

**STATE WATER RESOURCES CONTROL BOARD  
BOARD MEETING SESSION – OFFICE OF CHIEF COUNSEL  
OCTOBER 7, 2014**

**ITEM 8**

**SUBJECT**

CONSIDERATION OF A PROPOSED RESOLUTION ADOPTING AMENDED REGULATIONS GOVERNING REVIEW BY THE STATE WATER RESOURCES CONTROL BOARD OF ACTION OR FAILURE TO ACT BY REGIONAL WATER QUALITY CONTROL BOARDS.

**DISCUSSION**

Water Code section 13320 provides that within 30 days of a regional water 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. Existing regulations provide that a petition will be deemed dismissed by operation of law unless the State Water Board acts on a petition within 270 days of mailing a notification that interested persons have 30 days to file responses to the petition and the regional water board has 30 days to file the administrative record and a response to the petition. 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 unless the petition is being held in abeyance.

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. 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 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 "Deemed withdrawn" is more appropriate in this context, because the petitioner failed to file a complete petition.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 ISSUE**

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 board's action or failure to act. The proposed amendments will provide this certainty, so that petitioners can choose whether to seek judicial review of a regional water board order or decision under Water Code section 13330.

**FISCAL IMPACT**

Petitions that are dismissed by operation of law may result in litigation against the regional water boards, but any additional litigation is expected to be within the budgeted resources of the regional water boards.

**REGIONAL BOARD IMPACT**

Regional water boards will gain additional certainty over their actions and failures to act that resulted in petitions. They will learn whether the State Water Board will issue an order or dismiss the petition within 90 days of the filing of the petition.

**STAFF RECOMMENDATION**

Adopt the proposed amendments.

<p>State Water Board action on this item will assist the Water Boards in reaching Goals 5 and 6 of the Strategic Plan Update: 2008-2012 to improve transparency and accountability and to promote predictable, fair, and equitable application of laws, regulations, policies, and procedures. In particular, approval of this item will assist in fulfilling Objective 5.1 to enhance effective and consistent implementation of Water Board plans and policies and to reduce processing time and costs.</p>
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## STATE WATER RESOURCES CONTROL BOARD RESOLUTION NO. 2014-

### AMENDED REGULATIONS GOVERNING REVIEW BY THE STATE WATER RESOURCES CONTROL BOARD OF ACTION OR FAILURE TO ACT BY REGIONAL WATER QUALITY CONTROL BOARDS

#### WHEREAS:

1. Section 13320 of the Water Code provides that an aggrieved party may seek review by the State Water Resources Control Board (State Water Board) of any action or failure to act by a regional water quality control board (regional water board).
2. Chapter 6 of Division 3 of Title 23 of the California Code of Regulations sets forth rules by which the State Water Board reviews actions and failures to act by regional water boards pursuant to water quality petitions filed under Water Code section 13320.
3. On March 7, 2014, the State Water Board published a Notice of Proposed Rulemaking and publicly circulated a draft of proposed amendments to the regulations governing water quality petitions.
4. The comment period closed on April 30, 2014.
5. The State Water Board received twelve comment letters on the proposed amendments, including two requests for a hearing.
6. The State Water Board conducted a hearing on October 7, 2014.
7. The State Water Board has responded to all comments in the Final Statement of Reasons and has determined that no changes to the proposed amendments are warranted.

#### THEREFORE BE IT RESOLVED THAT:

1. The proposed amendments to Title 23, Division 3, Chapter 6 of the California Code of Regulations are adopted, and the Executive Director is authorized to transmit the amendments to the Office of Administrative Law for filing with the Secretary of State, and

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2. If during its approval process the Office of Administrative Law determines that minor, non-substantive corrections to the language of the amendment are needed for clarity or consistency, the Executive Director may make such changes, and shall inform the State Water 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 October 7, 2014.

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Jeanine Townsend  
Clerk to the Board

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## CALIFORNIA CODE OF REGULATIONS

### TITLE 23. WATERS

#### DIVISION 3. STATE WATER RESOURCES CONTROL BOARD AND

#### REGIONAL WATER QUALITY CONTROL BOARDS

#### CHAPTER 6. REVIEW BY STATE BOARD OF ACTION OR FAILURE

#### TO ACT BY REGIONAL BOARD

### **§ 2050. Petition for Review by State Board.**

(a) Any petition by an aggrieved person to the state board for review under Water Code Section 13320(a) of an action or failure to act by a regional board shall be submitted in writing and received by the state board within 30 days of any action or failure to act by a regional board. The petition shall contain the following:

- (1) Name, address, telephone number and email address (if available) of the petitioner.
- (2) The specific action or inaction of the regional board which the state board is requested to review and a copy of any order or resolution of the regional board which is referred to in the petition, if available. If the order or resolution of the regional board is not available, a statement shall be included giving the reason(s) for not including the order or resolution.
- (3) The date on which the regional board acted or refused to act or on which the regional board was requested to act.
- (4) A full and complete statement of the reasons the action or failure to act was inappropriate or improper.
- (5) The manner in which the petitioner is aggrieved.
- (6) The specific action by the state or regional board which petitioner requests.
- (7) A statement of points and authorities in support of legal issues raised in the petition, including citations to documents or the transcript of the regional board hearing ~~where appropriate~~ **if it is available.**
- (8) A statement that the petition has been sent to the appropriate regional board and to the discharger, if not the petitioner.
- (9) A statement that the substantive issues or objections raised in the petition were raised before the regional board, or an explanation of why the petitioner was not required or was unable to raise these substantive issues or objections before the regional board.

