

**STATE WATER RESOURCES CONTROL BOARD
RESOLUTION 2015-0005**

**AMENDMENT TO THE WATER QUALITY CONTROL POLICY FOR DEVELOPING
CALIFORNIA'S CLEAN WATER ACT SECTION 303(d) LIST**

WHEREAS:

1. Section 303(d)(1) of the Clean Water Act (CWA) (33 U.S.C. § 1313(d)) requires states to regularly identify surface waters that do not meet applicable water quality standards after technology-based controls have been implemented (referred to as the section 303(d) List) and prioritize such surface waters for the purposes of developing total maximum daily loads (TMDLs). (CWA § 303(d)(1); 40 C.F.R. § 130.7(b).) The states are required to submit their section 303(d) List biennially to the United States Environmental Protection Agency (U.S. EPA). (40 C.F.R. § 130.7(d).)
2. Water Code section 13140 authorizes the State Water Resources Control Board (State Water Board) to formulate and adopt policy for water quality control.
3. Water Code section 13191.3, subdivision (a), requires the State Water Board to prepare guidelines to provide the State Water Board and the Regional Water Quality Control Boards (Regional Water Boards) with recommended procedures to evaluate information solicited in support of listing and delisting candidate surface waters for the development of the section 303(d) List and developing and implementing TMDLs.
4. On September 30, 2004, by [Resolution No. 2004-0063](#), the State Water Board adopted the Policy for Developing California's Clean Water Act Section 303(d) List (Listing Policy).
5. The State Water Board has submitted to U.S. EPA three section 303(d) Lists for California's surface waters since it adopted the Listing Policy in 2004.
6. Since 2004, advancements in technology and monitoring programs have significantly increased the amount of data and information on the quality or condition of surface waters submitted to the State Water Board and the Regional Water Boards for listing assessment. Consequently, the State Water Board has been unable to submit the section 303(d) Lists biennially to U.S. EPA for California's surface waters. State Water Board staff proposes to amend the Listing Policy to create a more efficient process for effective and timely submissions of the section 303(d) List (Listing Policy Amendment) to U.S. EPA.
7. The CWA and the Listing Policy require the State Water Board to adopt a statewide section 303(d) List and submit it to U.S. EPA for approval. Pursuant to Water Code section 7, the State Water Board is authorized to delegate authority to the Executive Director. The Listing Policy Amendment provides (at Section 6.3) that the Executive Director, on behalf of the State Water Board, may evaluate the statewide section 303(d) List and comments thereto, respond to comments, and adopt the statewide section 303(d) List for submission to U.S. EPA.

8. The Listing Policy Amendment (at Section 6.1.1) revises the definition of “readily available data and information” to mean “data and information that can be submitted to the California Environmental Data Exchange network (CEDEN) [...]” CEDEN is a State Water Board database for submitting, storing, and sharing information on surface water quality. Pursuant to the revised definition, readily available data and information must be submitted to CEDEN upon the State Water Board and Regional Water Board’s next solicitation cycle. State Water Board staff anticipates that next notice of solicitation will be sent out to solicit data and information for the 2018 Integrated Report (the CWA section 303(d) and 305(b) reporting requirements). For the upcoming 2012, 2014 and 2016 Integrated Reports, the data and information submitted in response to the 2010 notice of solicitation shall be assessed and considered. As a result, the Listing Policy Amendment’s requirement that all data and information must generally be submitted to CEDEN will not be implicated until the State and Regional Water Boards send the 2018 Integrated Report notice of solicitation, which will provide sufficient time for persons and organizations unfamiliar with the CEDEN system to obtain training, if any is needed.
9. After the Listing Policy was adopted, the State Water Board adopted the Water Quality Control Plan for Enclosed Bays and Estuaries—Part 1 Sediment Quality ([Resolution No. 2008-0070](#) (September 16, 2008)), which contained narrative sediment quality objectives to protect benthic communities and human health and guidance to interpret the objectives. In Resolution No. 2008-0700, the State Water Board acknowledged the need to ensure the Listing Policy is updated to reflect the adopted sediment quality objectives. The Listing Policy Amendment contains revisions (at Section 6.1.3) to ensure consistency between the Listing Policy and the sediment quality objectives and the guidance adopted to interpret the objectives.
10. The State Water Board’s regulations for implementing the California Environmental Quality Act (Pub. Res. Code §§ 21000 et seq.) (CEQA) require the State Water Board to conduct environmental review of its certified exempt regulatory programs, which includes state policies affecting water quality control. (23 Cal. Code Regs., §§ 3775, 3777.) The requirement to perform an environmental review is inapplicable, however, if the State Water Board “determines that the activity is not subject to CEQA.” (Ibid., § 3720, subd. (b).) A governmental agency’s discretionary action is subject to CEQA if it is approving a “project” as defined in section 21065 of the Public Resources Code: “‘Project’ means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment[.]” If the subject matter does not constitute a “project,” then the approval is not subject to CEQA. (14 Cal. Code Regs. § 15061, subd. (b)(3).)
11. The State Water Board’s approval of the section 303(d) List itself is not a “project” subject to CEQA because the list is for informational purposes and such action has no potential to result in a “direct physical change in the environment, or a reasonably foreseeable indirect physical change on the environment” (Pub. Res. Code § 21065). Similarly, amending the Listing Policy is not a “project.” The changes to the Listing Policy promote efficiencies to the process by which the State Water Board and the Regional Water Boards administer, approve, and adopt the statewide section 303(d) List. The amendment streamlines the manner by which interested persons may submit information concerning the quality of the surface waters of the State; clarifies that the State Water Board may adopt a section 303(d) List which reflects a portion of the Regional Water Board’s approved section 303(d) List recommendations in a listing cycle rather than including list recommendations from each of the nine Regional Water Boards each listing cycle; adds that the State Water Board shall have discretion to administer the Regional Board’s assessment; provides that the State Water Board Executive

