 341-5172
E-mail address: tim.regan@waterboards.ca.gov

You may also direct requests for copies of the proposed text of the amended regulations, the initial statement of reasons, the modified text of the amended regulations, if any, or other information upon which the rulemaking is based to Mr. Regan at the above address. In the event that Mr. Regan is not available to respond to inquiries, please contact:

Philip G. Wyels, Esq.
Office of Chief Counsel
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812
Telephone: (916) 341-5178
E-mail address: philip.wyels@waterboards.ca.gov

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED AMENDMENTS/INTERNET ACCESS

An initial statement of reasons and the text ("express terms") of the proposed regulations have been prepared and are available from the contact person named in this notice. The State Water Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the amended regulations, and the Initial Statement of Reasons. The documents relating to this proposed action may be found on the State Water Board website at the following address:
http://www.waterboards.ca.gov/laws_regulations/index.shtml.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After any hearing and considering all timely and relevant comments received, the State Water Board may adopt the proposed regulations substantially described in this notice. If the State Water Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text--with changes clearly indicated--available to the public for at least 15 days before the State Water Board adopts the regulations as revised. Any such modifications will also be posted on the State Water Board website. The State Water Board will accept written comments on the modified regulation for 15 days after the date on which they are made available.

AVAILABILITY OF FINAL STATEMENT OF REASONS

Upon its completion, the final statement of reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.