(b) Service of a petition may be made by U.S. mail, by hand delivery, by facsimile with hard copy to follow, or via e-mail ~~by prior arrangement to waterqualitypetition@waterboards.ca.gov.~~ [In the case of service by facsimile, only the petition itself shall be sent. All exhibits shall be included with the hard copy.] The petition must be received by the state board no later than 5:00 p.m. 30 days following the date of the action or inaction by the regional board, except that if the thirtieth day following the date of the action or inaction falls on a Saturday, Sunday, or state holiday, the petition must be received by the state board no later than 5:00 p.m. on the first business day following.

(c) If the action or inaction that is the subject of the petition was taken by the regional board after notice and opportunity to comment, the petition to the state board shall be limited to those substantive issues or objections that were raised before the regional board.

**(d) The state board shall notify the petitioner of the assigned petition number and the date the state board received the petition.**

Note: Authority cited: Section 1058, Water Code. Reference: Section 13320, Water Code.

### **§ 2050.5. Complete Petitions; Responses; Time Limits.**

(a) Upon receipt of a petition that complies with section 2050 the state board may either dismiss the petition pursuant to section 2052, or may provide written notification to the petitioner, informing the discharger (if not the petitioner), the regional board, and other interested persons that they shall have 30 days from the date of mailing

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such notification to file a response to the petition with the state board. The regional board shall file the administrative record within this 30-day period, including a copy of the tape recording of the regional board action, or a transcript, if available. Responses to petitions and any other submissions shall be served concurrently upon the petitioner, the discharger (if not the petitioner) and the regional board, by any method listed in section 2050, **subdivision** (b). Any points and authorities filed in response to the petition shall include citations to documents or the transcript of the regional board hearing where appropriate. The time for filing a response or the administrative record may be extended by the state board. Additional submissions will be allowed only upon written request and at the discretion of the state board.

(b) The state board shall review and act on the petition within 270 days from the date of mailing the notification described in **subdivision** (a), unless a hearing is held by the state board. If a hearing is held, the state board shall act on the petition within 330 days from the date of mailing the notification described in **subdivision** (a), or within 120 days of the close of the hearing, whichever is later. If formal disposition is not made by the state board within these time limits the petition is deemed denied. These time limits may be extended for a period not to exceed 60 days with written agreement from the petitioner. The time limits for formal disposition do not apply while action on a petition is held in abeyance, as provided in ~~section 2050.5~~ **subdivision** (d).

(c) The state board may, on its motion, review a regional board's action or failure to act for any reason, including lack of formal disposition by the state board within the time limits provided in **subdivision** (b).

(d) A petition may be held in abeyance at the request or with the agreement of the petitioner.

(1) A request or agreement to hold a petition in abeyance must be in writing and shall be provided to the state board, the regional board, and the discharger, if not the petitioner.

(2) Petitions may be held in abeyance unless the regional board provides reasonable grounds for objection. For petitions challenging the assessment of administrative civil liability or penalties, written agreement from the regional board is required.

(3) The time limits for formal disposition **and for filing a response to the petition and the administrative record** shall be tolled during the time a petition is held in abeyance, and shall recommence running when the petition is removed from abeyance.

**(e) Unless a petition is being held in abeyance pursuant to subdivision (d), the state board shall issue the notification described in subdivision (a) within 90 days of receipt of a petition for review, as indicated in the notice provided pursuant to subdivision (d) of section 2050. If the state board has not provided the notification described in subdivision (a) within the 90-day period provided by this subdivision, the state board deems the petition dismissed by operation of law effective the 91<sup>st</sup> day following receipt of the petition. The time limit for providing the notification described in subdivision (a) shall be tolled during the time a petition is held in abeyance, and shall recommence running when the petition is removed from abeyance. A party aggrieved by a regional board final decision or order for which the state board dismisses a petition pursuant to this subdivision must file any judicial challenge within the 30-day period for judicial review allowed by Water Code section 13330, subdivision (b).**

**(f) For petitions received by the state board before the effective date of subdivision (e) that are not being held in abeyance and for which the state board has not issued the notification described in subdivision (a), the time limit for providing the notification described in subdivision (a) shall be as follows:**

**(1) For petitions received before January 1, 2011, within 120 days of the effective date of subdivision (e).**

**(2) For petitions received from January 1, 2011 to December 31, 2012, within 240 days of the effective date of subdivision (e).**

**(3) For petitions received from January 1, 2013 to the day before the effective date of subdivision (e), within one year of the effective date of subdivision (e).**

**(g) If the state board has not provided the notification described in subdivision (a) within the periods specified in subdivision (f)(1) through (f)(3), the state board deems the petition dismissed by operation of law effective the day following the respective period described in subdivision (f)(1) through (f)(3). The time limit for providing the notification described in subdivision (a) shall be tolled during the time a petition is held in abeyance, and shall recommence running when the petition is removed from abeyance. A party aggrieved by a regional board final decision or order for which the state board dismisses a petition pursuant to this**

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**subdivision must file any judicial challenge within the 30-day period for judicial review allowed by Water Code section 13330, subdivision (b).**

Note: Authority cited: Section 1058, Water Code. Reference: Section 13320, Water Code.

## **§ 2051. Defective Petitions.**

(a) Upon receipt of a petition that does not comply with Section 2050, the state board shall notify the petitioner of the manner in which the petition is defective and the time within which an amended petition may be filed, unless the petition is dismissed pursuant to section 2052.

(b) If a properly amended petition is not received by the state board within the time allowed, the petition shall be ~~dismissed~~ **deemed withdrawn** unless cause is shown for an extension of time.

Note: Authority cited: Section 1058, Water Code. Reference: Section 13320, Water Code.