Director may consider, adopt, and submit to U.S. EPA the Regional Water Board's list recommendations by considering and responding to written comments; corrects typographical errors, and makes other non-substantive revisions; and updates the evaluation guideline selection process used for interpreting narrative objectives to be consistent with the existing guidance for the sediment quality objectives. Accordingly, the State Water Board finds that amending the Listing Policy is not subject to CEQA or the State Water Board's procedures for implementing CEQA.

12. The Listing Policy Amendment is consistent with and advances the following goals identified in the State Water Board's Strategic Plan Update: 2008-2012: Goal 1 is to "implement strategies to fully support the beneficial uses for all 2006 303(d)-listed water bodies by 2030"; Goal 5 is to "improve transparency and accountability [...] by enhancing and improving accessibility of data and information"; and Goal 6 is to "enhance consistency across the Water Boards, on an ongoing basis, to ensure our processes are effective, efficient, and predictable, and to promote fair and equitable application of laws, regulations, policies, and procedures."
13. In considering the adoption of the Listing Policy Amendment, the State Water Board has considered the consensus recommendations adopted by the public advisory group convened pursuant to Water Code section 13191. Those recommendations were that the listing process should be transparent, the public participation process should be transparent and include outreach, and although site-specific information should be taken into consideration, the regional water quality control board should utilize a consistent set of tools and principles.
14. On November 12, 2013, the State Water Board provided electronic notice to persons interested in the California Integrated Report that the State Water Board and U.S. EPA were discussing strategies to make the process for developing the Integrated Report more efficient and submittals to U.S. EPA more timely. That notice included a link to a letter to U.S. EPA from the State Water Board, Division of Water Quality (dated July 15, 2013), which detailed proposed procedural changes to the Listing Policy. The notice also described the strategy of having the 303(d) List be comprised of a portion of the nine Regional Water Board listing recommendations each listing cycle.
15. In accordance with Water Code section 13144, the State Water Board consulted with and carefully evaluated the recommendations of concerned governmental agencies.
16. In accordance with Water Code section 13147, the State Water Board provided requisite notice to the Regional Water Boards of the public hearing regarding the proposed adoption of the Listing Policy Amendment and provided notice by publication in each region pursuant to Government Code section 6061.
17. On November 20, 2014, the State Water Board provided notice to the public (Notice of Opportunity to Comment) that (1) the Listing Policy Amendment was available for the public's review and written comment, (2) the deadline for the public's submission of written comments to the proposed Listing Policy Amendment was December 22, 2014, and (3) the State Water Board would separately provide notice of the date at which it would consider approving the Listing Policy Amendment. On November 21, 2014, the State Water Board provided notice to the public of a Revised Notice of Opportunity to Comment, which corrected the day of the corresponding date on which the written comment period ended.

18. On December 17, 2014, the State Water Board provided notice to the public that the State Water Board would hold a hearing at its February 3, 2015 board meeting to consider approving the Listing Policy Amendment.
19. The State Water Board reviewed written comments timely submitted on the proposed adoption of the Listing Policy Amendment and provided written responses to all written comments.
20. The State Water Board, in compliance with California Water Code section 13147, held a public hearing in Sacramento, California, on February 3, 2015, with respect to the board's adoption of the proposed Listing Policy Amendment and received and responded to public comments.
21. The regulatory provisions of the Listing Policy Amendment do not become effective until the provisions are approved by the Office of Administrative Law

THEREFORE, BE IT RESOLVED THAT THE STATE WATER BOARD:

1. Adopts the [Listing Policy Amendment](#).
2. Directs State Water Board staff to submit the Listing Policy Amendment to the Office of Administrative Law for approval.
3. Directs the Executive Director or his designee to make minor, non-substantive modifications to the text of the Listing Policy Amendment, if the Office of Administrative Law determines during its review that such changes are needed, and directs the Executive Director to inform the State Water Board of any such changes.
4. Directs staff to file a Notice of Exemption with the Office of Planning and Research.

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 February 3, 2015.

AYE: Chair Felicia Marcus
 Vice Chair Frances Spivy-Weber
 Board Member Tam M. Doduc
 Board Member Steven Moore
 Board Member Dorene D'Adamo

NAY: None

ABSENT: None

ABSTAIN: None



 Jeanine Townsend
 Clerk to the Board